

**CONFIRMATION HEARINGS ON FEDERAL  
APPOINTMENTS**

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**HEARINGS**

BEFORE THE

**COMMITTEE ON THE JUDICIARY**

**UNITED STATES SENATE**

**ONE HUNDRED SIXTH CONGRESS**

**SECOND SESSION**

**ON**

**CONFIRMATION OF APPOINTEES TO THE FEDERAL JUDICIARY**

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MAY 25, JUNE 15, JULY 12, and JULY 25, 2000  
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**Part 3**

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**Serial No. J-106-33**

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Printed for the use of the Committee on the Judiciary



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U.S. GOVERNMENT PRINTING OFFICE

73-475

WASHINGTON : 2001

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**THURSDAY, MAY 25, 2000**

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

The committee met, pursuant to notice, at 2:00 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Jeff Sessions presiding.

Also present: Senators Grassley and Schumer.

**OPENING STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA**

Senator SESSIONS. The committee will come to order.

Our first panel will be Senators and Congressmen who may be introducing nominees, and we would be glad to have them have a place at the table and come up. We will start with the circuit nominee and then go according to the list Senator Hatch has given me, or any other agreement you might have on your time, I would be glad to try and accommodate you.

Senator Grassley is a distinguished member of this committee. Senator Grassley, we are glad to have you here and we would be delighted to hear your comments at this time.

**STATEMENT OF HON. CHARLES GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA**

Senator GRASSLEY. Well, I want to introduce Bonnie Campbell. She is a nominee for the Eighth Circuit Court of Appeals, and that includes Iowa.

Ms. Campbell has broad experience in a number of areas of law, both private and public. Her private practice experience spanned a period of over six years, during which she primarily focused on issues relating to family and employment discrimination law.

Ms. Campbell's public service began in 1974, when she worked for former Iowa Senator John Culver. Then in 1990, after practicing in the private sector, she was elected Iowa's Attorney General. Her tenure as Attorney General provided Ms. Campbell an op-

portunity to become familiar with the workings of the Federal appellate court system, serving as counsel to all State agencies in the prosecution arm of State government in cases appearing before Federal appellate court.

Ms. Campbell has personally monitored and participated in a number of cases that have appeared before the Eighth Circuit she is nominated for. As Attorney General of the State of Iowa, she also aggressively prosecuted drug dealers and stalkers. In addition, she championed victims' rights and tougher domestic abuse laws.

Bonnie Campbell left the Attorney General's Office in 1995. President Clinton appointed her as the first Director of the Violence Against Women Office in the U.S. Department of Justice, and she is serving in that position this very day.

As the Director of this Office, she is responsible for working with U.S. attorneys to ensure enforcement of the new Federal criminal statutes contained in the Violence Against Women Act and related legislation seeking to transform the way in which the criminal justice system responds to violent crimes against women.

Ms. Campbell's stance on tougher domestic abuse laws and the aggressive prosecution of drug dealers has earned her nomination the endorsement of the Iowa State Police Association, the largest police association in the State of Iowa.

I thank you, Mr. Chairman, for this hearing, and you will also hear from my colleague, Senator Harkin, in support of this nomination as well.

Senator SESSIONS. Thank you very much, Senator Grassley. Those remarks will be important for the record, and your support for this nominee as a leading member of this committee will be most important.

Senator Harkin, I don't believe is here yet. I will go down our list. Senator Schumer is not here.

Senator Sarbanes.

**STATEMENT OF HON. PAUL SARBANES, A U.S. SENATOR FROM THE STATE OF MARYLAND**

Senator SARBANES. Well, thank you very much, Mr. Chairman. I am pleased to introduce to the committee Daniel Marcus, who has been nominated by the President to be the Associate Attorney General, which, as you well know, is the number three ranking position in the Department of Justice.

Dan Marcus is a thoroughgoing professional. He has had a very distinguished legal career. He is an honors graduate of Brandeis University and Yale Law School. He then clerked in the District of Columbia Circuit Court of Appeals for Judge Harold Leventhal, and then joined the firm of Wilmer, Cutler and Pickering in 1966. And it is fair to say he has been there 32 years, with time out on occasion for Government service.

In the 1970's, he served in the Department of Health, Education, and Welfare as Deputy General Counsel. Then he was General Counsel for the Department of Agriculture in 1979 and 1980. He came back into government service a couple of years ago, joining the Department of Justice a year ago, as the Principal Deputy Associate Attorney General. He became the Acting Associate Attorney General last October, and he has been serving in that capacity ever

since and we would like to just strike the "Acting" from the title and get him confirmed as the Associate Attorney General.

He is a distinguished citizen of Montgomery County, MD and he has been very active in our community there. He has been a chair of the D.C. Bar's Legal Ethics Committee, both a member and chairperson, and has performed, I think, distinguished public service in that capacity.

He knows this job; he has been doing it. He gets very high marks for the performance, and I think he would be excellent, obviously, in the position. I very much hope the committee will find its way clear to confirm him, and give the Senate a chance to pass on him as well.

Thank you very much.

Senator SESSIONS. Thank you, Senator Sarbanes. We appreciate those comments and they will be considered by the committee. Thank you so much.

Congressman Saxby Chambliss is next on my list. I don't know how they did this; it usually follows the nominees, I believe.

Congressman Chambliss.

**STATEMENT OF HON. SAXBY CHAMBLISS, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA**

Representative CHAMBLISS. Well, thank you very much, Senator. It is indeed a pleasure for me to be here today to appear before this body to recommend Beverly Martin for a position as U.S. District Judge in the Northern District of Georgia.

Beverly is currently serving as the U.S. attorney in Macon, GA, in the Middle District of Georgia, and unfortunately we are going to be losing her, once the Senate proceeds through the confirmation process, in Macon. And we hate to do that, but she has done just a terrific job as U.S. attorney. She has been a leader all across the country in fighting drug trafficking. She has been on a number of task forces at the Attorney General's direction.

I just can't recommend anybody higher than I recommend Beverly Martin to you. She's not only a fine lawyer in and of her own right, but she comes from good stock. Having practiced law in Georgia for 26 years myself, her father and I practiced against each other and with each other several different times, and he is a very fine lawyer and she came from a great family, as far as the legal profession is concerned.

It is indeed a privilege and a pleasure, Senator, for me to recommend Beverly Martin to you.

Senator SESSIONS. Thank you very much, Representative Chambliss. We appreciate that. I got a call today from my good friend, the former U.S. attorney in Atlanta, Larry Thompson, highly complimentary of the nominee. So I appreciate that.

Next, we have Resident Commissioner Carlos Romero-Barceló, from Puerto Rico.

We would be glad to hear your comments.

**STATEMENT OF HON. CARLOS ROMERO-BARCELÓ, RESIDENT COMMISSIONER IN CONGRESS FROM PUERTO RICO**

Commissioner ROMERO-BARCELÓ. Thank you, Mr. Chairman. I appear before you today to introduce, and also strongly support, the

nomination of Jay Garcia-Gregory to the Federal bench of the U.S. District Court for the District of Puerto Rico.

Mr. Garcia-Gregory's qualifications are first-grade. He is a member of the Bar of the General Court of Justice of Puerto Rico and the U.S. District Court for the District of Puerto Rico. He is also a member of the U.S. Supreme Court bar. His experience includes the management of complex civil litigation before the U.S. District Court for Puerto Rico.

Throughout his extensive and distinguished legal career, Mr. Garcia-Gregory has represented clients in admiralty, aviation, and telecommunications law; unfair competition and copyright infringement cases; corporate, tax, labor, contracts, and administrative law; antitrust, RICO, and securities cases; and in constitutional law and civil rights litigation.

He has held several positions of responsibility with the U.S. District Court for the District of Puerto Rico, and his wide-ranging legal expertise also includes 7 years as an active member of the New York Stock Exchange Arbitration Panel, in which he presides over numerous complex securities arbitration hearings.

Mr. Garcia-Gregory is also one of those rare individuals who, by virtue of his integrity and unassailable character and impeccable legal reputation, enjoys the enthusiastic endorsement of Puerto Ricans across the political spectrum—the Governor of Puerto Rico, the Speaker of the House of Representatives. The Governor is a Democrat, the Speaker of the House is a Republican; they both endorse him strongly. The oldest State chair of the Republican Party, Don Luis Ferrer, who is 97 years old, endorses him enthusiastically. I endorse him. So he has the endorsement of both sides because of his reputation.

He is one of the seven judgeships to be appointed in Puerto Rico, and since June 1, 1994, where we haven't had a judge for the seventh position. And needless to say the calendar of the court is very, very loaded, and I think all of the judges on the court are very eager to see Jay Garcia-Gregory join them on the bench. They all support him very strongly. In my opinion, this is one of the best appointments that has ever been made for the court in Puerto Rico, and I strongly support him.

Thank you, Mr. Chairman.

Senator SESSIONS. Well, thank you very much for sharing that insight, Commissioner Romero-Barceló. You are free to stay with us, or if you need to leave, that would be fine, also.

Senator COVERDELL, we are delighted to have you and hear your comments at this time.

**STATEMENT OF HON. PAUL COVERDELL, A U.S. SENATOR  
FROM THE STATE OF GEORGIA**

Senator COVERDELL. It is good to be with Chairman Sessions of Alabama. Mr. Chairman, I am pleased to join my colleague, who will be here very shortly, Senator Cleland, in recommending to you and the committee Beverly Martin to sit on the U.S. District Court for the Northern District of Georgia.

Ms. Martin is not only extremely qualified to serve on the Federal bench, but she is also thought very highly of in Georgia's legal community. Ms. Martin has a fine background which Senator

Cleland—we have conspired not to repeat everything before the committee, and so I won't go into the background that he will expand upon in his remarks.

As the record will show, Ms. Martin has an outstanding history of legal service and achievement. She has been a dedicated public servant since becoming assistant attorney general for the State of Georgia in 1984. Ms. Martin currently serves as U.S. attorney in the Middle District of Georgia. She comes from a family with a history of involvement in the community and with the law. Her dedication will no doubt carry over to her service on the Federal bench.

Ms. Martin's record has been noticed in Georgia. Since she was nominated, I have been most impressed with the tremendous outpouring of support I have received from Georgia's legal community on her behalf. She is thought highly of by everyone who has worked with her, and I have heard nothing but positive words about her nomination and how she would perform as a Federal judge. Her record and her reputation in Georgia and her dedication to her work lead me to believe she will serve honorably on the Federal bench.

Mr. Chairman, I highly recommend Ms. Martin to the committee and respectfully request her confirmation move forward. I think Ms. Martin is an excellent nominee, and that the committee will do a great service to the Federal judiciary by confirming her.

Just in closing, let me say that the recommendations have not only been many, but the personalities from home State that have spoken up on behalf of Ms. Martin I include among the most exemplary citizens of the State of Georgia, which is a very moving thing and a very important thing, and I want to share that with the committee.

Senator SESSIONS. Thank you. I have heard some of those comments.

Senator Schumer is our ranking member. Does he have a statement now? And then we will hear from Representative Morella.

**STATEMENT OF HON. CHARLES SCHUMER, A U.S. SENATOR  
FROM THE STATE OF NEW YORK**

Senator SCHUMER. Thank you very much, Mr. Chairman, and I just want to thank Senator Hatch, as well as my committee mates, for again helping New York with our judicial needs.

I want to thank our ranking member, Senator Leahy, for working so hard on behalf of so many of the nominees. Behind the scenes, Senator Leahy has worked quietly to help all of us move our nominees. And sometimes he doesn't get as much credit as he should, so I want to thank him publicly for everything he has done.

Mr. Chairman, I am proud today to introduce to the committee Laura Taylor Swain, a wonderful New Yorker who will make a great district court judge. She is currently a bankruptcy judge in the Eastern District of New York, and has now been nominated to fill a vacancy across the river in the Southern District.

Judge Swain's background and achievements as both a practitioner of law and as a bankruptcy judge make her a perfect candidate to be a Federal judge. She was born and raised in Brooklyn, my old stomping ground, and then attended Harvard College and Harvard Law School, two more of my stomping grounds, although

I like to say, Mr. Chairman, the best thing about going to Harvard is when someone says they went to Harvard, you are not impressed. Because they took you, they could take almost anybody. [Laughter]

After law school, Judge Swain accepted a judicial clerkship with the Hon. Constance Baker Motley, one of New York's great jurists and a trailblazer not only as a judge, but as a New York State Senator and Manhattan Borough President.

Following the clerkship, Judge Swain joined one of New York's top law firms, Debevoise and Plimpton. While in private practice, Judge Swain worked on large and difficult cases for major corporate clients, such as Uniroyal and Cable Vision. She spent more than 12 years at the Debevoise firm and became an expert on ERISA.

I will just editorialize a little that, for those who don't know, ERISA is one of the most complicated and difficult areas of the law. Those who work in this area are usually known as exceptional lawyers. Those who become experts in it are the cream of the crop, and Judge Swain was just that.

Since 1997, she has served with distinction as a judge on the U.S. Bankruptcy Court for the Eastern District. Not surprisingly, the matters that come before the bankruptcy courts in New York are among the most challenging in the Nation. They often involve vast financial concerns, millions of dollars in assets, and the most sophisticated counsel.

While managing a docket of over 6,000 cases, Judge Swain's task has been to unravel intricate commercial transactions, reorganize ongoing corporate ventures, and most importantly do justice to all involved, creditors and debtors alike. And by all accounts, Judge Swain has done a masterful job at this difficult and sometimes unforgiving work.

There is much more that I could say about the judge in her legal capacity, but I will just ask that my statement be put in the record.

Finally, I would like to say, because I think it is important when we nominate people for judges that they have complete records, not simply in the legal profession, I want to just praise her for her outside activities. She has been very active in her church, the Grace Episcopal Church, in New York, and in the church's school and community outreach efforts.

She has served as a member of the Board of Trustees of the New York Diocese of the Episcopal Church, and a member of the Board of Trustees of Episcopal Charities. Somehow, she even found time to sing in a well-known performance choir. I only wish we could hear her display this talent here, Mr. Chairman, as we consider her legal acumen.

To conclude, Mr. Chairman, Judge Swain will make an outstanding district judge, as she has as a bankruptcy judge, and will serve the people of New York and the Nation well on the bench.

I thank you and all of those here today for their time.

Senator SESSIONS. Thank you, Senator Schumer. I know you care deeply about an extraordinary bench in New York and you work hard to achieve that.

Senator SCHUMER. Thank you.



Senator SESSIONS. Representative Connie Morella, we are delighted to have you.

**STATEMENT OF HON. CONNIE MORELLA, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND**

Representative MORELLA. Thank you. It is a pleasure to be over here on this side.

Mr. Chairman, Senator Schumer, I am very pleased to appear before you this afternoon on behalf of my constituent, Daniel Marcus, whom the President has nominated to be Associate Attorney General, and who has been serving in that capacity as Acting Associate Attorney General since October 29, 1999.

In his role, he is responsible for the oversight and coordination of the civil litigating components of the Department, overseeing the Antitrust, Civil, Civil Rights, Environment and Natural Resources, as well as Tax Divisions, very important areas, as well as the Department's grant-making process. On February 28, President Clinton nominated Mr. Marcus to be Associate Attorney General—good judgment.

Immediately prior to joining the Department, Mr. Marcus was senior counsel in the Office of Counsel to the President, and then before that he was a partner in the prestigious Washington, DC, law firm of Wilmer, Cutler and Pickering, where he had a general regulatory practice with particular emphasis on food and drug regulation and related litigation.

He is a graduate of Brandeis and Yale Law School, where he was an editor of the Yale Law Journal. Following his graduation from law school, he clerked for Judge Harold Leventhal, of the U.S. Court of Appeals for the District of Columbia Circuit.

He joined Wilmer, Cutler and Pickering in 1966 and became a partner in 1973. From 1977 to 1979, he served as the Deputy General Counsel of the U.S. Department of Health, Education, and Welfare. From 1979 to 1980, he served as General Counsel to the U.S. Department of Agriculture.

In 1981, Mr. Marcus returned to Wilmer, Cutler and Pickering as a partner, and he served as the firm's ethics partner from 1991 to 1995. And from 1995 to 1998, he was a member of the firm's management committee. He was also the chairman of the D.C. Bar Legal Ethics Committee from 1995 to 1997. That impresses me enormously.

I am particularly impressed by Mr. Marcus' enthusiasm for public service and his commitment to the mission of the Department of Justice. We have discussed that at great length. Having relinquished private sector law as a partner in a distinguished, profitable firm to serve our country at a time of concern about public service brain drain, I think Mr. Marcus stands out as a real beacon, a real role model.

He also displays stability and good judgment by living in Montgomery County, MD, my district, for 33 years, and raising his family there, obviously inspiring his two sons who became successful lawyers. He and Mrs. Marcus are blessed also with two and three-quarters grandchildren.

Clearly, Mr. Marcus has a great variety of in-depth legal experience and an impressive resume, and, I believe the judicial tempera-

ment, the enthusiasm and people-oriented dedication to serve us exceedingly well. I certainly hope that the committee will move favorably on the President's nomination of Mr. Marcus to serve as Associate Attorney General of the United States.

Senator SESSIONS. Thank you very much, Congresswoman Morella.

Mrs. MORELLA. A pleasure.

Senator SESSIONS. Those are very kind and generous comments.

Mrs. MORELLA. I thank you, Mr. Chairman.

Senator SESSIONS. Thank you very much.

I see Senator Harkin is on a short timeframe, and Senator Cleland.

Senator CLELAND. I yield to my colleague.

Senator SESSIONS. The Senator from Iowa.

**STATEMENT OF HON. TOM HARKIN, A U. S. SENATOR FROM  
THE STATE OF IOWA**

Senator HARKIN. Thank you, Mr. Chairman. I appreciate that. I am on the floor now as a co-manager with Senator Lugar on the crop insurance bill, and I wanted to take the time to come over here. So I appreciate my colleague, Senator Cleland, letting me go ahead.

Senator SESSIONS. We both care about that bill.

Senator HARKIN. I know we do. I have got to get back to handle that.

Mr. Chairman, I am here obviously on behalf of a friend of 20 years, Bonnie Campbell, for the eighth circuit. But I just wanted to add a little postscript to what Congresswoman Morella was saying. It is a double pleasure for me to be here today because Dan Marcus is an old friend.

As a matter of fact, my wife is not here to testify, but if she were, she would put an exclamation point on everything that Congresswoman Morella said because Dan Marcus was her first boss. So she worked for him for a long time and is still singing his praises today. So he, again, is an excellent choice for the position of Associate Attorney General.

Mr. Chairman, it is my honor to be here to introduce and give my support to an Iowa constituent and, as I said, a friend of over 20 years, Bonnie J. Campbell, who has been nominated for the U.S. Court of Appeals for the Eighth Circuit. I believe she would serve in this position with honor and fairness and distinction.

Bonnie Campbell has had a long and distinguished service to our country. First, she has a deep appreciation for Congress and how we operate because she started her career here back in the 1970's with our former colleague, Senator John Culver. After law school, she started in 1984 with a private practice in Des Moines, where she worked on cases involving medical malpractice, employment discrimination, personal injury, real estate, and family law.

She was then elected attorney general of Iowa in 1990, the first woman to ever hold that position in our State. She managed in that position an office of some 200 people, including 120 attorneys handling a wide variety of criminal and civil matters for State agencies and officers. As attorney general, she gained high marks from all ends of the political spectrum as someone who was strong-

ly committed to enforcing the law, to reducing crime, and to protecting consumers.

In 1995, she was appointed as the Director of the Violence Against Women Office in the Department of Justice. In that position, she played a critical role in the implementation of the violence against women provisions of the 1994 Crime Act. Again, she has repeatedly won respect from a wide range of interests with different points of view on this issue. She has been, and remains, responsible for the overall coordination and agenda of the Department of Justice's efforts to combat violence against women.

As I said, Mr. Chairman, I have known Bonnie and Ed Campbell for over 20 years. She is a person of unquestioned integrity, keen intellect, and outstanding judgment. She also has a great sense of fairness and evenhandedness. These are the qualities, I believe, and her significant experience, that make her an ideal candidate for this important position.

Her nomination has been strongly supported by many, many of her colleagues, including the current Iowa attorney general and the president of the Iowa State Police Association, and the approval of the American Bar Association.

Finally, I might just add, Mr. Chairman, we do need a judicial system that truly reflects the diversity of this Nation. We need more women who are qualified on the bench at all levels. So for all these reasons, Mr. Chairman, I urge you and the committee to promptly report her nomination favorably to the floor of the Senate.

I know that Bonnie Campbell is here today with her husband, Ed Campbell—again, as I said, two longtime and close personal friends of mine. I have admired them both greatly through the years for their service to our country, to their local community, and to our State of Iowa. You couldn't find a better person to serve in this position on the court of appeals than Bonnie Campbell, Mr. Chairman.

Senator SESSIONS. Thank you very much, Senator Harkin. We appreciate those comments and they will definitely be considered by this committee.

Senator HARKIN. I appreciate that. Thank you, Mr. Chairman.

Senator SESSIONS. Senator Cleland from Georgia.

**STATEMENT OF HON. MAX CLELAND, A U.S. SENATOR FROM THE STATE OF GEORGIA**

Senator CLELAND. Thank you very much, Mr. Chairman. I would like to have Beverly Martin join me up here.

Beverly, would you just come up here and sit for a while?

We are delighted to be here, Mr. Chairman, and it is my pleasure to introduce to the committee Ms. Beverly Martin, currently the U.S. Attorney for the Middle District of Georgia.

Senator SESSIONS. Well, that is a plus.

Senator CLELAND. Yes, it is.

Senator SESSIONS. I was honored to have that time one time.

Senator CLELAND. Yes, and she does a marvelous job. She is currently the U.S. Attorney for the Middle District of Georgia and the President's nominee to the U.S. District Court for the Northern District of Georgia.

I am pleased that Senator Coverdell, who has already been here and said some wonderful things about Beverly, joins me with this presentation. I am also pleased to welcome Ms. Martin's father, Mr. Baldwin Martin. On her father's side, Ms. Martin is the fourth generation lawyer to practice in Georgia. Both her grandfather and her great grandfather served as chairman of the Board of Trustees of Mercer University in Macon, GA.

Beverly Martin is extremely qualified for appointment to the Federal bench. She has worked in private practice and has also held posts in State and Federal Government offices. She has distinguished herself as a litigator, a public prosecutor, and a public servant throughout her career in Georgia. I am very proud to recommend her today.

Ms. Martin is a native of Macon, GA. She attended Mercer University before receiving her undergraduate degree from my alma mater, Stetson University, in Deland, FL. I often say that my alma mater, Stetson, did two great things for me. They let me in and they let me out. [Laughter.]

She attained her J.D. from the University of Georgia School of Law in 1981. Ms. Martin was an associate attorney in the law firm of Martin, Snow, Grant, and Napier, in Macon, from 1981 to 1984, a law firm founded by her great grandfather.

From 1984 to 1994, Ms. Martin served as Assistant Attorney General in the Office of Georgia's Attorney General. At the Attorney General's Office, she represented the State of Georgia in civil litigation, and also served as the Division Director for the Business and Professional Regulation Division. In 1994, Ms. Martin joined the U.S. Attorney's Office in the Middle District of Georgia as a Federal prosecutor of both narcotics and general offenses.

In 1997, Ms. Martin was nominated by President Clinton and confirmed by the Senate to become the U.S. attorney for the Middle District, where she currently serves. As U.S. attorney, Ms. Martin oversees approximately 60 employees and the legal work of the United States of America in 70 Georgia counties.

Ms. Martin was appointed by the Attorney General to be a member of the Attorney General's Advisory Council for a 2-year term beginning in January of last year. She was also selected by her peers to be the chair of the Executive Committee of the Advisory Council for the Organized Crime Drug Enforcement Task Force in the Southeast Region of the United States.

Ms. Martin was selected as one of the two Women of Achievement by Career Women's Network last year. She was also named by her high school as Alumni of the Year last year. She serves on the Board of Directors of the Macon State College Foundation and is a member of the Steering Committee for Macon's Executive Forum.

Ms. Martin is a member of the State Bar of Georgia, the Macon Bar, and the Lawyer's Club of Atlanta. She is also a Master in the William Augustus Booth Inn of Court and is admitted to practice before the Federal District Courts for the Northern, Middle and Southern Districts of Georgia, the Eleventh Circuit Court of Appeals, and the U.S. Supreme Court.

She is an excellent attorney and will be an outstanding addition to the Federal bench. She cares deeply about her State and her

country. She loves her work, and she has served the State of Georgia for over 15 years as a Federal prosecutor in the Georgia Attorney General's office, assistant U.S. attorney, and U.S. attorney. She demonstrates the personal and professional qualities that will make her an outstanding Federal judge. I highly recommend Ms. Beverly Martin to the committee and the U.S. Senate, and urge that she be promptly confirmed.

Thank you very much, Mr. Chairman.

Senator SESSIONS. Thank you very much, Senator Cleland. Thank you for those remarks, and I know you care deeply about having quality people on the bench in Georgia.

Senator CLELAND. Thank you, sir.

Senator SESSIONS. Thank you.

Our Judiciary Committee today is holding its fifth nominations hearing of the second session of the 106th Congress. We will hear from one Justice Department nominee, one judicial nominee who has been nominated to be a U.S. circuit judge, and three judicial nominees who have been nominated for U.S. district judges.

We will have three panels this afternoon. The first will consist of the sponsors of the nominees. We have just had that. Then the second panel will consist of Mr. Daniel Marcus, who has been nominated to be Associate Attorney General. Our final panel will consist of the judicial nominees Bonnie J. Campbell, of Iowa, to be U.S. Circuit Judge for the Eighth Circuit; Jay A. Garcia-Gregory, of Puerto Rico, to be U.S. District Judge for Puerto Rico; Beverly B. Martin, of Georgia, to be U.S. District Judge for the Northern District of Georgia; and Laura Taylor Swain, of New York, to be U.S. District Judge for the Southern District of New York.

Mr. Marcus, I believe you are first up. Please join us.

I will need to take your oath, if you would raise your right hand.

Do you solemnly swear that the testimony you shall give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MARCUS. I do.

Senator SESSIONS. If you have any family members or friends you would like to introduce, Mr. Marcus, we would be delighted to have you do that at this time.

**TESTIMONY OF DANIEL MARCUS, OF MARYLAND, TO BE  
ASSOCIATE ATTORNEY GENERAL OF THE UNITED STATES**

Mr. MARCUS. Well, thank you, Mr. Chairman. Congresswoman Morella did a little head start for me on that, but let me introduce, sitting in the front row here, my wife, Maeva Marcus, who has supported me and borne with me for the last 35 years; my son, Jonathan, who is a career lawyer in the Justice Department, in the Criminal Division; his wife, Phyllis, who is a career lawyer at the Federal Trade Commission.

Our daughter, Stephanie, could not be here today because before this hearing was scheduled, she planned a week at the beach with her husband and her little girl.

Senator SESSIONS. She has her priorities straight. [Laughter.]

Mr. MARCUS. The real stars of the family, our two granddaughters, are a little too young to be here today. They are age 2 and age 1, but pictures are available after the hearing. [Laughter.]

Senator SESSIONS. We would be glad to hear any remarks that you would like to make.

Mr. MARCUS. Thank you. I will be brief.

Thank you, Mr. Chairman. It is a great honor for me to appear here today. I am grateful to the President for nominating me, and to the Attorney General for all her support and encouragement. I am also grateful to you, Mr. Chairman, and to the other members of this committee for considering my nomination to be Associate Attorney General. And special thanks to Senator Sarbanes and Congresswoman Morella for taking time from their busy schedules to stop by and say some kind words about me.

As you can tell from my resume and the comments of Senator Sarbanes and Congresswoman Morella, I have spent my entire legal career here in Washington, more years than I would like to remember. The bulk of that time has been spent in private practice at the firm of Wilmer, Cutler, and Pickering, although I was privileged to be nominated by President Carter and confirmed by the Senate to be General Counsel of the Department of Agriculture in 1979.

But for me, as for many lawyers in Washington, I think, the Department of Justice has always represented the best that our Nation has to offer as an opportunity for public service for lawyers. So I responded with alacrity last year when Ray Fisher asked me to come over to the Justice Department and be his principal deputy. Since last October, when Mr. Fisher, with the blessing of this committee, went on to become a judge on the Court of Appeals for the Ninth Circuit, I have had the honor of serving as Acting Associate Attorney General.

The Associate Attorney General, as you know, supervises five of the six litigating divisions of the Department—the Antitrust Division, the Civil Division, the Civil Rights Division, the Environment and Natural Resources Division, and the Tax Division. I also supervise the Department's grant-making agencies, the Office of Justice Programs and the COPS office.

On a daily basis, it is inspiring and invigorating to work not only with the leaders of those divisions and offices, many of whom you know, but also with the dedicated and talented career lawyers of the Department. Day in and day out, through Republican and Democratic administrations, those career lawyers provide representation to the people of the United States with the highest standards of excellence and integrity. You have my personal commitment that if I am confirmed as Associate Attorney General, I will do everything I can to ensure that those standards and those traditions are upheld.

Thank you again, Mr. Chairman, for considering my nomination. I hope I will have the opportunity to continue to work with this committee in furthering our common goal of preserving and strengthening our American system of justice.

I would be happy to answer any questions that the committee may have.

#### QUESTIONING BY SENATOR SESSIONS

Senator SESSIONS. Thank you very much, Mr. Marcus. That was a fine statement, and you correctly note the great traditions of the

Department of Justice and the need to maintain that. I know the Department has had some rocky times in areas really not in your area, but it is important everyday to make sure that the acts that are taken are defensible legally and otherwise.

I guess one of my first questions to you would be a question you and I discussed when we had a very pleasant discussion earlier, and that is are you capable and willing to undertake the unpleasant duty sometimes of telling your superiors and political higher-ups "no." I mean, that is one of the duties that a lawyer has to do and, to me, a high official in the Department of Justice will be called upon to express opinions or to approve or disapprove actions. You will have a high position there.

Will you tell us here in this hearing that if you believe it is wrong or not justified legally or morally or ethically that you would say no and do what you can to avoid a bad decision?

Mr. MARCUS. I agree with you completely, Mr. Chairman, and I will make that commitment. I think any lawyer who has had the experience that I have had in private practice and in Government knows that you have to be willing as a lawyer to tell your clients on occasion, no, you can't do that, and I think any lawyer worth his salt is prepared to do that.

Senator SESSIONS. Thank you.

I will just say this for all the nominees, for judges, of course, this is the only chance that the public has to have some insight into the background, the record, and the future prospects of a nominee. Once confirmed for a judgeship, it is lifetime appointment, not for you, Mr. Marcus, probably fortunately. The Department of Justice can wear anybody out, but it is a good place to be. At any rate, I would say that to you, so we will perhaps ask some questions.

But I think it is also important to note for the record that you have received the support of the President of the United States. Most of you, if not all of you, have received the support of the Senators from your States, and Congressmen and others who support you. FBI background checks have been conducted. The American Bar Association has done an analysis, and the committee staff here has reviewed the records and all the forms you have had to fill out, many of them quite long and detailed, and we have evaluated those. So I don't think it is necessary that we go over every issue, but I do think it is appropriate that some questions might be asked.

Mr. Marcus, one area that was noted on Monday in the Wall Street Journal falls under your area; that is, the COPS program. According to the Journal, the program has vastly overstated the number of policemen put on the street and has ignored some very serious problems resulting from poor administration and use of COPS grants.

Indeed, the Department of Justice's own Inspector General determined in its most recent audit that only one-half of the proclaimed 100,000 new officers have actually been deployed. Moreover, even that figure is suspect because the COPS office does not maintain an accurate tally of police officers actually deployed on the street. It bolsters its figures by including grants that have not even been accepted, let alone been used to hire officers, and by counting equipment such as new radios as equivalent to a certain number

of offices. This program, which costs the taxpayers \$8.8 billion—that is big—reportedly has been used for all sorts of inappropriate things, including the purchase of liquor for officers.

So I would like to know how you are planning to reform the COPS program to make sure that the American people are getting their money's worth and to stop the COPS office from making highly misleading public relations statements concerning the results of the COPS program.

Mr. MARCUS. Mr. Chairman, I read the Wall Street Journal article that appeared this week, and the COPS office is hard at work preparing a response to that article. The COPS program, I think, is an example of a very large and important Federal program of providing assistance to State and local law enforcement agencies to hire police officers and to purchase computers and other equipment and to hire civilians that will free up police officers to be deployed on the street.

The purpose of the COPS program is a very important purpose that I think has widespread bipartisan support, and that is to get more cops on the street and to improve community policing throughout our Nation. As with any large Government grant program, there may be occasional situations—and there are thousands and thousands of COPS grants out there—where there have been problems with those grants.

The particular situations described in the Journal article are isolated situations which the COPS program has dealt with. The Inspector General did an audit of the COPS program last year shortly after I came to the Department. The COPS office has cooperated with the Inspector General in making the changes that the Inspector General recommended in resolving the audit issues, and we are convinced that the COPS program is well on the road to resolving the issues raised by the Inspector General report.

You referred to the COPS count issue and let me just say a word about that. I think we have been very careful in the statements we have made about the COPS program. It takes some time once a grant is made, particularly with the technology grants, to do the redeployment, to do the training and get the cops out on the street, to hire the cops to get them out on the street.

We have been very careful to say that we have met our goal of funding through grants the hiring or redeployment of more than 100,000 police officers. As the Journal article indicated, we have got about half those officers already hired and out on the street, another 13,000 or so redeployed as a result of technology grants, and the other grants will result in cops in the pipeline getting out on the street over the next couple of years.

But we are committed to running that program in an efficient way, consistent with standards of integrity. And I have a lot of confidence in Tom Frasier, who came to the Department last fall from a career as police commissioner in Baltimore and previously as a police officer in California. He is working very hard with a good staff to make sure that program is run well.

Senator SESSIONS. In terms of money, it is the biggest part of your portfolio, isn't it?

Mr. MARCUS. It is a big part, yes.



Senator SESSIONS. Will you commit to us that you will examine the Inspector General's report, which I saw last year and reviewed, and it was pretty scathing on some of the activities, actually, your own Department of Justice Inspector General. I believe it needs some attention. I don't think it is something that you can coast on now.

Will you give this program attention to make sure that statements coming out saying what it has accomplished are accurate, and that some of the abuses, some of which are done by local police, not the Department of Justice, but you have the responsibility of some oversight on the money you send out—will you make a commitment that you would work to improve that program?

Mr. MARCUS. I agree with you, Senator, and I will make that commitment. We have made a lot of progress, but it needs and will receive my continued attention.

Senator SESSIONS. I am also concerned about the politicization of the Department and the perception that it has brought the tobacco suit for political reasons. I am concerned that if this is true, no industry would be immune from efforts by the Federal Government to use litigation as a tool to regulate unpopular industries. This would bypass Congress' constitutional role to set health policy through the legislative process.

I believe that the Federal tobacco suit may be the start of a pernicious trend to sue entire industries, which was never done until very recently in our legal system, in order to coerce settlements or enforce judgments that, in fact, regulate entire sectors of our economy.

I was also troubled by the lawsuit against the gun manufacturers. I felt that was particularly extreme, although I will note—I see you are smiling, but I will note the Department of Justice did not file that suit. It was done by Housing and Urban Development, I believe, and I thought it was a stretch. Since normally litigation is commenced within the Department, it was not approved within the Department.

But with regard to this tobacco issue, would you share your comments about that?

Mr. MARCUS. Yes, Mr. Chairman. I appreciate your concerns about lawsuits of this nature.

Senator SESSIONS. Excuse me.

Mr. MARCUS. Good morning, Mr. Chairman.

Senator SESSIONS. We are delighted to have our Chair.

The CHAIRMAN. Please go ahead.

Mr. MARCUS. Senator Sessions, I appreciate your concern with lawsuits of this nature, and I want to assure you, when I came to the Justice Department a little over a year ago, consideration of a possible lawsuit against the cigarette companies was already well underway. And I observed and participated in that process from April of 1999 until September when the lawsuit was filed, and I can assure you that the filing of that lawsuit, the decision to file that lawsuit was a careful decision that was undertaken on the merits by the Justice Department, and that we are confident that there are unique factors about the history of the tobacco industry and the cigarette companies that justify this kind of lawsuit.

The test, of course, will be in the Federal courthouse. Indeed, next week the motions to dismiss that were filed by the cigarette companies will be argued before the Federal district court here in Washington. And we are confident that we have a sound lawsuit, but the courts will tell us.

Senator SESSIONS. Well, I would just note I think in some of these new forms of litigation, we are at the margin that implicates separation of powers issues. Even if we don't like what they are doing, even if what they are doing is wrong, normally an individual has to file a suit. When the Government steps in and the Attorneys General of the States hire lawyers to represent them at huge fees and those kinds of things, we begin to have a blurring.

You and I have talked about this. I respect your legal analysis of these issues, and I just want you to know that I am concerned about it. I think we may have some disagreement on the issue, but I respect your judgment.

Mr. MARCUS. Thank you, Senator.

Senator SESSIONS. Thank you.

The CHAIRMAN. Senator Schumer has some questions.

#### QUESTIONING BY SENATOR SCHUMER

Senator SCHUMER. Thank you, Mr. Chairman, and I thank you for holding this hearing. I want to thank Mr. Marcus for the service that he has already given. He is obviously a well-qualified candidate for Associate Attorney General.

I would like to speak to you on an issue that you probably knew you were not going to get away without my asking questions about this, but it is something I am extremely concerned about and now getting very frustrated with the Justice Department, and particularly your department, and that is the Justice Department's lack of action with respect to innocent private land owners in the Oneida land claims suit of New York. I have been asking that these land owners be removed from suit for more than a year.

You oversee this case and we have talked about it several times. I must admit I still don't feel I have a satisfactory answer to why DOJ cannot proceed in this case without involving innocent land owners, not only in the right of ejectment, but in allowing them to be in harm's way in any way at all.

Can you tell me what is happening? Can you tell me why there has been such delay and when I am going to get an answer from Justice not only about ejectment, but about all financial claims that might be held against land owners?

Mr. MARCUS. Yes, Senator Schumer, and I think you are going to get an answer very soon. We have been involved in a process which has stretched out longer than we had hoped of trying very hard to get this case settled. As you know, Judge McKearn, I guess it was over a year ago, appointed a distinguished mediator to try to settle this case, and our motion with respect to coming into the case and adding the State and the land owners as defendants has never been acted on. It has been held in abeyance pending the settlement negotiations.

We have been very reluctant to give up on the settlement negotiations because from time to time—and I can't discuss them in detail—we have been close to a settlement, we had hoped. We have

worked very hard with the State, with the counties, and with the Oneidas to try to settle this case.

We recently asked the judge for another week because efforts are still continuing. Absent another extension, we will be filing our report with the judge next week on the status of the settlement negotiations, and we are continuing to explore ways in which we can give additional assurances to the land owners. The land owners, as you observe, are——

Senator SCHUMER. Can I interrupt? What assurances have you given? You said additional.

Mr. MARCUS. Well, we have given——

Senator SCHUMER. I see the Justice Department filing the suit. It was done before I took office. The Justice Department was siding with the Oneida Nation, was agreeing that land owners might have to be ejected, was agreeing that land owners who have held the property for—families often for generations, should be held in harm's way for something that happened in 1790.

I was utterly amazed that the Justice Department and the Federal Government would not simply try to settle, but would basically hold the land owners as hostage, as pawns, to try and get the State to settle. I admit there are legitimate claims between the State and the Indian tribes, although those come from 1790. There was a Supreme Court case in 1985, but there was no mandate whatsoever that the land owners be put in the middle of this.

And now we are in the anomalous position where the Oneidas, the actual plaintiffs, are asking for less than the Justice Department, because they have already publicly stated that as long as the suit is allowed to continue, they will remove the land owners from harm's way. They are admitting they made a mistake. Do you think the Justice Department made such a mistake?

I know there is a settlement going on; we all know that. I would like to know how one can defend putting a right of ejection in the suit, how one can defend that the Federal Government, in the personage of the Justice Department, should take the side completely of one side in this case, and most importantly when are we going to see the Justice Department remove the land owners from harm's way, something we have all been waiting for and hasn't happened. You and I have talked for three, four months. We talked, I think, two, three weeks ago and I was supposed to get an answer within three days.

Mr. MARCUS. Senator, the Justice Department came into this case before I was at the Justice Department because of its statutory obligation to look out for the interests of Indian tribes such as the Oneidas. But the Department of Justice's sharing of interest with the Oneida tribes is with respect to the State's responsibility here. We think the State of New York is the party that should be paying damages to the Oneida Indians.

The Federal Government, incidentally, in the settlement negotiations has offered to make a Federal contribution, as well, even though there is no Federal responsibility here, we believe, in an effort to try to settle the case.

Senator SCHUMER. But I am not arguing that part of the case.

Mr. MARCUS. I understand.

Senator SCHUMER. I am arguing that the land owners are put in the middle.

Mr. MARCUS. I understand that.

Senator SCHUMER. Property values have declined. People are afraid to sell their land, people are afraid to buy land, for something that these people are as innocent as you or me of, an action in 1790.

Mr. MARCUS. We have tried to give assurance to the land owners that we are seeking relief against the State, not the land owners. One of our problems, as you know, is that the position that the State has been taking formally in the case is one that suggests that the State is not liable and that the land owners implicitly may be liable. That is not our position.

Since the time I have been at the Justice Department, we have consistently assured the land owners that we are not seeking ejectment and we are glad to—

Senator SCHUMER. Although your court papers have said it.

Mr. MARCUS. The court papers—

Senator SCHUMER. You tell them we are really not doing this, but the court papers say we are seeking ejectment. They haven't been changed yet, as I understand it, in the Oneida case.

Mr. MARCUS. I can assure you, Senator, that we—

Senator SCHUMER. But am I right that at this moment the court papers filed have not been amended and they hold a right of ejectment?

Mr. MARCUS. That is correct, but we have not only stated publicly, we have told the court that we are not seeking ejectment, and the amended complaint that will be filed will certainly not seek ejectment.

Senator SCHUMER. Will the amended complaint remove the land owners from harm's way in any way?

Mr. MARCUS. I am very hopeful that we are right now considering actively several alternatives for giving additional assurances to the land owners and removing them from harm's way, and I hope to have a definitive answer for you as soon as we reach a decision on that, which hopefully will be in the next few days.

Senator SCHUMER. OK, although I have heard that for three months.

Mr. MARCUS. I understand.

Senator SCHUMER. Do you set this policy or do you have to get approval from someone above you?

Mr. MARCUS. I supervise the Environment and Natural Resources Division. This is an issue we work out with our client, the Department of the Interior.

Senator SCHUMER. Has Interior stood in the way of removing the land owners?

Mr. MARCUS. We are in the middle of discussions with them, Senator. No, they have not stood in the way.

Senator SCHUMER. OK.

Mr. MARCUS. We are working together with them to consider alternatives for providing additional assurances to the land owners.

Senator SCHUMER. You know, you could have said to me a year ago, don't push me on this because we are trying to negotiate, but I have lost patience, basically. Would you be willing to say that it

is your personal view that the Justice Department should remove the land owners from this suit and out of harm's way as long as the suit between the Indian tribes and the State, which is the gravamen of the complaint here, is not jeopardized?

Is it your personal opinion—I am not asking Justice Department policy—that you should at least go as far as the Oneidas have gone in backing off what I consider a real travesty in how the Federal Government has behaved?

Mr. MARCUS. I think I can say it is my personal opinion and it is the opinion of the Department of Justice. We are going to make clear to the court that we are not seeking any relief against the land owners.

Senator SCHUMER. You are going to make that clear in your legal papers or just in—I forget the term, having been out of law school for a long time and never practiced, but dicta? Is this going to be part of the papers or is this going to be whatever verbiage is between you?

I mean, what has happened in the past is we go to the land owners, sir, and we say, well, the Justice Department really isn't serious about removing the land owners or holding them out of harm's way. And they come back to us and say, really? Here are the legal papers they filed.

You are a good lawyer, you are an excellent lawyer. If you were advising your client, would you advise them to rely on the verbiage between the judge and the lawyer or on what the court papers say?

Mr. MARCUS. Senator, we will be filing papers with the court very shortly that will make our position clear. I hope that position will be satisfactory, will provide sufficient assurance for the land owners and for you.

Senator SCHUMER. Well, I would simply urge you to reevaluate the position of Justice and make it crystal clear that you are not coming in de novo. You are not coming in with clean hands, not you, Mr. Marcus, but the Justice Department. And I would advise you to make it one hundred percent clear in the papers and everywhere else that the land owners are no longer in harm's way.

Here is what you have in the last year, Justice Department. You have not accomplished a settlement. You have created far greater tensions between the Indian tribes and the land owners because you have pitted one against the other, when originally that wasn't the case. And you have hurt two counties that are in pretty bad shape to begin with. So I would hope that you learn the error of your ways.

By the way, this is not personal to you. I think you are a fine man. You know, you are serving your country well and you are the kind of person who should be in Government. And I don't know what forces there are surrounding you, but the frustration level not only that I have, but that Congressman Boehlert has, that all of the Federal representatives of this area, Democrat, Republican, liberal, conservative, have with how the Justice Department has acted is at the boiling point. And I would urge you to try and get that policy changed as quickly as possible.

I want to say to your family—I imagine those are your children there—he is a good man and I have nothing against him. You

should be proud of him. I just think he is representing a wrong policy, very wrong, in one specific instance.

Mr. MARCUS. Is now the time, Senator, to tell you I was born in Brooklyn? [Laughter.]

Senator SCHUMER. Well, you can tell me that when you file your papers.

Thank you. Thank you, Mr. Chairman. I am sorry for that diversion, but this is extremely important to me and to many of the citizens of my State.

The CHAIRMAN. That is fine, Senator Schumer.

Mr. Marcus, welcome.

Mr. MARCUS. Thank you, Mr. Chairman.

#### QUESTIONING BY SENATOR HATCH

The CHAIRMAN. I am sorry I couldn't be here from the beginning.

I have worked for many years to protect the religious freedoms of all Americans. I believe that such freedoms are among the very most fundamental and important rights protected by the Constitution. The Clinton administration supported the Religious Freedom Restoration Act, which passed a few years ago but was partially struck down by the Supreme Court. I am now working on the Religious Liberty Protection Act.

Will you make a commitment not only to support such legislation, but also to work with me to pass this legislation this year?

Mr. MARCUS. Senator Hatch, I know our folks are actively taking a look at draft language on a new religious liberty protection act. We are very anxious to work with you and with other Senators and Congressmen on this issue. The President has a commitment here, and we look forward to—I think the idea of now trying more focused, specific legislation in an effort to adjust to the Supreme Court's decision in *City of Boerne* makes a lot of sense.

The CHAIRMAN. Well, it is very important to me. I believe we should do that. One of the triumphs we had was passing the Religious Freedom Restoration Act. I was down there with the President when he signed it into law, and I was really shocked at the Supreme Court coming out and voiding it partially.

Now, the Judiciary Committee, along with other congressional committees, have experienced a great deal of frustration in conducting oversight of the Justice Department. Requests for documents and other information are generally met with conciliatory statements and indications of cooperation, but actually getting documents from the Justice Department has been like pulling teeth.

The Department has stonewalled us, citing Department policy, deliberative process, sensitive matters, classification, all the while denying the Congress and the American people from looking at the materials that we think we are entitled to. They have been denying us the necessary information to evaluate the performance of the Justice Department.

Despite the overwhelming support in the case law upholding Congress' authority to get information related to its oversight function, including information relevant to internal deliberations by prosecutors and open investigations, the Justice Department has refused to produce materials simply because of departmental policy.

For example, the Department of Justice has refused to produce certain materials related to the Loral Hughes matter solely on the basis that it would go against Department policy with regard to open cases. Now, this is despite the fact that the courts, from investigations since Teapot Dome to Iran-contra, have ruled that Congress is entitled to information in open cases.

When a subpoena is issued to the Justice Department, do you believe that it is proper to refuse to produce documents on the basis of anything other than a recognized legal privilege, such as executive privilege or attorney-client privilege?

And let me just ask an additional question on top of that one. What will you do to ensure that the Department fully complies with congressional subpoenas?

Mr. MARCUS. Mr. Chairman, I think that, of course, we don't assert the right to refuse to respond to subpoenas other than on the basis of clearly established privileges. But we do make an effort, where we have concerns under deliberative privilege, under the open case policy, to see if we can reach some accommodation with the committee that provides you with the information you need in a way that enables us to protect what we think are important policies that are longstanding policies of the Justice Department in Republican as well as Democratic administrations.

We are not always successful in that effort, and I realize that there have been disagreements in this necessary process of trying to accommodate between the Department's needs and the committee's very important needs. I can commit to you that—and most of the controversies that you have referred to are ones that don't fall within my bailiwick on the civil side of the Department.

But I know that the Attorney General and the Deputy Attorney General are committed to working with you and your committees on these matters, despite past disagreements. And I share that commitment and give you my personal commitment to try to work those matters out in an effective way so that you get what you need.

The CHAIRMAN. Well, thank you because I think we have had far too many difficulties getting subpoenaed documents, and frankly it just isn't right. So I would appreciate any help you can give there.

Well, I want to thank you for being here today. I am easy compared to these other guys. [Laughter.]

Mr. MARCUS. Thank you very much, Mr. Chairman.

The CHAIRMAN. Nice to have you with us.

[The questionnaire of Mr. Marcus, with attachments, follow:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used).**  
Daniel Marcus
2. **List current place of residence and office address(es).**  
Home: Bethesda, MD 20816  
Work: U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530
3. **Date and place of birth.**  
January 5, 1941  
Brooklyn, NY
4. **Marital Status (including maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**  
Married to: Maeva Dronsick Marcus  
Occupation: Editor, Documentary History of the Supreme Court  
Employer: Supreme Court Historical Society  
Thurgood Marshall Federal Judiciary Building  
Room C-506  
One Columbus Circle, NE  
Washington, DC 20544
5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**  
College: Brandeis University, 1958-1962  
B.A. 1962  
Law School: Yale Law School, 1962-1965  
LL.B. 1965
6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**



Summer 1962:	Substitute Letter Carrier U.S. Post Office Bowling Green Station New York, NY
Summer 1963:	Summer Associate Kaye, Scholer, Fierman, Hays & Handler New York, NY
Summer 1964:	Research Assistant Professor Boris Bittker Yale Law School New Haven, CT
Aug 1965-Aug 1966	Law Clerk Judge Harold Leventhal U.S. Court of Appeals for the D.C. Circuit Washington, DC
Aug 1966-March 1977	Associate, then Partner Wilmer, Cutler & Pickering Washington, DC
March 1977-April 1979	Deputy General Counsel (Office of Legal Counsel) U.S. Department of Health, Education and Welfare Washington, DC
April 1979-December 1980	General Counsel (Acting until June 1979) U.S. Department of Agriculture Washington, DC
January 1981-October 1998	Partner Wilmer, Cutler & Pickering Washington, DC
November 1998-April 1999	Senior Counsel to the Counsel to the President White House Washington, DC

April 1999-October 1999    Principal Deputy Associate Attorney General  
U.S. Department of Justice  
Washington, DC

October 1999-present    Acting Associate Attorney General  
U.S. Department of Justice  
Washington, DC

Nonprofit Boards:

Food Research & Action Center, Inc.  
1875 Connecticut Avenue, NW  
Washington, DC  
(Member, Board of Directors, 1989-1998)

Yale Law School Fund  
127 Wall Street  
New Haven, CT 06520

Antioch Law School  
Washington, DC  
(Now defunct)  
(Member, Board of Governors, 1982-1986)

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

No

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

Brandeis University: graduated Magna Cum Laude; member, Phi Beta Kappa

Yale Law School: Order of the Coif; Topics Editor, Yale Law Journal

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

Member, District of Columbia Bar; American Bar Association  
Member, D.C. Bar Legal Ethics Committee, 1991-1997; Vice Chair, 1994-1995;  
Chairperson, 1995-1997  
Member, D.C. Circuit Judicial Conference (several years, including this year)  
Currently Member of ABA House of Delegates (representing Department of Justice)  
Currently Member of Council of the Administrative Law Section of the ABA  
(representing the Executive Branch)  
Member, Administrative Conference of the United States, 1979-1980

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

Organizations to which I belong that lobby:

National Trust for Historic Preservation

Other organizations to which I belong:

District of Columbia Bar  
Tifereth Israel Congregation  
Lawyers Committee for the Washington Opera  
Washington Performing Arts Society  
Yale Law School Alumni Association  
Brandeis University Alumni Association  
Smithsonian Associates  
Supreme Court Historical Society  
WETA  
Phi Beta Kappa  
Corcoran Gallery  
Palisades Swimming Pool Association (bylaws attached)  
Wood Acres Citizens Association (bylaws attached)

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

District of Columbia Court of Appeals (April 2, 1972)  
U.S. District Court for the District of Columbia (June 24, 1966)  
U.S. Court of Appeals, District of Columbia Circuit (October 21, 1966)  
U.S. Supreme Court (January 24, 1972)  
U.S. Court of Appeals, 2nd Circuit (December 10, 1973)

U.S. Court of Appeals, 3rd Circuit (December 7, 1983)  
U.S. Court of Appeals, 6<sup>th</sup> Circuit (April 8, 1986)  
U.S. Court of Appeals, 9<sup>th</sup> Circuit (February 28, 1989)  
U.S. Court of Appeals for the Federal Circuit (June 9, 1982)

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

Note, Ford v. Ford: Full Faith & Credit for Child Custody Decrees, 73 Yale L.J. 134 (1963). (attached)

FDA Compliance Problems, chapter in Consumer Protection Compliance, Practising Law Institute (1971). (attached)

The New FDA Hearing Regulations -- An Analysis, 29 Food, Drug, Cosmetic L.J. 336 (1974). (attached)

FDA Approval of Comparative Claims for Prescription Drugs -- The Moxam Case, 17 Drug Information Journal 171 (1983). (attached)

Soviet Pipeline Sanctions: The President's Authority to Impose Extraterritorial Controls, 15 Law & Policy in International Business 1163 (1983). (attached)

Testimony before the House Committee on Education and Labor and the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee on H.R. 700 (a bill to overrule the Supreme Court's decision in the Grove City case so as to re-establish the principle that Title VI of the Civil Rights Act bans discrimination in any program operated by a recipient of federal funds), March 28, 1985. (attached)

Generic Drug Scandal Raises Issues as to FDA's Authority to Deal with Fraud, Washington Regulatory Report (published by Clark Boardman Co.), Vol. 2, No. 4 (1990). (attached)

OSHA's Expanding Hazard Communication Requirements, Natural Resources & Environment (published by ABA Section of Natural Resources, Energy, and Environmental Law), Vol 4, No. 3, p. 19 (1990). (attached)

Prospects for a Revitalized Food and Drug Administration, Washington Regulatory Report, Vol. 3, No. 5 (1991). (attached)

OSHA's Hazard Communication Standard, chapter in The Environmental Law Manual, published by ABA Section of Natural Resources, Energy, and Environmental Law (1992). (attached)

Implications of FDA's Tobacco Rule for Manufacturers of Drugs and Medical Devices, 2 Regulatory Affairs Focus (journal of Regulatory Affairs Professional Society) 13 (1997). (attached)

I have also given a number of speeches on legal or professional matters. Copies are attached.

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

I am in good health. My last physical examination was in December 1999.

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

Deputy General Counsel (Office of Legal Counsel), U.S. Department of Health, Education and Welfare, March 1977-April 1979 (appointed)

General Counsel, U.S. Department of Agriculture, April 1979-December 1980 (acting April-June 1979; appointed)

Senior Counsel to the Counsel to the President, November 1998-April 1999 (appointed)

Principal Deputy Associate Attorney General April-October 1999 (appointed)

Acting Associate Attorney General, October 29, 1999-present (appointed)

15. **Legal Career:**

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

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

Law Clerk to Judge Harold Leventhal, U.S. Court of Appeals for the D.C. Circuit, August 1965-August 1966

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

I have never practiced alone.

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

I became an associate at Wilmer, Cutler & Pickering, then at 900 17<sup>th</sup> St, NW, Washington, DC, in August 1966. I became a partner in the firm in January 1973, and remained until March 1977 (during this period, the firm moved to 1666 K St., NW). From March 1977 to April 1979, I served as Deputy General Counsel (Office of Legal Counsel) of the U.S. Department of Health, Education and Welfare, 200 Independence Avenue, SW, Washington, DC 20201. From April 1979 to December 1980, I served as Acting General Counsel and, upon my confirmation by the Senate, as General Counsel of the U.S. Department of Agriculture, 14<sup>th</sup> St. & Independence Avenue, SW, Washington, DC 20250. In January 1981, I returned to Wilmer, Cutler & Pickering as a partner; and remained at the firm until October 1998. (In 1986, the firm moved its offices to 2445 M St., NW.) From November 1998 to April 1999, I was Senior Counsel to the Counsel to the President. In April 1999, I became Principal Deputy Associate Attorney General and became Acting Associate Attorney General on October 29, 1999.

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

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

The following response is to both b.1. and b.2.

During the two periods, 1966-1977 and 1981-1998, during which I was practicing law at Wilmer, Cutler & Pickering, my practice consisted largely of a regulatory practice before federal government agencies (mainly the Federal Communications Commission and the Food and Drug Administration), and related litigation in the federal courts. During the first period (1966-1977), my most important clients included CBS, Kaiser Broadcasting, the Pharmaceutical Manufacturers Association and the Council for Responsible Nutrition. During the second period (1981-1998) my major clients included RKO General, LIN Broadcasting, Knight Ridder Broadcasting, the Council for Responsible Nutrition, the Chemical Manufacturers Association, Upjohn, Miles (Bayer), American Cyanamid, Gallo Winery, and the U.S. Cane Sugar Refiners Association.

As a Deputy General Counsel at the Department of Health, Education and Welfare (1977-1979), I worked on welfare reform legislation and a number of civil rights and health

policy matters. As General Counsel of USDA (1979-1980), I supervised more than 200 lawyers in Washington and around the country and was involved in issues relating to commodity price support programs, food stamps, food safety, the Forest Service and agricultural marketing matters. In the Office of Counsel to the President (November 1998-April 1999), I served as liaison to the Department of Justice and worked on a variety of policy/legal matters. As Principal Deputy Associate Attorney General (April-October 1999) and Acting Associate Attorney General (since October 29, 1999), I have been involved in supervising and coordinating the work of the civil litigating decisions of the Department of Justice (Antitrust, Civil, Civil Rights, Environment and Natural Resources, and Tax), the Office of Justice Programs, the COPS program, the Community Relations Service, the Office of Tribal Justice, the Executive Office of the U.S. Trustees, and the Office of Dispute Resolution.

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

During my career at Wilmer, Cutler & Pickering, I appeared occasionally in federal court and in federal administrative agency hearings.

- 2. What percentage of these appearances was in:**

- (a) federal courts;
- (b) state courts of record;
- (c) other courts.

Approximately 80 percent of my appearances were in federal courts and 20 percent in administrative agency hearings.

- 3. What percentage of your litigation was:**

- (a) civil;
- (b) criminal.

95 percent civil; 5 percent criminal.

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

I have been lead counsel in one multi-party administrative hearing and associate counsel in two others.

- 5. What percentage of these trials was:**

- (a) jury;
- (b) non-jury.

All were non-jury administrative hearings before an Administrative Law Judge.

16. **Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the document 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. Speckels Sugar Co. v. Espy, Civ F-94-5827GEB (E.D.Cal.), decided Dec. 14, 1994. In this case, Wilmer, Cutler & Pickering represented a number of domestic sugar growers, processors, and refiners in challenging the legality of sales by the U.S. Department of Agriculture (through the Commodity Credit Corporation) of refined sugar that had been forfeited to USDA by processors of sugarcane and sugar beets. We argued that the sales were at prices below the minimum price required by 7 U.S.C .S. 1427, and that the "small quantities" exception to that provision was inapplicable. USDA argued that the minimum price requirements of Section 1427 did not apply to sugar. After summary judgment briefing and oral argument, the District Court upheld the Government's position, holding that Congress had not mandated the application of Section 1427 to sugar. There was no appeal.

I was the partner in charge of this matter, participated actively in the drafting and editing of the briefs, and argued the case to the District Court.

- a. I worked on this case in 1994.
- b. The case was litigated before Judge Garland E. Burrell, Jr. of the U.S. District Court for the Eastern District of California.
- c. Co-Counsel:

Katherine Bradley  
Wilmer, Cutler & Pickering



Now at:  
7108 Exfair Road  
Bethesda, MD 20814  
(301) 652-6136

Opposing Counsel:

Dale McNeil, then at  
U.S. Department of Agriculture

Now at:  
Ablondi, Foster, Sobin & Davidow, P.C.  
1150 18<sup>th</sup> Street, NW  
Washington, DC 20036  
(202) 296-3355

2. Pfizer, Inc. v. Miles, Inc., 868 F.Supp. 437 (D.Conn. 1994). Wilmer, Cutler & Pickering represented Miles, Inc. (now known as Bayer Corp.) in this case, a lawsuit brought by Pfizer under the Section 43(a) of the Lanham Act, claiming that Miles had made false promotional claims that its new anti-hypertension drug, Adalat CC, is equivalent to Pfizer's well-established anti-hypertension drug, Procardia XL. On behalf of Miles, we filed a counterclaim alleging that Pfizer had made false claims that Adalat CC is inferior to Procardia XL. Both parties sought preliminary injunctions. After expedited discovery, Judge Covello held a three-day evidentiary hearing in June 1994. In August, he issued a decision denying Pfizer's motion for a preliminary injunction, but granting a preliminary injunction to Miles on its counter-claim. 868 F. Supp. 437 (D. Conn. 1994). Pfizer appealed this decision to the Second Circuit, but dismissed its appeal pursuant to a settlement agreement.

I participated actively in this litigation, both during the discovery phase (taking and defending the depositions of expert witnesses) and at the preliminary injunction hearing (examining and cross-examining expert witnesses).

- a. I worked on this case from October 1993 through August 1994.
- b. The case was litigated before Judge Albert Covello of the U.S. District Court for the District of Connecticut.
- c. Co-Counsel:

Thomas P. Olson  
Wilmer, Cutler & Pickering  
2445 M Street, NW  
Washington, DC 20037  
(202) 633-6651

Stefan Underhill  
Day, Berry & Howard  
Stamford, CT

Now: U.S. District Judge  
U.S. District Court  
915 Lafayette Boulevard  
Bridgeport, CT 06604  
(203) 579-5714

Opposing Counsel:

Joel E. Hoffman  
Sutherland, Asbill & Brennan, LLP  
1275 Pennsylvania Avenue, NW  
Washington, DC 20004  
(202) 383-0142

3. Pfizer Citizen Petition, FDA Docket No. 93P-0115/CP1 (1993). In this case, Wilmer, Cutler & Pickering represented Elan Pharmaceutical Research Corporation in opposing a petition filed with the Food and Drug Administration by Pfizer. In that petition, Pfizer requested that FDA deny approval of Elan's new drug application (NDA) for Nifelan, a drug that would, if approved, compete with Pfizer's antihypertension drug, Procardia XL. Pfizer claimed that Elan's NDA failed to meet statutory requirements for a full (as opposed to an abbreviated or "paper") NDA. On behalf of Elan, we opposed the petition, and an accompanying stay request, on the ground that the statutory requirements relied on by Pfizer had been satisfied or were not applicable. After extensive pleadings, FDA issued an order, in February 1996, dismissing the Pfizer petition as moot.

I was the partner in charge of this matter and participated extensively in the drafting and editing of the briefs.

- a. I worked on this case in 1993-1994.
- b. The case was litigated before the Food and Drug Administration.
- c. Co-Counsel:

Jacquelyn Ruff, then at  
Wilmer, Cutler & Pickering

Now at:  
Federal Communications Commission  
International Bureau  
Telecommunications Division  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554  
(202) 418-7806

Opposing Counsel:

Richard M. Cooper  
Williams & Connolly  
725 12<sup>th</sup> Street, NW  
Washington, DC 20005  
(202) 434-5466

4. Ethicon, Inc. v. Food and Drug Administration, 762 F. Supp. 382 (D.D.C. 1991). Wilmer, Cutler & Pickering represented Ethicon in this case, a challenge to a decision by FDA to reclassify an important type of surgical sutures from Class III to Class II under the Medical Device Amendments to the Federal Food, Drug, and Cosmetic Act. The effect of the reclassification was to no longer require pre-market approval applications for such sutures, thus making it easier for new manufacturers to enter the market. Ethicon argued that FDA's reclassification was inconsistent with the statutory classification standards and would not adequately assure safety and effectiveness. U.S. Surgical Corporation, which had sought the reclassification decision, intervened in the case to join FDA in defending the agency's decision. Ethicon sought a preliminary injunction or temporary restraining order, which was denied by the District Court. 1991 WL 29897 (D.D.C. Feb. 20, 1991). Subsequently, the District Court granted summary judgment in favor of FDA, upholding the reclassification decision. 762 F. Supp. 382 (D.D.C. 1991). No appeal was taken.

I was the partner in charge of this litigation and worked extensively in proceedings before FDA that led to the FDA decision, in developing the strategy for the lawsuit, and in editing the complaint and briefs.

- a. I worked on the case in 1990-1991.
- b. The case was litigated before Judge Joyce Green of the U.S. District Court for the District of Columbia.

c. Co-Counsel:

Randolph D. Moss, then at  
Wilmer, Cutler & Pickering

Now:  
Acting Assistant Attorney General  
Office of Legal Counsel  
U.S. Department of Justice  
Washington, DC 20530

Michael F. Cole, then at  
Washington, Perito & Dubuc  
Washington, DC

Now at:  
McDermott, Will & Emery  
600 13th Street, NW  
Washington, DC 20005  
(202) 756-8000

Opposing Counsel

For FDA:  
Mark Heller

Now at:  
Hale and Dorr, LLP  
1455 Pennsylvania Avenue, NW  
Washington, DC 20004  
(202) 942-8488

For U.S. Surgical:

Sanford M. Litvack  
Dewey, Ballentine, et al.  
New York, NY

Now:  
Vice Chairman of the Board  
Walt Disney Company  
500 S. Buena Vista Street  
Burbank, CA 91521

(818) 560-7707

5. Upjohn Co. v. Pantron I Corp. and California Pacific Research, Inc. (CV-5-88-809-LD6 (D. Nev.), decided Feb. 9, 1989, affirmed, 887 F. 2d 1090 (9<sup>th</sup> Cir. 1989). In this case, Wilmer, Cutler and Pickering represented Upjohn, the manufacturer of Rogaine, a prescription drug approved by FDA for treatment of baldness, in a Lanham Act action against two manufacturers of unapproved baldness remedies for making false claims as to the efficacy of their products. After preliminary discovery and a hearing, the District Court issued the above-referenced opinion, denying Upjohn's motion for a preliminary injunction. The court held that Upjohn had failed to show a likelihood of success in proving that defendants' efficacy claims were false, and in any event had not shown irreparable injury or that the hardship to Upjohn from denying a preliminary information outweighed the hardship to defendants from granting one. The Ninth Circuit affirmed the denial of the preliminary injunction. Preparation for trial continued, with extensive discovery. In the meantime, the Federal Trade Commission brought separate enforcement actions against both defendants for false advertising under the FTC Act (and eventually won judgments against both of them). In light of those FTC actions, Upjohn entered into settlement agreements with both companies, and the trial did not take place.

I was the partner in charge of this matter. I was actively involved in the drafting and editing of Upjohn's briefs, conducted and defended many depositions, and argued the preliminary injunction motion in the District Court and the appeal in the Ninth Circuit.

- a. I worked on this case in 1988-1991.
- b. The case was litigated before Judge Lloyd D. George of the U.S. District Court for the District of Nevada.
- c. Co-Counsel:

A. Stephen Hut, Jr.  
 Wilmer, Cutler & Pickering  
 2445 M Street, NW  
 Washington, DC 20037  
 (202) 633-6235

Paul Hejmanowski  
 Lionel, Sawyer & Collins  
 300 S. 4<sup>th</sup> Street  
 Las Vegas, NV 89101  
 (702) 383-8888

Opposing Counsel:

Counsel for Pantron I Corporation:  
Edward A. Woods  
Browne & Woods  
450 N. Roxbury Drive  
Beverly Hills, CA 90210  
(213) 274-7100

Counsel for California Pacific Research, Inc:  
Jay H. Geller  
11845 W. Olympic Blvd.  
Suite 1000  
Los Angeles, CA 90064  
(213) 312-8100

6. RKO General, Inc. (KHJ-TV), 2 F.C.C. Rcd. 4807 (Initial Decision 1987). In this comparative license renewal hearing, Wilmer, Cutler & Pickering represented RKO General, the licensee of numerous television and radio stations, whose qualifications as a licensee had been challenged. The KHJ-TV (Los Angeles) case was designated by the Federal Communications Commission as the lead case in which RKO's qualifications to remain a licensee would be determined. The issues designated for hearing involved whether RKO should be disqualified as a licensee because of a number of instances of alleged misconduct and whether, as to KHJ-TV, any adverse conclusions as to RKO's qualifications were mitigated by its policies and programming record at KHJ-TV. There was extensive discovery, beginning in 1983, submission of volumes of written direct testimony, a lengthy hearing for cross-examination of witnesses before Administrative Law Judge Edward Kuhlmann in 1985, and post-hearing submissions of proposed findings of fact and conclusions of law. In 1987, Judge Kuhlmann issued his initial decision, finding against RKO on a number of qualifications issues. He made substantial favorable findings as to RKO's policies and programming record at KHJ-TV, but held that that favorable broadcast record was not sufficient to outweigh RKO's misconduct. RKO appealed to the Commission, but the appeal was mooted by a settlement in which RKO's license for KHJ-TV was transferred to the Walt Disney Company.

I was the partner in charge of the "broadcast record" part of this case. I participated actively in discovery, in the development of written testimony and post-hearing proposed findings and conclusions, and in preparing witnesses for possible cross-examination at the hearing. (The competing applicant in the end elected not to cross-examine witnesses on the station's broadcast record.)

a. I worked on this case during 1983-1988.

b. The case was tried before ALJ Edward Kuhlmann and his decision was appealed to the full Commission.

c. Co-Counsel:

Timothy B. Dyk, then at  
Wilmer, Cutler & Pickering

Now at:  
Jones, Day, Reavis & Pogue  
51 Louisiana Avenue, NW  
Washington, DC 20001  
(202) 879-3939

William H. Fitz, then at  
Pierson, Ball & Dowd  
Washington, DC

Now at:  
Covington & Burling  
1201 Pennsylvania Avenue, NW  
Washington, DC 20004-7566  
(202) 662-6000

Marnie K. Sarver, then at  
Pierson, Ball & Dowd

Now at:  
Wiley, Rein & Fielding  
1776 K Street, NW  
Washington, DC 20006-2304  
(202) 719-7000

Opposing Counsel:

Brian P. Kilbane, then at  
Mass Media Bureau  
Federal Communications Commission

Now:  
Administrative Law Judge  
Social Security Administrative  
1 Morton Drive, 3<sup>rd</sup> Floor  
Charlottesville, VA 22390  
(804) 977-3456

7. United States Cane Sugar Refiners Assn. V. Block, 69 C.C.P.A. 172, 683 F. 2d 399 (CCPA 1982), affirming grant of summary judgment by Court of International Trade, slip opinion, June 5, 1982. In this case, Wilmer, Cutler & Pickering represented a trade association of cane sugar refining companies challenging the legality of import quotas for raw and refined cane sugar administered by the Department of Agriculture. We argued that the cited authority for the quotas, particularly Section 201 of the Trade Expansion Act of 1962, did not authorize the imposition of these quotas. We also argued that the quotas were in reality designed to protect the sugar price support program and were therefore unlawful because they did not meet the requirements of Section 22 of the Agricultural Adjustment Act of 1933 governing such quotas. Both the Court of International Trade and, on appeal, the Court of Customs and Patent Appeals (now the Court of Appeals for the Federal Circuit) held that the requirements of Section 22 of the Agricultural Adjustment Act were inapplicable, and that the quotas were within the President's trade agreement implementation authority.

I was the partner in charge of this matter and participated actively in drafting and editing the complaint and briefs. I argued the case in both the Court of International Trade and the Court of Customs and Patent Appeals.

- a. I worked on this case in 1982.
- b. Court of International Trade (Judge Bernard Newman); Court of Customs and Patent Appeals (opinion by Chief Judge Howard Markey).
- c. Co-Counsel:

William Marmon, Jr., then at  
Wilmer, Cutler & Pickering

Now at:  
MCI Telecommunication Corporation  
1801 Pennsylvania Avenue, NW  
Washington, DC 20006  
(202) 887-3090

Opposing Counsel:

David M. Cohen  
U.S. Department of Justice  
Civil Division  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
(202) 307-0136



James C. Walczak  
U.S. Department of Agriculture  
1400 Independence Avenue, SW  
Washington, DC 20520

Now at:  
MacDonald, Illig, Jones & Britton, LLP  
100 State Street, Suite 700  
Erie, PA 16507-1498  
(814) 870-7600

8. American Medical Association (and Pharmaceutical Manufacturers Assn.) v. Mathews, 429 F. Supp. 1179 (N.D. Ill. 1977). In this case, Wilmer, Cutler & Pickering represented the Pharmaceutical Manufacturers Association (PMA), a trade association of prescription drug manufacturers, in challenging the legality of the "Maximum Allowable Cost (MAC)" regulations promulgated by the Secretary of Health, Education and Welfare limiting reimbursement for multi-source prescription drugs under the Medicare and Medicaid programs to the lowest-cost generic version of such drugs.

We argued that the Secretary had erred in assuming that FDA's regulation of drugs would assure that all versions of a multi-source drug were "bioequivalent" -- i.e., would be absorbed in the patient's bloodstream at the same rate, and that the Secretary therefore could not make the statutorily-required finding that costs in excess of the MAC were "unnecessary to the efficient delivery of drug-related health services." We also argued that the procedures for determining which drugs would be subject to such limitations did not comply with the Administrative Procedure Act. In granting the Government's motion for summary judgment and denying plaintiffs' motions, the District Court rejected our arguments and found that the Secretary had acted lawfully. 429 F. Supp. 1179 (N.D. Ill. 1977). There was no appeal.

I was lead counsel for PMA and was the primary author of PMA's brief. I also represented the client in a chambers conference on the case with the Judge. There was no oral argument.

- a. I worked on this case in 1976-1977.
- b. The case was litigated before Judge Preston Marshall of the U.S. District Court for the Northern District of Illinois.
- c. Counsel for the American Medical Association:

Jack R. Bierig  
Sidley & Austin  
Bank 1 Plaza  
10 South Dearborn Street  
Chicago, IL 60603  
(312) 853-7000

Counsel for the Department of Health, Education and Welfare:

Michael P. Peskoe  
Food and Drug Administration

Now at:  
American Home Products Corporation (Law Dept.)  
5 Giralda Farms  
Madison, NJ 07940  
(973) 660-5000

9. National Nutritional Foods Association v. Food and Drug Administration, 504 F. 2d 761 (2d Cir. 1974), cert. denied, 95 S. Ct. 1326 (1975). In this case, Wilmer, Cutler & Pickering represented three manufacturers of dietary supplements -- Archon Pure Products Corporation, Plus Products, and William T. Thompson Company--and a trade association they had just formed the Council for Responsible Nutrition, in challenging FDA regulations establishing a standard of identity for multi-vitamin and multi-mineral supplements. The FDA regulations limited the potency of many vitamins and minerals in supplements, prohibited certain ingredients, and treated products exceeding the potency limits as drugs. The regulations were also challenged by a number of other parties. The Court of Appeals generally upheld FDA's authority to establish a standard of identity, but directed the agency to consider applications for variations from the standard in terms of dosage limits and permissible combinations of vitamins and minerals. The Court of Appeals also held that there was no rational basis for treating all high-potency dietary supplement products as drugs.

This decision was a significant setback for FDA. The regulation was not further pursued by the agency on remand, and was in any event largely superseded by the enactment by Congress of the Rogers-Proxmire Amendments of 1976, restricting FDA's regulatory authority over vitamin/mineral products.

I was lead counsel for our clients in this case, supervising the development of our arguments and the writing of our briefs. Along with counsel for other petitioners, I argued the case in the Second Circuit.

a. I worked on this case in 1973-1974.

b. The case, a direct appeal to the U.S. Court of Appeals for the Second Circuit, was heard by a panel consisting of Circuit Judges Friendly and Smith and Judge Bartels of the Eastern District of New York, sitting by designation. Judge Friendly wrote the opinion for the Court.

c. Co-Counsel:

Richard A. Allen, then at  
Wilmer, Cutler & Pickering

Now at:  
Zuckert, Scoutt & Rasenberger, L.L.P.  
888 17<sup>th</sup> Street, NW  
Washington, DC 20006  
(202) 298-8660

Principal Counsel for other petitioners:

For National Nutritional Foods Association:  
Milton Bass, then at  
Bass & Ullman

Now at:  
Ullman, Shapiro & Ullman, LLP  
299 Broadway, Suite 1700  
New York, NY 10007  
(212) 571-0068

For Vitaminerals, Inc:  
William R. Pendergast  
McMurray & Pendergast  
Washington, DC  
(Deceased)

For National Health Federation:  
Kirkpatrick W. Dilling  
Dilling & Dilling  
1120 Lee Road  
Northbrook, IL 60062  
(312) 236-8417

For Federation of Homemakers:

James S. Turner  
Swankin, Turner & Koch  
700 13<sup>th</sup> Street, NW, Suite 1200  
Washington, DC 20036  
(202) 462-8800

For Linus Pauling and Roger Williams:  
Michael R. Sonnenreich, then at  
Chayet & Sonnenreich  
Washington, DC

Now at:  
Sonnenreich & Roccograndi  
2600 Virginia Avenue, NW  
Washington, DC 200037  
(202) 965-4150

Opposing Counsel:

Stephen H. McNamara  
Food and Drug Administration

Now at:  
Hyman, Phelps & McNamara  
700 13<sup>th</sup> Street, NW, Suite 1200  
Washington, DC 20005  
(202) 737-5600

and

Howard Holstein  
Food and Drug Administration

Now at:  
Hogan & Hartson  
555 13<sup>th</sup> Street, NW  
Washington, DC 20004-1109  
(202) 637-5600

10. Pharmaceutical Manufacturers Association v. Finch, 307 F. Supp. 858 (D.Del.1970).  
In this case, Wilmer, Cutler & Pickering represented the Pharmaceutical Manufacturers  
Association, a trade association of manufacturers of prescription drugs, in challenging the  
lawfulness of FDA regulations defining required criteria for "adequate and well-

controlled clinical investigations" necessary to establish the effectiveness of new drugs, and permitting the FDA to deny a hearing on whether the regulatory standard had been met whenever the agency concluded that the drug manufacturer's submission did not satisfy all the specified criteria. We argued that the record did not support FDA's regulatory definition and that the agency's "summary judgment" procedure for avoiding hearings was unfair. We also agreed that the FDA regulations were invalid under the Administrative Procedure Act (APA) because they had been promulgated without notice and an opportunity for comment (because, said FDA, the regulations were only "interpretive" and "procedural"). On motions for summary judgment, the District Court agreed with our APA argument and held the FDA regulations invalid. 307 F. Supp. 858 (D.Del. 1970). FDA did not appeal.

I drafted the complaint and the briefs in this case.

- a. I worked on this case in 1969-1970.
- b. The case was litigated before Judge James L. Latchum of the U.S. District Court for the District of Delaware.
- c. Co-Counsel:

Lloyd N. Cutler  
 Wilmer, Cutler & Pickering  
 2445 M Street, NW  
 Washington, DC 20037  
 (202) 663-6100

Opposing Counsel:

Eugene Pfeifer  
 Food and Drug Administration

Now at:  
 King & Spalding  
 1730 Pennsylvania Avenue, NW  
 Washington, DC 20006  
 (202) 737-0500

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

Apart from litigation, I provided advice to many clients during my years in private practice on the interpretation of, and compliance with, federal statutes and agency regulations. Thus, I provided advice to a number of broadcast licenses on compliance with FCC requirements and to drug and food companies on compliance with FDA requirements.

In the 1990s I was very active on legal ethics matters, as "ethics partner" at my firm, Wilmer, Cutler & Pickering, from 1991 to 1995, and as a member of the DC Bar Legal Ethics Committee from 1991 to 1997 (and Chairperson of that Committee for two years). I was also elected by my partners to be a member of the firm's Management Committee from July 1995 through June 1998.

Similarly, during my years as a lawyer in the Executive Branch, I have advised a number of Government officials, including the Secretary of Health, Education and Welfare (Joseph A. Califano, Jr.), the Secretary of Agriculture (Bob Bergland), and the current Attorney General on a wide range of issues of statutory interpretation and on a number of legislative matters.

In my current position, I have represented the Department of Justice in the mediation of one of the largest government contract cases in history; and worked closely with the Assistant Attorneys General who report to me on a wide range of litigation, legislative matters, and internal organization and management matters.

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

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

I retired as a partner of Wilmer, Cutler & Pickering on October 30, 1998. Pursuant to the firm's Retirement Plan for Partners, I began receiving retirement payments, in the amount of \$9391 per month, in April 1999.

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

I will fully comply with all ethics laws and regulations, and will seek and follow the advice of Department of Justice ethics officials when questions arise. I have minimized issues of conflicts of interest by investing in mutual funds, municipal bonds, and Treasury bonds rather than stocks of individual companies. While I have severed my relationship with Wilmer, Cutler & Pickering (except for my receipt of fixed retirement payments), I continue to recuse myself on particular matters that I worked on at the firm or in which the firm is representing a party.

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

No.

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

See attached financial disclosure report.

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

See attached.

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

My wife and I hosted small events at our home for a candidate for the Maryland House of Delegates and a candidate for the Montgomery County Council in the 1970s.



## III. GENERAL (PUBLIC)

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

During my years in private practice, I accepted several appointments from the D.C. Superior Court and the U.S. Court of Appeals for the D.C. Circuit to represent defendants or appellants in criminal cases. I estimate that I devoted over 400 hours to such representations. In addition, I represented pro bono clients in a range of matters, including employment discrimination, civil liberties, and welfare rights matters. I estimate that over the years I devoted more than 2000 hours to such representations.

From 1982 to 1986 I was a member of the Board of Governors of Antioch School of Law, whose mission was to train public interest lawyers. I devoted more than 200 hours to the Board's activities. I also served for nine years (1989-1998) on the Board of Directors of the Food Research and Action Center (FRAC), a nonprofit organization focusing on hunger and child nutrition issues. I devoted more than 200 hours to the FRAC Board's activities.

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

I have never belonged to any such organization.



U.S. Department of Justice

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Washington, D.C. 20530

Stephen D. Potts  
Director  
Office of Government Ethics  
Suite 500  
1201 New York Avenue, N.W.  
Washington, D.C. 20005-3919

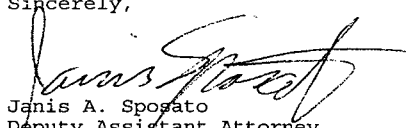
Dear Mr. Potts:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Daniel Marcus, who has been nominated by the President to serve as Associate Attorney General, Department of Justice.

We have conducted a thorough review of the enclosed report, and have counseled Mr. Marcus who will recuse himself or seek a waiver before participating in any matters affecting his financial or personal interests.

In light of this counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,



Janis A. Spogato  
Deputy Assistant Attorney  
General for Law and Policy  
Justice Management Division

Enclosure

**Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT**

SF 274 (Rev. 8/94)  
U.S. Office of Government Ethics

Form Approved  
OMB No. 3201-0001

Reporting Status <input checked="" type="checkbox"/> Full <input type="checkbox"/> Part-time <input type="checkbox"/> Other		Termination Date (If Applicable) (Month, Day, Year)	
Reporting Individual's Name MARCUS		Agency Use Only MAR 2 2000	
Position for Which Filing Associate Attorney General		OGE Use Only	
Location of Present Office 950 Pennsylvania Ave., N.W., Washington, D.C. 20530		Fee for Late Filing Any individual who is required to file this report and does so more than 30 days after the date this report is required to be filed, or, if an extension is granted, more than 30 days after the date of the filing extension period shall be subject to a \$200 fee.	
Reporting Period 1/19 to Present		Reporting Periods Incumbent: The reporting period is the calendar year ending on the date of Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.	
Signature of Reporting Individual Daniel Marcus		Termination Filers: The reporting period is the calendar year ending on the date of termination. Part II of Schedule D is not applicable.	
Signature of Other Reviewer [Signature]		Nominees, New Entrants and Candidates for President and Vice President:	
Agency Ethics Officer's Opinion [Signature]		Schedule A: The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value of assets and liabilities is reported within 31 days of the date of filing.	
Office of Government Ethics Use Only		Schedule B: Not applicable.	
Comments of Reporting Officials (If additional space is required, use the reverse side of this sheet) Notations "N/A" made by Janice M. Rodgers, AEO, DOT, upon consultation with filer.		Schedule C, Part I (Liabilities): The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.	
Signature [Signature]		Schedule C, Part II (Agreements or Arrangements): Show any agreements or arrangements as of the date of filing.	
Date (Month, Day, Year) 1/20/00		Schedule D: The reporting period is the preceding two calendar years and the preceding calendar year up to the date of filing.	

NSN 7540-01-970-4444

274-111

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SP 274 (7-79) 6894  
5 CFR Part 2634  
U.S. Office of Government Ethics

Reporting Individual's Name

DANIEL MARCUS

Page Number

SCHEDULE A

Income; type and amount. If "None" (or less than \$201)\* is checked, no other entry is needed in Block C for that item.

Valuation of Assets at close of reporting period

Assets and Income

BLOCK A	BLOCK B		BLOCK C												
	Type	Amount	None	\$1,001 - \$16,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	Over \$500,000	Capital Gains	Rent and Royalties	Dividends	Other (Specify Type)	Amount	Date (Mo., Day, Yr.) Only if "Other" specified
<p>Identify each asset held by you, your spouse, or dependent children for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period.</p> <p>Identify each asset or source of income held by you, your spouse, or dependent children which generated over \$200 in income during the reporting period.</p> <p>None <input type="checkbox"/></p> <p>Examples:                      Central Airlines Common                      Dow Jones &amp; Smith, Homedown, State                      Kingsone Equity Fund                      IRA: Heartland 400 Index Fund</p>															
1. Wilmer, Cutler & Pickering (delisted Wash DC)															
2. (S) Supreme Court Historical Society, Washington, D.C.													Retirement pay from the law firm		\$84,579 JMK
3. Howard County MD Construction Bonds (muni. bond)													Salary as Historian		
4. Wash. Suburban Sanitary Dist. MD (muni. bond)															
5. Washington County MD Public Improvements (muni. bond)															
6. Wilmer, Cutler & Pickering (Washington, DC)													Retiring off public account by retiring from 1998-99		\$176,761

\* 1971 Edition Code Not Used. Edition Prior to 1971 Cannot Be Used.

5010-108-01  
 5010-108-02  
 U.S. Office of Governmental Ethics

Reporting Individual's Name

DANIEL MARCUS

Page Number

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Block A	BLOCK B										Amount	Block C
	BLOCK C		BLOCK D		BLOCK E		BLOCK F		BLOCK G			
Assets and Income	Valuation	Income Type	Valuation	Income Type	Valuation	Income Type	Valuation	Income Type	Valuation	Income Type	Amount	Block C
1 MD State Dept. of Transportation Construction (mun. bond)	\$1,000,000	Interest	\$1,000,000	Interest	\$1,000,000	Interest	\$1,000,000	Interest	\$1,000,000	Interest	\$1,000,000	
2 MD Water Quality Financing (mun. bond)	\$1,000,000	Interest	\$1,000,000	Interest	\$1,000,000	Interest	\$1,000,000	Interest	\$1,000,000	Interest	\$1,000,000	
3 MD State Health & Higher Education Facilities (mun. bond)	\$1,000,000	Interest	\$1,000,000	Interest	\$1,000,000	Interest	\$1,000,000	Interest	\$1,000,000	Interest	\$1,000,000	
4 Baltimore City Parking (mun. bond)	\$1,000,000	Interest	\$1,000,000	Interest	\$1,000,000	Interest	\$1,000,000	Interest	\$1,000,000	Interest	\$1,000,000	
5 Anne Arundel City MD Water (mun. bond)	\$1,000,000	Interest	\$1,000,000	Interest	\$1,000,000	Interest	\$1,000,000	Interest	\$1,000,000	Interest	\$1,000,000	
6 Alliance Growth Fund	\$1,000,000	Dividend	\$1,000,000	Dividend	\$1,000,000	Dividend	\$1,000,000	Dividend	\$1,000,000	Dividend	\$1,000,000	
7 Merrill Lynch Basic Value Fund	\$1,000,000	Dividend	\$1,000,000	Dividend	\$1,000,000	Dividend	\$1,000,000	Dividend	\$1,000,000	Dividend	\$1,000,000	
8 Merrill Lynch Global Allocation Fund	\$1,000,000	Dividend	\$1,000,000	Dividend	\$1,000,000	Dividend	\$1,000,000	Dividend	\$1,000,000	Dividend	\$1,000,000	
9 Pimco Growth Fund	\$1,000,000	Dividend	\$1,000,000	Dividend	\$1,000,000	Dividend	\$1,000,000	Dividend	\$1,000,000	Dividend	\$1,000,000	

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91-273 (Rev. 6-94)  
 U.S. Office of Government Ethics

Page Number  
**3**

**SCHEDULE A continued**

Reporting Individual's Name  
**DANIEL MARCUS**

Block A Assets and Income <small>Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period. Identify each asset or source of income which generated over \$200 in income during the reporting period.</small>	Block B Valuation of Assets		Block C Amount	
	Income Type	Other (Specify)	Actual Amount	Date (MM/Day/Year) <small>Only if Oklahoma</small>
Templeton World Fund				
Intermountain Power Agency - Utah Power (muni. bond)				
Idaho Falls Idaho Electric Refunding (muni. bond)				
Kentucky State Rev. - Building Revenue Bond (muni. bond)				
Illinois State College Savings (muni. bond)				
Georgia Municipal Electric Auth (muni. bond)				
Hawaii State Bonds (muni. bond)				
Fort Worth Texas Dept. School Dist. Bond (muni. bond)				
Gainesville Florida Utilities Systems (muni. bond)				

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Reporting Individual's Name

DANIEL MARCUS

SCHEDULE A continued

Block A Assets and Income Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period. Identify each asset or source of income which generated over \$200 in income during the reporting period.	Block B Valuation of Assets		Block C Income Type										Amount	Date (Mo., Day, Yr.) Only if Honoraria				
	None or Less Than \$1,000	Over \$1,000	Capital Gains	Dividend	Rent and Royalties	Interest	Capital Gains	Excluded Interest	Other (Specify Type)	Other (Specify Type)	Other (Specify Type)	Other (Specify Type)			Other (Specify Type)	Other (Specify Type)	Other (Specify Type)	
Merrill Lynch CMA Money Fund	X																	
Essex Lane Limited Partnership (Real estate - a partner in Houston)																		
CSM a Limited Partner	X																	
CSM a Limited Partner	X																	
Winthrop Texas Investors L.P. (partnership in Dallas)																		
CSM a Limited Partner	X																	
CSM a Limited Partner	X																	
Israel Bonds	X																	
Riggs Bank checking account																		
(S) Boston College Law School																		
(S) Hillsborough County Florida Utilities (Miami bond)																		

\* Taxable income may be less

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 Form 990  
 Office of Government Ethics

Reporting Individual's Name

DANIEL MARCUS

Page Number

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Block A		Block B				Block C							
Assets and Income		Valuation of Assets				Income: Type							
		Amount				Amount							
		Date (Mo., Day, Yr.)				Date (Mo., Day, Yr.)							
certify, each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period. certify, each asset or source of income which generated over \$200 in income during the reporting period.													
3) Prince Georges Co., MD Construction & Pub. Improvements (muni. bond)													
3) Maryland St. Transp. Auth. Special Oblig. Bonds (muni. bond)													
3) Maryland St. Transp. Auth. Transp. Oblig. Bonds (muni. bond)													
3) Wash. Suburban Sanitary Dist. MD Sewage Disposal Authority (muni. bond)													
3) Wash. Suburban Sanitary Dist. MD Gen. Construction Bonds (muni. bond)													
3) AIM Value Fund - Class B													
3) Merrill Lynch Environmental Growth Fund													
3) Pfligrin Mid Cap Growth Fund													
3) Seligman Communications & Int'l. Fund													

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SE 332 (Rev. 6/94)  
5-CFRA (Rev. 2/83)  
U.S. Office of Government Ethics

Reporting Individual's Name  
**DANIEL MARCUS**

Page Number  
**6**

**SCHEDULE A continued**

Block A Assets and Income	Block B Valuation of Assets		Block C Income: Type										Amount	Actual Amount Only if "Other" specified	Date (Mo, Day, Yr) Only if Honorary			
	\$1,001 - \$15,000	\$15,001 - \$50,000	Over \$1,000,000	Over \$1,000,000	Over \$500,000 - \$1,000,000	Over \$250,001 - \$500,000	Over \$100,001 - \$250,000	Over \$50,001 - \$100,000	Over \$20,001 - \$50,000	Over \$10,001 - \$20,000	Over \$5,001 - \$10,000	Over \$2,501 - \$5,000				Over \$1,001 - \$2,500	Over \$501 - \$1,000	Over \$251 - \$500
1 (S) VAN Kampen Emerging Growth Fund																		
2 (S) Merrill Lynch CMA Money Fund																		
3 <del>AIM</del> AIM Value Fund A (IRA)																		
4 AIM Limited Maturity Treasury Fund (IRA)																		
5 (S) AIM Value Fund - Class A (IRA)																		
6 (S) AIM Limited Maturity Treasury Fund (IRA)																		
7 Certificate of Deposit - Old Man Bank - Evansville IN (401(k))																		
8 U.S. Treasury Bonds / Notes (401(k))																		
9 AIM International Equity Fund (401(k))																		

U.S. Office of Government Ethics, 1315 Pennsylvania Avenue, N.W., Washington, D.C. 20004-4302

31 278 (Rev. 6/94)  
 26 CFR Part 2034  
 U.S. Office of Government Ethics

Reporting Individual's Name: **DANIEL MARCUS** Page Number: **7**  
**SCHEDULE A continued**

Assets and Income	Block B										Block C									
	Valuation of Assets										Income Type									
	\$1,000 - \$10,000	\$10,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	\$1,000,001 - \$5,000,000	\$5,000,001 - \$10,000,000	Over \$10,000,000	Other (Specify Type)	Dividend	Real and Personal	Interest	Capital Gains	Other (Specify Type)	Amount	Actual Amount Only if Other Specified	Date (Acq. Exp. or Honoraria)		
1. AIM Value Fund - Class B (401(E))																				
2. Alliance Growth Fund (401(K))																				
3. AIM Intermediate Government Fund (401(K))																				
4. Merrill Lynch Global Allocation Fund (401(K))																				
5. Pilgrim Mid Cap Growth Fund (401(E))																				
6. Pimco Growth Fund (401(K))																				
7. Seligman Communications & Info. Fund (401(K))																				
8. Seligman Growth Fund (401(K))																				
9. Templeton Foreign Fund (401(K))																				

1991 Edition. Use the "Use" Edition Prior to 1991. "Change Be Used."

SI-278 (Rev. 6/93)  
 5 CFR Part 2634  
 U.S. Office of Government Ethics

Reporting Individual's Name

DANIEL

SCHEDULE A continued

Page Number



Block A Assets and Income <small>Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period. Identify each asset or source of income which generated over \$200 in income during the reporting period.</small>	Block B Valuation of Assets		Block C Income: Type										Actual Amount <small>Only if "Other" specified</small>	Date <small>(Mth., Day, Yr)</small>  Only if Honoree			
	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000	Dividends	Interest	Rent and Royalties	Capital Gains	Other			Other (Specify Type)	Amount	
1. George Putnam Fund (401(k))	X																
2. Van Kampen Emerging Growth (401(k))				X													
3. Retirement Reserves (401(k))																	
4. (S) TIAA-CREF Retirement Annuities																	
5. Lincoln Life Annuities (retirement account)																	
6. Lincoln Life Annuities Multi-Fund																	
7. (S) American Fund (IRA/Roth IRA)																	
8. (S) Growth Fund of America (jointly held with mother, Judy Daniels)																	
9. (S) Franklin Maryland Tax-Free Income Fund																	

101. Entries Can Be Used, Editions Prior to 1971 Cannot Be Used.

SE 178 (Rev. 6/94)  
 5 CFR Part 2634  
 U.S. Office of Government Ethics

Block A		Block B		Block C		Page Number
Assets and Income		Valuation of Assets		Income: Type		Amount
Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period.		Identify each asset or source of income which generated over \$200 in income during the reporting period.		Other (Specify Type)		Date (Mo., Day, Yr.) Only if Honorary
Reporting Individual's Name: <b>DANIEL MARCUS</b>						9
1	(S) Franklin Income Class A	\$1,001 - \$15,000				
2	(S) Franklin U.S. Govt. Fund Class A	\$15,001 - \$50,000				
3	(S) Franklin Federal Tax Free Fund-Class A	\$50,001 - \$100,000				
4	(S) Franklin Strategic Income Fund-Class A	\$100,001 - \$250,000				
5	(S) Franklin Dynatech Fund	\$250,001 - \$500,000				
6	(S) Franklin Equity Fund Class A	\$500,001 - \$1,000,000				
7	(S) Franklin Rising Dividend Fund-Class A	\$1,000,001 - \$5,000,000				
8	(S) Franklin Mutual Services Financial Services Class A	Over \$5,000,000				
9	(S) Sale of 18,888 shares of Franklin Equity Income Fund					

1991 Edition. Gov. BK. Used. Editions (1987 to 1991) Cannot Be Used.

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 U.S. Office of Government Ethics

Reporting Individual's Name  
**DANIEL MARCUS**

Page Number  
**10**

**SCHEDULE A continued**

Block A Assets and Income	Block B Valuation of Assets		Block C Income: Type		Date (Mo./Day/yr.) Only if Honorary
	Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period.	Identify each asset or source of income which generated over \$200 in income during the reporting period.	Income Type	Amount	
(s) sale of 427 shares of Franklin Small Cap Growth Fund (s) sale of 2824 shares of Franklin High Yield Tax Free Fund (s) sale of 1721 shares of Franklin Mutual Series Mutual Shares Fund	None over \$1,000	None over \$200	Capital Gains	\$100,000	
	\$1,001 - \$15,000	\$15,001 - \$50,000	Capital Gains	\$100,001 - \$1,000,000	
	\$15,001 - \$50,000	\$50,001 - \$100,000	Capital Gains	\$1,000,001 - \$10,000,000	
	\$50,001 - \$100,000	\$100,001 - \$250,000	Capital Gains	\$10,000,001 - \$50,000,000	
	\$100,001 - \$250,000	\$250,001 - \$500,000	Capital Gains	\$50,000,001 - \$100,000,000	
	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Capital Gains	\$100,000,001 - \$500,000,000	
	\$500,001 - \$1,000,000	\$1,000,001 - \$5,000,000	Capital Gains	\$500,000,001 - \$1,000,000,000	
	\$1,000,001 - \$5,000,000	\$5,000,001 - \$10,000,000	Capital Gains	\$1,000,000,001 - \$5,000,000,000	
	\$5,000,001 - \$10,000,000	\$10,000,001 - \$50,000,000	Capital Gains	\$5,000,000,001 - \$10,000,000,000	
	Over \$10,000,000	Over \$50,000,000	Capital Gains	Over \$10,000,000,000	

1991 Edition Civ. Bk. Used. Editions Prior to 1971 Cannot Be Used.

Do not complete Schedule B if you are a new entrant, nominee, Vice Presidential or Presidential Candidate

52-734 (Rev. 6/94)  
3 CFFR Part 101A  
U.S. Office of Government Ethics

Page Number

Reporting Individual's Name: DANIEL MARCUS  
 Nominee -- NOT applicable SCHEDULE B

**Part I: Transactions**

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded \$1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

1	Identification of Asset	Transaction Type (S) Purchase (X) Sale ( )	Date (Mo, Day, Yr)	None <input type="checkbox"/>	Amount of Transaction (S)															
					\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	\$1,000,001 - \$5,000,000	\$5,000,001 - \$10,000,000	\$10,000,001 - \$50,000,000	\$50,000,001 - \$1,000,000,000						
1	Example: Central Airlines Common	X	2/1/91																	
2	Nominee -- not applicable																			
3	"																			
4	"																			
5	"																			

**Part II: Gifts, Reimbursements, and Travel Expenses**

For you, your spouse and dependent children, report the source, a brief description of the gift, reimbursement, or travel expense provided to you by the federal government, given to your agency in connection with official duties, or received from one source totaling \$250 or more; and (2) travel-related cash reimbursements received from one source totaling \$240 or more. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal, friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expense provided. Exclude anything given to you by the federal government, given to your agency in connection with official duties, or received from one source totaling \$250 or more; child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth \$100 or less. See instructions for other exclusions.

1	Source (Name and Address)	Brief Description	Value
1	Example: Sheri Ann, of Rock Collection, NY, NY Frank Jones, San Francisco, CA	Airline ticket, hotel room & meals incident to national conference \$1,500 (personal activity unrelated to duty) Leather briefcase (personal property)	\$400 \$200
2	Nominee -- not applicable		
3			
4			
5			

1991 Edition Can Be Used Editions Prior to 1991. Consent Be Used.

**SCHEDULE C**

SP-775 (Rev. 7/84)  
U.S. Office of Government Ethics

Reporting Individual's Name: **DANIEL MARCUS** Page Number: **1**

**Part I: Liabilities**  
Report liabilities over \$10,000 owed to any one creditor at any time during the reporting period by year, percentage, and liability used to obtain relative listed in instructions. See instructions for revolving charge accounts.

Creditor (Name and Address)	Type of Liability	Interest Rate		Period of Liability		Number of Months in (A)
		1983	1984	1983	1984	
First Citizens Bank, Washington, DC John Jones, 123 J St., Washington, DC	Mortgage on real property, Delaware Primarily joint	10%	10%	12 yrs	12 yrs	12
NONE						

**Part II: Agreements or Arrangements**  
Report your agreements or arrangements for:  
(1) continuing participation in an employee benefit plan (e.g., pension, 401k, deferred compensation); (2) combination of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

State and Termination Date of Arrangement: \_\_\_\_\_  
 Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service \_\_\_\_\_  
 Pursuant to partnership retirement plan, will receive fixed monthly payments, which began April 1, 1979. I retired as a partner on October 30, 1978. Fler receives fixed monthly payments until his death at \$9,351.44E

State: **Washington D.C.**

\*date retirement plan adopted, subsequently amended. I retired from the firm pursuant to the plan on October 30, 1978.

SP-278 (Rev. 6/96)  
5 CFR Part 2.624  
U.S. Office of Government Ethics

Reporting Individual's Name: **DANIEL MARCUS** Page Number: **1**

**SCHEDULE D**

**Part I: Positions Held Outside U.S. Government**

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or social, fraternal, or political entities and those of an honorary nature. None

Sample	Organization (Name and Address)	Type of Organization		Position Held	From (Mo., Yr.) To (Mo., Yr.)		
		Non-profit education	Law firm		6/82	7/85	Present
1	Wilmer, Cutler & Pickering, Washington, DC		Law firm	Partner	1/81	10/98	
2	Food Research & Action Center, Washington, DC		Non-profit public interest	Director	1/89	10/98	
3	Yale Law School Fund, New Haven, CT		Non-profit educational	Director	1/92	6/98	
4							
5							
6							

**Part II: Compensation In Excess Of \$5,000 Paid by One Source**

Report sources of more than \$5,000 compensation received by you or your spouse, partner, or other business enterprise or any other non-profit business affiliation for services provided directly by you during the reporting period. Do not include the value of gifts or honoraria received from any source of more than \$5,000. You need not report the U.S. Government as a source. None

Sample	Source (Name and Address)	Legal services	Build, Dismantle, or Operate
1	Dea Jones & Smith, Housatonic, State Metro University (client of Dea Jones & Smith), Montgomery, State	Legal services in connection with university construction	
2	Wilmer, Cutler & Pickering, Washington, DC	Legal services	
3	Aramark, Inc. (client of WCP), Philadelphia, PA	Legal services in connection with health care litigation	
4	BASF, Inc. (client of WCP), Mt. Olive, NJ	Legal services in connection with consumer litigation	
5	Bayer Corp. (client of WCP), Pittsburgh, PA	Legal services in connection with regulatory matters	
6	Chemical Manufacturers Assn (client of WCP), Arlington, VA Council for Responsible Distribution (client of WCP), Washington, DC	Legal services in connection with regulatory matters	

SP-278 (Rev. 6/96) U.S. Office of Government Ethics



SEC Form 278e  
 U.S. Office of Government Ethics  
 Reporting Individual's Name: DANIEL MARCUS Page Number: 2

**SCHEDULE D**

**Part I: Positions Held Outside U.S. Government**  
 consultant of any corporation, firm, partnership, or other business enterprise or any other organization, including religious, fraternal, or political organizations, or any other entity, or any other position, office, director, trustee, general partner, proprietor, representative, employee, or

	Organization (Name and Address)	Type of Organization	Position Held		From (Mo, Yr)	To (Mo, Yr)	None <input type="checkbox"/> Present <input type="checkbox"/> 11/91
			President	Partner			
1	NAV Arms of Rock Collection, NY, NY Dwy, Green & Smith, Homestead, Fla	Non-profit, education Law firm			6/92	7/92	
2							
3							
4							
5							
6							

**Part II: Compensation In Excess Of \$5,000 Paid by One Source**  
 Report sources of more than \$5,000 compensation received by you or your organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source.

Source (Name and Address)	Legal Services	Brief Description of Duties
1. Credit Suisse (client of WCBP), Zurich, Switzerland	Legal services in connection with university reorganization	
2. Credit Suisse First Boston (client of WCBP), New York, NY	Legal services in connection with litigation	
3. European Commission (client of WCBP), Brussels, Belgium	Legal services in connection with international trade matter	
4. Gallo Winery (client of WCBP), Modesto, CA	Legal services in connection with BATF and other regulatory matters	
5. General Electric Appliances (client of WCBP), Louisville, KY	Legal services in connection with Dept of Energy regulatory matters	

Do not complete this part if you are an incumbent, Former Filers, or Presidential Candidate

(18) Edition: Oct 84. Used: Edition: Prior to 1981. Printed by Vint.

2 CFR Part 201  
 2 CFR Part 204  
 U.S. Office of Government Ethics

Reporting Individual's Name

Daniel Marcus

Page Number

3

SCHEDULE D

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether or not they are limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None

Example	Organization (Name and Address)	Type of Organization	Position Held	From (Mo. Yr.)		To (Mo. Yr.)
				Start	End	
	NYU, Ave. of Rock, College, NY, NY	Non-profit, education	President	7/86	8/88	Present
	Dot Jones & Smith, Hometown, State	Law firm	Partner			1991
1						
2						
3						
4						
5						
6						

Part II: Compensation In Excess Of \$5,000 Paid by One Source

Report sources of more than \$5,000 compensation received by you or your spouse, partner, or dependent child from any source during the reporting period, other than compensation from your employer or from a source generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source.

None

Example	Source (Name and Address)	Legal services	Legal services in connection with university conduct	Legal services in connection with university conduct	Legal services in connection with university conduct	Legal services in connection with university conduct
	Dot Jones & Smith, Hometown, State					
1	Harman & Keimer (client of WC&P)	Legal services				Legal services in connection with BAF regulatory matter
2	Household International Corp (client of WC&P)	Legal services				Legal services in connection with litigation
3	Woland & Knight (client of WC&P)	Legal services				Legal services in connection with HUD contract matter
4	Home Paramount Pest Control (client of WC&P)	Legal services				Legal services in connection with FTC regulatory matter
5						

SP-278 (Rev. 9/84)  
 U.S. Office of Government Ethics

Reporting Individual's Name: **DANIEL MARCUS** Page Number: **4**

**SCHEDULE D**

**Part I: Positions Held Outside U.S. Government**  
 Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Report the position held, religious, social, fraternal, or political entities and those of an honorary nature. None

From (Mo., Yr.)	To (Mo., Yr.)	Position Held	Type of Organization	
			Non-profit, education, law firm	For-profit, business
1	2008	President		
2	2008	Partner		
3				
4				
5				
6				

**Part II: Compensation In Excess Of \$5,000 Paid by One Source**  
 Report sources of more than \$5,000 compensation received by you or your business a liability for more than \$5,000 during the reporting period. Do not report compensation of more than \$5,000. You need not report the U.S. Government as a source. None

Do not complete this part if you are an Incumbent, Termination Filer, or Presidential Candidate

Source (Name and Address)	Brief Description of Duties
Example: Doe Jones & Smith, Hometown, State Metro University (Gift of Doe Jones & Smith), Westchester, State	Legal services Legal services in connection with university re-orientation
Altra Laboratories (Client of WCEP), Plainfield, NJ	Legal services in connection with FDA regulatory matters
Paracelsus Healthcare Corp. (Client of WCEP), Houston, TX	Legal services in connection with health care regulatory matters
St. Pierre (Client of WCEP), Washington, DC	Legal services in connection with litigation
Sonus Pharmaceuticals (Client of WCEP), Seattle, WA	Legal services in connection with litigation
Swiss Bank Corp. (Client of WCEP), Basel, Switzerland	Legal services in connection with litigation
Witten Bank of Switzerland (Client of WCEP), Zurich, Switzerland	Legal services in connection with litigation

**SCHEDULE D**

Page Number **5**

**Part I: Positions Held Outside U.S. Government**  
 Report any positions held during the applicable reporting period, whether full-time or part-time, in any foreign or domestic corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution, religious, social, fraternal, or political society and those who of an honorary nature. None

1	2	3	4	5	6	7	
						From (Mo., Yr.)	To (Mo., Yr.)
1	David Marcus	President	None	1988	1991		

**Part II: Compensation In Excess Of \$5,000 Paid by One Source**  
 Report any source which has paid or is to pay you or your spouse or dependent child more than \$5,000 in compensation of more than \$5,000. You need not report the U.S. Government as a source. None

1	2	3	4	5	6	7
1	U.S. Sugar Refiners' Assn (client of Wood)	Legal services in connection with university construction	Legal services in connection with trade and regulatory (USDA) matters	Washington, DC		
2	U.S. Postal Service (client of Wood)	Legal services in connection with federal ethics matters	Legal services in connection with federal ethics matters	Washington, DC		
3	University of Illinois (client of Wood)	Legal services in connection with federal ethics matters	Legal services in connection with federal ethics matters	Urbana, IL		

**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	75,000	Notes payable to banks—secured	0
U.S. Government securities—add schedule A	506,438	Notes payable to banks—unsecured	0
Listed securities—add schedule B	7,120,255	Notes payable to relatives	0
Unlisted securities—add schedule C	487,598	Notes payable to others	0
Accounts and notes receivable:		Accounts and bills due	0
Due from relatives and friends	0	Unpaid income tax	0
Due from others	0	Other unpaid tax and interest	0
Doubtful	0	Real estate mortgages payable—add schedule	0
Real estate owned—add schedule D	616,000	Chattel mortgages and other liens payable	0
Real estate mortgages receivable	0	Other debts—itemize:	0
Autos and other personal property	100,000		
Cash value—life insurance	30,000		
Other assets—itemize:			
IRA & CASH IN RETIREMENT ACC.	79,963		
ISRAEL BONDS	4,500		
		Total liabilities	
		Net worth	6,088,754
Total assets	6,088,754	Total liabilities and net worth	6,088,754
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		

FINANCIAL NET WORTH  
SCHEDULE A  
U.S. GOVERNMENT SECURITIES

See attached pages from Merrill Lynch statement.

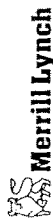


PRIORITY CLIENT **IRRA** ACCOUNT

FBO DANIEL MARCIUS

Current Portfolio										
Quantity	Security Description	Date Acquired	Adjust/Unit Cost Basis	Total Cost Basis	Estimated Market Price	Estimated Market Value	Unrealized Gain or (Loss)	Estimated Accrued Interest	Estimated Annual Income	Current Yield %
CDs, Deposit Notes and Equivalents										
70,000	CD OLD NATL BK EVANSVILLE IND 06.100% NOV 26 2001 SEMI	11/15/99	100.00	70,000	98.10	68,674	(1,325)	1,135	4,269	6.21
10,000	CD FIRST USA BANK OF INDIANA CLARKSBURG IN 07.000% FEB 24 2003 SEMI	02/14/00	100.00	10,000	98.62	9,862	(137)	12	700	7.09
	<b>Total - CDs, Deposit Notes &amp; Equivalents</b>			<b>80,000</b>		<b>78,536</b>	<b>(1,462)</b>	<b>1,147</b>	<b>4,969</b>	<b>6.33</b>
Government Securities										
64,660	COUPON TREASURY RECEIPT 11.000% APR 15 2002 ZEROS MAY 15 2000	07/15/98	50.83	58,735	98.79	63,880	N/A			
16,000	8 CATS SERIES T ZEROS NOV 15 2001 ORIGINAL UNIT COST: 75.46	03/06/97	89.46	14,314	89.23	14,277	(36)			
37,000	8 CATS SERIES T ZEROS NOV 15 2002	03/27/96	67.49	24,973	83.32	30,830	N/A			
14,000	U.S. TREASURY NOTE 6.000% FEB 15 2003 ORIGINAL UNIT COST: 100.60	08/12/97	100.32	14,045	99.03	13,864	(180)	34	874	6.31

IF YOU SEE THIS MESSAGE, PLEASE CONTACT US AT 1-800-345-4773



**PRIORITY CLIENT *IRRA* ACCOUNT**

FBO DANIEL MARCUS

**Current Portfolio**

Quantity	Security Description	Date Acquired	Adjust/Unit Basis	Total Cost Basis	Estimated Price	Estimated Market Value	Unrealized Gain (Loss)	Estimated Interest	Estimated Annual Income	Current Yield %
Government Securities										
57,000	U.S. TREASURY STRIPS ZERO% NOV 15 2003	07/23/97	69.68	39,719	78.41	44,696	N/A			
95,000	U.S. TREASURY STRIPS ZERO% NOV 15 2008 ORIGINAL UNIT COST: 63.57	12/09/96	75.81	72,027	73.68	70,003	(2,023)			
115,000	U.S. TREASURY STRIPS ZERO% AUG 15 2005 ORIGINAL UNIT COST: 59.45	12/09/96	70.87	81,510	68.60	78,896	(2,613)			
37,000	U.S. TREASURY STRIPS ZERO% AUG 15 2006	07/10/96	50.76	18,783	65.23	24,136	N/A			
90,000	U.S. TREASURY STRIPS ZERO% NOV 15 2007	07/23/97	53.90	48,512	60.11	54,100	N/A			
100,000	U.S. TREASURY STRIPS ZERO% NOV 15 2008	07/23/97	50.35	50,357	56.34	56,341	N/A			
105,000	U.S. TREASURY STRIPS ZERO% NOV 15 2009	07/23/97	47.07	49,425	52.77	55,410	N/A			
				<b>472,401</b>		<b>506,438</b>	<b>(4,852)</b>	<b>34</b>	<b>874</b>	<b>6.31*</b>

Bonds purchased at a premium show amortization Δ  
Bonds purchased at a discount show accretion B

\* - Excludes the market value of original issue discount holdings in the calculation of total current yield for debt securities.



## FINANCIAL NET WORTH

## SCHEDULE B

## LISTED SECURITIES

Various mutual funds (See attached pages from Merrill Lynch and Lincoln Financial Advisors)	\$3,767,097
American Legacy Fund	63,949
TIAA/CREF retirement account (wife)	159,958
Lincoln Life Annuities	169,714
Growth Fund of America	<u>29,537</u>
	\$4,190,255



MASTER FINANCIAL SERVICE



PRIORITY CLIENT CMA ACCOUNT

DANIEL MARCUS TTEE

Current Portfolio

Quantity	Security Description	Symbol	Sector	Date Acquired	Adjust/Unit Cost Basis	Total Cost Basis	Estimated Market Price	Estimated Market Value	Unrealized Capital (Loss)	Estimated Annual Income	Current Yield %
Mutual Funds and Defined Asset Funds											
Mutual Funds - Equity											
4,666	ALLIANCE GROWTH FUND CLASS (1.9710 FRACTIONAL SHARE)			02/04/94	31.58	147,373	41.78	194,945	47,573		
	Total Client Investment			N/A	N/A	N/A	41.78	40	N/A		
	Investment Return			\$95,284							
1,925	ML BASIC VALUE FD CL C CLASS (1.6500 FRACTIONAL SHARE)			01/20/95	26.35	50,725	33.34	64,179	13,470	756	1.1
	Total Client Investment			N/A	N/A	N/A	33.34	21	N/A		1.1
	Investment Return			\$31,017							
4,313	ML GLOBAL ALLOCATION B CLASS (1.4230 FRACTIONAL SHARE)			02/04/94	13.59	58,628	13.31	57,406	(1,204)	2,686	4.5
	Total Client Investment			N/A	N/A	N/A	13.31	5	N/A		4.5
	Investment Return			\$34,998							
5,119	PIMCO GROWTH FD CL C CLASS (1.7520 FRACTIONAL SHARE)			02/04/94	24.24	124,085	36.20	185,307	61,221		
	Total Client Investment			N/A	N/A	N/A	36.20	27	N/A		
	Investment Return			\$22,408							
1,226	TEMPLETON WORLD FUND CLASS (1.3100 FRACTIONAL SHARE)			12/28/98	15.89	19,492	17.51	21,467	1,975	467	2.1
	Total Client Investment			N/A	N/A	N/A	17.51	5	N/A		2.1
	Investment Return			\$17,844							



MASTER FINANCIAL SERVICE

PRIORITY CLIENT **CMA** ACCOUNT



HAEVA MARCUS TTEE

**Current Portfolio**

Quantity	Security Description	Date Acquired	Adjust/Unit Cost Basis	Total Cost Basis	Estimated Market Price	Estimated Market Value	Unrealized Gain or (Loss)	Estimated Accrued Interest	Estimated Annual Income	Current Yield %
65,000 B	MARYLAND ST TRANSN ADTH SERIES 2000A SEP82 00-0092JUL01 MOODY'S: AAA, S&P: AAA ORIGINAL UNIT COST: 40.07	05/25/94	53.98	35,092	53.22	34,595	(496)			
	<b>Total Municipal Bonds</b>			162,129		162,026	(101)	878	4,039	5.60*

Bonds purchased at a premium show amortization Δ  
Bonds purchased at a discount show accretion θ

\* - Excludes the market value of original issue discount holdings in the calculation of total current yield for debt securities.

**Current Portfolio**

Quantity	Security Description	Symbol	Date Acquired	Adjust/Unit Cost Basis	Total Cost Basis	Estimated Market Price	Estimated Market Value	Unrealized Gain or (Loss)	Estimated Annual Income	Current Yield %
1,981	AIM VALLE FUND CLASS B (.7270 FRACTIONAL SHARE)		05/15/95	27.41	54,306	47.90	94,869	40,584		N/A
	<b>Total Client Investment</b>				\$34,025		34	N/A		
	<b>Investment Return</b>								\$60,864	

**Mutual Funds and Defined Asset Funds**



**PRIORITY CLIENT CMA ACCOUNT**

MAEVA MARCUS TTEE

**Current Portfolio**

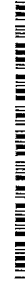
Quantity	Security Description	Symbol	Sector	Date Acquired	Adjust/Unit Basis	Total Client Basis	Estimated Market Price	Estimated Market Value	Unrealized Gain or (Loss)	Estimated Annual Income	Curr Yld %
1,312	ML FUNDAMENTAL GROWTH C (.7400 FRACTIONAL SHARE)			12/28/98	21.68	28,445	27.26	35,765	7,319		N/A
	Total Client Investment				N/A	N/A	27.26	20	N/A		
	Investment Return			\$26,283							
7,685	ML GROWTH FUND CL C (.3040 FRACTIONAL SHARE)			02/04/94	15.81	121,560	32.94	223,143	131,581		N/A
	Total Client Investment				N/A	N/A	32.94	10	N/A		
	Investment Return			\$50,993							
	Total Client Investment			\$202,190							
652	SELIGMAN COMMUNICATIONS & INFORMATION FUND CL D (.3760 FRACTIONAL SHARE)			02/04/94	20.80	13,566	49.35	32,176	18,608		N/A
	Total Client Investment				N/A	N/A	49.35	18	N/A		
	Investment Return			\$2,743							
	Total Client Investment			\$29,433							
3,182	VAR KAMPER GROWTH CLASS C (.2169 FRACTIONAL SHARE)			02/04/94	32.55	103,584	107.37	341,651	238,066		N/A
	Total Client Investment				N/A	N/A	107.37	105	N/A		
	Investment Return			\$50,990							
	Total Client Investment			\$290,661							
	<b>Total Mutual Funds - Equity</b>					<b>321,464</b>		<b>757,815</b>	<b>436,158</b>		

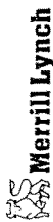
Mutual Funds and Defined Asset Funds

**Mutual Funds - Equity**

Quantity	Security Description	Symbol	Sector	Date Acquired	Adjust/Unit Basis	Total Client Basis	Estimated Market Price	Estimated Market Value	Unrealized Gain or (Loss)	Estimated Annual Income	Curr Yld %
1,312	ML FUNDAMENTAL GROWTH C (.7400 FRACTIONAL SHARE)			12/28/98	21.68	28,445	27.26	35,765	7,319		N/A
	Total Client Investment				N/A	N/A	27.26	20	N/A		
	Investment Return			\$26,283							
7,685	ML GROWTH FUND CL C (.3040 FRACTIONAL SHARE)			02/04/94	15.81	121,560	32.94	223,143	131,581		N/A
	Total Client Investment				N/A	N/A	32.94	10	N/A		
	Investment Return			\$50,993							
	Total Client Investment			\$202,190							
652	SELIGMAN COMMUNICATIONS & INFORMATION FUND CL D (.3760 FRACTIONAL SHARE)			02/04/94	20.80	13,566	49.35	32,176	18,608		N/A
	Total Client Investment				N/A	N/A	49.35	18	N/A		
	Investment Return			\$2,743							
	Total Client Investment			\$29,433							
3,182	VAR KAMPER GROWTH CLASS C (.2169 FRACTIONAL SHARE)			02/04/94	32.55	103,584	107.37	341,651	238,066		N/A
	Total Client Investment				N/A	N/A	107.37	105	N/A		
	Investment Return			\$50,990							
	Total Client Investment			\$290,661							
	<b>Total Mutual Funds - Equity</b>					<b>321,464</b>		<b>757,815</b>	<b>436,158</b>		

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**PRIORITY CLIENT RETIREMENT ACCOUNT**

FBO DANIEL MARCUS

Quantity	Security Description	Symbol	Sector	Date Acquired	Unit Cost Basis	Total Cost Basis	Estimated Market Price	Estimated Market Value	Unrealized Gain or (Loss)	Estimated Annual Income	Current Yield %
<b>Current Portfolio</b>											
<b>Mutual Funds and Defined Asset Funds</b>											
<b>Mutual Funds - Equity</b>											
621	AIM VALUE FUND CL A			10/19/94	27.26	16,929	49.62	30,814	13,881		
	Total Client Investment			\$6,842							
	Investment Return			\$23,971							
	<b>Total Mutual Funds - Equity</b>					<b>16,929</b>		<b>30,814</b>	<b>13,881</b>		
<b>Mutual Funds - Fixed Income</b>											
2,131	AIM LIMITED MATURITY TREASURY FD A (-2770 FRACTIONAL SHARE)			08/20/98	10.08	21,499	9.93	21,160	(323)	1,097	5.1
	Total Client Investment			N/A	N/A	N/A	9.93	2	N/A		5.1
	Investment Return			\$20,099							
				\$1,061							
	<b>Total Mutual Funds - Fixed Income</b>					<b>21,499</b>		<b>21,163</b>	<b>(323)</b>	<b>1,097</b>	<b>5.1</b>
	<b>Total Mutual Funds</b>					<b>38,428</b>		<b>51,977</b>	<b>13,558</b>	<b>1,097</b>	<b>2.1</b>
DATE ACQUIRED: Date of your initial investment in this fund. UNIT COST BASIS: Average cost basis for all shares owned. UNREALIZED GAIN or (LOSS): Total market value minus total cost basis.											
<b>Total of Long Portfolio</b> * Excludes N/A Items <b>52,004</b> <b>13,558 *</b> <b>1,099</b> <b>2.1</b>											

TOTAL CLIENT INVESTMENT: Cost of shares directly purchased (excluding shares purchased through reinvestment)  
 INVESTMENT RETURN: Value of reinvested shares plus capital appreciation (depreciation) of all shares purchased, including through reinvestment.

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**PRIORITY CLIENT RETIREMENT ACCOUNT**

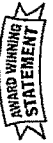
FBO MAEVA MARCUS

**Current Portfolio**

Quantity	Security Description	Symbol	Sector	Date Acquired	Unit Cost Basis	Total Cost Basis	Estimated Share Price	Estimated Market Value	Unrealized Gain or (Loss)	Estimated Annual Income	Current Yield %
<b>Mutual Funds and Defined Asset Funds</b>											
<b>Mutual Funds - Equity</b>											
789	AIM VALUE FUND CL A (.9810 FRACTIONAL SHARE)			10/19/94	27.23	21,485	49.62	39,150	17,662		
	Total Client Investment			N/A	N/A	N/A	49.62	43	N/A		
	Investment Return			\$9,705							
				\$30,443							
	<b>Total Mutual Funds - Equity</b>					<b>21,485</b>		<b>39,198</b>	<b>17,662</b>		
<b>Mutual Funds - Fixed Income</b>											
2,709	AIM LIMITED MATURITY TREASURY FD A (.0340 FRACTIONAL SHARE)			08/20/98	10.08	27,330	9.93	26,900	(412)	1,395	5.1
	Total Client Investment			N/A	N/A	N/A	9.93		N/A		5.1
	Investment Return			\$25,547							
				\$1,352							
	<b>Total Mutual Funds - Fixed Income</b>					<b>27,330</b>		<b>26,900</b>	<b>(412)</b>	<b>1,395</b>	<b>5.1</b>
	<b>Total Mutual Funds</b>					<b>48,815</b>		<b>66,099</b>	<b>17,250</b>	<b>1,395</b>	<b>2.1</b>
DATE ACQUIRED: Date of your initial investment in this fund. UNIT COST BASIS: Average cost basis for all shares owned. UNREALIZED GAIN or (LOSS): Total market value minus total cost basis. TOTAL CLIENT INVESTMENT: Cost of shares directly purchased (excluding shares purchased through reinvestment). INVESTMENT RETURN: Value of reinvested shares plus capital appreciation (depreciation) of all shares purchased, including through reinvestment.											
<b>Total of Long Portfolio</b>									<b>17,250 *</b>	<b>1,396</b>	<b>2.1</b>
									<b>66,123</b>		
									<b>48,839*</b>		

\* Excludes N/A items

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**PRIORITY CLIENT IRRA® ACCOUNT**

FSO DANIEL MARCUS

**Current Portfolio**

Quantity	Security Description	Symbol	Sector	Date Acquired	Adjust/Unit Cost Basis	Total Cost Basis	Estimated Market Price	Estimated Market Value	Unrealized Gain or (Loss)	Estimated Annual Income	Current Yield %
<b>Mutual Funds - Equity</b>											
82	AIM INTERNATIONAL EQUITY FUND CL B SHARES			REINV	23.77	1,949	27.59	2,262	313		
2,123	AIM INTERNATIONAL EQUITY FUND CL B SHARES (1.7050 FRACTIONAL SHARE)			N/A	N/A	N/A	27.59	58,573	N/A		
	Total Client Investment							19	N/A		
	Investment Return			\$2,262							
236	AIM VALUE FUND CLASS B			REINV	45.19	10,664	47.90	11,304	639		
3,289	AIM VALUE FUND CLASS B (1.3400 FRACTIONAL SHARE)			N/A	N/A	N/A	47.90	157,543	N/A		
	Total Client Investment							25	N/A		
	Investment Return			\$11,304							
1,150	ALLIANCE GROWTH FUND CLASS B			REINV	40.74	46,851	41.75	48,012	1,161		
6,301	ALLIANCE GROWTH FUND CLASS B (1.3890 FRACTIONAL SHARE)			N/A	N/A	N/A	41.75	263,066	N/A		
	Total Client Investment							16	N/A		
	Investment Return			\$48,012							
5,432	ML GLOBAL ALLOCATION B			N/A	N/A	N/A	13.31	72,299	N/A	3,308	4.5

**Mutual Funds and Defined Asset Funds**

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PRIORITY CLIENT **IRRA** ACCOUNT

FBO DANIEL MARCUS

Current Portfolio

Quantity	Security Description	Symbol	Sector	Date Acquired	Adjust/Unit Cost Basis	Total Cost Basis	Estimated Market Price	Estimated Market Value	Unrealized Gain or (Loss)	Estimated Annual Income	Current Yield %
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Mutual Funds and Defined Asset Funds

Quantity	Security Description	Symbol	Sector	Date Acquired	Adjust/Unit Cost Basis	Total Cost Basis	Estimated Market Price	Estimated Market Value	Unrealized Gain or (Loss)	Estimated Annual Income	Current Yield %
	<b>Mutual Funds - Equity</b>										
	(-.9630 FRACTIONAL SHARE)										
	Total Client Investment					N/A					
	Investment Return					N/A					
1,941	PILOTRIM MID CAP GR FUND CL C			REINV	18.93	36,713	32.94	63,936	27,193		
5,653	PILOTRIM MID CAP GR FUND CL C			N/A	N/A	N/A	32.94	186,209	N/A		
	(-.2220 FRACTIONAL SHARE)										
	Total Client Investment					N/A	32.94	7	N/A		
	Investment Return					\$63,936					
820	PIMCO GROWTH FD CL C			REINV	31.45	25,789	36.20	29,684	3,895		
4,555	PIMCO GROWTH FD CL C			N/A	N/A	N/A	36.20	164,891	N/A		
	(-.4580 FRACTIONAL SHARE)										
	Total Client Investment					N/A	36.20	16	N/A		
	Investment Return					\$29,684					
477	SELIGMAN COMMUNICATIONS & INFORMATION FUND CL D			REINV	37.79	18,025	49.35	23,539	5,514		
3,247	SELIGMAN COMMUNICATIONS & INFORMATION FUND CL D			N/A	N/A	N/A	49.35	160,239	N/A		
	(-.1260 FRACTIONAL SHARE)										
	Total Client Investment					N/A	49.35	6	N/A		
	Investment Return					\$23,539					

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PRIORITY CLIENT **IRRA** ACCOUNT

FBO DANIEL MARCUS

Quantity	Security Description	Symbol	Sector	Date Acquired	Adjust/Unit Cost Basis	Total Cost Basis	Estimated Market Price	Estimated Market Value	Unrealized Gain or (Loss)	Estimated Annual Income	Curr Yield %
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**Current Portfolio**

**Mutual Funds and Defined Asset Funds**

<b>Mutual Funds - Equity</b>											
5,437	SELIGMAN GROWTH FD CLASS B (1.0050 FRACTIONAL SHARE)			04/09/99	7.22	39,267	7.73	42,028	2,760		
	Total Client Investment			N/A	N/A	N/A	7.73		N/A		
	Investment Return			\$7,358							
410	TEMPLETON FOREIGN FUND CLASS A			RE/INV	10.02	4,111	10.17	4,169	61	129	3.1
10,056	TEMPLETON FOREIGN FUND CLASS A (1.8140 FRACTIONAL SHARE)			N/A	N/A	N/A	10.17	101,964	N/A	3,158	3.1
	Total Client Investment			N/A	N/A	N/A	10.17	8	N/A		3.1
	Investment Return			\$4,169							
1,627	THE GEORGE PUTNAM FUND CLASS B			04/21/99	18.55	30,187	14.87	24,193	(5,988)	767	3.1
974	THE GEORGE PUTNAM FUND CLASS C (1.9260 FRACTIONAL SHARE)			N/A	N/A	N/A	14.87	14,483	N/A	459	3.1
	Total Client Investment			N/A	N/A	N/A	14.87	13	N/A		3.1
	Investment Return			\$26,419 (\$2,225)							
692	VAN KAMPEN EMERGING GROWTH CLASS C			RE/INV	70.29	48,640	107.37	74,300	25,660		



**PRIORITY CLIENT** **IRRA**® ACCOUNT

FBO DANIEL MARCIUS

**Current Portfolio**

Quantity	Security Description	Symbol	Sector	Date Acquired	Adjust/Unit Cost Basis	Estimated Market Price	Estimated Market Value	Unrealized Gain or (Loss)	Estimated Annual Income	Current Yield %
<b>Mutual Funds and Defined Asset Funds</b>										
<b>Mutual Funds - Equity</b>										
5,232	VAN KAMPEN EMERGING GROWTH CLASS C (-3900 FRACTIONAL SHARE)			N/A	N/A	107.37	561,759	N/A		
	Total Client Investment				N/A	107.37	41	N/A		
	Investment Return			\$74,300						
	<b>Total Mutual Funds - Equity</b>				<b>262,230</b>		<b>2,064,630</b>	<b>61,208</b>	<b>7,824</b>	<b>.3</b>
<b>Mutual Funds - Fixed Income</b>										
7,418	AJM INTERM GOVT FUND CLASS B SHS (-4400 FRACTIONAL SHARE)			N/A	N/A	8.78	65,130	N/A	3,738	5.7
	Total Client Investment			N/A	N/A	8.78	3	N/A		5.7
	Investment Return			N/A						
	<b>Total Mutual Funds - Fixed Income</b>						<b>65,133</b>		<b>3,738</b>	<b>5.7</b>
	<b>Total Mutual Funds</b>				<b>262,230</b>		<b>2,129,764</b>	<b>61,208</b>	<b>11,563</b>	<b>.5</b>
<small>DATE ACQUIRED: Date of your initial investment in this fund.            UNIT COST BASIS: Average cost basis for all shares owned.            UNREALIZED GAIN or (LOSS): Total market value minus total cost basis.</small>										
<b>Total of Long Portfolio</b>										
<b>Total of Estimated Accrued Interest</b>										
								<b>54,894 *</b>	<b>17,408</b>	<b>.7</b>
								<b>1,181</b>		

\* - Excludes N/A Items

IN STATE SEE INSTRUCTIONS FIRST

STATE STREET BANK

NATIONAL FINANCIAL ADVISORS

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POSITIONS IN YOUR ACCOUNT					
ACCOUNT TYPE	DESCRIPTION	SYMBOL CUSIP	QUANTITY	PRICE ON 01/31/00	MARKET VALUE
CASH	PRIME FUND DAILY MONEY CLASS 7 DAY AVG NET YIELD 5.25%	FDAXX 233809102	181.57	1.00	181.57
<b>CASH/CASH EQUIVALENTS</b>			<b>0.1 % Of Portfolio</b>		<b>181.57</b>
CASH	FRANKLIN INCOME CLASS A	FKINX 353496300	16,660.516	2.15	35,820.11
CASH	FRANKLIN US GOV'T CLASS A	FKUSX 353496307	5,543.285	6.44	35,698.76
CASH	FRANKLIN FEDERAL TAX FREE CLASS A	FKFTX 353519101	2,756.318	11.25	31,038.14
CASH	FRANKLIN STRATEGIC INCOME CLASS A	FPSTX 354713505	2,105.708	9.95	20,951.79
CASH	FRANKLIN HIGH YIELD TAX FREE INCOME A	FRHIX 354723702	10.658	10.36	110.42
CASH	FRANKLIN DYNATECH FUND A	FKDNX 353496201	999.716	28.05	28,042.03
CASH	FRANKLIN EQUITY CLASS A	FKREX 353516107	3,879.191	15.09	58,536.99
CASH	FRANKLIN RISING DIVIDENDS CLASS A	FRDPX 353825102	1,041.859	18.38	19,149.37
CASH	MUTUAL SERIES FINCL SERVICES CLASS A	TFSIX 354026106	704.741	12.26	8,640.12
<b>MUTUAL FUNDS</b>			<b>99.9 % Of Portfolio</b>		<b>237,985.73</b>
END OF STATEMENT					

ACCOUNT CARRIED WITH NATIONAL FINANCIAL SERVICES CORPORATION

FINANCIAL NET WORTH

SCHEDULE C

UNLISTED SECURITIES  
(Municipal Bonds)

See attached pages from Merrill Lynch statement.



MASTER FINANCIAL SERVICE



DANIEL MARCUS TTEE

Current Portfolio

Quantity	Security Description	Date Acquired	Adjust/Unit Cost Basis	Total Cost Basis	Estimated Market Price	Estimated Market Value	Unrealized Gain or Loss	Estimated Accrued Interest	Estimated Annual Income	Current Yield %
Municipal Bonds										
10,000	Δ WASHINGTON SUBK SAN DIST MD SEW DISP REDG 01D JAN97 04.125%JUN01 00 MOODY'S: AA1, S&P: AA ORIGINAL UNIT COST: 101.33	06/15/98	100.17	10,017	100.00	10,000	(16)	101	412	4.12
30,000	θ INTERMOUNTAIN PUR ASY UT P/SUP REV B 7.5%CI REFG NOV88 00.000%JUL01 00 MOODY'S: A1, S&P: A+ ORIGINAL UNIT COST: 94.31	11/04/98	98.68	29,605	98.48	29,546	(58)			
5,000	Δ WASHINGTON CNTY MD PUB IMPT JUN93 04.750%JAN01 01 MOODY'S: AAA, S&P: AAA ORIGINAL UNIT COST: 102.34	06/15/98	100.76	5,038	100.53	5,026	(11)	38	237	4.72
45,000	θ IDAHO FALLS ID ELEC RFDG 6.8%CI FGIC AUG91 00.000%APR01 01 MOODY'S: AAA, S&P: AAA ORIGINAL UNIT COST: 92.28	12/02/98	96.14	43,265	95.26	42,867	(397)			
10,000	θ KENTUCKY ST PPY-BLDG CMN RV A P.426 7.30%CI B1C1 OCT88 00.000%JUN01 01 MOODY'S: AAA, S&P: AAA ORIGINAL UNIT COST: 92.61	02/10/99	95.73	9,573	94.48	9,448	(124)			

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PRIORITY CLIENT **CMA** ACCOUNT

DANIEL MARCUS TTEE

Current Portfolio

Quantity	Security Description	Date Acquired	Adjust/Unit Cost Basis	Total Cost Basis	Estimated Market Price	Estimated Market Value	Unrealized Gain or (Loss)	Estimated Accrued Interest	Estimated Annual Income	Current Yield %
10,000	ILLINOIS ST COLLEGE SAVINGS 05 45FCI OCT92 00.000%AUG01 01 MOODY'S: AA2, S&P: AA- ORIGINAL UNIT COST: 92.62	08/25/99	94.48	9,448	93.49	9,349	(98)			
35,000	GEORGIA MUN ELEC AUTH PRF RV7 5%CI B ANSAC ETM AUG88 00.000%JAN01 02 MOODY'S: AAA, S&P: AAA ORIGINAL UNIT COST: 91.29	05/25/99	93.59	32,757	91.33	31,967	(769)			
10,000	HAWAII ST 7.3%CI SFR BL DEC88 00.000%DEC01 02 MOODY'S: A1, S&P: A+ ORIGINAL UNIT COST: 86.85	08/25/99	88.67	8,867	86.92	8,692	(174)			
30,000	FORT WORTH TEX INDPT SCH DIST HPT RFDC PSF GID APR99 04.250%FEB15 03 MOODY'S: AAA, S&P: AAA ORIGINAL UNIT COST: 100.84	07/01/99	100.68	30,206	97.58	29,274	(931)	50	1,275	4.35
10,000	MARYLAND ST DEPT TRANSN CONS TRANSN 2ND ISS RFDC DEC93 04.375%DEC15 03 MOODY'S: AA2, S&P: AA ORIGINAL UNIT COST: 100.10	08/08/97	100.05	10,005	97.82	9,782	(223)	90	437	4.47

Municipal Bonds



MASTER FINANCIAL SERVICE

PRIORITY CLIENT CMA ACCOUNT



DANIEL MARCUS TTEE

Current Portfolio

Quantity	Security Description	Date Acquired	Adjust/Unit Cost Basis	Total Cost Basis	Estimated Market Price	Estimated Market Value	Unrealized Gain or (Loss)	Estimated Accrued Interest	Estimated Annual Income	Current Yield %
45,000	8 MARYLAND WTR GLT FNG ADM RVLVS LN FD REV 6.35% A JUN92 00.000\$SEP01 04 MOODY'S: AA2, S&P: AA ORIGINAL UNIT COST: 59.18	10/19/94	78.09	35,143	79.24	35,660	517			
20,000	Δ BALTIMORE MD REV RFDC BALT CITY PKG OLD FGIC OCT93 04.650\$JUL01 06 MOODY'S: AAA, S&P: AAA ORIGINAL UNIT COST: 100.84	01/22/96	100.51	20,102	97.04	19,409	(693)	150	929	4.79
10,000	Δ MARYLAND ST HLTH&HR ED FACS AUTH REV OLD AMBAC JAN93 05.100\$JUL01 07 MOODY'S: AAA, S&P: AAA ORIGINAL UNIT COST: 103.37	08/08/97	102.26	10,226	99.73	9,973	(252)	82	510	5.11
25,000	6 ILLINOIS ST UNIV REVS AUX FACS SYS 7.3%CI NOV89 00.000\$APR01 08 MOODY'S: A3, S&P: A ORIGINAL UNIT COST: 63.73	02/15/00	63.85	15,964	63.66	15,917	(46)			
30,000	ANNE ARUNDEL CNTY MD CONS WTR & SWR RFDC AUG93 05.250\$APR15 10 MOODY'S: AA2, S&P: A	04/22/96	99.03	29,711	100.12	30,038	327	586	1,574	5.24

Municipal Bonds



**PRIORITY CLIENT CMA ACCOUNT**  
 CMA

MASTER FINANCIAL SERVICE

DANIEL MARCUS TTEE

**Current Portfolio**

Quantity	Security Description	Date Acquired	Adjust/Unit Cost Basis	Total Cost Basis	Estimated Market Price	Estimated Market Value	Unrealized Gain or (Loss)	Estimated Accrued Interest	Estimated Annual Income	Current Yield %
Municipal Bonds										
15,000	INTERMOUNTAIN BUS, ASY UT PS&S OPTICAL CONV B, PRF02 NOV/88 --- ADJUL01 12 MOODY'S: A1, S&P: A+	08/25/99	90.56	13,585	91.28	13,693	N/A			
15,000	GAINESVILLE EL UTILS SYS SER 5 - 4% CD SEP 05 ADJUL01 12 MOODY'S: AA3, S&P: ***	11/04/98	95.72	14,358	99.49	14,924	N/A			
<b>Total Municipal Bonds</b>				<b>327,878</b>		<b>325,572</b>	<b>(2,306)</b>	<b>1,097</b>	<b>5,377</b>	<b>4.74*</b>

Bonds purchased at a premium show amortization  $\Delta$   
 Bonds purchased at a discount show accretion  $\theta$

\*\*\* Rating currently unavailable or not rated/unrated as provided by Rating Agency or recognized industry wide third party vendor source.  
 \* - Excludes the market value of original issue discount holdings in the calculation of total current yield for debt securities.





PRIORITY CLIENT **CMA** ACCOUNT

MASTER FINANCIAL SERVICE

MAEVA MARCUS TTEE

Current Portfolio

Quantity	Security Description	Date Acquired	Adjust/Unit Cost Basis	Total Cost Basis	Estimated Market Price	Estimated Market Value	Unrealized Gain or (Loss)	Estimated Accrued Interest	Estimated Annual Income	Current Yield %
Municipal Bonds										
45,000	B HILLSBOROUGH CO FL TITL REF REV 1.5% APR 15 SA SEP91 00.000/AUG01 02 MOODY'S: AAA, S&P: AAA ORIGINAL UNIT COST: 88.73	07/01/99	90.88	40,899	88.99	40,046	(852)			
20,000	B PRINCE GEORGES CNTY MD CONS PR IMP REF 7%01 MIA JUN91 00.000/JUL01 05 MOODY'S: AAA, S&P: AAA ORIGINAL UNIT COST: 57.18	02/25/94	75.60	15,120	75.90	15,181	61			
40,000	Δ MARYLAND ST TRANSK AUTHI SP1 ORLG REV SEP B FCI OCT94 05.750/JUL01 05 MOODY'S: AAA, S&P: AAA ORIGINAL UNIT COST: 101.50	11/09/94	100.74	40,299	103.51	41,406	1,107	371	2,299	5.55
15,000	Δ WASHINGTON SUBM SAN DIST MD SEM DISP REFG MAR93 05.100/DEC01 07 MOODY'S: AA1, S&P: AA ORIGINAL UNIT COST: 102.36	01/17/96	101.36	15,205	100.23	15,035	(169)	187	764	5.08
15,000	Δ WASHINGTON SUBM SAN DIST MD GEN CONSTR REFG PRF01 MAY91 06.500/NOV01 10 MOODY'S: AAA, S&P: AAA CALL DT: 11/01/01 CALL PR: 102 ORIGINAL UNIT COST: 107.87	01/20/95	103.41	15,512	105.06	15,760	248	320	975	6.18

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**PRIORITY CLIENT CMA ACCOUNT**

MASTER FINANCIAL SERVICE

MAEVA MARCUS TTEE

**Current Portfolio**

Quantity	Security Description	Date Acquired	Adjust/Unit Cost Basis	Total Cost Basis	Estimated Market Price	Estimated Market Value	Unrealized Gain or (Loss)	Estimated Accrued Interest	Estimated Annual Income	Current Yield %
Municipal Bonds										
65,000	B MARYLAND ST TRANSN AUTH TRAMS P J RV 6.33% CI FCIG SEP92 00.000%JUL01 11 MOODY'S: AAA, S&P: AAA ORIGINAL UNIT COST: 40.07	02/25/94	53.98	35,092	53.22	34,595	(496)			
	<b>Total Municipal Bonds</b>			<b>162,129</b>		<b>162,026</b>	<b>(101)</b>	<b>878</b>	<b>4,039</b>	<b>5.60*</b>

Bonds purchased at a premium show amortization  $\Delta$   
 Bonds purchased at a discount show accretion  $\theta$

\* Excludes the market value of original issue discount holdings in the calculation of total current yield for debt securities.

**Current Portfolio**

Quantity	Security Description	Symbol	Sector	Date Acquired	Adjust/Unit Cost Basis	Total Cost Basis	Estimated Market Price	Estimated Market Value	Unrealized Gain or (Loss)	Estimated Annual Income	Current Yield %
Mutual Funds and Defined Asset Funds											
1,981	AIM VALUE FUND CLASS B FRACTIONAL SHARE			05/15/95	27.41	54,306	47.90	94,889	40,584		
	Total Client Investment				N/A	N/A	47.90	34	N/A		
	Investment Return										

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## FINANCIAL NET WORTH

## SCHEDULE D

## REAL ESTATE OWNED

A. Residence, Bethesda, MD	\$400,000
B. Real Estate Limited Partnerships	
Winthrop Texas (apartments, Dallas)	30,000
Essex Lane (apartments, Houston)	60,000
FSP Park Seneca (office building, Charlotte, NC)	75,000
Austin Partners (office building, Austin, TX)	50,000
12 AMH Associates (commercial building, Washington, DC)	<u>          0</u>
TOTAL	\$615,000

The CHAIRMAN. If we can have Ms. Campbell, Mr. Garcia-Gregory, Ms. Martin, and Judge Swain come to the witness table, I will be glad to swear you all in.

If you would raise your right hands, do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Ms. CAMPBELL. I do.

Mr. GARCIA-GREGORY. I do.

Ms. MARTIN. I do.

Judge SWAIN. I do.

The CHAIRMAN. Thank you.

Do any of you have any statements you would care to make? We will start with you, Ms. Campbell, then Mr. Garcia-Gregory, then Ms. Martin, and then Ms. Swain, and please introduce your family members or any guests or friends that you have with you.

**TESTIMONY OF BONNIE J. CAMPBELL, OF IOWA, TO BE U.S. CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT**

Ms. CAMPBELL. Thank you, Mr. Chairman. I don't have a statement, except to thank you for the opportunity to be here. I would like to introduce my husband, Ed Campbell, sitting right there.

The CHAIRMAN. Ed, we are glad to have you with us.

Ms. CAMPBELL. And I have many friends and colleagues from the Violence Against Women Office and others with whom I work who are here, and I thank them, but I certainly won't introduce all of them.

The CHAIRMAN. Well, we are thankful to have all of you here. As one of the coauthors of the Violence Against Women Act, we are happy with the work that you are doing, and we are going to try and get it right this time, although I felt the Supreme Court should have gotten it right itself, but you never know.

Ms. CAMPBELL. I appreciate your support always.

The CHAIRMAN. Thank you, Ms. Campbell.

Mr. Garcia-Gregory.

**TESTIMONY OF JAY A. GARCIA-GREGORY, OF PUERTO RICO, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF PUERTO RICO**

Mr. GARCIA-GREGORY. I take this opportunity to thank you, Mr. Chairman, for the opportunity to be here at this hearing. And I would like to introduce my wife of 30 years, Myrella.

The CHAIRMAN. So happy to have you here.

Mr. GARCIA-GREGORY. And my daughter, Myrella Garcia, 27 years old.

The CHAIRMAN. Very happy to have you.

Mr. GARCIA-GREGORY. My other daughter could not be here. She took a vacation after finishing her second year of law school at Suffolk, and she is right now in Malaysia. But I wish to publicly thank my wife, Myrella. If it had not been for her support, I probably would not be here today. She was instrumental in my actually going through my career as a lawyer, as a law student and a lawyer, and she has been very supportive. And if I had to marry again, I would marry her all over again, as well as I would study law, which I love, I really love.

The CHAIRMAN. We are always happy to hear that. [Laughter.]  
Mr. GARCIA-GREGORY. It has been 30 years of bliss and I hope it goes on.

The CHAIRMAN. Thank you so much.  
Ms. Martin.

**TESTIMONY OF BEVERLY B. MARTIN, OF GEORGIA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA**

Ms. MARTIN. Thank you, Mr. Chairman. I wanted to thank you for having this hearing today, and particularly for letting me participate in it.

My father is here with me today, Baldwin Martin. He is here from Macon, GA. My cousin, Kelli Wynn, is—

The CHAIRMAN. Let's have your father stand up. I think I saw him.

[Mr. Martin stood.]

The CHAIRMAN. Very happy to welcome you here.

Ms. MARTIN. My cousin, Kelli Wynn, is a student at Georgetown, so she was able to come across town and be with us today. She told me she made dean's list, so I think she is really here to check my answers.

The CHAIRMAN. That is good.

Ms. MARTIN. Also, a childhood friend from Sunday school and church lives here in Washington and she is here as well, Kathleen Burger. She is here with her husband, Glen Gerada.

The CHAIRMAN. Kathleen, happy to have you here, and your husband as well.

Well, thank you.

Ms. MARTIN. Thank you for having me.

The CHAIRMAN. By the way, Paul Warner speaks very highly of you.

Ms. MARTIN. I think very well of him, Mr. Chairman.

The CHAIRMAN. He is a good man.

Ms. Swain.

**TESTIMONY OF LAURA TAYLOR SWAIN, OF NEW YORK, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK**

Judge SWAIN. Thank you, Mr. Chairman. It is an honor to be here, and I am grateful for the consideration of the nomination and for the opportunity to introduce my family members who are here today—my husband, Andrew Swain, and my daughter, Annabelle Swain.

The CHAIRMAN. Annabelle. She looks like she is pretty relaxed there.

Judge SWAIN. It varies.

My mother, Madeline Taylor.

The CHAIRMAN. We are happy to have you with us.

Judge SWAIN. And my brother, Gordon Taylor.

The CHAIRMAN. Gordon, happy to have you here.

Judge SWAIN. And for myself and my family members who could not be here today, including Andy's family in England and for the bankruptcy court on which I sit, I thank you for this opportunity and for the consideration.

The CHAIRMAN. Well, thank you so much. We are proud of you and proud to have all of you here, and we look forward to questioning you and asking some questions to you that I think need to be asked.

I will just ask across the board here, in general, Supreme Court precedents are binding on all lower courts, and circuit precedents are binding on the district courts within any particular circuit. Are you committed to following the precedents of the higher courts faithfully and giving them full force and effect even if you personally disagree with such precedents?

Ms. Campbell, you are up for the eighth circuit, and the rest of you are up for district court judgeships.

Ms. CAMPBELL. Well, the answer is short. Absolutely.

The CHAIRMAN. OK.

Mr. GARCIA-GREGORY. Definitely, yes.

Ms. MARTIN. Yes, Mr. Chairman.

Judge SWAIN. Yes, Mr. Chairman.

The CHAIRMAN. What would you do if you believed the Supreme Court or the court of appeals had seriously erred in rendering a decision? Would you nevertheless apply the decision or would you apply your own best judgment on the merits?

We will start with you, Judge Swain.

Judge SWAIN. I would follow the applicable precedent, absolutely.

Ms. MARTIN. The role of the district court is very limited and you would be bound by the precedent from the circuit court or the Supreme Court, Mr. Chairman.

Mr. GARCIA-GREGORY. I would be duty-bound by the Supreme Court, as well as the circuit.

Ms. CAMPBELL. I would follow the precedent, as well.

The CHAIRMAN. That is good. Take, for example, the Supreme Court's decision on Monday in *United States v. Playboy Entertainment Group, Inc.*, where the Court struck down a provision of the 1996 Telecommunications Act that was designed to protect children from exposure to sexually explicit adult programming on television. That was a 5-4 decision.

The bill required cable operators who offer sexually explicit material to fully scramble their signals or show such programming only between 10 p.m. and 6 a.m. The Court said that violated the first amendment's free speech guarantees. The Court held that another section of the same law requiring cable operators to inform subscribers that they will completely block objectionable if asked to do offered an equally effective and less restrictive means to achieve the same goal.

I presume you will follow the precedent, even though you may or may not agree with it. Anybody who won't?

[No response.]

The CHAIRMAN. You have stated that you would be bound by Supreme Court precedent and, where applicable, the rulings of the Federal circuit court of appeals for your district. There may be times, however, when you are faced with cases of first impression. What principles will guide you or what methods will you employ in deciding cases of first impression?

Shall we start with you, Ms. Martin?

Ms. MARTIN. Thank you, Mr. Chairman. Of course, in my 20 years of practicing law, I have rarely been faced with an issue that hadn't been decided before because there is such an enormous body of law from the various courts who are ruling over district courts.

But there is a procedure to follow. You look first to the plain language of the statute in interpreting it, look to any other analogous analyses that have been made by the circuit courts and the Supreme Court and apply those.

The CHAIRMAN. All right.

Mr. Garcia-Gregory.

Mr. GARCIA-GREGORY. I would agree with my colleague on the left. You know, those are the available sources to be used. If there is any ambiguity in the statute, it is not a plain-language matter, I would go to the legislative history. But I would certainly use the traditional tools of analogy and distinction, but always being guided by either precedent or the applicable laws.

The CHAIRMAN. Thank you.

Judge Swain.

Judge SWAIN. In those rare cases, and they are indeed rare in my experience as well, I would look to the applicable constitutional or statutory language as a starting point, to precedents, to analogous cases, perhaps analogous statutes, and I would do my best to make a decision that is consistent with precedent, with applicable law, and to explain well the basis of my decision.

The CHAIRMAN. Thank you.

Ms. Campbell.

Ms. CAMPBELL. It is difficult to improve upon what has already been said because I agree with it. I would look to the Constitution, the statute, the plain meaning of the statute, any Supreme Court or circuit court precedents, and apply the law as well as I can.

The CHAIRMAN. Thank you. Now, please state in detail your best independent legal judgment on the lawfulness under the Equal Protection Clause of the 14th amendment in Federal civil rights laws of the use of race, gender, or national origin-based preferences in such areas as employment decisions—that would be hiring, promotion, or layoffs—college admissions and scholarship awards, and the awarding of government contracts.

Now, I think I should note that the Supreme Court has held that any race-based classifications at either the Federal or State level are to be examined under the strict scrutiny standard. Under this standard, the classification must be justified by a compelling government interest. The Court has mentioned that providing remedies to those who have directly suffered discrimination meets this test, but that an interest in curing widespread societal pressures or achieving diversity does not.

Shall we start with you, Ms. Campbell?

Ms. CAMPBELL. The *Adarand* case, as you described it, is clearly controlling law. Any remedial statute would have to be very narrowly tailored to promote a compelling state interest, and any review of that by a court would apply a strict scrutiny test. I think that is a very, very tough standard.

The CHAIRMAN. Mr. Garcia-Gregory.

Mr. GARCIA-GREGORY. I agree with my colleague on the right. It would be a strict scrutiny standard and I would abide by the *Adarand* decision.

The CHAIRMAN. OK.

Ms. MARTIN. Mr. Chairman, the Supreme Court was very clear in the *Adarand* case that any race-based classifications should be subject to very strict scrutiny, and I would be bound by that and I would follow that.

The CHAIRMAN. Ms. Swain.

Judge SWAIN. I agree with my colleagues. The Supreme Court has spoken very directly to the standard for evaluating any race-based classification, and I would follow precedent in any decision that I would make.

The CHAIRMAN. All right. Now, do any of you have any legal or moral beliefs which would inhibit or prevent you from imposing or upholding a death sentence in any criminal case that might come before you as a Federal judge? Do any of you have any—

Ms. CAMPBELL. No.

Judge SWAIN. I don't, Mr. Chairman.

Mr. GARCIA-GREGORY. No.

Ms. MARTIN. No.

The CHAIRMAN. All right. That is a tough one because we all have differing views on these types of things, but we have to apply the law.

Do you believe that 10-, 15-, or even 20-year delays between conviction of a capital offender and execution is too long? What do you think?

We will start with you, Mr. Garcia-Gregory.

Mr. GARCIA-GREGORY. I would say yes, I think it is a little long. It is a long time, but in any event, you know, it is a matter for either Congress to remedy or the courts to act more swiftly on the petitions that are made.

The CHAIRMAN. OK; Ms. Martin.

Ms. MARTIN. Well, I know that Congress has taken steps to expedite those types of things so that they won't take 10 to 15 years. And, of course, you are the policymaking body and every statute that you pass is presumed constitutional, and that would be the policy that would be enforced by the courts.

The CHAIRMAN. Ms. Swain.

Judge SWAIN. I believe that the courts should be as efficient as possible in considering death penalty appeals, as in all matters. And to the extent there are available avenues of appeal or administrative or statutory mechanisms that are within the purview of the legislative branches or the executive branches of Government, as a judge I would work within the law as established by the policy-making branches of Government.

The CHAIRMAN. Ms. Campbell.

Ms. CAMPBELL. I am beginning to feel like I am a copy-cat here. I think it was the goal of Congress with the habeas corpus reform to speed up this process.

The CHAIRMAN. Well, it was a Hatch-Dole bill, the Antiterrorism and Effective Death Penalty Act, that basically said we are tired of these long delays. And we want to treat people fairly, but there should not be frivolous appeals. We gave them basically one trip up



through the State courts and one trip up through the Federal courts, and unless there is an absolute proof of innocence, the sentence has to be carried out.

It takes about 3 or 4 years to go through that process, but we have been talking about 10-, 15-, 20-, 25-year delays, with frivolous appeal after frivolous appeal, and some of the lower court judges have made mockery out of the system.

Now, let me ask this question. We will start with you, Ms. Campbell. The Supreme Court, through a process of so-called selective incorporation, has applied most, if not all, of the provisions of the Bill of Rights against the States. Thus, for instance, the First Amendment, which originally was intended to apply only to the Federal Government, has been applied to the States. The Second Amendment, however, which protects the rights of law-abiding citizens to own firearms in this country has not.

Do you believe the Second Amendment ought to be applied to the States?

Ms. CAMPBELL. I don't have a vast knowledge of Second Amendment law, but I can assure you that if that question came to me in a case or a controversy, I would look to the Supreme Court for guidance.

The CHAIRMAN. All right.

Mr. Garcia-Gregory.

Mr. GARCIA-GREGORY. I don't think I could improve on the answer that was given here by my colleague. I would certainly look—and I would go also into any constitutional sources of—sources that could help, you know, in deciding the issue. But certainly I have to go into Supreme Court precedents, if there are any.

The CHAIRMAN. All right.

Ms. Martin.

Ms. MARTIN. Again, Mr. Chairman, the role of a district court judge is limited to following the precedent established by the United States Supreme Court, and in my case the Eleventh Circuit of Appeals. As a Federal district judge, I would do so.

The CHAIRMAN. OK.

Ms. Swain.

Judge SWAIN. I join my colleagues. If such an issue were presented to me as a district court judge, I would decide it within the bounds and the precedents set by applicable law in the courts above me.

The CHAIRMAN. OK; let me go to you, Ms. Campbell, and just ask you a couple of questions. Under what circumstances do you believe it appropriate for a Federal court to declare a statute or an act enacted by Congress unconstitutional?

Ms. CAMPBELL. Well, one would hope that would be very rare and only if there were Supreme Court precedent which one would be required to follow.

The CHAIRMAN. Are you aware of the Supreme Court's recent decision in *United States v. Morrison* and its 1995 decision *United States v. Lopez*? And if you are, please explain to the committee your understanding of these decisions and their holdings regarding congressional power.

Some commentators have accused the Supreme Court of judicial activism because of their decisions in these cases. Do you agree or disagree?

Ms. CAMPBELL. I don't think I would fool you at all, Mr. Chairman, if I told you that I wasn't familiar with those cases. Of course, I am. It is my understanding in both *Lopez* and *U.S. v. Morrison* that the Supreme Court requires a truly economic activity before Congress can rely upon the Interstate Commerce Clause to pass a law in an area, if I haven't too grossly oversimplified which was what I thought a very lengthy decision by the Court, especially in *Morrison*. As a circuit court judge, I know you understand, if I am fortunate enough to be there, that I would have to follow the law handed down in those cases.

The CHAIRMAN. There have been nine major cases now on federalism and those two are two very interesting cases on federalism that have been highly criticized by some. Every one of them has been a 5-4 decision, as you know. It will be interesting to see how that finally sifts out.

Mr. Garcia-Gregory, let me ask you this question. The making of law is a very serious matter. To enact a statute or to amend the Constitution is very serious, or the text of a proposed statute or an amendment. They must receive a set number of formal approvals by the elected representatives of the people either in Congress or in the State legislatures. This formal approval process embodies the express will of the people through their elected representatives, and this elevates the particular words of the statute or constitutional provision to binding law.

Now, do you agree that the further a judicial opinion varies from the text and the original intent of a statute or constitutional provision, the less legal legitimacy it has?

Mr. GARCIA-GREGORY. If I have understood the question correctly, I would—you know, as a U.S. district court judge, I would be bound to give all presumptions to a congressional enactment as far as constitutionality is concerned, and to respect, you know, the plain language of the statute. If there is any ambiguity, you know, I would have to go into the legislative history. But there certainly is a presumption of constitutionality, you know, through the congressional process, and it would be my duty to try to save the statute through any narrow construction that could be feasible in order to avoid having to decide an unnecessary constitutional question.

The CHAIRMAN. Ms. Martin, the Founding Fathers believed that the separation of powers in a government was critical to the protection of the liberty of the people. Thus, they separated the legislative, executive, and judicial powers into three different branches of government, the legislative power being the power to balance moral, economic and political considerations, and to make law, and the judicial power being the power only to interpret the laws made by Congress and by the people.

Now, in your view, is it the proper role of a Federal judge when interpreting a statute or the Constitution to accept the balance struck by the Congress or to rebalance the competing moral, economic, and political considerations?

Ms. MARTIN. No. It is the role of the court to accept the balance established by Congress, and any statute that is considered by a court should be presumed constitutional.

The CHAIRMAN. Are you aware of the case recently argued before the Supreme Court entitled *Dickerson v. United States*?

Ms. MARTIN. I am, Mr. Chairman.

The CHAIRMAN. You are aware of Section 3501, 18 U.S.C. Section 3501. That case asked whether a defendant's voluntary confession could be admitted into evidence in the Government's case-in-chief under 18 U.S.C. Section 3501 even if the confession was not preceded by the warnings required by the *Miranda v. Arizona* decision.

Now, please explain to the committee your understanding of *Miranda*, Section 3501, and the proper role of the Congress and the courts in establishing rules of evidence and procedure for the Federal courts.

Ms. MARTIN. Well, it is the role of Congress to establish the rules of evidence and the rules of law that are supposed to be interpreted by the courts. The issue in *Dickerson* related to the formality of the *Miranda* warnings. I think 3501 looked more to the voluntariness of the statement and, of course, that is an issue that is involved in evidentiary hearings in courts all over this country everyday. But whatever the ruling of the United States Supreme Court, of course, if I were to be confirmed as a United States district court judge, it would be my job to follow that ruling.

The CHAIRMAN. Thank you very much.

Now, Judge Swain, let me ask you this question. In a speech you gave at the U.S. Attorney's Office, you stated that the

"Supreme Court's recent States' rights decisions, particularly in the sovereign immunity area, change radically settled assumptions regarding private civil litigation as a means of enforcing federally-recognized rights, including in the discrimination area."

Now, please explain to the committee your understanding of the Court's recent sovereign immunity decisions and whether you view them as a positive development for our legal system.

Judge SWAIN. As you noted, Mr. Chairman, that remark was in the context of the recent line of States' rights and sovereign immunity cases that began with the seminal *Tribe* case and have continued through and including the case whose title escapes me at the moment dealing with the enforcement of the Age Discrimination in Employment Act by private individuals as against the States.

I understand and I accept as binding precedent and the law the Court's construction of the powers of Congress with respect to the waiver of sovereign immunity of the States and with respect to, in particular, in the context of private civil litigation.

The ADEA, as well as other statutes dealing with civil rights, include private civil action provisions, and under the ADEA decision of the Supreme Court, it is clear that the current Court and the current law in the United States is such that private actions may not be brought under certain circumstances in which they had been authorized by statute.

The CHAIRMAN. Well, I think we have asked enough questions here. There are a lot of other questions, naturally, we could ask, but I am very proud of all four of you having this opportunity to

be nominated for these very important positions. They are lifetime positions and they are among the most important positions in the world.

At least from my standpoint, the Federal judiciary is the one branch of Government we have counted on to save the Constitution through all these years, and we are going to continue to count on you folks as you serve on your respective benches to do the very best you can to keep our country free and to abide by the rule of law, which is very poorly understood by many other nations, but is very well understood here. You have all given excellent answers to these questions.

Let me just say this, that Senators Leahy and Moynihan have statements for the record. Senator Moynihan's statement is in support of you, Judge Swain.

[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF SENATOR PATRICK LEAHY, A U.S. SENATOR FROM THE  
STATE OF VERMONT

I am glad to see the Committee holding a hearing for judicial nominees today. The Committee has been woefully slow in acting on nominees to federal courts across the country and, in particular, on nominees to the Courts of Appeals. The Committee has reported only 16 nominees all year and held what amounts to three previous hearings all year on judicial nominations. There is growing frustration around the country with this partisan stall.

I am very glad to see that Bonnie Campbell, nominated by the President to a vacancy on the Eighth Circuit Court of Appeals, is included in today's hearing. She currently serves as the distinguished head of the Department of Justice's Violence Against Women Office and has previously served as the Attorney General for the State of Iowa. Ms. Campbell enjoys the support of both of her home state Senators. I have known and worked with Bonnie for a number of years and believe that she will bring an important perspective to the federal bench. She has worked on victims issues and domestic violence issues for many years. She has a distinguished background in public service and law enforcement at the state and federal levels.

The Committee is also proceeding on three District Court nominees: Jay Garcia-Gregory, nominated to the District Court of Puerto Rico; Beverly Martin, nominated to the District Court in the Northern District of Georgia; and Judge Laura Taylor Swain, nominated to the District Court of the Southern District of New York. I am sorry more nominees were not included today. This is another abbreviated list of nominees and not the full complement of five to seven judicial nominees that we normally consider. In light of the vacancies that are being perpetuated and the number of highly qualified nominees pending before this Committee, that is most regrettable.

I have spoken over the last several years on the need to move forward on the nomination to the District Court in Puerto Rico. Over the last several weeks I have made the point that crime and drug trafficking are serious problems in the Caribbean and that we should be making sure that the federal court in Puerto Rico has all the resources it needs to do its job.

Also included at today's hearing is Daniel Marcus, who has been nominated by the President to be the Associate Attorney General. I am glad to see the Committee moving forward on the nomination of this fine man to the third highest position at the Department of Justice. Mr. Marcus is a dedicated public servant who is well known to many of us. I hope that his presence here today signals that the majority will now proceed without further delay to confirm him to this important position.

Unfortunately, we have been unable to obtain action on the nominations of David Ogden to be Assistant Attorney General for the Civil Division, Don Vereen to be the Deputy Director of the Office of National Drug Control Policy, Julio Mercado to be Deputy Administrator of the Drug Enforcement Agency or, of course, Bill Lann Lee to be the Assistant Attorney General for the Civil Rights Division. They continue to languish without action before this Committee.

I am very disturbed that the nomination of Randy Moss, to be the Assistant Attorney General in charge of the Office of Legal Counsel, a nomination that was reported unanimously by the Committee, was not confirmed by the Senate yesterday due to last minute, anonymous Republican objection.

One of our most important constitutional responsibilities as United States Senators is to provide advice and consent on the scores of judicial nominations sent to us to fill the vacancies on the federal courts around the country. Yesterday we made some progress as we confirmed 16 new judges. For that I thank the Democratic leader and the majority leader, my counterpart on this Committee, Senator Hatch, and all those who worked with us to achieve Senate action on those judicial nominees.

But before any Senator thinks that our work is done for the year, let us take stock: We are only one-third of the way the number of judges nominated by a Republican President and confirmed by a Democratic majority in 1992, and only half way to the levels of confirmations achieved in 1984 and 1988. We have finally passed the level of 17 confirmations achieved in 1996, in the year before I became the Ranking Democrat on the Judiciary Committee. That low water mark is no measure of success, however.

Today we face more judicial vacancies than when the Senate adjourned in 1994. That means there are more vacancies across the country than when the Republican majority took controlling responsibility for the Senate in January 1995. Over the last six years we have gained no ground in our efforts to fill longstanding judicial vacancies that are plaguing the federal courts.

In addition, recall that yesterday was the first action that the Senate has taken on judicial nominees since March 9, when the Senate ended 4-years of delay and finally voted to confirm Judge Richard Paez to the Ninth Circuit. For more than two months, for more than 10 weeks, the Senate has not acted to confirm a single judge, not one. That stall accounted for the backlog in judicial nominations that results in there being 16 judicial nominations on the Senate calendar yesterday. On the other hand, since March 9, seven additional vacancies have arisen and the Senate has received 17 additional nominations.

There remain 36 judicial nominations pending in the Judiciary Committee, plus new nominations that the President is sending us every week. I have challenged the Senate to regain the pace it met in 1998 when the Committee held 13 hearing and the Senate confirmed 65 judges. That would still be one less than the number of judges confirmed by a Democratic Senate majority in the last year of the Bush Administration in 1992. Indeed, in the last two years of the Bush Administration, a Democratic Senate majority confirmed 124 judges. It would take an additional 67 confirmations this year for this Senate to equal that total.

Over the last five years the Republican-controlled Senate confirmed the following: 58 federal judges in the 1995 session; 17 in 1996; 36 in 1997; 65 in 1998; and 34 in 1999. By contrast, in one year, 1994, with a Democratic majority in the Senate, we confirmed 101 judges. With commitment and hard work many things are achievable.

Of the confirmations achieved this year, seven were nominations that were reported last year and should have been confirmed last year. That would have made last year's total slightly more respectable. Instead, they were held over and inflate this year's numbers. In addition, Tim Dyk, one of the nominees finally considered yesterday, was nominated in 1998 and was held over two years. Mr. Dyk was confirmed overwhelmingly yesterday by a vote of 74-35. I do not understand why his nomination was held up so long before the Senate.

Moreover, the Republican Congress has refused to consider the authorization of the additional judges needed by the federal judiciary to deal with their ever increasing workload. In 1984, and again in 1990, Congress responded to requests by the Chief Justice and the Judiciary Conference for needed judicial resources. Indeed, in 1990, a Democratic majority in the Congress created scores of needed new judgeships during a Republican Administration.

Three years ago the Judicial Conference of the United States requested that an additional 53 judgeships be authorized around the country. Last year the Judicial Conference renewed its request but increased it to 72 judgeships needing to be authorized around the country. Instead, the only federal judgeships created since 1990 were the nine District Court judgeships authorized in the omnibus appropriations bill at the end of last year.

If Congress had timely considered and passed the Federal Judgeship Act of 1999, S.1145, as it should have, the federal judiciary would have nearly 130 vacancies today. That is the more accurate measure of the needs of the federal judiciary that have been ignored by the Congress over the past several years and places the vacancy rate for the federal judiciary at 14 percent (128 out of 915. As it is, the vacancy rate is almost 10 percent (65 out of 852) and has remained too high throughout the five years that the Republican majority has controlled the Senate.

Especially troubling is the vacancy rate on the courts of appeals, which continues at over 11 percent (20 out of 179) without the creation of any of the additional judgeships that those courts need to handle their increased workloads.

Most troubling is the circuit emergency that had to be declared more than seven months ago by the Chief Judge of the Court of Appeals for the Fifth Circuit. I recall when the Second Circuit had such an emergency two years ago. Along with the other Senators representing States from the Circuit, I worked hard to fill the five vacancies then plaguing my circuit. The situation in the Fifth Circuit is not one that we should tolerate; it is a situation that I wished we had confronted by expediting consideration of the nominations of Alston Johnson and Enrique Moreno last year. I still hope that the Senate will consider both of this year.

I deeply regret that the Senate adjourned last November and left the Fifth Circuit to deal with the crisis in the federal administration of justice in Texas, Louisiana and Mississippi without the resources that it desperately needs. I look forward to our resolving this difficult situation. I will work with the Majority Leader and the Democratic Leader to resolve that emergency at the earliest possible time.

With 20 vacancies on the Federal appellate courts across the country and nearly half of the total judicial emergency vacancies in the Federal courts system in our appellate courts, our courts of appeals are being denied the resources that they need, and their ability to administer justice for the American people is being hurt. There continue to be multiple vacancies on the Ninth Circuit. Three vacancies is too many perpetuating these four judicial emergency vacancies, as the Senate has in this one circuit, is irresponsible. We should act on these nominations promptly and provide the Ninth Circuit with the judicial resources it needs and to which it is entitled.

I am likewise concerned that the Fourth, Sixth and District of Columbia Circuits are suffering from multiple vacancies.

I continue to urge the Senate to meet our responsibilities to all nominees, including women and minorities, and look forward to action on the nominations of Judge James Wynn, Jr. to the Fourth Circuit, Enrique Moreno to the Fifth Circuit, Kathleen McCree Lewis to the Sixth Circuit and Judge Johnnie Rawlinson to the Ninth Circuit. Working together the Senate can join with the President to confirm well-qualified, diverse and fair-minded judges to fulfill the needs of the federal courts around the country.

Having begun so slowly in the first five months of this year, we have much more to do before the Senate takes its final action on judicial nominees this year. We should be considering 20 to 40 more judges this year. Having begun so slowly, we cannot afford to follow the "Thurmond rule" and stop acting on these nominees at the end of the summer in anticipation of the presidential election. We must use all the time until adjournment to remedy the vacancies that have been perpetuated on the courts to the detriment of the American people and the administration of justice. I urge all Senators to make the federal administration of justice a top priority for the Senate for the rest of this year.

I look forward to prompt and favorable action by the Committee on the nominees included in today's hearing and look forward to the next hearing, which I hope will be scheduled for the first week after the Memorial Day Recess.

[The prepared statement of Senator Moynihan follows:]

PREPARED STATEMENT OF DANIEL PATRICK MOYNIHAN, A U.S. SENATOR FROM THE STATE OF NEW YORK

Mr. Chairman, I am very pleased that the committee is holding a hearing on Laura Taylor Swain, who has been nominated to be United States Judge for the Southern District of New York. I hope that the committee will favorably act on her nomination and the Senate, in turn, will confirm her.

Laura Taylor Swain is a graduate of Harvard-Radcliffe College and Harvard Law School. Following graduation she clerked for Judge Constance Baker Motley, then Chief Judge of the United States District Court for the Southern District of New York. After completing her clerkship she joined the law firm of Debevoise & Plimpton, specializing in employee benefits, ERISA, executive compensation, and employment law, including Federal and State anti-discrimination statutes. Since November of 1996 she has served as a United States Bankruptcy Judge for the Eastern District of New York.

I have every confidence that Laura Taylor Swain will make an excellent addition to the Court of the Southern District of New York. I commend her to you without reservation.

The CHAIRMAN. The record will remain open until the close of business on Friday for additional written questions from Senators. When we get these questions to you, I hope you will answer them as quickly as possible so that we will have those in the record.

I don't see any other Senators here. So, with that, we will recess until further notice, and we wish you all the best.

Thank you.

Ms. MARTIN. Thank you, Mr. Chairman.

Mr. GARCIA-GREGORY. Thank you, Mr. Chairman.

Ms. CAMPBELL. Thank you.

Judge SWAIN. Thank you so much, Mr. Chairman

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).  
**Bonnie Jean Campbell, formerly Bonnie Jean Pierce (maiden name)**
2. Address: List current place of residence and office address(es).  
**Residence: Arlington, Virginia 22202**  
**Office: U. S. Department of Justice**  
**810 - 7<sup>th</sup> Street, N.W.**  
**Washington, D.C. 20531**
3. Date and place of birth.  
**April 9, 1948; Norwich, New York**
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
**Married to Edward L. Campbell. My husband is a self-employed consultant. The name of his company is Campbell & Associates, and he is currently working out of our home in Arlington, Virginia.**
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
**Des Moines Area Community College**  
**Ankeny, Iowa**  
**From January/1975 to June/1977**  
**No degree awarded/hours transferred to Drake University toward BA Degree**  
**Drake University**  
**Des Moines, Iowa**  
**September/1977 to May/1982**  
**B.A. Degree, Summa Cum Laude, May 15, 1982**  
**Drake University Law School**  
**Des Moines, Iowa**  
**August/1982 to December/1984**  
**J.D. Degree, December 21, 1984**



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

**January/1983 to January/1985; law clerk  
Wimer, Hudson, Flynn & Neugent (partnership dissolved in 1989)**

**January/1985 to August/1989; Associate Attorney  
Wimer, Hudson, Flynn & Neugent (partnership dissolved in 1989)**

**September/1989 to January/1991; Of Counsel  
Belin, Harris, Lamson, McCormick**

**January/1991 to January/1995, Attorney General  
Iowa Department of Justice**

**March/1995 to present, Director  
Violence Against Women Office, U.S. Department of Justice**

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

**No. Not applicable.**

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

**B.A., Summa Cum Laude**

**Phi Beta Kappa**

**Who's Who in America**

**Who's Who in American Law**

**Who's Who of American Women**

**Who's Who of Women in World Politics**

**Who's Who of Emerging Leaders in America**

**YWCA Women of Achievement honoree, June, 1991**

**Young Women's Resource Center "Woman of Vision" honoree, August, 1991**

**Chairperson of Iowa Special Olympics Law Enforcement Torch Run, 1991, 1993**

**Honoree, Women's Equality Day, August, 1993**

**Woman of Distinction, Johnson County Senior Citizens, March, 1994**

**Presidential Advisory Council on Crime and Senior Citizens Issues**

**Time magazine named as one of the twenty-five most influential people in America**

**(April, 1997)**

**Ida B. Wells-Barnett Achievement Award recipient, Women's Equality Day, August, 1998**  
**Featured in People, The National Journal, US News and World Report, The Washington Post, and other publications in the United States and abroad**  
**National Organization for Victims Assistance award for work on behalf of victims, 1996**

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

**American Bar Association**  
**Iowa State Bar Association**  
**District of Columbia Bar**  
**The Association of Trial Lawyers of America**

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

**The organizations to which I belong that are active in lobbying before public bodies include the following:**

**American Association of Retired Persons**  
**Emily's List**  
**The Association of Trial Lawyers of America**

**The other organizations to which I belong include the following:**

**Culver Scholarship Fund, Trustee**  
**Grace United Methodist Church**  
**American Bar Association**  
**Iowa State Bar Association**  
**District of Columbia Bar**  
**Iowa State Bar Foundation - Fellow**  
**NAAG (National Association of Attorneys General), 1991-1994**  
**Chair, Consumer Protection Committee, 1992-1993**  
**Co-Chair, Telemarketing Fraud Task Force, 1992-1993**  
**Chair, FDA Working Group, 1992-1993**  
**Member, Criminal Law Committee, 1991-1994**  
**Member, FTC Working Group, 1991-1994**  
**SAGE (Society of Attorneys General Emeritus), 1995-present**

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

**Iowa Supreme Court**  
**January 25, 1985**

**United States District Court for the Southern District of Iowa**  
**May 8, 1985**

**United States District Court for the Northern District of Iowa**  
**March 6, 1985**

**United States Court of Appeals for the Eighth Circuit**  
**August 28, 1989**

**United States Supreme Court**  
**August 7, 1989**

**District of Columbia Court of Appeals**  
**November 7, 1997**

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

**I have not written or edited any books. Although it is possible that articles, reports, and publications in addition to those listed below have been published under my name or auspices, I have listed all the articles, reports, and publications I have been able to identify and locate.**

**Untitled Articles (attached)**

**Iowa Police Journal, Summer 1991**  
**Iowa State Police, Summer 1991**  
**Iowa Police Journal, Fall 1992**  
**Iowa State Police, Fall 1992**  
**Iowa Police Journal, Spring 1993**  
**Iowa State Police, Fall 1993**  
**Iowa Police Journal, Fall 1993**

Iowa Police Journal, Winter 1993  
Iowa Law Enforcement, Winter 1993  
Iowa State Police, Winter 1993  
Iowa Chiefs of Police Magazine, Spring 1994  
Iowa Chief of Police Magazine, Summer 1994  
Iowa law Enforcement, Winter 1994

Other Articles (attached)

“Domestic Violence and Substance Abuse,” Prevention Quarterly, 1992

Reports (attached)

*Report of the Attorney General, Iowa, 1991 and 1992, Campbell* (This is a compilation of opinions issued by the Attorney General’s Office).

*Report of the Attorney General, Iowa, 1994, Campbell.* (This is a compilation of opinions issued by the Attorney General’s Office).

*Report and Recommendations to Attorney General Bonnie J. Campbell, Blue Ribbon Panel on Sentencing, November, 1991.* I chaired the Blue Ribbon Panel on Sentencing and released the report to the public.

*Report on State Domestic and Sexual Violence Data Collection, submitted to the National Institute of Justice by the Justice Research and Statistics Association, September 5, 1995.*

*Confidentiality of Domestic Violence Victims’ Addresses, prepared by the National Criminal Justice Association, November, 1995.*

*The Confidentiality of Communications Between Sexual Assault or Domestic Violence Victims and Their Counselors, Report to Congress, December, 1995.*

*Domestic Violence, Stalking, and Antistalking Legislation, An Annual Report to Congress under the Violence Against Women Act, April, 1996.*

*The Validity and Use of Evidence Concerning Battering and Its Effects in Criminal Trials, Report to Congress, May, 1996.*

*Domestic Violence and Stalking, The Second Annual Report to Congress, under the Violence Against Women Act, July, 1997.*

*The Clinton Administration's Crime Control Strategy: A Commitment to End Violence Against Women*, Department of Justice, September, 1999.

*Protecting Victims of Domestic Violence, A Law Enforcement Officer's Guide to Enforcing Orders of Protection Nationwide*, prepared and disseminated by the Violence Against Women Office, Department of Justice, and the International Association of Chiefs of Police.

*A Passport to Safety, Full Faith and Credit, A Judge's Bench Card*, prepared and disseminated by the Violence Against Women Office, Department of Justice, and the National Council of Juvenile and Family Court Judges.

*An Advocate's Guide to Full Faith and Credit for Orders of Protection, Assisting Victims of Domestic Violence*, prepared and disseminated by the Violence Against Women Office, Department of Justice, and the Full Faith and Credit Project of the Pennsylvania Coalition Against Domestic Violence.

Other Published Material (attached)

Domestic Violence Awareness Informational Package, May, 1991, materials prepared and disseminated by the Attorney General's Office to elevate the public's awareness about domestic violence, as well as inform them about the availability of local services.

*Prosecutor Intern Program Manual*, prepared and distributed by the Attorney General's Office to assist local prosecutors in the management of the Prosecutor Intern Program.

Iowa Attorney General's Conference on Law Enforcement, 1994, a compilation of training materials compiled for distribution to conference participants.

*In Person, In Time: Recommended Procedures for Death Notification*, September, 1992, a manual prepared and distributed by the Attorney General's Office to assist various professionals with the task of death notification.

"Wanted: For Failure to Pay Child Support" posters, prepared and distributed periodically in an attempt to collect delinquent child support payments and encourage voluntary child support payments.

"Send Help" banners, prepared and disseminated for motorists to carry in their vehicles and display in the event their vehicle became disabled. The reverse side of the banner included two segments: "What Should I Do If My Car Breaks Down?" and "What Are My Rights When I Take My Car In For Repairs?"

*Stalking is a Crime*, prepared and disseminated by the Crime Victim Assistance Division of the Attorney General's Office.

*Stop Fraud, A Consumer's Guide to Stopping Fraud*, prepared and distributed by the Consumer Protection Division of the Attorney General's Office.

*Small Business Alert*, prepared and distributed by the Attorney General's Office.

*Car Buying Made Easy*, prepared and distributed by the Consumer Protection Division of the Attorney General's Office.

*How to Complain Effectively*, prepared and distributed by the Consumer Protection Division of the Attorney General's Office.

*Join the E-Team!*, prepared and distributed by the Attorney General's Office.

*Herbicide Problems*, prepared and distributed by the Farm Division of the Attorney General's Office.

*Fence Laws & the Iowa Farmer*, prepared and distributed by the Farm Division of the Attorney General's Office.

*How to Spot Credit Repair Scams*, prepared and distributed by the Attorney General's Office, in conjunction with the Federal Trade Commission.

*Taking the Scare Out of Auto Repair*, prepared and distributed by the Attorney General's Office, in conjunction with the American Automobile Association, the Federal Trade Commission, and the National Association of Attorneys General.

*Telemarketing Fraud, How to Spot It, How to Avoid It*, prepared and distributed by the Attorney General's Office, in conjunction with the Federal Trade Commission.

*A Guide to Attorney General Opinions*, prepared and distributed by the Attorney General's Office.

*A Victim's Guide to Criminal Appeals in Iowa*, prepared and distributed by the Criminal Appeals Division and the Crime Victim Assistance Program, Attorney General's Office.

*If Crime Strikes You ...*, prepared and distributed by the Crime Victim Compensation Program, Attorney General's Office.

*The 1993 Handbook on The Iowa Gift Law*, prepared and distributed by the Attorney General's Office.

Speeches/Testimony Regarding Legal Policy

I should note that I have given hundreds of speeches discussing the law and/or legal policy throughout my career. Most often I spoke extemporaneously, whether or not I had a prepared text. Consequently, even though I have included copies of speeches that I have been able to locate (they are noted with an asterisk), I cannot say for certain that I followed that text exactly in delivering the speech. Also, I have included the names of organizations which I have addressed, but this list is not exhaustive since I no longer have records of all my speaking engagements over the years.

Statement on Domestic Violence at a Public Hearing, Marshalltown, Iowa, March 2, 1991.\*

Remarks for dedication of a shelter for battered women in Marshalltown, Iowa, April 5, 1991.\*

Testimony before the Committee on the Judiciary, United States Senate, on Violence Against Women, Washington, D.C., April 9, 1991.\*

Testimony before the Subcommittee on Transportation and Hazardous Materials, Committee on Energy and Commerce, House of Representatives, on Telemarketing Fraud and Consumer Abuse, Washington, D.C., May 9, 1991.\*

Remarks, Martin Luther King Celebration, Des Moines, Iowa, January 15, 1992.\*

Remarks, Hate Crimes Seminar, Des Moines, Iowa, February 6, 1992.\*

Remarks, Midwest Gang Investigators Association, Dubuque, Iowa, April 15, 1992.\*

Testimony before the Subcommittee on Social Security and the Subcommittee on Oversight, Committee on Ways and Means, House of Representatives, on Deceptive Mailings and Solicitations to Senior Citizens and Other Consumers, Washington, D.C., May 14, 1992.\*

Remarks, Polk County Women Attorneys, Spring, 1992.\*

Remarks, Iowa State University Extension Service, Spring, 1992.\*

Remarks, Candlelight Vigil, Sponsored by the Family Violence Center, Des Moines, Iowa, October 29, 1992.

Remarks, "When Love Goes Wrong Conference on Family Violence," South Sioux City, Nebraska, November 6, 1992.\*

Remarks on Campus Rape, Iowa State University, Ames, Iowa, April 13, 1993.\*

Remarks, "Violence Towards Women" Conference, sponsored by the Association of Trial Lawyers of America, Johns Hopkins Injury Prevention Center, and Southern California Injury Prevention Research Center, Washington, D.C., June 3, 1993.\*

Remarks for Equality Day, Cedar Rapids, Iowa, August 26, 1993.\*

Remarks, Women's Resource Center, 15<sup>th</sup> Anniversary Celebration, Clinton, Iowa, October 27, 1993.\*

Testimony before the Iowa Senate Commerce Committee on Telemarketing and Direct Mail Scams, Des Moines, Iowa, January 13, 1994.\*

Remarks, "Working for Justice" Conference, Des Moines, Iowa, May 16, 1994.\*

Remarks, Law Enforcement Intelligence Network (LEIN) Conference, Des Moines, Iowa, Spring, 1994.\*

Remarks, White House Ceremony Announcing My Appointment as Director of the Violence Against Women Office, Washington, D.C., March 21, 1995.

Remarks, Preparatory Meeting for the Beijing Fourth World Conference on Women, New York, March 27, 1995.

Remarks, Meeting with Domestic Violence and Sexual Assault Advocates, Law Enforcement, Prosecutors, Elected Officials, the U. S. Attorney, and Survivors, Lewiston and Bangor, Maine, April 19, 1995.

Remarks, Delaware Violence Against Women Implementation Committee, Wilmington, Delaware, April 24, 1995.

Remarks, Kentucky Legislative Task Force on Domestic Violence, Frankfort, Kentucky, April 25, 1995.

Remarks, Kentucky Crime Victims' Rights Day, Frankfort, Kentucky, April 25, 1995.



Remarks, Distinguished Lecturer Series, Rockefeller School for the Social Sciences, Dartmouth College, Hanover, New Hampshire, April 28, 1995.

Remarks, White House Conference on Aging, "A Celebration of the Milestones," Pittsburgh, Pennsylvania, May 3, 1995.

Remarks, Response to Domestic Violence: Community and Criminal Justice Partnership, San Francisco, California, May 31, 1995.

Remarks, Refugee Women's Alliance, Seattle, Washington, June 1, 1995.

Remarks, Costs of Domestic Violence Project, New York, New York, June 11-12, 1995.

Remarks, "Mission Possible: Stopping Stalkers," American Prosecutors Research Institute, Arlington, Virginia, July 10, 1995.

Remarks, NIJ/OJP/OJJDPA Annual Conference on Criminal Justice Research, Washington, D.C., July 11, 1995.

Remarks, Attorney General's Advisory Committee of U. S. Attorneys (AGAC), Washington, D.C., July 12, 1995.

Remarks, National Advisory Council on Violence Against Women, Washington, D.C., July 13, 1995.

Remarks, Federal Judicial Center, Workshop for District Judges, Boston, Massachusetts, July 14, 1995.\*

Remarks, Domestic Violence Seminar, Association of Trial Lawyers of America Annual Convention, New York, New York, July 15, 1995.

Remarks, 33<sup>rd</sup> Annual AFL-CIO National Conference on Community Services, Washington, D.C., July 17, 1995.

Remarks, Business and Professional Women's USA, National Conference, Tulsa, Oklahoma, July 18, 1995.

Remarks, National Association of Counties, Public Safety Steering Committee, Atlanta, Georgia, July 22, 1995.

Remarks, The Center for Women in Church and Society Community Meeting, San Antonio, Texas, July 25, 1995.

Remarks, National Coalition Against Sexual Assault, Washington, D.C., July 27, 1995.

Remarks, VAWA Grantees' Conference, Washington, D.C., July 27, 1995.

Remarks, ABA's Annual Conference, Commission on Domestic Violence, Chicago, Illinois, August 3, 1995.

Testimony, American Bar Association's Commission on Domestic Violence, "Multidisciplinary Solutions: Public Hearings on Domestic Violence," Chicago, Illinois, August 4, 1995.

Remarks, Community Crisis Center, Elgin, Illinois, August 3, 1995.

Remarks, National Coalition Against Domestic Violence National Conference, Charleston, South Carolina, August 5, 1995.

Remarks, Federal Judicial Center's National Workshop for District Judges, Seattle Washington, August 30- September 1, 1995.

Remarks, Various Events at the United Nation's Fourth World Women's Conference, Beijing, China, August 31 - September 17, 1995.

Remarks, "Domestic Violence and Women's Health: Broadening the Conversation," The Commonwealth Fund and its Commission on Women's Health, New York, New York, September 20, 1995.

Remarks, Women Legislators' Lobby, Washington, D.C., October 2, 1995.

Remarks, Annual Candlelight Vigil, My Sister's Place, D.C. Coalition Against Domestic Violence, Washington, D.C., October 2, 1995.

Remarks, White House Domestic Violence Awareness Month Event, Washington, D.C., October 2, 1995.

Remarks, Des Moines Education Association, Des Moines, Iowa, October 3, 1995.

Remarks, Iowa Medical Society and the Blue Cross and Blue Shield of Iowa Foundation, "Break the Silence, Begin the Cure," Des Moines, Iowa, October 5, 1995.

Remarks, "Women and Justice," Dedication of Carrie Chapman Catt Hall, Iowa State University, Ames, Iowa, October 5, 1995.

Remarks, Community Responses to Crime Conference, Des Moines, Iowa, October 5, 1995.

Remarks, Family Violence Center Event, Children and Families of Iowa, Des Moines, Iowa, October 5, 1995.

Remarks, Meeting of Rotary Club of Des Moines A. M., Des Moines, Iowa, October 6, 1995.

Remarks, Annual Conference of the National Association of Women Judges, Atlanta, Georgia, October 9, 1995.

Remarks, Kick-Off of SAVE Program to Stop America's Violence Everywhere, American Medical Association Alliance, Chicago, Illinois, October 9, 1995.

Remarks, Fifth Annual National Conference on Domestic Violence, National College of District Attorneys, San Francisco, California, October 8-11, 1995.

Remarks, "A Dialogue on Domestic Violence," The Education Fund of the Women's Forum, Inc., New York, New York, October 10, 1995.

Remarks, Second Annual Governor's Summit on Domestic Violence, Governor's Task Force on Domestic Violence, Ft. Lauderdale, Florida, October 10, 1995.

Remarks, Kick-Off of SAVE Program to Stop America's Violence Everywhere, Medical Society Alliance of the District of Columbia, American Medical Association Alliance, Inc., Washington, D.C., October 11, 1995.

Remarks, "Changes, Challenges, and Choices: Recognizing Women in Public Safety," Massachusetts, October 12, 1995.

Remarks, 25<sup>th</sup> Anniversary Celebration of Cambridgeport Problem Center, Cambridge, Massachusetts, October 12, 1995.

Remarks, National Day of Remembrance, YWCA Week Without Violence, Washington, D.C., October 15, 1995.

Remarks, "Week Without Violence," the YWCA, and "Blow the Whistle Against Violence Against Women," The Body Shop, Inc., in conjunction with the Empower Program, Bethesda, Maryland, October 18, 1995.

Remarks, "Emerging Issues," Church and Society Committee, Grace United Methodist Church, Des Moines, Iowa, October 22, 1995.

Remarks, National Violence Prevention Conference, "Bridging Science and Program," Des Moines, Iowa, October 23, 1995.

Remarks, Attorney General Reno's Town Hall Meeting, Johnston, Iowa, October 25, 1995.\*

Remarks, "Higher Education's Role in Ending Violence and Abuse," Minnesota Higher Center Against Violence and Abuse, St. Cloud, Minnesota, October 26, 1995.

Remarks, Town Meeting, "Domestic Violence: Federal, State, and Community Response," St. Paul, Minnesota, October 27, 1995.

Remarks, National Coalition Against Sexual Assault, 17th Annual Conference, Myrtle Beach, South Carolina, November 2, 1995.

Remarks, Peace and Conflict Resolution Program, Washington Semester, American University, Washington, D.C., November 3, 1995.

Remarks, "Planned Parenthood: Continuing the Legacy," Planned Parenthood Federation of America, Inc., 79<sup>th</sup> Annual Meeting, New York, New York, November 4, 1995.

Remarks, "Police Leadership for the 21<sup>st</sup> Century: the Emerging Role of Women," National Center for Women and Policing, Washington, D.C., November 12, 1995.

Remarks, YWCA/Distinguished Women Leaders Awards Ceremonies, Nashua, New Hampshire, November 13, 1995.

Remarks, Fourth Quadrennial National Forum for Women State Legislators, Center for the American Woman and Politics, Rutgers University, San Diego, California, November 17, 1995.

Remarks, The Women's Bar Association of the District of Columbia, Washington, D.C., November 28, 1995.

Remarks, "Women and Violence: Issues and Solutions," Ad Hoc Committee on Women and the Law, Illinois State Bar Association, Chicago, Illinois, November 30, 1995.

Remarks, African American Task Force on Violence Against Women, Harlem Legal Services, New York, New York, December 1, 1995.

Remarks, "And Justice For All," Girls Incorporated, Washington, D.C., January 10, 1996.

Remarks, 19<sup>th</sup> Annual Meeting of Houston Area Women's Center, Houston, Texas, January 18, 1996.

Remarks, 6<sup>th</sup> Conference in the U.S. Public Health Service's Office on Women's Health, "Healthy Women 2000" Series, Washington, D.C., January 24, 1996.

Remarks, "1996 Policy Institute: Every Voice Counts," Association of Junior Leagues International, Washington, D.C., February 2, 1996.

Remarks, Washington, D.C. Rotary Club, Washington, D.C., February 7, 1996.

Remarks, Corporate Conference on Violence Against Women, Senator Joe Biden, Wilmington, Delaware, February 12, 1996.

Remarks, Gonzaga High School Leadership Program, Washington, D.C., February 20, 1996.

Remarks, Kent State University, First Annual Symposium on Violence, Kent, Ohio, February 21, 1996.

Remarks, Texas Association Against Sexual Assault Conference, Galveston, Texas, February 27-March 1, 1996.

Remarks, Meeting with Rhode Island Service Providers, Law Enforcement, and Elected Officials, Rhode Island, March 1, 1996.

Remarks, Session before Faculty and Students of DePauw University, Greencastle, Indiana, March 4, 1996.

Remarks, Conference on Stalking and Violence Against Women, Security Protective Service, Central Intelligence Agency, Washington, D.C. Chapter of the Association of Threat Assessment Professionals, March 8, 1996.

Remarks, Stalking Training Conference, San Diego, California, March 15, 1996.

Remarks, U.S. Department of Education's Domestic Violence Forum, Washington, DC, March 20, 1996.

Remarks, Quad Cities Women's Conference, Davenport, Iowa, March 23, 1996.

Remarks, Meeting of the Clearinghouse on Women's Issues, Washington, D.C., March, 26, 1996.

Remarks, "National Perspectives on Family Violence," Army Family Advocacy Training Conference, New Orleans, Louisiana, April 2, 1996.

Remarks, Washington Justice Semester Program, American University, Washington, D.C., April 3, 1996.

Remarks, Meeting of STOP Violence Against Women Committee, Friendship Center, Helena, Montana, April 11, 1996.

Remarks, 16<sup>th</sup> Annual National Forum on Victim's Rights, National Organization for Victim Assistance, Washington, D.C., April 26, 1996.

Remarks, New Hampshire Statewide Conference on Family Violence, Waterville Valley, New Hampshire, May 10, 1996.

Remarks, Domestic Violence Program for Trial Judges, Louisville, Kentucky, May 31, 1996.\*

Remarks, Forum on Prevention and Parity: Girls in Juvenile Justice, Washington, D.C., June 12, 1996.\*

Remarks, Meeting with Task Force, Elected Officials, Community of Harlem, and Victims, African American Task Force on Violence Against Women, New York, New York, June 27, 1996.

Remarks, Annual Judicial Conference of Municipal and District Court Judges, Bellaire, Michigan, July 9, 1996.

Remarks, Conference on "Consolidating Gains in the Prevention and Control of Domestic Violence," Alexandria, Virginia, July 23-24, 1996.

Remarks, National District Attorneys Association, Annual Summer Conference, Nashville, Tennessee, July 24, 1996.\*

Remarks, Business and Professional Women/USA Annual Conference, Washington, D.C., July 28, 1996.

Remarks, Great Lakes Native American Conference, Bloomington, Minnesota, July 31, 1996.\*

Remarks, Annual Research and Evaluation Conference, National Institute of Justice, Washington, D.C., August 6, 1996.

Remarks, Canada-U.S.A. Forum on Women's Health, Ottawa, Canada, August 8-10, 1996.

Remarks, Tenth Annual Conference of the Ohio Coalition on Sexual Assault, September 5, 1996.

Remarks, National Coalition of Hispanic Health and Human Services Organizations, Eleventh Biennial National Conference on Hispanic Health and Human Services, Santa Fe, New Mexico, September 10, 1996.\*

Remarks, Press Conference and Meeting on Issues Regarding Violence Against Indian Women, The Indian Pueblo Cultural Center, Albuquerque, New Mexico, September 12, 1996.\*

Remarks, Maryland State Attorneys' Training, Fort Meade, Maryland, September 20, 1996.\*

Remarks, Art Exhibit to Honor Domestic Violence Awareness Month, featuring Photography by Annie Leibovitz, Washington, D.C., October 1, 1996.

Remarks, New York Meeting with Local Criminal Justice Officials, New York, New York, October 2, 1996.\*

Remarks, Young Women 1996: Leadership and Community, New Haven, Connecticut, October 4, 1996.\*

Remarks, Take Back the Night Rally, Jacksonville Landing, Florida, October 9, 1996.\*

Remarks, Barbara Ann Campbell Memorial Breakfast, Jacksonville, Florida, October 10, 1996.\*

Remarks, Governor's Third Annual Summit on Domestic Violence, Jacksonville, Florida, October 10, 1996.\*

Remarks, "Interfaith Breakfast: A Call to End Violence Against Women," Advisory Council on Violence Against Women, Washington, D.C., October 11, 1996.

Remarks, American College of Emergency Physicians, State Chapter of California, Inc., Stop the Violence NOW Conference, Los Angeles, California, October 14, 1996.\*

Remarks, National College of District Attorneys, Sixth Annual National Conference on Domestic Violence, Atlanta, Georgia, October 16, 1996.\*

Remarks, Meeting with the Board of Directors of the Conference of State Court Administrators, Washington, D.C., October 18, 1996.

Remarks, Interdisciplinary Conference on Domestic Violence, Macon, Georgia, October 22, 1996.\*

Remarks, LECC/Victim-Witness National Conference, Panama City, Florida, October 23, 1996.\*

Remarks, The Domestic Violence Training and Resource Institute, Concord, Massachusetts, October 29, 1996.\*

Remarks, Family Violence: Creating a Coordinated Community Approach, Oakbrook, Illinois, October 30, 1996.\*

Remarks, National Institute of Justice, Washington, D.C., November 8, 1996.\*

Remarks, Meeting of the President's Interagency Council on Women, Washington, D.C., November 19, 1996.

Remarks, Meeting of Youth-At-risk Working Group, American Bar Association's Center for Children and the Law, Washington, D.C., November 21, 1996.

Remarks, Meeting of American Bar Association Commission on Domestic Violence, Washington, D.C., November 22, 1996.

Remarks, American Prosecutors Research Institute, Austin, Texas, December 6, 1996.\*

Remarks, Washington State Domestic Violence Summit II, Seattle, Washington, December 11, 1996.\*

Remarks, VAWGO Technical Assistance Session: Stalking, Washington, D.C., January 29, 1997.\*



Remarks, Florida Medical Association Leadership Conference, Orlando, Florida, January 31, 1997.\*

Remarks, National Symposium on Victims of Federal Crime, Washington, D.C., February 10, 1997.

Remarks, Department of Defense Domestic Violence Policy Conference, Washington, D.C., February 7, 1997.\*

Remarks, Indianapolis Medical Alliance SAVE Brunch, Indianapolis, Indiana, February 10, 1997.\*

Remarks, Louisiana District Attorneys Association, Collaborating to STOP Violence Against Women Conference, New Orleans, Louisiana, February 12, 1997.\*

Remarks, North Tonawanda Domestic Violence Intervention Program, North Tonawanda, New York, February 13, 1997.\*

Remarks, Drake University Law School, Annual Law Review Banquet and Award Ceremony, Des Moines, Iowa, March 7, 1997.\*

Remarks, National Center for Women and Policing, "Police Leadership for the 21<sup>st</sup> Century: Women Implementing Change," Anaheim, California, March 11, 1997.\*

Remarks, New England School of Law, Domestic Violence Hearing, Boston, Massachusetts, March 14, 1997.

Remarks, "Women Making History" forum, honoring Women's History Month, Houston, Texas, March 15, 1997.\*

Remarks, Meeting of National Task Force on Violence Against Women, Washington, D.C., March 19, 1997.

Remarks, "Conference on Collaboration Between Researchers and Advocates on Domestic Violence and Sexual Assault," Sponsored by the Women's Studies Program, University of Illinois, Chicago, Illinois, March 23, 1997.\*

Remarks, Annual Interreligious Public Policy Briefing '97, Interfaith Impact for Justice and Peace, Washington, D.C., April 7, 1997.

Remarks, "U.S. - Russia Seminar on Combating the Sexual Exploitation of Women and Children: Investigation, Judicial Concern, and Organized Crime," Sponsored by the Departments of State, Justice, and the Federal Justice Center, Washington, D.C., April 7, 1997.\*

Remarks, "Transcending the Politics of Illusion, Vision, Values and Community," National Council of Churches of Christ in the USA," Washington, D.C., April 7, 1997.\*

Remarks, "Measuring Success: Juvenile Crime Prevention and Juvenile Justice," Second Bi-annual Crime Prevention and Juvenile Justice Summit, Kansas City, Kansas, April 8, 1997.

Remarks, American College of Emergency Physicians, Washington, D.C., April 9, 1997.\*

Remarks, Wisconsin Attorney General's Task Force on Children in Need, Conference on Child Abuse, Eau Claire, Wisconsin, April 15, 1997.\*

Remarks, The Women Lawyer's Association of Los Angeles, Los Angeles, California, April 17, 1997.\*

Remarks, San Diego District Attorney's Annual Crime Victims Luncheon, San Diego, California, April 18, 1997.\*

Remarks, "Stop the Tears: Protecting Children From Domestic Violence," Center for Sexual Assault and Domestic Violence Survivors, Columbus, Nebraska, April 23, 1997.\*

Remarks, "Breaking the Cycle for Children Who Witness," International Association of Chiefs of Police, Alexandria, Virginia, April 23, 1997.\*

Remarks, Third Annual Domestic Violence Conference for Professionals, Salem, Oregon, April 24, 1997.\*

Remarks, Great Lakes Native American Conference, Traverse City, Michigan, May 19, 1997.\*

Remarks, "Children in a Violent World," Second World Congress on Family Law and the Rights of Children and Youth, San Francisco, California, June 3, 1997.

Remarks, Domestic Violence Regional Training, Tampa, Florida, June 10, 1997.

Remarks, Seventh Annual Domestic Violence Conference, Sponsored by the State of Utah, Department of Human Services, Salt Lake City, Utah, June 12, 1997.\*

Remarks, "A Reunion of Courage-Twenty Years: Taking A Stand Against Domestic Violence," House of Ruth, Baltimore, Maryland, June 24, 1997.\*

Remarks, "Vital Voices: Women in Democracy," Vienna, Austria, July 9-11, 1997.

Remarks, National Victim Assistance Academy, Washington, D.C., July 16, 1997.\*

Remarks, "Meeting the Challenges of Crime and Justice: The Annual Conference on Criminal Justice Research and Evaluation," Washington, D.C., July 23, 1997.

Remarks, "COPS -Domestic Violence Training Conference," Chicago Housing Authority, Chicago, Illinois, July 28, 1997.\*

Remarks, Meeting of The Rotary Club of Des Moines, Des Moines, Iowa, July 31, 1997.

Remarks, National Conference of State Legislatures, Philadelphia, Pennsylvania, August 8, 1997.

Remarks, Santa Monica Rape Crisis Center, Los Angeles, California, August 11, 1997.

Remarks, COPS/DV Regional Training, Boston, Massachusetts, August 14, 1997.

Remarks, 1997 Association of Threat Management Professionals Conference, Anaheim, California, August 27, 1997.

Remarks, Navy Medical Leaders' Conference, Spouses' Program, Arlington, Virginia, August 28, 1997.\*

Remarks, Council on Sexual Assault and Domestic Violence, Sioux City, Iowa, October 9, 1997.\*

Remarks, Domestic Violence Town Hall Meeting, Des Moines, Iowa, October 10, 1997.\*

Remarks, The 19<sup>th</sup> Annual National Coalition Against Sexual Assault National Conference and Women of Color Institute, Cleveland, Ohio, October 14, 1997.

Remarks, Soap Summit III, Los Angeles, California, October 18, 1997.

Remarks, The Silent Witness National Initiative, Washington, D.C., October 19, 1997.

Remarks, Full Faith and Credit Conference, Albuquerque, New Mexico, October 28, 1997.\*

Remarks, National Conference of State Legislatures, Criminal Justice Committee, Washington, D.C., November 6, 1997.

Remarks, "Conference on Domestic Violence and Welfare," Stony Brook, School of Social Welfare, Stony Brook, New York, November 11, 1997.

Remarks, "Domestic Violence Knows No Borders," Interstate Enforcement and Technology Conference, Albany, New York, November 13, 1997.

Remarks, Second Joint Conference on DNA Databanks and Repositories, Chicago, Illinois, December 8, 1997.

Remarks, Domestic Violence Summit, Dartmouth, Massachusetts, January 8, 1998.

Remarks, Domestic Violence Summit, Indianapolis, Indiana, January 21, 1998.

Remarks, Victims Assistance Services, White Plains, New York, January 23, 1998.

Remarks, Houston Area Women's Center 21<sup>st</sup> Annual Meeting, Houston, Texas, January 15, 1998.

Remarks, Briefing of the National Association of Commissions for Women, Office for Women's Initiatives and Outreach, The White House, Washington, D.C., February 26, 1998.

Remarks, United Nations Conference on the Status of Women, New York, New York, March 5, 1998.

Remarks, Violence Against Women Grants Office, State Administrators Meeting, Washington, D.C., March 11, 1998.

Remarks, National Association of Attorneys General Summit on Domestic Violence, Washington, D.C., March 12, 1998.

Remarks, U.S.-Italy Negotiations Regarding Trafficking, Rome, Italy, April, 1998.

Remarks, Second Annual Region V State Women's Health Leadership Meeting, Chicago, Illinois, April 23, 1998.

Remarks, Computer Game Developers' Conference, Sponsored by Population Communications International, Long Beach, California, May 7, 1998.

Remarks, Massachusetts Bar Institute, Seminar on Violence Against Women, Boston, Massachusetts, May 19, 1998.

Remarks, Suffolk County Regional Training Conference, "Working Together for Children Who Witness Domestic Violence," Boston, Massachusetts, May 20, 1998.

Remarks, "United Nations Conference of Plenipotentiaries on the Establishment of International Criminal Courts," Rome, Italy, June 22 - 26, 1998.

Remarks, The Annual Conference on Criminal Justice Research and Evaluation: Viewing Crime and Justice from a Collaborative Perspective, Washington, D.C., July 26-29, 1998.

Remarks, "Vital Voices of Northern Ireland: Women in Democracy," Belfast, Northern Ireland, August 31, 1998.

Remarks, Conference on Domestic Violence by Law Enforcement Officers, Sponsored by the Behavioral Science Unit, Federal Bureau of Investigation, Quantico, Virginia, September 16, 1998.

Remarks, "Violence Against Women Worldwide," Women's Foreign Policy Group, Washington, D.C., September 23, 1998.

Remarks, "Vital Voices: Women in Democracy," Montevideo, Uruguay, September 28 - October 4, 1998.

Remarks, "Family Violence: Facing the Problem - Finding the Solutions," Ozarks Fighting Back, Springfield, Missouri, October 6, 1998.

Remarks, "Domestic Abuse: Silence Equals Violence," Women's Resource Center, University of California, San Francisco, California, October 6, 1998.

Remarks, World of Law Government Panel, Harvard Law School, Cambridge, Massachusetts, October 13, 1998.

Remarks, Illinois Coalition Against Domestic Violence 20<sup>th</sup> Anniversary Celebration, Springfield, Illinois, October 14, 1998.

Remarks, Community Forum on Domestic Violence, Wilton, Connecticut, October 23, 1998.

Remarks, "The Volcano Within: A Program Exploring Responses to Family Violence," Women for Women, New York, New York, October 27, 1998.

Remarks, "Joint U.S.-Russia Summit on Domestic Violence," Moscow, Russia, October 28 - 31, 1998.

Remarks, Conference on Police Combating Violence Against Women, Baden, Austria, November 30- December 4, 1998.

Remarks, Employers Against Domestic Violence, Boston, Massachusetts, February 10, 1999.

Remarks, Harvard School of Public Health, Boston, Massachusetts, February 10, 1999.

Remarks, Panel on Domestic Violence: Reality vs. Myth, Howard University, Washington, D.C., April 30, 1999.

Remarks, Symposium on Rape and Sexual Assault in Rural Maryland, Wye Mills, Maryland, May 6, 1999.

Remarks, Hadassah National Convention, Washington, D.C., July 26, 1999.

Remarks, Next Millennium Conference: Ending Domestic Violence, Rosemont, Illinois, August 30, 1999.

Testimony, Violence Against Women Act Oversight Hearing, House Judiciary Subcommittee on Crime, September 29, 1999.\*

Remarks, 25<sup>th</sup> Anniversary of Alexandria House, St. Paul, Minnesota, October 1, 1999.

Remarks, National Association of Women Judges' Annual Conference, Miami, Florida, October 14, 1999.

Remarks, Federal Firearms/Enforcement of Violence Against Women Act, Cedar Rapids, Iowa, October 28, 1999.

Remarks, National Meeting of State Sexual Assault Coalitions, Chicago, Illinois, October 29, 1999.

**Remarks, Southeast Domestic Violence Conference, Birmingham, Alabama, November 5, 1999.**

**Remarks, National Association of Attorneys General, State Initiatives Conference, Washington, D.C., November 9, 1999.**

**Remarks, NGA/NIJ Executive Policy Forum on "Preventing Family Violence: Building Bridges Across Systems," Phoenix, Arizona, January 13, 2000.**

**Remarks, Preventing Domestic Violence in Communities, Office of Weed & Seed, Dallas, Texas, February 17, 2000.**

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

**Excellent. October 6, 1999.**

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

**I have never held any judicial office.**

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

**Not applicable.**

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

**I was elected Attorney General of the State of Iowa in 1990, took office in January, 1991, and served one four-year term, ending in January, 1995.**

**I ran unsuccessfully for Governor of the State of Iowa in 1994.**

17. Legal Career:

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

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

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

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

**I have never practiced law alone.**

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

**January/1983 to January/1985; law clerk  
January/1985 to August/1989; Associate Attorney  
Wimer, Hudson, Flynn & Neugent (partnership dissolved in  
1989)  
222 Equitable Building  
Des Moines, Iowa 50309**

**September/1989 to January/1991; Of Counsel  
Belin, Harris, Lamson, McCormick  
2000 Financial Center  
7<sup>th</sup> & Walnut  
Des Moines, Iowa 50309**

**January/1991 to January/1995; Attorney General  
Iowa Department of Justice  
1300 East Walnut  
Des Moines, Iowa 50319**

**March/1995 to present; Director  
Violence Against Women Office  
U.S. Department of Justice  
810 Seventh Street, NW  
Washington, D.C. 20531**



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

From January, 1985, until January, 1991, I was in the private practice of law. After law school, I joined a small law firm with which I had clerked throughout most of law school. Although the firm was engaged in the general practice of law, two of the partners specialized in property and real estate development law; another practiced bankruptcy law; and another specialized in personal injury and family law. I was fortunate to have worked on a wide range of legal issues throughout my years in private practice; however, my work gradually became primarily focused on family and employment discrimination law. This remained the case even after I joined a larger firm of counsel in 1989.

In 1991, I was sworn in as Iowa's Attorney General and began a legal career in the public sector. The Attorney General is the state's chief legal officer, and in Iowa, the Attorney General's office is the state's largest "law firm." Serving as Attorney General was an exhilarating and challenging experience for me and one from which I gained enormous knowledge and insight. Since state departments of justice are the largest practitioners before the federal circuit courts of appeals, I was also afforded an opportunity to become familiar with federal appellate work. Additionally, the responsibilities of state attorneys general include writing attorney general opinions and applying the rules of statutory construction to harmonize statutory schemes seemingly in tension with each other in an attempt to provide our clients with solid legal counsel.

After running unsuccessfully for Governor, I was appointed by President Clinton, in March, 1995, to direct the first Violence Against Women Office in the U. S. Department of Justice. I am currently in that position. I also serve as Counsel to Attorney General Reno, and my responsibilities at the Department of Justice have been to coordinate implementation of the Violence Against Women Act and related statutes within the Department of Justice and with other federal departments and agencies, as well as state and local officials.

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

**In private practice, my typical clients were individuals with matters before the family court and business entities. Family law and employment discrimination law were the two areas in which I specialized.**

**As Attorney General of Iowa, my clients were the State of Iowa, statewide office-holders, legislative leaders, state agency officials, and various other categories of individuals, including, most importantly, the citizens of the State of Iowa.**

**As Director of the Violence Against Women Office, I do not have clients in the ordinary sense of the word, but I serve as Counsel to the Attorney General, and provide legal and policy advice to a wide array of officials across the Department of Justice and the government.**

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

**While I was in private practice, I appeared in court frequently; during my tenure as Iowa Attorney General, I only appeared in court on one occasion; and since I have been at the Department of Justice, I have not appeared in court at all because the responsibilities of my current position do not require it.**

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

**While I was in private practice, most (90 percent) of my court experience was in state court, but I did occasionally (10 percent) appear in federal court and regularly appeared before administrative agencies.**

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

**Approximately 90 percent of my cases were civil, although I did periodically handle criminal cases.**

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

**I did not try any cases to a verdict, and since I no longer have access to most of the records from my time in private practice, I cannot say with certainty the number of cases I litigated. It is my best estimation that I tried between fifteen and twenty cases, including the family law cases I handled, which are heard in equity. Of these cases, I estimate that I was sole counsel in two-thirds of the cases and associate counsel in one-third.**

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

**All of these trials were non-jury.**

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

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

**I have chosen eight cases with which I was personally engaged during my tenure as Attorney General and two cases which reflect my litigation experience as a private practitioner. The eight cases from my time as Iowa Attorney General were selected because I was directly involved with each of them in a variety of ways, e.g., making the decision to appeal the case, directing the litigation strategy, or approving settlement. I cannot say that I**

worked on every case, or even most cases, which came before the Attorney General's office, but I participated directly with these particular cases for reasons which I will indicate. To suggest that I made every decision or that I alone was responsible for the success (or failure) of any of the cases would be a disservice to the talented and dedicated attorneys who worked in my office.

1) *AFSCME/Iowa Council 61 v. State*, 484 N.W.2d 390 (Iowa 1992)

The budget and finance issues raised in the *AFSCME* case and related matters demanded my personal attention, as well as the attention of many other attorneys in the Attorney General's office. In the *AFSCME* case, I personally directed the litigation strategy and made the key decisions, including, significantly, the decision to file an *amicus curiae* brief. I also reviewed the research and writing of several staff attorneys and collaborated closely with two of my colleagues in the drafting of the *amicus* brief. My involvement was similar with respect to a number of the Attorney General Opinions regarding the budget.

During my tenure as Attorney General of Iowa from 1991 to 1995, the state experienced serious difficulties with its budget. When I took office in January, 1991, a comprehensive annual financial report had just been issued; the State Auditor and the State Treasurer called for the Governor and the Iowa General Assembly to get the state's books in order and balance the budget according to generally accepted accounting principles. The state constitution (Art. VII, section 2) prohibits the state from going into debt in excess of \$250,000.

Previously, in 1990, negotiations between the State and state employee collective bargaining units regarding a two-year contract had broken down. Legislative leaders sought an Attorney General's opinion regarding budgeting practices, and on April 11, 1991, I issued an Attorney General's Opinion (1991 Op. Att'y Gen. 91-4-1), concluding that the Governor was required, as a contractual and statutory matter, to fully fund an arbitration award. According to Iowa statute, a negotiation impasse triggered arbitration. The arbitrators were required by statute to accept "the most reasonable offer, in its judgment, of the final offers on each impasse item submitted by the parties." The arbitrators selected the union's final offer and rejected the state's final offer. The Attorney General's Opinion concluded that the arbitration was binding and that the state was required to use discretionary funding to pay for the arbitration awards.

The Governor item-vetoed the appropriations for salary increases, and several state unions then sued the State of Iowa and the Governor, claiming that the state had breached its contract agreement with state workers, and sought enforcement of the arbitration award. Because I had previously issued an Attorney General's Opinion on the matter, outside counsel represented the Governor, and I filed an *amicus curiae* brief consistent with the Attorney General's Opinion.

The Iowa Supreme Court considered the case *en banc* and reached conclusions that were consistent with the Attorney General's Opinion. The Court held in *AFSCME* that the state is bound by the contracts that it enters; that there is no violation of separation of powers in the statutory scheme; that the Governor's actions regarding arbitration are subject to judicial review; that the Governor's funding decisions were discretionary, so that funds for the employee contract could have been found within the discretionary budget; and that the Governor had the power to veto the collective bargaining package in order to challenge the arbitration award in court before disbursing funds.

The Iowa General Assembly and the Governor had been wrangling for two years with budget and finance policies, and an Attorney General's Opinion (1991 Op. Att'y Gen. 91-3-2) and two other letters of informal advice had been issued in response to the issues raised. The *AFSCME* case was a significant development in the budget discussions because the executive and legislative branches felt pressure to agree on budget matters, the Iowa Supreme Court clearly set out its role in interpreting state constitutional and statutory provisions, and the Court's reasoning was consistent with the advice the legislature and Governor had received from the Attorney General.

- (a) The Attorney General's involvement in this case commenced in 1991.
- (b) This case was tried in the state district court in Polk County, Iowa, and the case was tried before the Honorable Harry Perkins. The appeal was heard by the Iowa Supreme Court, sitting *en banc*.
- (c) Counsel of record:  
 Elizabeth M. Osenbaugh (then Deputy Attorney General)  
 (Now deceased)  
 Julie F. Pottorff (then Assistant Attorney General)  
 Deputy Attorney General  
 Second Floor, Hoover Building  
 Des Moines, Iowa 50319  
 (515) 281-3349

**Counsel for Appellants:**  
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**Charles E. Gribble**  
**505 5<sup>th</sup> Street, Suite 535**  
**Des Moines, Iowa 50309**  
**(515) 244-5049**

**Larry P. Weinberg**  
**1101 - 17<sup>th</sup> Street, Suite 1210**  
**Washington, D.C. 20036**  
**(515) 775-5900**

2) *State v. Davis*, 493 N.W.2d 820 (Iowa 1992)

This appeal was assigned to the division director of the Criminal Appeals Division, who consulted with me regarding the issues involved, the decision to seek an appeal, and the overall appellate strategy to be used, as well as the appropriateness of these particular fact situations to test the primary issue. After reviewing the circumstances of the cases, I made the decision to seek appeal and was directly involved in developing the appellate strategy.

The State of Iowa sought discretionary review of rulings by two state judicial magistrates who sentenced criminal defendants in domestic abuse assault cases. The case is reported in Northwest Reports under the name of *Davis*, but the same issue was resolved in the companion case of *Sagert*. Although the crimes were relatively minor, the issue involved was important in the state's efforts to implement a newly-enacted domestic abuse assault sentencing statute.

Iowa adopted enhanced penalties for domestic abuse assault in 1980, mandatory arrest provisions in 1986, and a mandatory two-day jail sentence for simple misdemeanor domestic abuse assault in 1991. In these two cases, each criminal defendant had pled guilty to simple misdemeanor domestic abuse assault. The magistrates in each of the sentencing proceedings had

imposed fines, but no jail sentences. The state filed a request to appeal captioned alternatively as an application for writ of certiorari or discretionary review, and the Iowa Supreme Court accepted the case for appellate review as a discretionary review action.

In the appeal, the Iowa Supreme Court accepted our arguments and reversed the lower court, holding that the legislative sentencing mandate for a jail sentence must be followed unless a deferred judgment was granted.

- (a) The Attorney General's representation commenced in 1991 with the filing of the Application for Discretionary Review.
- (b) The cases were tried in the Iowa district court for Black Hawk County and were tried by the county attorney before the Honorable Richard Paxson and the Honorable Katherine Langlas, Judicial Magistrates. The appeal by the Attorney General was heard by the Iowa Supreme Court (Justices Harris, Carter, Lavorato, Neuman and Snell), and the decision was filed on December 23, 1992.
- (c) Co-Counsel of Record:  
Ann E. Brenden, Assistant Attorney General  
215 East 7<sup>th</sup> Street  
Des Moines, IA 50319  
(515) 281-5428

Thomas J. Ferguson, Black Hawk County Attorney  
316 East Fifth Street  
B-1 Courthouse Building  
Waterloo, Iowa 50703  
(319) 833-3001

Kasey Wadding (then Assistant Black Hawk County Attorney and  
now Bremer County Attorney)  
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Waverly, Iowa 352-0214  
(319) 352-0214

Counsel of Record for Defendant Sagert:  
Linda Del Gallo, State Appellate Defender  
2<sup>nd</sup> Floor, Lucas Building  
Des Moines, IA 50319  
(515) 281-8841

Ahmet S. Gonlubol (then Assistant Appellate Defender)  
214 First Street  
Cedar Rapids, Iowa 52404  
(319) 398-3690

3) *State v. Rick Hunt, d/b/a EZ Strip*, 512 N.W.2d 285 (Iowa 1994)

Although I did not try this case or handle the appeal, I worked closely with the newly-appointed environmental crimes team on this and other environmental criminal cases. I established the enforcement team, setting out guidelines for prosecution of environmental crimes, developing strategy, and making decisions about bringing criminal charges rather than seeking civil or administrative enforcement.

The criminal defendant (Rick Hunt, charged individually and in his corporate capacity, and his business, which was charged in its corporate capacity) appealed a conviction for illegal disposal of hazardous waste. The case was significant because it was the first environmental criminal case decided by the Iowa Supreme Court in which the criminal defendant had been sentenced to a jail term.

The criminal defendant was charged in three counts which alleged violations of Iowa's statutory provisions regarding improper disposal of hazardous waste, intentional discharge of a pollutant into a waterway, and knowingly storing hazardous waste without proper authority. The state showed that the defendant used caustic chemicals to remove paint from metal objects. Although a proper system for disposing of the chemicals was in place, it was not always used. Instead, hazardous materials were sometimes being pumped directly into a creek that ran behind the business, which fed into the city's sewer system. Even when the disposal system had been used, the sludge generated was stored well beyond the statutory limit of ninety days. The defendant admitted that he did not intend to recycle the waste material that was recyclable, and a former employee testified that the defendant knew about the problem of disposal but took no action. The jury returned a verdict of guilty on all three counts.

On appeal, the conviction and sentence were upheld by the Iowa Supreme Court.

- (a) The Attorney General's representation in this case commenced in 1992 with the filing of the charges.



(b) The case was tried in the state district court for Muscatine County and was tried before the Honorable J. L. Burns, an Iowa district court judge. The appeal was heard by the Iowa Supreme Court (Chief Justice McGiverin and Justices Harris, Carter, Snell and Andreasen).

(c) Co-Counsel of Record  
Kathleen Deal (then Assistant Attorney General)  
Assistant United States Attorney  
110 East Court Avenue  
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Robert P. Ewald, Assistant Attorney General  
Second Floor, Hoover Building  
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(515) 281-5976

Counsel for Defendant Hunt:  
Donald L. Carr  
Smith, Schneider, Stiles, Wimer, Hudson, Serangeli, Robinson,  
Mallaney, Shindler & Scalise, P.C.  
1000 Equitable Building  
Des Moines, Iowa 50309  
(515) 245-6789

Michael E. Marshall (then in private practice)  
Secretary of the Senate  
Iowa General Assembly  
State Capitol  
Des Moines, Iowa 50319  
(515) 281-5307

#### 4) Iowa Trust Litigation

*City of Dubuque v. Iowa Trust*, 519 N.W.2d 786 (Iowa 1994)  
*Lyons v. Jefferson Bank*, 781 F. Supp. 1525 (D. Colo. 1992), (preliminary injunction), 793 F.Supp. 981 (D.Colo. 1993) (trial), affirmed, 994 F.2d 716 (10th Cir. 1994)  
*In re Iowa Trust*, 135 B.R. 615 (1992)

This complex litigation required thousands of hours of work by many attorneys in the Attorney General's office and by outside counsel retained to assist the effort. I actively participated in setting out the initial litigation

strategy and reviewing that strategy on a regular basis. I personally appeared at the original hearing in which the Insurance Commissioner was appointed as a receiver.

This litigation encompassed several cases in state and federal courts, only some of which are reported and many of which were settled out of court. It involved the fraudulent conversion of \$107 million in public funds from Iowa cities that had banded together to invest municipal funds in an entity that became known as Iowa Trust. The end result of the litigation was one-hundred percent recovery of the lost funds, as well as recovery of litigation costs for Iowa Trust participants. Steven Wymer was ultimately convicted of several criminal securities fraud charges stemming from transactions involving Iowa municipalities and other government entities.

The overall legal strategy in the Iowa Trust litigation was to pursue two classes of defendants: those who had Iowa Trust money and those whose negligence caused its loss. The top priority was recovery of the money. Because the theft of the funds from Bankers Trust of Des Moines was discovered quickly, it was determined to pursue "tracing" as the primary legal theory. Tracing required multiple and simultaneous legal actions: location of the assets; preservation of those assets through injunction; accumulation of sufficient documentation and witness testimony to prove ownership; preparation and trial of that proof; the simultaneous protection of Iowa Trust assets from claims by other Wymer victims; and distribution on an equitable basis of any monies recovered. Ethical obligations required local counsel in jurisdictions outside of Iowa, including counsel in New York, Illinois, Colorado, and California. Assistant Attorney General Anuradha Vaitheswaran was assigned the primary duty of tracing the money, while other attorneys handled the remaining issues, and Deputy Attorney General Gordon Allen was assigned as the coordinator of the litigation team.

The former trustees of the Iowa Trust filed a bankruptcy petition on Sunday, January 5, 1992, which required continuation of a scheduled state court hearing. After an expedited hearing in bankruptcy court on January 9, 1992, the bankruptcy petition was dismissed. The bankruptcy judge determined that the litigation plan appeared to be well thought out and executed and that bankruptcy appeared unnecessary. *In re Iowa Trust*, 135 B.R. 615 (1992).

On May 8, 1992, the Colorado federal district court issued judgment in favor of Iowa Trust for more than \$42 million. *Lyons v. Jefferson Bank & Trust*, 781 F. Supp. 1525 (D. Colo. 1992), *aff'd*, 994 F.2d 716 (10th Cir. 1992). This judgment, coupled with our earlier successes, represented recovery of two-thirds of the money stolen and added judicial credibility to the tracing

arguments made by Iowa Trust. When the Tenth Circuit Court of Appeals upheld the decision on appeal, California defendants were made keenly aware that Iowa Trust could prove its tracing claims, could litigate those claims expeditiously, and would pursue them vigorously. At the same time, settlement negotiations were ongoing with potential third-party defendants on claims of negligence.

In order to obtain settlements, negotiations occurred and lead to agreements. For instance, Bankers Trust of Des Moines, because of its financial position, settled for \$4 million, but with the express provision that if Iowa Trust recovered more than \$75 million, a dollar-for-dollar rebate of up to \$4 million would be paid. The City of La Quinta had received the money of Iowa Trust directly, without any intermediary bank or broker, and therefore settlement with them required payment from their cash accounts. Like most cities, this was difficult. A \$2 million payment was negotiated with a subsequent agreement by which the City of La Quinta would pay up to \$3.3 million out of its recoveries from others. By early 1994, Iowa Trust had recovered all of the lost funds, plus the costs of recovering those dollars.

- (a) The Attorney General's representation in this case commenced in December, 1991.
- (b) The case was tried in the state district court in Polk County, Iowa; the federal district court in the Northern District of Iowa; the federal district court in Colorado; the 10<sup>th</sup> Circuit Court of Appeals; and several California state and federal courts. The case was tried before the Honorable Michael Streit, then a state district court judge, and now a member of the Iowa Court of Appeals; The state appeal was heard by the Iowa Supreme Court, Justices Harris, Larson, Neuman, Snell and Andreason; the Honorable Michael Melloy, formerly in the United States Bankruptcy Court for the Northern District of Iowa, now a district court judge for the United States District Court for the Northern District of Iowa; the Honorable J. Lewis Babcock, in the United States District Court in Colorado; and the federal appeal was heard by Justices McKay, McWilliams, and Kelly.
- (c) Co-counsel of Record:  
Deputy Attorney General Gordon Allen  
Scott Galenbeck, Assistant Attorney General  
Lynn Walding, Assistant Attorney General

**Don Senneff, Assistant Attorney General**  
**Harold Young, Assistant Attorney General**  
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**Anuradha Vaitheswaran, (then Assistant Attorney General)**  
**Iowa Court of Appeals Judge**  
State Capitol  
Des Moines, Iowa 50319  
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**John Perkins, (then Deputy Attorney General)**  
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(515) 225-3737

**Tom Flynn**  
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**Kelly, Haglund, Garnsey & Kahn**  
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Denver, Colorado 80202  
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5) *State v. Tri-State Debt Collection*, (Iowa District Court for Polk County, Equity No. 40-23257)

This was a civil action brought by the Consumer Protection Division during my tenure which resulted in the banning of a Des Moines debt collection business from appearing in small claims courts in the state because of allegations it systematically charged thousands of Iowans excessive and unlawful costs in its collection of bad checks. The suit accused the debt collector of charging individual Iowans hundreds of dollars in unearned and illegal fees as part of the company's effort to collect on bad checks as small as ninety-three cents. The lawsuit also named two officers of the company, Robert Hurlbutt and Kathy Stuckmyer, as well as Robert Clauss, an attorney for the company.

My office conducted a comprehensive survey of more than 1,000 small claims actions for dishonored checks filed by Tri-State in Polk County, Iowa between December 1, 1990 and May 31, 1992. Although the debt collector sought hundreds of dollars in each case, more than half of the cases studied involved checks of \$25 or less.

Our lawsuit also alleged that almost all of the actual work involved in preparing petitions or orders for default judgments had been completed by Mr. Hurlbutt or his associate, Kathy Stuckmyer, neither of whom were attorneys. Yet, Tri-State routinely claimed over two-hundred dollars per case for attorney fees. We also alleged that the defendants manipulated the informal setting of the small claims court to secure hundreds of default judgments for attorney fees which had not been earned and punitive damages to which they were not entitled and that these practices violated both the Iowa Debt Collection Act and the Iowa Consumer Fraud Act.

We obtained a preliminary injunction shortly after the action was filed preventing the debt collector from filing any new collection actions seeking attorney fees or punitive damages until trial, engaging in any collection activities on cases already filed where it was awarded attorney fees or punitive damages, and ordering the escrowing of any attorney fees or punitive damages debtors voluntarily paid to the clerk of court in then-pending collection actions. Testimony at the preliminary injunction hearing graphically exposed heart-wrenching tales of abuse, such as the story of a Korean owner of a small business who could not read English and was tricked into signing a confession of judgment for thousands of dollars, purportedly for not turning over small checks to Tri-State for collection.

The action was resolved through a stipulated order which banned the company and Robert Hurlbutt from filing any new debt collection lawsuits anywhere in Iowa. Hurlbutt was also barred from having any role with an Iowa debt collection company and from receiving any financial benefit from debt collection in the future. The order also reduced certain existing default judgments by approximately \$80,000 by eliminating the portion claimed for punitive damages and reducing attorneys fees to a maximum of \$95. The company was prohibited from falsely threatening people that they would face criminal prosecution or jail sentences for failure to pay a civil debt, and the defendants also were ordered to pay \$10,000 into a restitution fund to reimburse attorney fees or punitive damages already paid by some debtors. Another defendant, attorney Robert Clauss, had earlier paid an additional \$10,000 into the restitution fund.

The action was novel in that no one had previously asked an Iowa court to exercise statutory authority to ban a debt collector from all small claims courts in Iowa. I worked closely with Deputy Attorney General Elizabeth Osenbaugh and Assistant Attorney General Pamela Griebel in developing the evidentiary basis we knew we would need to succeed. Several Iowa magistrates and associate district court judges had collectively approved thousands of monetary judgments on behalf of Tri-State. Attacking each judgment individually was neither feasible nor likely to be productive. We needed to compile solid statistics to uncover the global picture no one judge could envision. In the process we located vivid examples of individual abuse. Prior to my term as Attorney General, several attempts to stop this insidious abuse of the courts had failed, largely due to shortfalls in statutory remedies and the difficulty of establishing patterns on a case-by-case basis.

- (a) The Attorney General's representation commenced in 1992.
- (b) The case was tried in state district court in Polk County, Iowa and was tried before the Honorable Michael Streit, then a state district court judge, and now a member of the Iowa Court of Appeals.
- (c) Co-counsel of record:  
Pamela Griebel, Assistant Attorney General  
Second Floor, Hoover Building  
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Opposing Counsel:  
Michael Moon  
Mowry Law Office  
P. O. Box 573  
Marshalltown, Iowa 50158  
(515) 753-7222

- 6) *Merle Hay Funeral Home/Cemetery Litigation*  
*Leopard Enterprises One, Inc., Case No. 89-2669-CJ-11*  
*Leopard Enterprises Two, Inc., Case No. 89-2670-CJ-11*

The financial collapse in 1989 of one of Iowa's largest privately-owned cemeteries raised the specter of economic and personal disaster for thousands of older Iowans and their families -- and a most unusual bankruptcy issue. Investigators from the Iowa Attorney General's office and the Insurance Division discovered in late 1989 that several hundred-thousand dollars of consumers' trust funds were missing. On the eve of planned enforcement

actions, the cemetery's corporate owners filed consolidated chapter 11 bankruptcy cases in the United States Bankruptcy Court for the Southern District of Iowa (*Leopard Enterprises One, Inc., Case No. 89-2669-CJ-11*; *Leopard Enterprises Two, Inc., Case No. 89-2670-CJ-11*). My office criminally prosecuted company owner Donald Leopard and his chief financial officer, David Ludvigson, in state district court. Ludvigson was convicted by a Polk County jury of misusing trust funds in 1990, and Leopard pled no-contest to felony theft charges in 1992.

In late 1991 and early 1992, a potential purchaser, Memorial Heritage, Inc., proposed a chapter 11 reorganization plan in which all pre-need funeral and cemetery contracts would be extinguished – including those involving burial sites. Arguing that real estate could be sold through bankruptcy free and clear of the “claims” of burial lot owners, Memorial Heritage urged Chief Bankruptcy Judge Lee Jackwig to approve a sale on those terms.

I personally worked with Deputy Attorney General Elizabeth Osenbaugh and Assistant Attorney General Pamela Griebel in urging Judge Jackwig to characterize burial lot contracts as interests in real estate which could not be disturbed in a chapter 11 reorganization plan. Our position carried pragmatic risks – legal victory could jeopardize the only potential sale. While my office was subsequently successful in establishing a township's obligation to preserve the physical integrity of burial sites in *State v. Terry*, 541 N.W.2d 882 (Iowa 1995), in 1992 consumers' rights were far less certain. Ultimately, we crafted a compromise which allowed Memorial Heritage to avoid monetary exposure for prior wrongful burials but preserved consumers' interests in burial lots. The sale was completed, and consumer burial lot contracts were honored.

- (a) The Attorney General's representation in this case began in 1989.
- (b) The case was tried in the United States Bankruptcy Court for the Southern District of Iowa and was tried before the Honorable Judge Lee Jackwig.
- (c) Counsel of Record:  
Pamela Griebel, Assistant Attorney General  
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Opposing Counsel for Memorial Heritage:  
John Wassberg  
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Kansas City, Missouri 64111  
(816) 756-0030

7) *Hoversten v. State*, 998 F.2d 614 (8th Cir. 1993)

In this habeas corpus action the Eighth Circuit Court of Appeals reversed the criminal conviction of Larry Hoversten based on a violation of his sixth amendment right to confrontation. I monitored this case carefully and assisted in the development of the litigation strategy because I was keenly aware that it might necessitate amending our state statute and that the Attorney General's office would play a role in crafting that legislative change.

Mr. Hoversten was charged with second-degree sexual abuse of his 4-year-old stepdaughter. The child was reluctant to identify Mr. Hoversten as the perpetrator. During the competency hearing for the child, the prosecution established that the child suffered from post-traumatic stress disorder and was receiving therapy. The child was found competent to testify, and the district court ordered that a screen or mirror be placed in the courtroom between the child and the defendant when the child testified.

The defendant was convicted as charged, his conviction was upheld on appeal by the Iowa Supreme Court, and a request for certiorari to the United States Supreme Court was denied. *State v. Hoversten*, 437 N.W.2d 240 (Iowa), cert. denied, 493 U.S. 875, 110 S. Ct. 212, 107 L. Ed. 2d 165 (1989).

The defendant filed a federal habeas corpus action alleging that his sixth amendment right to confrontation was denied. The federal district court granted habeas corpus relief on that ground, and the Eighth Circuit affirmed.

This case was tried after the Iowa Supreme Court's decision in *State v. Coy*, 397 N.W.2d 730 (Iowa 1986), but before the United States Supreme Court's reversal in *Coy v. Iowa*, 487 U.S. 1012, 108 S. Ct. 2798, 101 L. Ed. 2d 857 (1988) and before the United States Supreme Court's decision in *Maryland v. Craig*, 497 U.S. 836, 110 S. Ct. 3157, 111 L. Ed. 2d 666 (1990), which set out the standards for use of any screening device. Thus, the state district court judge did not have the benefit of the United States Supreme Court rulings at the time that decisions were made regarding the use of a mirror in the courtroom.



The federal courts reversed the conviction because there was no particularized showing of necessity, as required by the U.S. Supreme Court in *Craig*; because no post hoc factual determination could be made; and because the error was not harmless. The federal courts refused to make factual findings that were never made by the state court, based on federal comity considerations and based on an inadequate record to infer such findings by the state court. If the child's testimony were not considered, the federal courts concluded, the remaining evidence could not be characterized as overwhelming, so the error was not harmless.

- (a) The Attorney General's representation in the habeas corpus action commenced in 1993.
- (b) The case was originally tried in Hardin County District Court before the Honorable Milton D. Seiser. The habeas corpus action was tried in the federal district court for the Northern District of Iowa and was heard by the Honorable David R. Hansen, then a federal district court judge for the Northern District of Iowa and now a judge on the 8<sup>th</sup> Circuit Court of Appeals. The federal appeal was heard by Judges McMilian, Magill and Loken.
- (c) Co-counsel of Record:  
Thomas D. McGrane, Assistant Attorney General  
(Now deceased)

Opposing Counsel:  
Edward J. Ennis  
West Des Moines, Iowa 50265  
(515) 225-0822

- 8) *State v. Ross*, 573 N.W.2d 906 (Iowa 1998)

The Consumer Protection Division in Iowa has long had a reputation for innovation, and the *Ross* case illustrates how that innovation continued during my tenure in the Attorney General's office. Iowa has a substantial population of persons over age sixty-five, and unscrupulous telemarketers often target these vulnerable, older Iowans. Fortunately for one Iowa woman, Rita Hierstein, a bank employee began to ask questions when Mrs. Hierstein sought to withdraw two certificates of deposit. The bank employee discovered that Mrs. Hierstein was the victim of a telemarketer. She requested an unlisted telephone number for Mrs. Hierstein and called the Attorney General for assistance.

The next day Mrs. Hierstein's telephone was routed to the Consumer Protection Division. A legal secretary, playing the role of Mrs. Hierstein, answered the telephone and recorded all of the calls from the telemarketer. These recordings were used in a criminal prosecution against the telemarketer.

Adam Ross was charged with conspiracy to commit theft by deception, extortion, and aiding, making, establishing, or advertising an illegal lottery. Mr. Ross was convicted on all three counts, and his convictions were affirmed by the Iowa Supreme Court.

- (a) The Attorney General's representation in this case began in September, 1993.
- (b) The case was tried in state district court in Polk County, Iowa, before the Honorable J. W. Jordan and appealed to the Iowa Supreme Court. The appeal was heard by the Iowa Supreme Court (Chief Justice McGiverin and Justices Carter, Lavorato, Andreasen and Ternus).
- (c) Co-counsel of record:  
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Martha E. Boesen, Assistant Attorney General  
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(515) 281-5164

Opposing Counsel:  
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Rosenberg Law Firm  
505 5<sup>th</sup> Avenue, Suite 1010  
Des Moines, Iowa 50309  
(515) 243-7600

9) *In re the Marriage of Jeanette Lynn Goforth and Timothy David Goforth, CD53-31466*

This case involved a dissolution action in which joint legal custody and child visitation were at issue. It was a *pro bono* case, and I represented the Respondent from the time the Petition for Dissolution of Marriage was filed through the trial of the matter and subsequent entry of the Dissolution Decree.

In this case, my client had made a grave mistake (armed robbery) in his youth and was just returning from confinement in the Anamosa Men's Reformatory when his wife filed a Petition for Dissolution of Marriage. The Petitioner, Jeanette, and Respondent, Timothy, were married during the Respondent's confinement to Anamosa, and the Petitioner was pregnant with the couple's only child. Melissa was born during the Respondent's confinement. However, the Petitioner and Melissa visited the Respondent regularly throughout the confinement period, thus making it possible for the Respondent to develop a significant, loving relationship with his daughter, despite the unusual circumstances of his confinement.

When the Petitioner filed her Petition for Dissolution of Marriage, she simultaneously sought and was awarded a temporary restraining order enjoining the Respondent from any contact with the Petitioner and his daughter. Most important, the Respondent was extremely disappointed that he was unable to see his young daughter for many months and confronted the very real possibility that he would never be able to have a normal father-daughter relationship with her. My client sought the chance to be a father to his daughter, and I agreed to help him achieve that goal.

Throughout these proceedings, the Petitioner argued that the fact of the Respondent's confinement alone was sufficient to prevent him from developing a normal paternal relationship with his daughter. She resisted joint legal custody and visitation rights, even though both are favored by Iowa law. After getting the restraining order set aside, the Court entered an Order for Visitation, but the visitation between the Respondent and his daughter was to be supervised.

The Respondent contended that the facts before the Court merited the awarding of joint custody, with ordinary rights of visitation. The Respondent lived in Des Moines where the Petitioner and their child also lived. Even though the restraining order prevented him from visiting with his daughter while it was in effect and he had little experience caring for her, we argued that his circumstances placed him in the same position as that of a first-time father and in no way should force the termination of his relationship with his daughter.

Trial was scheduled for September 4, 1986, and the key issues remained joint legal custody of the minor child and regular visitation privileges. The Respondent prevailed at trial and was granted joint legal custody of his daughter, as well as ordinary (and unsupervised) visitation privileges.

(a) I represented the Respondent in 1986.

(b) The case was tried in state district court in Polk County, Iowa and was tried before the Honorable George W. Bergeson.

(c) Counsel of Record:  
Bonnie J. Campbell  
810 - 7<sup>th</sup> Street, N.W.  
Washington, D.C. 20531  
(202) 616-8894

Counsel for Petitioner:  
Rick Olson  
2635 Hubbell Avenue  
Des Moines, Iowa 50317  
(515) 265-8877

10) *In re King Management Company, Retail Sales Tax Assessment,*  
*Docket No. 85-334-6A-A (September, 1986)*

This was a test case to determine whether sales taxes could be collected from firms offering investment management services. The case was initiated when the Iowa Department of Revenue and Finance imposed a sales tax assessment against King Management on fees it received for various asset management services. King Management was a farm management company which offered securities portfolio and farm land investment management services to its clients. King Management set its fees for clients as a percentage of the assets managed, so if it were determined that these services were taxable, the result would have been a fee increase for the company's clients. King Management filed a Protest of the sales tax assessment and argued against the assessment before the Tax Review Committee of the Iowa Department of Revenue and Finance.

I represented King Management in this administrative proceeding, wrote the Protest which was filed with the Department of Revenue and Finance, and argued the case, with my client, before the Tax Review Committee. The case was significant, not only because of the impact it would have on King Management's clients, but on other investment management companies as well. At issue, generally, was application of the state sales tax to services not enumerated in the Iowa Code and, specifically, the definition of "investment counseling."

Pursuant to the Iowa Code, the sales tax could be applied to various enumerated services, including the service of "investment counseling." The Department of Revenue and Finance Rule implementing the statute further

defined "investment counseling," stating, *inter alia*, that "Investment counseling does not include the mere management of a business or property." King Management was assessed for providing an investment counseling service.

In its Protest, King Management asserted that only the Iowa Legislature had the authority to determine sales tax coverage, that the Departmental Rule specifically exempted investment management, and that consequently, the Department of Revenue and Finance had exceeded its statutory authority in violation of the constitutional separation of powers between the legislative and executive branches of government. Further, King Management argued that this sales tax assessment was a violation of their due process protections since they had no notice that the sales tax would be imposed on the services they provided to their clients. Finally, King Management argued that the services it provided to clients were more along the lines of an "investment manager" as opposed to an "investment counselor."

The Tax Review Committee considered the Protest and issued a Letter of Findings in favor of King Management, agreeing that King Management's services were specifically exempted under the Department Rule interpreting the Iowa statute governing the application of sales tax assessments. An Order was entered by the Hearing Officer terminating the matter.

- (a) I represented King Management in 1986.
- (b) This case was presented to the Iowa Department of Revenue and Finance in Des Moines, Iowa and was heard by the Tax Review Committee of the Iowa Department of Revenue and Finance.
- (c) Counsel of Record:  
Bonnie J. Campbell  
810 Seventh Street, N.W.  
Washington, D.C. 20531  
(202) 616-8894  
  
Counsel for the State:  
James D. Miller (then counsel in Department of Revenue and Finance)  
Assistant Attorney General  
Hoover State Office Building  
Des Moines, Iowa 50309  
(515) 281-5846

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

**My experience as an attorney in private practice, as Iowa Attorney General, and as Director of the Violence Against Women Office and Counsel to the Attorney General has prepared me well for a position as an appellate judge.**

**The Attorney General's Office is steeped in the law, serving as counsel to all state agencies, serving as the prosecution arm of the government, and providing other constituent services that are analogous to client services in private practice. The position presented one of the most interesting and challenging opportunities to address a broad spectrum of legal issues. The Attorney General also essentially serves as a manager of a law firm of more than one-hundred lawyers, and is responsible not only for day-to-day management of the office, but also for setting the agenda for the office, directing significant litigation, and guiding clients' actions. It also involves the unique opportunity to address statutory and constitutional issues of public access to government operations.**

**The Attorney General is elected through popular vote and is therefore a political office. More fundamentally, however, the position presents the opportunity to practice law in areas that are some of the most interesting, most challenging and most varied. It requires the ability to examine issues from a variety of perspectives, because local, state and national interests often are implicated in much of the legal work that is done in the Attorney General's Office. I can say without hesitation that it was the most exhilarating experience of my career and caused me to grow in my legal acumen and my appreciation for the law.**

**When I left the Attorney General's office after an unsuccessful run for governor in 1994, I was appointed as the first director of the Violence Against Women Office in the United States Department of Justice. This office was created in 1995 to implement the 1994 Violence Against Women Act (VAWA) and to lead the national effort to stop domestic violence, sexual assault, and stalking of women. I also serve as Counsel to the Attorney General on violence against women issues in general and the Violence Against Women Act in particular.**

**I am responsible for working with U.S. Attorneys to ensure enforcement of the new federal criminal statutes contained in the VAWA and related legislation, assisting the Attorney General in formulating policy related to civil and criminal justice for women, and administering \$1.6 billion in grants to help states, tribes, and local communities transform the way in which criminal justice systems respond to violent crimes against**

women. Additionally, the Violence Against Women Office works with law enforcement officials and victim advocates to develop grant programs that support a wide range of services to victims of domestic and sexual violence and stalking; legal aid, law enforcement protection, emergency shelter, and advocacy are among them.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

**None, except for whatever benefits have accrued as a result of my employment with the federal government. I have not made any arrangements to be compensated in the future for any financial or business interest.**

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

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

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

**No.**

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

**See attached Financial Disclosure Report.**

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

**See attached Financial Net Worth Statement.**

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

7. **Yes.**

**Clark Rasmussen for Governor**

**Democratic gubernatorial primary, February, 1974 to June, 1974**

**Field organizer, responsible for recruiting volunteer supporters, scheduling and advance, issues development, and office management**

**John Culver for United States Senate**

**General election, June, 1974 to November, 1974**

**Field organizer, responsible for recruiting volunteer supporters, scheduling and advance, issues development, office management, and voter identification and get-out-the-vote initiatives.**

**John Culver for United States Senate**

**General election, 1980**

**Volunteer**

**Ed Campbell for Governor**

**Democratic gubernatorial primary, 1982**

**Volunteer**

**Roxanne Conlin for Governor**

**General election, 1982**

**Volunteer**

**Lowell Junkins for Governor**

**Primary and general elections, 1986**

**Volunteer**

**State Chair of the Iowa Democratic Party**

**Iowa caucuses and general election, 1987 to 1989**

**Volunteer spokesperson for the Iowa Democratic Party, responsible for overall management of the IDP, including fundraising, candidate scheduling, media, etc.**



**Iowa Co-chair, Clinton for President campaign  
General election, 1992  
Volunteer position**

**I ran successfully for Iowa Attorney General in 1990 and unsuccessfully for Governor of Iowa in 1994.**

III. GENERAL (PUBLIC)

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

**As a private practitioner, I accepted many pro bono cases and did intake screening for Polk County (Iowa) Legal Aid. One example of many cases I handled is the *Goforth* case discussed in question 13 above.**

**During my tenure as Attorney General, I established one of the first pro bono policies in an Attorney General's office in the country; this policy was touted as a model by the ABA in their attempts to encourage government attorneys to do pro bono work. Our policy defined several opportunities for government lawyers to fulfill their pro bono obligations: lawyers in the Attorney General's office could perform intake screening for Polk County Legal Aid, or the lawyers could serve the Legal Services Corporation and the Alternative Dispute Resolution program in Polk County.**

**Throughout my years as a lawyer, I have given hundreds of speeches to professional, civic, social, religious, and other organizations to share information with the public about their legal rights and ways in which they can access the legal system; I continue to do so.**

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

**No. I have never belonged to any organization that discriminates on the basis of race, sex, or religion.**

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

**There is not a selection commission in my jurisdiction to recommend candidates for nomination to the federal courts. When I read media reports of a possible vacancy on the Eighth Circuit in 1998, I wrote a letter to President Clinton indicating my interest in the position if the vacancy did, in fact, occur. After the vacancy did arise, I was interviewed by representatives of the Department of Justice and the Office of White House Counsel and subsequently by representatives of the FBI and the American Bar Association. I was nominated by the President on March 2, 2000.**

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

No.

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

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

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

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as the vehicle for imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Article III of the United States Constitution specifically limits federal courts to adjudicating cases or controversies. Under our Constitution, federal courts are courts of limited jurisdiction. Judges must be cognizant of other limiting federal jurisdictional principles: whether the party petitioning the court has proper standing; whether the controversy is ripe for judicial resolution; and whether the issue before the court is moot or is capable of being settled by a judicial decision. Judges should decide only the issues that come to them and should not reach out for issues that are not properly presented by the parties litigating the cases.

Our legal system is designed to provide an orderly and predictable process to resolve disputes. Judges certainly play an important role in this process, but not the only role. It is important to remember that the Constitution established a separation of powers. Popularly-elected representatives may set policies through legislation that is enacted, and the executive branch administers the law. Judges should give deference to the determination of the political branches, regardless of whether they agree or disagree with the policy, so long as it complies with the Constitution.

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March 9, 2000

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

Dear Mr. Reynolds:

Enclosed please find a Self-initiated Amendment to the AO-10 form which I filed with  
your office on March 6, 2000.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Bonnie J. Campbell".

Bonnie J. Campbell

BJC:bp

SELF-INITIATED AMENDMENT

AO 19  
Dec. 1998

FINANCIAL DISCLOSURE REPORT  
FOR CALENDAR YEAR 1998

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

1. Person Reporting (Last name, first, middle initial) <b>CAMPBELL, RONNIE J.</b>	2. Court or Organization <b>U.S. Court of Appeals, 8th Circuit</b>	3. Date of Report <b>3/9/2000</b>
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) <b>U.S. Circuit Judge-Nominee</b>	5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date <b>3/2/00</b> <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final	6. Reporting Period <b>January 1, 1999 - March 1, 2000</b>
7. Chambers or Office Address <b>U.S. Department of Justice, Violence Against Women Office, 810 7th Street, N.W. Washington, D.C. 20531</b>	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

*IMPORTANT NOTE: The instructions which apply to this form are the following: (1) and (2) of the  
instructions that apply to each part where you have reportable information. See the last page.*

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

POSITION	NAME OF ORGANIZATION/ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Trustee	Culver Scholarship Fund
2	
3	

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

DATE	PARTIES AND TERMS
<input checked="" type="checkbox"/> NONE (No reportable agreements.)	
1	
2	
3	

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

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1999	* Campbell and Associates (S):	\$
2	HBO&C Health Management Systems, Inc.	\$
3	HMS/Wiener Associates	\$
4		\$
5 2000	* Campbell & Associates (S): Health Management Systems, Inc. * (Public Affairs Consulting)	\$ \$

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	CAMPBELL, BONNIE J.	3/6/2000

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

	SOURCE	DESCRIPTION
<input type="checkbox"/>	NONE (No such reportable reimbursements.)	
1	Exempt	
2		
3		
4		
5		
6		
7		

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

	SOURCE	DESCRIPTION	VALUE
<input type="checkbox"/>	NONE (No such reportable gifts.)		
1	Exempt		\$
2			\$
3			\$
4			\$

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

	CREDITOR	DESCRIPTION	VALUE CODE*
<input checked="" type="checkbox"/>	NONE (No reportable liabilities.)		
1			
2			
3			
4			
5			
6			

\* Value codes: F-\$15,000 to \$25,000; G-\$25,000 to \$50,000; H-\$50,000 to \$100,000; I-\$100,000 to \$250,000; J-\$250,000 to \$500,000; K-\$500,000 to \$1,000,000; L-\$1,000,000 to \$2,500,000; M-\$2,500,000 to \$5,000,000; N-\$5,000,000 to \$10,000,000; O-\$10,000,000 to \$25,000,000; P-\$25,000,000 to \$50,000,000; Q-\$50,000,000 to \$100,000,000; R-\$100,000,000 to \$250,000,000; S-\$250,000,000 to \$500,000,000; T-\$500,000,000 or more.



FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	CAMPBELL, BONNIE J.	3/9/2000

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

IX. CERTIFICATION.

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

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

Signature Bonnie J. Campbell Date March 10, 2000

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App. 4, § 104.)

FILE INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure  
Administrative Office of the  
United States Courts  
Suite 200  
One Columbus Circle, N.W.  
Washington, D.C. 20543



AG-19  
Rev. 1/98

**FINANCIAL DISCLOSURE REPORT  
FOR CALENDAR YEAR 1998**

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

1. Person Reporting (Last name, first, middle initial) <b>CAMPBELL, BONNIE J.</b>	2. Court or Organization <b>U.S. Department of Justice</b>	3. Date of Report <b>3/6/2000</b>
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) <b>Director, Violence Against Women Office</b>	5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date <b>3/2/00</b> <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final	6. Reporting Period <b>January 1, 1999 - March 1, 2000</b>
7. Chambers or Office Address <b>810 7th Street, NW Washington, D.C. 20531</b>	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

*IMPORTANT NOTES: The instructions accompanying the form are as follows: 1. Complete all parts, checking the NONE box for each part where you have no reportable information. See all instructions.*

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

POSITION	NAME OF ORGANIZATION/ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Director	U.S. Department of Justice Violence Against Women Office
2 Trustee	Culver Scholarship Fund
3	

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

DATE	PARTIES AND TERMS
<input checked="" type="checkbox"/> NONE (No reportable agreements.)	
1	
2	
3	

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

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1999	* Campbell and Associates (S):	\$
2	HBO&C	\$
	Health Management Systems, Inc.	\$
3	HMS/Wiener Associates	\$
4		\$
5 2000	* Campbell and Associates (S):	\$
	Health Management Systems, Inc.	\$
	* (Public Affairs Consulting)	\$

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting <b>CAMPBELL, BONNIE J.</b>	Date of Report <b>3/6/2000</b>
------------------------------------	--	-----------------------------------

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

	<u>SOURCE</u>	<u>DESCRIPTION</u>
<input type="checkbox"/>	NONE (No such reportable reimbursements.)	
1	Exempt	
2		
3		
4		
5		
6		
7		

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

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
<input type="checkbox"/>	NONE (No such reportable gifts.)		
1	Exempt		\$
2			\$
3			\$
4			\$

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

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE*</u>
<input checked="" type="checkbox"/>	NONE (No reportable liabilities.)		
1			
2			
3			
4			
5			
6			

\* Value Codes: A=15,000.01-49,999.99; B=50,000.00-99,999.99; C=100,000.00-499,999.99; D=500,000.00-999,999.99; E=1,000,000.00-4,999,999.99; F=5,000,000.00-9,999,999.99; G=10,000,000.00-49,999,999.99; H=50,000,000.00-99,999,999.99; I=100,000,000.00 or more.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	CAMPBELL, BONNIE J.	3/6/2000

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

A Description of Asset (including trust assets) <small>Indicate where applicable owner of the asset by listing the governmental (G), the fiduciary name of the reporting individual and spouse (S), the name of ownership by spouse (DC), for ownership by dependent child. Place (D) in column 10 if the asset is exempt from prior disclosure.</small>	B Date during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1)	(2)	(3)	(4)	If not exempt from disclosure				
	Ann. Code (A-I)	Type (J-K)	Value Code (L-P)	Method Code (Q-W)	Type (X)	Date (Y)	Month Code (Z-AA)	Year Code (AB)	Identify of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
1 Justice Federal Credit Union									Exempt
2 Checking			B	T					
3 Savings			A	T					
4 Norwest Checking			D	T					
5 Resources Trust Company									
6 Retirement Account:									
7 Copley Pension Properties VII	A	div.	J	T					
8									
9 New England Capital Growth Fund	A	div.	J	T					
10									
11 Cash Account	A	int.	J	T					
12									
13									
14									
15									
16									
17									
18									

1. Income tax Codes: A-\$1,000 or less; B-\$1,001-\$2,500; C-\$2,501-\$5,000; D-\$5,001-\$15,000; E-\$15,001-\$50,000; F-\$50,001-\$100,000; G-\$100,001-\$1,000,000; H-\$1,000,001-\$5,000,000; I-\$5,000,001-\$10,000,000; J-\$10,000,001-\$50,000,000; K-\$50,000,001-\$100,000,000; L-\$100,000,001-\$500,000,000; M-\$500,000,001-\$1,000,000,000; N-\$1,000,000,001-\$5,000,000,000; O-\$5,000,000,001-\$10,000,000,000; P-\$10,000,000,001-\$50,000,000,000; Q-More than \$50,000,000,000.

2. Value Method Codes: Q-Appraisal; R-Cost (real estate only); S-Assessment; T-Cash/Market; U-Other; V-Estimate; W-Other.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	CAMPBELL, BONNIE J.	3/6/2000

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

## IX. CERTIFICATION.

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

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

Signature Bonnie J. Campbell Date March 6, 2000

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App. 4, § 104.)

FILING INSTRUCTIONS	
Mail signed original and 3 additional copies to:	Committee on Financial Disclosure Administrative Office of the United States Courts Suite 2-301 One Columbus Circle, N.E. Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

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

ASSETS			LIABILITIES		
Cash on hand and in banks	12	000 --	Notes payable to banks--secured	none	
U.S. Government securities--add schedule	none		Notes payable to banks--unsecured	none	
Listed securities--add schedule	none		Notes payable to relatives	none	
Unlisted securities--add schedule	none		Notes payable to others	none	
Accounts and notes receivable:	none		Accounts and bills due	none	
Due from relatives and friends	none		Unpaid income tax	none	
Due from others	none		Other unpaid tax and interest	none	
Doubtful	none		Real estate mortgages payable--add schedule	none	
Real estate owned--add schedule	none		Chattel mortgages and other liens payable	none	
Real estate mortgages receivable	none		Other debts--itemize:		
Autos and other personal property	6	000	Auto Loan	4	827
Cash value--life insurance	5	108	Crate & Barrel	5	992
Other assets--itemize:					
Resources Trust (IRA)	1	100			
Household furnishings (e.g. Art, Jewelry & Collectibles)	150	000	Total Liabilities	10	819
Thrift Savings Plan	19	070	Net Worth	182	459
Total Assets	193	278 --	Total liabilities and net worth	193	278
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, comaker or guarantor	none		Are any assets pledged? (Add schedule.)	no	
On leases or contracts	none		Are you defendant in any suits or legal actions?	no	
Legal Claims	none		Have you ever taken bankruptcy?	no	
Provision for Federal Income Tax	none				
Other special debt	none				

AFFIDAVIT

I, Bonnie J. Campbell, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

March 10, 2000  
(DATE)

Bonnie J. Campbell  
(NAME)

Leslie Washburn  
(NOTARY)

My Commission Expires April 30, 2003

SENATE JUDICIARY COMMITTEE QUESTIONNAIRE

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
Jay A. García-Gregory  
Jay A. García  
Jay Alonso De La Torre García  
Jay Alonso De La Torre García Gregory
2. Address: List current place of residence and office address(es).  
Residence: Guaynabo, Puerto Rico  
Office : Fiddler, González & Rodríguez, LLP  
PO Box 363507  
San Juan, PR 00936-3507
3. Date and place of birth.  
September 19, 1944; San Juan, Puerto Rico
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
Married.  
Spouse: Myrella Vélez-Dexter  
Occupation: Housewife
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.
  - a. Assumption College (1962-1966)  
A.B., Magna Cum Laude (1966)
  - b. University of Madrid, Spain (1966-1969)  
Three years of study in Philosophy. No degree awarded.

- c. University of Puerto Rico School of Law (1969-1972)  
L.L.B., Magna Cum Laude (1972)
  - d. Columbia University School of Law (1972-1973)  
One academic year as an Associate in Law (Assistant to the Professors teaching the Legal Method Course to first year law students). Completed courses and seminars in Constitutional Law, Federal Courts and Federal Judicial System, Conflict of Laws, Criminal Law and Procedure, Corporations and Insurance. No degree awarded.
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.
- 9/71-12/71 Ad Honorem third year Teaching Assistant to the Professors teaching Legal Research to first year students in the University of Puerto Rico School of Law
  - 9/72 - 6/73 Columbia University, School of Law  
Associate in Law (Teaching Assistant)  
435 West 116<sup>th</sup> St.  
New York, NY 10027  
Telephone: (212) 854-2522
  - 6/73-1/74 U.S. District Court for the District of Puerto Rico  
Law Clerk to the Honorable Hiram R. Cancio,  
Chief Judge (now retired)  
Administrative Office of the U.S. Courts  
One Columbus Circle, N.E.  
Washington, DC 20544  
Telephone: (202) 502-1850
  - 9/75-6/76 Ad Honorem part-time lecturer, University of Puerto Rico School of Law
  - 1975 to Present Instructor, Courses in Federal Jurisdiction and Venue and Appellate Practice for the Federal Bar Association



1974 to Present Fiddler, González & Rodríguez, LLP - (Litigation Division)  
 (Associate, 1974-1977)  
 (Senior Associate, 1977-1978)  
 (Partner, 1979 to present)  
 254 Muñoz Rivera Ave., 6<sup>th</sup> Floor  
 San Juan, PR 00918  
 Telephone: (787) 759-3159

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

US Navy Reserve (1962-1964), ROC Program, Worcester, MA - 1962-1964  
 Honorable Discharge Certified on December 31, 1964 by Norman A. Smith,  
 Commander U.S. Navy Director of Naval Reserve, **XXX**

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.
- a. Honors Fellow (Colegial con Dignidad de Beca), Colegio Mayor Diego de Covarrubias, Madrid, Spain (1968-1969)
  - b. Member, Delta Epsilon Sigma National Honor Society, Assumption College (1966)
  - c. Member, National Honor Society, Academia Perpetuo Socorro (1962). Graduated with Honors, third in the class based on the grade point average.
  - d. West Publishing Company Prize for the Best Academic Achievement in Anglo-American Studies (University of Puerto Rico School of Law, 1972).
  - e. Editor-in-Chief of the University of Puerto Rico Law Review (1971-1972); Member of the Law Review Staff (1970-1971) (Selected on the basis of a grade point average of 3.5+).
  - f. Manuel Rodriguez Ramos Medal for Student holding the Position of Editor-in-Chief of the Law Review

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

A. Bar Associations:

- 1) Federal Bar Association
- 2) Hispanic National Bar Association
- 3) Puerto Rico Bar Association
- 4) American Bar Association
- 5) American Trial Lawyers Association
- 6) District of Columbia Bar Association (non-active)

B. Judicial - Related Committees:

- 1) Chairman, Committee on Admissions, U.S. District Court for the District of Puerto Rico (November 20, 1995 to date) (Evaluation of Petitions for Admission by counsel to practice before the Federal Court, including presiding over hearings on admission and readmission of counsel).
- 2) Chairman, Committee to Review and Recommend Amendments to the Local Rules in Civil Cases, United States District Court for the District of Puerto Rico (November 3, 1999 to date) (Preparation of a Report recommending changes to the local rules in civil and admiralty cases).
- 3) Member, District Examination Committee, U.S. District Court for the District of Puerto Rico (1979 to 1995)
- 4) Member, Supreme Court of Puerto Rico Board of Bar Examiners (1980-1984)

C. Legal Committees:

- 1) Member, Organizing Committee for the Inauguration of the Old San Juan Post Office and Federal Courthouse in May 2000 (in charge of continuing legal education community program for grade and high school students).

- 2) Member, Organizing Committee for the Judicial Conference, U.S. Court of Appeals for the First Circuit (1985) (in charge of Seminar on Sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure).
- 3) Member, Committee on Law of the Puerto Rico Commission for the Celebration of the Fifth Centennial of the Discovery of America and Puerto Rico (1985).

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

I do not belong to any organizations active in lobbying before public bodies.

I belong to other organizations as follows:

- a. Delta Theta Phi Law Fraternity
- b. Opus Dei (Work of God), a personal prelature of the Catholic Church.
- c. YMCA
- d. Caribe Hilton - Swimming and Tennis Club
- f. The Banker's Club of San Juan

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

- a. General Court of Justice of Puerto Rico (June 26, 1973) (Admitted to practice before the Courts of Puerto Rico by the Supreme Court of Puerto Rico)
- b. U.S. District Court for the District of Puerto Rico (July 19, 1973)
- c. U.S. Court of Appeals for the First Circuit (February 6, 1974)
- d. Supreme Court of the United States (September 13, 1976)
- e. United States Court of International Trade (May 1, 1981)

- f. District of Columbia Court of Appeals (April 21, 1981)
- g. U.S. Court of Appeals for the Fifth Circuit (1986)

None of the above memberships has ever lapsed.

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

Copies of the following are attached:

- a. Student Monograph published in the University of Puerto Rico Law Review: "El Infame Crimen Contra Natura: Una Aberración Constitucional" ("The Infamous Crime Against Nature: a Constitutional Aberration"), 40 University of Puerto Rico Law Review 399 (1971) (co-authored with Jorge Souss-Villalobos).
- b. "Prólogo" ("Prologue") written as Editor-in-Chief of the University of Puerto Rico Law Review (1971-1972) in connection with the published "Draft of a Puerto Rican Penal Code Bill" by Professor José Miró Cardona, 41 University of Puerto Rico Law Review 402 (1972).
- c. "Litigation Desk Reference: Tort & Insurance," Federal Circuit 1.2.3, Chapter on Puerto Rico (co-authored with Clara E. López-Baralt) edited by Mark S. Rhodes and Richard D. Bennet (published under the auspices of the American Business & Insurance Attorneys, Clark, Boardman & Callaghan, IL and NY (1992)).
- d. "Civil Appeal Procedures in the Commonwealth of Puerto Rico" (Co-authored with Rafael Vizcarrondo, Heriberto J. Burgos and Raúl M. Arias), International Bar Association Series - Civil Appeal Procedures Worldwide, Editor Charles Platto, Graham & Trotman, and International Bar Association (1992)

- e. Materials used in the Federal Bar Review Course (1995-1999) (Limited publication for course participants).
  - i. Federal Jurisdiction
  - ii. Federal Appellate Practice and Procedure

I have not given any speeches on issues involving constitutional law or policy.

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

The present state of my health is superior. The date of my last physical examination was January 25, 2000.

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

I have not held any judicial office.

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

Not applicable.

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

I have not held any public office. However, my duties as a Notary Public in and for the Commonwealth of Puerto Rico (which is an integral part of the legal profession) are vested with a public function pursuant to Article 2 of Act No. 75 of July 2, 1987.

17. Legal Career:

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

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

I served as law clerk to the Honorable Hiram R. Cancio, former Chief Judge of the United States District Court for the District of Puerto Rico, from June 1, 1973 to January 31, 1974, when Judge Cancio retired.

I also served during the same time period on an ad hoc basis as law clerk for former U.S. District Judge Jose V. Toledo (deceased), who became Chief Judge when Judge Cancio retired.

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

I have never practiced alone.

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

I joined the law firm of Fiddler, González & Rodríguez, LLP on February 1, 1974 as an Associate in Litigation. In 1977, I became a Senior Associate, and on January 1, 1979, I became a full proprietary Partner.

Address: Fiddler, González & Rodríguez, LLP  
PO Box 363507  
San Juan, PR 00936-3507

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

The general character of my practice has always been in the area of litigation, including extensive appellate practice before the United States Court of Appeals for the First Circuit. I have represented parties or appeared as amicus curiae in numerous cases or matters throughout my 26 years of practice. A substantial number of these cases (approximately 66) have been reported.

From 1974 to 1993, my appearances in court were very frequent and included evidentiary hearings and jury and non-jury trial work. I was involved in cases dealing with a wide range of subjects, including antitrust, RICO, securities, banking and negotiable instruments, alcoholic beverage labeling, advertising and excise taxes, copyright, unfair competition, breach of contract, complex tort litigation, insurance, admiralty (in rem and in personam proceedings involving the arrest of vessels), civil rights and labor. During this period, I also supervised the litigation work of many attorneys in the litigation division of the Firm. In addition, I joined co-counsel from the mainland in the supervision of discovery (including the taking of depositions), preparation of dispositive motions, evidentiary hearings and many court appearances to discuss the ultimate disposition of cases before the U.S. District Court for the District of Puerto Rico and, to a limited extent the Trial and Supreme Courts of Puerto Rico. I also participated fully in discovery and motion practice in a series of complex civil actions.

During the 1980's and 1990's, I also engaged to a limited extent in corporate work, and became involved in the drafting of opinion letters, commercial agreements and federal banking law.

I also developed an extensive administrative practice before the U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms involving alcoholic beverage unfair trade matters. I also participated in joint seminars for alcoholic beverage industry members with Bureau of Alcohol, Tobacco and Firearms officials on the subject of compliance with the unfair trade provisions of the Federal Alcohol Administration Act and pertinent regulations. As a result of these

seminars I prepared an in-house client manual for compliance with federal alcoholic beverage law and regulations.

I also became involved in federal communications law and helped organize Puerto Rico's first long distance company, now a private enterprise.

During this period, I was also appointed an arbitrator of the New York Stock Exchange and presided over complex arbitration proceedings involving employment agreements between stockholders and stock brokerage houses, as well as investor related matters.

From January 1993 to October 1994, I worked exclusively on two important civil rights cases involving the Government of Puerto Rico. Morales-Feliciano v. Pedro Rosselló, Civ. 79-4 (PG) was a complex civil suit challenging conditions of confinement, particularly health conditions and overcrowding, in the Puerto Rico correctional system. This case is currently under a consent decree. Roberto Navarro Ayala, et al v. Pedro Rosselló, et al, Civ. 74-1301 (HL) was another complex civil rights case challenging the conditions of hospitalization of the mentally ill in a Government Psychiatric Hospital run by Puerto Rico's Health Department.

Since 1994, I have continued to handle litigation and supervise attorneys from my firm in complex cases and matters such as antitrust, RICO, air transportation, constitutional, employment and administrative law. Additionally, I have been actively involved in litigation motion practice, pretrial orders, status, settlement conferences, and the preparation of cases for trial (e.g. motions in limine, proposed jury instructions in RICO and aviation cases) in the U.S. District Court for the District of Puerto Rico. At the same time, I have continued to handle appeals before the U.S. Circuit Court for the First Circuit and, to a limited extent, the Trial and Supreme Courts of Puerto Rico. I have also appeared before the Panel on Multi-District Litigation in Aviation related matters.

Over the last six years, I have also participated in general litigation and antitrust seminars organized by my firm for clients and other members of the business community.



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

My typical clients have included the State Government and Government officials, distilleries, banks, pharmaceutical companies, construction and trading companies, environmental service companies, insurance companies, health insurers, communication enterprises, power co-generation facilities, air carriers, and air cargo carriers.

I have extensive experience in the following areas of the law: alcoholic beverages, health facilities and health related facilities, banking, labor, civil rights, constitutional law, corporate law and commercial agreements, general tort and contract litigation, communications, antitrust, unfair competition, and RICO litigation, power industry, admiralty, arbitration, copyright infringement and unfair competition, aviation, and environmental law.

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

In the last five years, I have appeared in court occasionally.

My appearances have primarily involved motion practice, pretrial conferences, settlement, and status conferences, temporary restraining orders, and requests for injunctive and declaratory relief.

2. What percentage of these appearances was in:
  - (a) federal courts - 90%
  - (b) state courts of record - 8%
  - (c) other courts (Administrative) - 2%
3. What percentage of your litigation was:
  - (a) civil - 100%
  - (b) criminal - 0%

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

One case was tried to verdict and one case was tried to judgment before courts of record. In the case tried to verdict I was associate counsel. In the case tried to judgment I was lead counsel. This does not include cases decided on motions to dismiss and/or for summary judgment.

5. What percentage of these trials was:

(a) jury - 50%

(b) non-jury - 50%

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

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

- 1) Adolfo Nones Manescau v. Chase Manhattan Bank, N.A., Civ. No. 75-1171 (1975) (Judge Juan R. Torruella) (United States District Court for the District of Puerto Rico).

This civil diversity action was based on slander of title because of an alleged negligent recordation of a collection judgment in the Registry of Property. It was the first slander of title case tried before the U.S. District Court for the District of Puerto Rico.

I was actively engaged in discovery and trial as associate counsel for defendant bank together with lead counsel Charles Cordero, Esq. who also represented defendant through defendant's insurance company. The case was tried in

1977. The jury returned a verdict for defendant. The plaintiff did not file an appeal.

Counsel for plaintiffs:

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Lead co-counsel for defendant:

Charles Cordero, Esq. (now Circuit Judge)  
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- 2) Alberto Umpierre v. Telemundo, Inc., Civ. 75-689 (901) (1976-1977)  
(Judge Wilfrido Roberts) (Superior Court, San Juan, Puerto Rico).

This civil action was based on an alleged breach of contract arising from a television station's cancellation of the transmission of a baseball series with plaintiff as narrator and producer. Following trial, the court entered judgment for defendant. To the best of my knowledge, it was the first time that a local television station had been sued by a producer and narrator. I tried the case as counsel for defendant, together with an associate of my firm, Arturo Vera. (I have been unable to locate his current address and phone number).

Counsel for plaintiff:

Pedro Toledo González, Esq.  
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San Juan, PR 00909  
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- 3) Mitsui & Co. (U.S.A.) Inc. v. Puerto Rico Water Resources Authority, 528 F. Supp. 768 (D.P.R. 1981) (Judge Juan M. Pérez-Giménez).

This was a complex civil litigation involving the design and construction of a power plant in Puerto Rico (the Aguirre Power Plant). I acted as local counsel for plaintiff. The action was for breach of contract but defendant raised a real party in interest dispositive motion to dismiss under Puerto Rican law, which was an issue of first impression for a federal diversity court in Puerto Rico. This issue was extensively briefed and argued before the court. A series of depositions and massive document discovery preceded the motion. I handled all the civil law aspects of the motions and briefs filed. The court ruled in favor of plaintiff and denied the motion to dismiss. The case also involved the decision of other significant issues such as the applicability of Puerto Rico's accountant's privilege to documents located in New York and whether the translation into English of Spanish and Japanese documents to be produced and appurtenant costs were contemplated by the Federal Rules of Civil Procedure governing discovery. In Re Puerto Rico Electric Power Authority, 687 F. 2d 501 (1<sup>st</sup> Cir. 1982) (Judges Campbell, Coffin, and Breyer). The case was settled in 1983, on the eve of trial.

Counsel for plaintiff:

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- b) Lock Holmes, Esq.  
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Counsel for defendant:

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- b) Kenneth Cushman, Esq.  
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- c) K. Robert Conrad, Esq.  
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- 4) Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, 506 U.S. 139, 113 S. Ct. 684, 121 L. Ed. 2d 605 (1993) (Justice White, with whom Rehnquist, C. J. Blackmun, O'Connor, Scalia, Kennedy, Souter and Thomas, JJ concurred; Stevens J, dissenting) (holding that an interlocutory order denying 11<sup>th</sup> Amendment immunity is immediately appealable), reversing Metcalf & Eddy, Inc. v. Puerto Rico Aqueduct and Sewer Authority, 945 F. 2d 10 (1<sup>st</sup> Cir.) (Judges Breyer, Aldrich and Selya), on remand from United States Supreme Court, 991 F. 2d 935 (1<sup>st</sup> Cir. 1993) (Judges Breyer, Aldrich and Selya) (11<sup>th</sup> Amendment Immunity issue decided on the merits in favor of Metcalf & Eddy.) Related case: Colegio de Ingenieros y Agrimensores de Puerto Rico v. Autoridad de Acueductos y Alcantarillados, 92 JTS 137 (Justice Naveira) (1992) (holding that the College of Engineers and Architects has standing to challenge a contract for engineering services between two corporations and declaring null certain clauses of the agreement).

This complex civil case involved the massive repair of Puerto Rico's waste water treatment plants which had been ordered arrested by the federal Environmental Protection Agency. A financial audit by the government of Metcalf & Eddy's expenses and billing was conducted and I acted as counsel for Metcalf during the audit. Thereafter, I became local counsel for Metcalf in a civil breach of contract suit filed in federal court. The case involved issues of first impression such as the legality of a contract between a corporation and a Puerto Rico public corporation for the practice of engineering, proper governmental procedures in conducting an audit, the appealability of an interlocutory order by a public corporation claiming Eleventh Amendment immunity, and the legality of certain assignments made.

I actively participated as local counsel in massive discovery, the drafting of dispositive motions, the Eleventh Amendment immunity appeals from an interlocutory order (Judge Jaime Pieras) and the presentation of briefs on the practice of engineering issues before the Supreme Court of Puerto Rico. My role as local counsel ended in January 1993, after argument before the Supreme Court of the United States on the issue of appealability of the District Court's interlocutory order denying defendant's claim of 11th Amendment immunity.

Counsel for plaintiff:

- a) Peter Sipkins, Esq. (lead counsel)  
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- b) James Dobbs, Esq., Senior Vice President  
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Counsel for defendant:

- a) Michael T. Brady, Esq.  
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- b) Arturo Trías, Esq., and  
José Trías Monge, Esq.  
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c) Perry M. Rosen, Esq.  
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5) In re the Justices of the Supreme Court of Puerto Rico, 695 F.2d 17 (1<sup>st</sup> Cir. 1982), (Judges Coffin, Bownes and Breyer).

The Justices of the Supreme Court of Puerto Rico were sued in federal court because of an alleged violation of the civil rights of certain members of Puerto Rico's Integrated Bar Association. The Justices had upheld the constitutionality of Puerto Rico's Integrated Bar and plaintiffs were challenging that decision in federal court alleging that the Justices had conspired with the Puerto Rico Bar Association. At stake was the institutional integrity of the judicial function of the Justices of the Supreme Court. I defended the Justices in hearings held in the United States District Court (Judge Juan R. Torruella) together with co-counsel, and filed a Petition for Mandamus and Stay before the U.S. Court of Appeals for the First Circuit after the District Court ordered limited discovery from the Justices. I assumed a leading role in arguing the Petition for Mandamus before the First Circuit and thereafter continued to represent the Justices in certain remedial aspects of the litigation. The Court of Appeals granted in part the Petition for Mandamus, ordered that no discovery be taken from the Justices, and further ordered that the Justices were to be treated as purely nominal parties in the litigation.

Co-counsel for defendants The Justices of the Supreme Court of Puerto Rico:

b) Hon. Miriam Naveira de Rodón, now  
Justice of the Puerto Rico Supreme Court  
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San Juan, PR 00906  
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c) José Julián Alvarez, Professor  
University of Puerto Rico, School of Law  
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San Juan, PR 00931  
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- d) Salvador Antonetti, Esq., Partner  
Fiddler, Gonzalez & Rodriguez, LLP  
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San Juan, PR 00936-3507  
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Counsel for plaintiffs:

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Márquez & Acevedo  
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Robert E. Schneider, Esq.  
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Counsel for co-defendant Puerto Rico Bar Association:

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- 6) Futura Development of Puerto Rico, Inc. v. Estado Libre Asociado de Puerto Rico, 144 F. 3d 7 (1<sup>st</sup> Cir. 1998) (Judges Torruella, Boudin and Stahl), cert. denied, \_\_\_ U.S. \_\_\_, 119 S. Ct. 338 (1998).

In this case, the United States Court of Appeals for the First Circuit held that a federal district court lacks subject matter jurisdiction to entertain a separate civil action against a State entity (here the Commonwealth of Puerto Rico) to enforce a prior judgment entered against one of the State entity's public corporations. I drafted the Brief and argued the appeal as counsel for the Commonwealth of Puerto Rico. The Court of Appeals reversed the Judgment entered by the District Court (Judge Salvador E. Casellas) and ordered the complaint dismissed as to the Commonwealth of Puerto Rico. A Petition for Certiorari was filed before the Supreme Court on the issue of subject matter



jurisdiction and the applicability of the Eleventh Amendment to Puerto Rico. I drafted a Brief in Opposition to the Petition. Certiorari was denied.

Co-Counsel for defendant Estado Libre Asociado de Puerto Rico (Commonwealth of Puerto Rico):

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Counsel for co-defendant Officers of the Commonwealth:

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Counsel for Futura Development of Puerto Rico, Inc.:

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- 7) Córdova & Simonpietri Insurance Agency, Inc. v. Chase Manhattan Bank, N.A., 649 F.2d 36 (1<sup>st</sup> Cir. 1981) (Judges Campbell, Bownes and Breyer).

In this case, the United States Court of Appeals for the First Circuit held that Section 3 of the Sherman Act prohibiting restraints of trade within a territory was no longer applicable to Puerto Rico after the advent of Commonwealth status in 1952. The court interpreted the Puerto Rico Federal Relations Act as being in the nature of a “compact” between Puerto Rico and the United States. It treated Puerto Rico like a “state” for the purpose of establishing the “commerce” requirement in an antitrust action. I researched and drafted the Brief for appellee Chase and also argued the appeal. The Court of Appeals affirmed the Judgment of the District Court (Judge Juan M. Pérez-Giménez) dismissing the action because the antitrust commerce requirement had not been satisfied.

Counsel for appellant:

Gilberto Mayo Pagán, Esq. (deceased)

Counsel for co-defendant-appellee Carlos M. Benítez, Inc.:

c) Antonio F. Montalvo, Esq.  
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363 Tetuán St. (law firm)  
San Juan, PR 00901

- 8) Camacho v. Autoridad de Teléfonos de Puerto Rico, 868 F. 2d 482 (1<sup>st</sup> Cir. 1989) (Judges Coffin, Bownes, and Selya).

In this case, the United States Court of Appeals for the First Circuit affirmed a District Court judgment (Judge Juan M. Pérez Giménez) dismissing the complaints of various individuals whose telephone conversations had been wiretapped pursuant to court orders obtained by federal enforcement officers. The court held that the Omnibus Crime Control and Safe Street Act applies to

Puerto Rico and preempts those provisions prohibiting wiretapping found in the Constitution of Puerto Rico. The decision also sustained the District Court's removal jurisdiction and the grant of immunity from suit to defendants the Puerto Rico Telephone Company and its officers.

I was counsel for the Puerto Rico Telephone Company in the District Court and the Court of Appeals and drafted the arguments on the applicability of the Omnibus Crime Control Act to Puerto Rico, the preemption of the Puerto Rico Constitution wiretapping prohibitions, and the removal jurisdiction of the District Court.

Counsel for plaintiffs:

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Counsel for co-defendants officers and past officers of the Puerto Rico Telephone Company:

- a) Lino J. Saldaña  
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- b) Daniel Domínguez, now U.S. District Judge  
U.S. District Court for the District of Puerto Rico  
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Counsel for intervenor-appellee the United States:

- a) John C. Harrison, Esq.  
Civil  
Department of Justice  
Washington, DC

(Present telephone and address unknown)

- b) Daniel López-Romo, Esq., former U.S. Attorney  
for the District of Puerto Rico  
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- 9) Cabot LNG Corp. v. Puerto Rico Power Electric Authority, 922 F. Supp. 707 (D.P.R. 1996) (Judge Daniel R. Domínguez).

In this case of first impression within the District of Puerto Rico, the federal District Court held that the professional and expert services exemption from bidding requirements found in the Enabling Act of Puerto Rico's Power Electric Authority applies to the selection of independent power companies to develop, finance, construct, own and operate co-generation facilities from which the Authority would purchase electric capacity and energy pursuant to long term contracts. I argued before the court on behalf of intervenor AES that the exemption was applicable to the two co-generators selected by the Authority. The court ruled that the professional and expert services exemption was applicable and dismissed the complaint. Plaintiff appealed and a settlement was reached prior to oral argument before the United States Court of Appeals for the First Circuit. I also drafted portions of the Joint Brief for Appellees.

Counsel for intervenor Ecoeléctrica:

- a) Francisco Besosa, Esq.  
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- b) Lynn R. Coleman, Esq.  
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Counsel for Plaintiff Cabot LNG Corporation:

- a) Jaime Sifre, Esq.  
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Counsel for defendant Puerto Rico Power Electric Authority:

Juan Villafañe-López, Esq.  
Pedro Santiago Torres, Esq.  
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- 10) National Pharmacies, Inc. v. Carmen Feliciano de Melecio, Secretary of Health, 51 F. Supp. 2d 45 (D.P.R. 1999) (Chief Judge Héctor M. Laffitte).

This case involved the issue whether mail service pharmacies are allowed or prohibited by the Pharmacy Act of Puerto Rico. National challenged the Pharmacy Act under the Commerce Clause but the Court avoided the constitutional issue by narrowly construing the territorial reach of the Pharmacy Act. The Court entered a declaratory judgment holding that National's mail service operations and its contract with Blue Shield of Puerto Rico were beyond the territorial reach of the Act. The Judgment was appealed by the College of Pharmacists of Puerto Rico and the Puerto Rico Association of Pharmacy Owners. Amici Briefs on behalf of Retired Persons Service Pharmacy (Pharmacy Branch of AARP) and the American Managed Care Pharmacy Association have been filed. I drafted the complaint and request for declaratory and injunctive relief as well as the stipulations filed in the District Court, assisted by an attorney from my office. I also drafted the appellate brief for National and argued the appeal on March 9, 2000.

Counsel for co-defendants-appellees College of Pharmacists and Association of Pharmacy Owners of Puerto Rico:

Johanna Emanuelli-Huertas  
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Counsel for co-defendant Secretary of Health of Puerto Rico:

- a) Alberto Rodríguez Ramos (former counsel)  
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- b) José R. Gaztambide, Esq. (present counsel)  
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Counsel for intervenor the Justice Department of Puerto Rico:

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Counsel for Amicus Curiae American Managed Care Pharmaceutical Association:

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Alexander H. Bopp, Esq.  
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Telephone: (787) 754-2323

19. Legal Activities : Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)
- a. Dupont Hotel Fire Litigation in the United States District Court for the District of Puerto Rico, where the undersigned actively participated in the obtention of expert testimony for the defense and the pre-trial interrogation of trial expert witnesses.
  - b. I served as lead counsel during 1993-1994 for the Government of Puerto Rico in a complex civil rights suit, Morales-Feliciano v. Pedro Rosselló, Civ. 79-4 (PG) challenging conditions of confinement, particularly health conditions and overcrowding, in the Puerto Rico prison system. This case is currently under a consent decree.
  - c. I have been involved in the preparation of legal memoranda to assist the U.S. Attorney's office in the investigation of potential antitrust criminal violations.
  - d. I have presided as member and/or Chairman of the Panel over complex New York Stock Exchange Arbitration proceedings.
  - e. I have been actively involved in Bureau of Alcohol, Tobacco and Firearms investigations on taxes, labeling and unfair trade practices and have participated with ATF enforcement officers in seminars to members of the liquor industry. In connection with the events, I have also conducted client audits and prepared a Manual for Compliance with ATF regulations.

- f. As a member of the Puerto Rico Board of Bar Examiners (1980 to 1984), I have drafted questions on contracts, civil procedure and torts, and participated in a reformulation of the Bar Examination with the Justices of the Supreme Court of Puerto Rico and other members of the Puerto Rico Bar.
- g. As a member of the Federal District Examination Committee from 1979 to 1995, I drafted questions on civil procedure, jurisdiction, and appellate practice and helped prepare the final format for Examination with the other members of the Committee and Judges of the District Court.
- h. As Chair of the Federal District Court Admissions Committee from 1995 to date, I have conducted innumerable due diligence searches on the professional qualifications, character and fitness of applicants for admission to the United States District Court for the District of Puerto Rico. I have also presided over hearings to admit and to reinstate applicants as members of the Bar of the Court.
- i. As instructor of the Federal Bar Association from 1995 to 1999, I have lectured on Federal Jurisdiction and Appellate Practice in the Bar Review Course sponsored by the Association twice a year.
- j. As Chairman of the Committee to Review and Recommend Amendments to the Local Rules in civil cases from 1999 to date, I have engaged in a full scale revision of the Local Rules of Court to conform them with the Federal Rules of Civil Procedure and the Supplemental Admiralty Rules. I am also involved with other members of the Committee in the preparation of a Mediation Program for the District.



**II. Financial Data and Conflicts of Interest (Not Public)**

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

Savings 1165(e) plan: \$106,437 to be paid when I terminate my relationship with Fiddler, González & Rodríguez, LLP.

Liquidation of Partnership Capital Account in Fiddler, Gonzalez & Rodriguez, LLP: \$43,433 to be paid in monthly installments of not less than \$1,000 in two years, assuming an employment termination date in 2000.

Pension from the FGR Pension Plan Trust (an independent entity from Fiddler, González & Rodríguez, LLP) with an accrued value of \$491,635 or more and monthly payments of \$9,898.46, assuming an employment termination date in 2000.

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

I would recuse myself after disclosing the conflict or potential conflict to the parties and their counsel in any case coming before me for a decision, unless all parties and their counsel agree that I should remain as presiding Judge. I would comply with all laws, regulations or Canons of Ethics applicable to federal judicial officers including the Code of Conduct for United States Judges and the Ethics in Government Act of 1978, as amended.

I have been a partner of Fiddler, González & Rodríguez, LLP for 21 years. I would not hear cases where an attorney for the firm represents one of the parties for at least 2 years. I would not hear cases from clients I represented while at the firm for at least 2 years. I would, of course, not hear any case where I have participated as counsel for one of the parties. I would not participate and/or hear any case where I have a financial interest in one of the

parties, e.g. stock ownership. I would not participate or hear any case where one of my family members is a party or counsel. I would not participate or hear cases where I am still a consultant on an ad honorem basis to any non-profit party.

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

No.

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

Please see attached Financial Disclosure Form AO10.

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

Please see attached Net Worth Statement.

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

No.

## 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	8,	213	.00	Notes payable to banks—secured		
U.S. Government securities—add schedule				Notes payable to banks—unsecured		
Listed securities—add schedule	36,	566	.00	Notes payable to relatives		
Unlisted securities—add schedule				Notes payable to others		
Accounts and notes receivable:				Accounts and bills due	34,	429 .00
Due from relatives and friends				Unpaid income tax		
Due from others				Other unpaid tax and interest		
Doubtful				Real estate mortgages payable—add schedule	197,	413 .00
Real estate owned—add schedule	250,	000	.00	Chattel mortgages and other liens payable		
Real estate mortgages receivable				Other debts—itemize:		
Autos and other personal property	50,	000	.00			
Cash value—life insurance						
Other assets—itemize:						
Investment in IRAS and 1165(e) Savings Plan	127,	907	.00			
Participation in Inheritance	27,	432	.00			
Accrued value Pension Benefits Plan	491,	635	.00	Total Liabilities	231,	842 .00
Participation in FGR, L.L.P.	43,	433	.00	Net Worth	803,	344 .00
Total Assets	1,035,	186	.00	Total Liabilities and net worth	1,035,	186 .00
<b>CONTINGENT LIABILITIES</b>				<b>GENERAL INFORMATION</b>		
As endorser, comaker or guarantor	None			Are any assets pledged? (Add schedule)	No	
On leases or contracts	None			Are you defendant in any suits or legal actions?	No	
Legal Claims	None			Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax	None					
Other special debt	None					

**SCHEDULE**

- |    |  |              |
|----|--|--------------|
| 1. | Chase Manhattan Bank Common Stock:             | 389 Shares   |
| 2. | Real Estate Mortgage over principal residence: | \$197,413.00 |

**III. GENERAL (PUBLIC)**

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.
  - a. I have performed pro bono work for the Association for Intercultural Exchange, Inc. a non-profit corporation dedicated to the cultural, moral and educational advancement of women in Puerto Rico. Apart from general legal advice, I have successfully represented the Association in the administrative permit process for the establishment of a University Residence and Study Center for young women in the Island. I have also defended the Association and prevailed in litigation involving the validity of restrictive covenants. On a pro bono basis, I serve as legal advisor to an Institute of Hospitality (Monteclaro) sponsored by the Association of Cultural Exchange, Inc. which trains and educates girls from disadvantaged families and helps to place them in hotels, restaurants, and other hospitality-related companies.
  - b. I have also performed pro bono litigation work for Fundación Pro Ayuda, Inc., a non-profit corporation dedicated to the raising of funds to assist and offer economic help to institutions dedicated to the prevention of child abandonment and abuse in Puerto Rico. In 1992, I supervised an associate of the firm in the filing and prosecution of a declaratory judgment action in the courts of Puerto Rico seeking declaratory relief that a foster home investigated for child abuse by the Department of Social Services of Puerto Rico was not entitled to certain funds initially destined for the construction and expansion of a new foster home by the same owners because they had not met the requisite licensing requirements. The court entered judgment granting the declaratory relief requested by the Fundación.
  - c. I handled a pro bono habeas corpus court-appointed appeal together with an associate of the firm. See, Cruz-Sánchez v. Rivera-Cordero, 835 F.2d 947 (1st Cir 1987). The United States Court of Appeals for the First Circuit initially held that the State remedies had not been exhausted. Subsequently, we represented Mr. Cruz-Sánchez before the Supreme Court of Puerto Rico. Once the Supreme Court denied a Petition for Certiorari challenging his incarceration on constitutional grounds, we also represented Mr. Cruz-Sánchez

for the second time before the United States Court of Appeals for the First Circuit. The Court of Appeals denied our second Petition for Habeas Corpus relief. We then filed a Petition for Rehearing which was also denied.

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

I belonged to an all-male social fraternity named AFDA (in Spanish: Asociación Fraternal de Amigos) (in English: Fraternal Association of Friends) which by definition had only male members. The period of my membership was from approximately 1980 to late 1989 or early 1990. I must clarify that women are not excluded from the fraternity's facilities, and widows of deceased members are granted the use of facilities. I visited the fraternity's facilities with my wife and two daughters for dinners and/or brunches on Sundays and parties. I also used the fraternity's dining room to entertain clients. I resigned my membership in late 1989 or early 1990 because of my disagreement with the AFDA policy of excluding women members and because I decided to join the Caribe Hilton Swimming and Tennis Club. After my resignation, I have occasionally visited the facilities when invited by one of the members, usually to discuss legal matters over lunch.

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

There is no selection commission in Puerto Rico to recommend candidates for nomination to the federal courts. The suggestion that I could be a potential nominee first came in 1994 from the Honorable Baltasar Corrada del Río, former Secretary of State and now Supreme Court Justice. I welcomed the suggestion, since I had for some time been interested in public service. I was then interviewed by Puerto Rico's Resident Commissioner in Washington, the Honorable Carlos Romero Barceló, who together with the Governor of Puerto Rico, the Honorable Pedro Rosselló, jointly recommended my nomination to

President Clinton on February 14, 1997. After the 105th Congress adjourned, the Governor and the Resident Commissioner resubmitted their recommendation to President Clinton on November 2, 1998. My potential nomination was also endorsed by various legislators from Puerto Rico, such as the President of the Senate, Honorable Charles Rodríguez and the Honorable Kenneth McClintock, Chairman of the Puerto Rico Senate Government and Federal Affairs Committee. I was also found to be a qualified and acceptable candidate by the Puerto Rico Speaker of the House, the Honorable Edison Mislá Aldarondo, and the House's Majority Leader, the Honorable Angel Cintrón, as well as by former Governor Luis A. Ferré. Finally, my candidacy was endorsed by the Hispanic National Bar Association, through its Judiciary Committee which interviewed me and conducted a due diligence search on my professional qualifications. On January 24, 2000 I was called by the White House and told that I was a potential candidate for a judicial nomination and sent all pertinent questionnaires. I was then interviewed by the Justice Department, investigated by the FBI, and interviewed and found to be qualified by the ABA Standing Committee on the Judiciary.

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

No.

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

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

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

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Federal judges should decide only concrete and actual cases or controversies under Article III of the Constitution. They are duty bound to find facts in accordance with the Federal Rules of Civil Procedure, Criminal Procedure and Evidence. Judicial decisions (within pertinent constitutional and statutory jurisdictional limitations) must be based on the rule of decision applicable to those facts derived from legal sources such as constitutional, statutory, or case precedential authority.

Federal judges should never project their particular views on any individual or class of individuals using the parties or the case as a vehicle to impose such views. They should respect the dual federal-state system of government and entertain only those cases or controversies specified in Article III and found in specific congressional grants of jurisdiction.

Standing, ripeness, and mootness are integral parts of the case or controversy requirement imposed on the federal judiciary by Article III. Federal judges must continuously monitor their cases to satisfy themselves that an actual case or controversy exists during all stages of litigation. The limited jurisdiction of the federal courts must always be observed because it is an integral part of the separation of powers found in the Constitution.



Federal judges must correctly apprehend and respect the proper nature, function and role of any institution that comes before the court. If, because of defects in management or administration, a party has suffered damages, the court may redress the injury or fashion an adequate remedy to prevent further damages, but it should not become a de facto administrator of the institution. The proper role of the federal judiciary is to adjudicate concrete cases or controversies of an adversarial nature, not to become the perpetual overseer of litigating parties in any future conduct or action not related to the particular claims before the court.

Mr. and Mrs. Jay Garcia Gregory  
Statement of Assets and Liabilities  
March 15, 2000

ASSETS		
Cash in bank (Sch A)		\$8,213
Stocks (Sch B)		\$36,566
Real Estate Owned (Sch C)		\$250,000
Furniture and Fixtues		\$25,000
Jewelry		\$10,000
Automobiles		\$15,000
One Third Participation Inheritance:		
Apt Condado 54		\$19,470
Cash in bank		\$3,960
Stock Chase Manhattan Bank		\$4,002
Investments in Individual Retirement Accounts		
Jay Garcia		\$5,636
Mrs.Jay Garcia		\$15,834
Capital account Fiddler Gonzalez & Rodriguez LLP		
As of September 30, 1999		\$43,433
Accrued value FGR Proprietary Partners		
Pension Plan		\$491,635
Savings Fiddler Gonzalez & Rodriguez 1165(e) Plan		\$106,437
TOTAL ASSETS		<u>\$1,035,185</u>
LIABILITIES		
Accounts payable		\$34,429
Mortgage Payable (Sch C)		\$197,413
TOTAL LIABILITIES		<u>\$231,842</u>
NET WORTH		<u>\$803,343</u>
TOTAL LIABILITIES AND NET WORTH		<u>\$1,035,185</u>

Mr. and Mrs. Jay Garcia Gregory  
 Supporting Schedules  
 Statement of Assets and Liabilities  
 March 15, 2000

Schedule A:

Cash in bank :

Bank	Balance	Line of Credit	Balance	L/C
Bank Trust	\$5,000		\$25,000	\$0
Citibank	\$3,000		\$2,000	\$0
Doral	\$213		\$5,000	\$0
Total	\$8,213			

Schedule B:

Stocks :

Shares	Company	In name of	Market Value	Pledged
389	Chase Manhattan Bk.	Jay Garcia	\$36,566	NO

Schedule C:

Real Estate Owned:

Location property	Title in name of	Cost	Appraisal	Mortgage	
				Monthly	Balance
Malaga 8-51 Urb Torrimar Guaynabo, PR	Jay Garcia	\$75,000	\$250,000	\$1,368	\$197,413

AO-10 (w)  
Rev. 1/98

**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**

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

<b>1. Person Reporting</b> (Last name, first, middle initial) Garcia-Gregory, Jay A.	<b>2. Court or Organization</b> District of Puerto Rico	<b>3. Date of Report</b> 04/05/1990
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	<b>5. Report Type (check type)</b> X Nomination, Date 04/05/1990 ____ Initial ____ Annual ____ Final	<b>6. Reporting Period</b> 01/01/1999 to 03/31/1990
<b>7. Chambers or Office Address</b> POBox 363507 San Juan PR 00936 254 Munoz Rivera Ave 6th Floor Hato Rey, PR 00918	<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	

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

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

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Partner	Fiddler, Gonzalez & Rodriguez, L.L.P.
2 Consultant	Monteclaro, Inc. (non-profit educational institution)
3	

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

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 2000	Partnership Agreement with Partners of Fiddler, Gonzalez & Rodriguez, L.L.P. with a 5.1793% of ownership.
2 2000	Agreement for liquidation of Capital Account, as adjusted to date of termination of employment in monthly payments of not less than \$1,000 in two years.
3 1992	Fiddler, Gonzalez & Rodriguez Employees' Savings Plan to be withdrawn upon termination of employment.

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

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1998	Fiddler, Gonzalez & Rodriguez, L.L.P. compensation for services	\$ 197,296.00
2 1999	Fiddler, Gonzalez & Rodriguez, L.L.P. compensation for services	\$ 210,029.00
3 2000	Fiddler, Gonzalez & Rodriguez, L.L.P. partial liquidation of capital account.	\$ 50,000.00
4 2000	Fiddler, Gonzalez & Rodriguez, L.L.P. compensation for services	\$ 49,153.00

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Garcia-Gregory, Jay A.	04/05/1900

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

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
<input type="checkbox"/>	NONE	
1	Exempt.	
2		
3		
4		
5		
6		
7		

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

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
<input type="checkbox"/>	NONE		
1	Exempt		
2			
3			

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

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
<input type="checkbox"/>	NONE		
1	The Bank Trust	Revolving Line of Credit	
2			
3			
4			
5			
6			

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

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Garcia-Gregory, Jay A.	Date of Report 04/05/1900
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*(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

**VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions**

A. Description of Assets  <i>Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.  Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure				
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)	
NONE (No reportable income, assets, or transactions.)					Exempt					
1 Chase Manhattan Corp. Common Stock	E	Dividend	K	T						
2 BankTrust Bank Account	A	Interest	K	T						
3 Doral Bank Account	A	Interest	J	T						
4 1/3 share apartment, Condado, San Juan, Puerto Rico		None	K	Q						
5 Accrued Value FGR Proprietary Partners' Plan		None	N	W						
6 Savings Fiddler, Gonzalez & Rodriguez, L.L.P. 1165 (e) Plan	C	Dividend	M	T						
7 Citibank IRA (S)	A	Interest	J	T						
8 BankTrust IRA (S)	A	Interest	J	T						
9 BankTrust IRA	A	Interest	J	T						
10 BBV IRA (S)	A	Interest	J	T						
11 BBV IRA	A	Interest	J	T						
12										
13										
14										
15										
16										
17										
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more 3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated										

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Garcia-Gregory, Jay A.	04/05/1900

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.**

*(Indicate part of report.)*

II. 4. Fiddler, Gonzalez & Rodriguez Retirement Plan with pension payments upon termination of employment.

VII. The apartment mentioned therein was appraised in \$59,000. Date of appraisal: July 29, 1996.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Garcia-Gregory, Jay A.	04/05/1900

## IX. CERTIFICATION

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

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

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature  Date 4/6/00

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

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



**I. BIOGRAPHICAL INFORMATION (PUBLIC)**

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

Beverly Baldwin Martin

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

Residence: Macon, Georgia

Office: 433 Cherry Street  
Macon, GA 31201

**3. Date and place of birth.**

August 7, 1955  
Macon, Bibb County, Georgia

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

I am not married.

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

University of Georgia School of Law (Juris Doctor, 1981)  
Athens, Georgia  
(1978 - 1981)

Stetson University (Bachelor of Arts, 1976)  
Deland, Florida  
(1974 - 1976)

Mercer University (No degree awarded)  
Macon, Georgia  
(1973 - 1974)

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

Office of the U.S. Attorney Middle District of Georgia 433 Cherry Street Macon, GA 31201	(1997 - present) United States Attorney
Office of the U.S. Attorney Middle District of Georgia 433 Cherry Street Macon, GA 31201	(1994 - 1997) Assistant United States Attorney
State of Georgia Office of the Attorney General 40 Capitol Square Atlanta, GA 30334	(1984 - 1994) Assistant Attorney General
Martin, Snow, Grant & Napier 240 Third Street Macon, GA 31201	(1981 - 1984) Associate Attorney
Butler, Binion, Rice, Cook & Knapp 1747 Pennsylvania Avenue NW, Suite 900 Washington, DC 20006	(1978) Receptionist
Can Manufacturers' Institute 1625 Massachusetts Avenue, NW, Suite 500 Washington, DC	(1977) Receptionist
Billy Adams Campaign for Congress [no longer in business]	(1976) Assistant to Campaign Manager
Lone Star Corporation P. O. Box 1606 Macon, GA 31202	(1990 - present) Member, Board of Directors
Macon State College Foundation 100 College Station Drive A-228 Macon, GA 31206	(1999 - present) Member, Board of Directors

Career Women's Network of Macon (1996 - 1997)  
P. O. Box 6690 Member, Board of Directors  
Macon, GA 31206 - 6690

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

No.

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

In March 1999, I was one of two recipients of the 1999 Women of Achievement award given by Career Women's Network.

On May 29, 1999, I received the distinguished alumni award for outstanding career achievements from Stratford Academy, a high school I attended in Macon, Georgia from 1972 -1973.

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

Georgia Bar Association (1981 - present)  
District Representative to Younger Lawyers Executive Committee  
(1981 - 1984)  
Chair, Administrative Law Section (1995 - 1996)  
Committee on Women and Minorities in the Bar (1999 - present)

Macon Bar Association (1981 - 1984; 1994 - present)

William Augustus Bootle Inn of Court (1999 - present)  
Master

American Judicature Society (intermittently since approximately 1994)

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

I do not belong to any organizations that are active on lobbying before public bodies. The other organizations I belong to are the following:

Career Women's Network, Macon, Georgia (1994 - present)  
Board Member (1996 - 1997)  
Chair of the Scholarship Committee (1996 - 1997)  
Woman of Achievement Award (1999) (one of two recipients)

Georgia Association of Women Lawyers (I have belonged intermittently since 1981.)

Lawyer's Club of Atlanta (1989 - present)

Democratic Women's Organization, Bibb County (I attended two meetings in early 1997.)

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

Georgia Trial Courts: (June 1981)

Georgia Court of Appeals: (October 22, 1981)

Georgia Supreme Court: (October 22, 1981)

United States District Court, Middle District of Georgia: (August 15, 1981)

United States District Court, Southern District of Georgia: (May 22, 1989)

United States District Court, Northern District of Georgia: (April 22, 1991)

United States Court of Appeals, Eleventh Circuit: (November 1981)

United States Supreme Court: (December 11, 1989)

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

I have published one article, a casenote in law school. I have attached a copy of this casenote, and it can be found at:

"European Economic Community Article 119 of the British Equal Pay Act of 1970," 10 Ga. J. Int'l & Comp. L. 203 (1980)

I have not given any speeches on issues of constitutional law or legal policy.

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

My health is excellent. My last complete physical exam was February 21, 2000.

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

I have never held a judicial office.

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

Not applicable.

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

I currently serve as the United States Attorney for the Middle District of Georgia. I became the Acting United States Attorney in November 1997, and was confirmed by the United States Senate as the United States Attorney in February 1998.

17. **Legal Career:**

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

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

I have not served as a clerk to a judge.

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

I have not practiced alone.

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

I was an associate attorney at the law firm of Martin, Snow, Grant and Napier from July 1981 until December 1984. The address of the law firm is:

Martin, Snow, Grant & Napier  
240 Third Street  
Macon, GA 31202

I was an Assistant Attorney General in the State Law Department of the Attorney General of Georgia from December 1984 through May 1994. The address of the Attorney General's office is:

Office of the Attorney General  
40 Capitol Square S.W.  
Atlanta, GA 30334-1300

I became an Assistant United States Attorney in the Middle District of Georgia in May 1994. I became the Acting United States Attorney in November 1997, and was confirmed by the United States Senate as the United States Attorney in February 1998. The address of this office is:

Office of the United States Attorney  
Middle District of Georgia  
433 Cherry Street  
Macon, GA 31201

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

During my employment with Martin, Snow, Grant & Napier (1981-1984), I developed plans in compliance with the Employee Retirement Income Security Act of 1974 ("ERISA"). I also represented creditors in federal bankruptcy proceedings. Additionally, from time to time, I represented indigent defendants on an appointed basis in the Superior Court of Bibb County, Georgia.

From 1984 - 1991, while employed at the Office of the Attorney General, I litigated personal injury and property damage cases before courts in all parts of the state of Georgia. I briefed and argued issues at the trial court level as well as in the Appellate Courts of Georgia. In addition, I represented the Georgia Department of Transportation in personnel matters before the Georgia Commission on Equal Opportunity.

During the period of 1991 - 1994, continuing in my employment at the Office of the Attorney General, I managed personnel and legal activities as the Director of the Business and Professional Regulation Division. Roughly 50% of my time was devoted to management, with the other 50% devoted

to legal work. My legal work consisted of prosecuting health care professionals for matters affecting their licensure, as well as defending Georgia Trial and Appellate Judges in both State and Federal Courts in legal actions filed against them. I also handled special projects for the Attorney General, including work related to the investigation of the lending practices of Fleet Finance Corporation, and how those practices affected Georgia's poor.

From May 1994 until November 1997, while serving as an Assistant United States Attorney, I prosecuted both narcotics and other federal crimes in the federal district courts of the Middle District of Georgia. The other federal crimes I prosecuted included the interstate distribution of child pornography, the production and distribution of counterfeit federal reserve notes, violations of federal firearms statutes, and bank robberies. I handled all aspects of my cases including the following: (1) grand jury investigations; (2) drafting and presenting the indictments to the grand jury; (3) pretrial hearings for the defendant's initial appearance and arraignment; (4) pretrial hearings related to evidentiary matters, such as motions to suppress evidence; (5) negotiations related to the defendants' entry of guilty pleas; (6) trials; (7) sentencing hearings; and (8) appeals.

From November 1997 until the present, I have served as the United States Attorney for the Middle District of Georgia. In this capacity, I have management responsibilities for approximately sixty employees as well as the legal matters they handle. I work with local, state, and federal law enforcement agencies in the seventy counties which comprise the Middle District of Georgia. I have been involved in the development of four "Weed and Seed" sites in Albany, Athens, Macon, and Valdosta, Georgia, each of which has been officially recognized by the Department of Justice. I also serve on the Attorney General's Advisory Council, and as Chair of the Executive Committee for the Organized Crime Drug Enforcement Task Force (OCDETF) for the Southeast Region of the United States.



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

During my time at Martin, Snow, Grant & Napier, my typical client was a bank or a small business that needed to file a claim in Bankruptcy court as a creditor, or needed a profit-sharing or retirement plan as defined by ERISA. Also, from time to time, I was appointed to represent indigent defendants who were charged with criminal violations in the Superior Court of Bibb County.

During my time at the Office of the Attorney General, my clients were the State of Georgia and those employed by the State.

During my time at the Office of the United States Attorney, my clients have been the United States of America and those employed by the United States.

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

During my time as an Assistant United States Attorney (May 1994 - November 1997) I appeared regularly in the federal courts of the Middle District of Georgia. I appeared in Federal District Court or its corollary Magistrate Division at least weekly. Since becoming United States Attorney in November 1997, however, I have appeared in Court only occasionally.

During the time I served as Director of the Business and Professional Regulation Section at the office of the Attorney General (1991 - 1994) I litigated many cases; approximately 85% of that litigation was before administrative tribunals. My other court appearances were almost exclusively in state court, and were less frequent than my appearances during my tenure as an Assistant United States Attorney.

My earlier work in the Attorney General's office (1984 - 1991) required me to be in court for hearings on motions or appellate matters at least once or twice a month. I did not try cases before juries as frequently during this period as I did during my tenure as an Assistant United States Attorney.

During the time that I worked as an associate attorney at the office of Martin, Snow, Grant & Napier, I appeared routinely in federal bankruptcy proceedings.

**2. What percentage of these appearances was in:**

During my tenure in the Office of the United States Attorney (1994 - present):

<b>(a) federal courts;</b>	100%
<b>(b) state courts of record;</b>	0%
<b>(c) other courts.</b>	0%

While I worked at the Office of the Attorney General, and served as the Director of the Business and Professional Regulation Division of that office (1991 - 1994):

<b>(a) federal courts;</b>	5%
<b>(b) state courts;</b>	10%
<b>(c) other courts.</b>	85% (administrative tribunals)

During my earlier years at the Office of the Attorney General (1984 - 1991):

<b>(a) federal courts;</b>	0%
<b>(b) state courts;</b>	75%
<b>(c) other courts.</b>	25% (administrative tribunals)

During my time at Martin, Snow, Grant & Napier (1981 - 1984):

<b>(a) federal courts;</b>	50% (U.S. Bankruptcy court)
<b>(b) state courts;</b>	50%
<b>(c) other courts.</b>	0%

**3. What percentage of your litigation was:**

During my time at the office of the United States Attorney (1994 - present):

<b>(a) civil;</b>	5%
<b>(b) criminal.</b>	95%

During my time at the office of the Attorney General of the State of Georgia (1984 - 1994):

<b>(a) civil;</b>	100%
<b>(b) criminal.</b>	0%

During my time at Martin, Snow, Grant & Napier (1981 - 1984):

<b>(a) civil;</b>	95%
<b>(b) criminal.</b>	5%

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

While serving as an Assistant United States Attorney, I tried two cases to verdict, and in a third, the defendant agreed to enter a plea of guilty after two days of presentation of evidence by the government. I served as sole counsel in one of the two cases I tried to verdict, and co-counsel in the other two.

At the Attorney General's office from 1991 - 1994, I would estimate that I handled ten non-jury trials before an administrative tribunal.

From 1984 - 1991, I tried two jury trials as sole counsel, one non-jury trial as sole counsel and four jury trials serving as associate counsel.

While at Martin, Snow, Grant & Napier (1981 - 1984), I tried one jury trial as associate counsel.

5. **What percentage of these trials was:**

During my tenure at the Office of the United States Attorney (1994 - present):

(a) jury; 100%

(b) non-jury. 0%

While serving as the Director of the Business and Professional Regulation Division of the Office of the Attorney General of Georgia (1991 - 1994):

(a) jury; 0%

(b) non-jury. 100%

During my earlier tenure at the Office of the Attorney General of Georgia (1984 - 1991):

(a) jury; 60%

(b) non-jury. 40%

During my time at Martin, Snow, Grant & Napier (1981 - 1984), I tried one case as associate counsel, and it was a jury trial.

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

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

- 1 United States v. Major  
U. S. District Court, Middle District of Georgia  
Crim. No. 5:94-CR-44(WDO)

This case involved the prosecution of fourteen individuals from the Milledgeville, Georgia area in a federal drug conspiracy to sell methamphetamine, cocaine and marijuana. I represented the United States of America. The evidence in the case included the results of wire interceptions on four telephone lines: approximately 7,000 telephone calls. Ultimately eleven of the defendants were convicted, with the remaining three placed on pretrial diversion. By the time of the trial, only two of the defendants remained, and they pled guilty to the charges after two days of the presentation of the government's evidence.

- a) The case was indicted in August 1994 and was tried in October 1996.
- b) The Honorable Wilbur D. Owens  
United States District Court, Middle District of Georgia
- c) I tried this case with Assistant U.S. Attorney Charles Calhoun. His address and telephone number are:

433 Cherry Street  
Macon, GA 31201  
(912) 752-3511

I did the bulk of the pretrial preparation. During the trial, however, Mr. Calhoun took responsibility for several witnesses, particularly those involved in monitoring the telephone intercept.

Opposing counsel in the Major case were as follows:

Mr. Charles Erion  
748-E North Houston Road  
P. O. Box 8548  
Warner Robins, GA 31095  
(912) 922-9185

(Mr. Erion is no longer a member of the Georgia Bar, and his whereabouts are not known. This is his last known address.)

Mr. Franklin J. Hogue  
201 Second Street, Suite 570  
P. O. Box 1795  
Macon, GA 31202  
(912) 750-8040

Mr. C. Alan Wheeler  
637 Cherry Street  
Macon, GA 31201-2623  
(912) 742-7488

Mr. Bennett T. Willis, Jr.  
788 Mulberry Street  
Macon, GA 31201-2640  
(912) 746-0048

Mr. Guy J. Notte  
123 Washington Street  
Madison, GA 30650  
(912) 343-0015

Mr. Doye E. Green, Jr.  
577 Mulberry Street  
912 Charter Medical Bldg.  
Macon, GA 31208-4077  
(912) 743-9517

Mr. Michael C. Daniel  
P. O. Box 1744  
Athens, GA 30601  
(706) 548-1151

Mr. John R. Francisco  
P. O. Box 181  
Macon, GA 31202-0181  
(912) 746-7606

Ms. Sandra J. Popson  
355 Cotton Avenue  
Macon, GA 31201-2687  
(912) 742-6481

Ms. Christina L. Hunt  
Federal Defenders Office  
306 E. Chestnut Street  
Yakima, WA 98901  
(509) 248-8920

Mr. Robert P. Westin  
P. O. Box 98  
Gordon, GA 31031-0098  
(912) 628-2144

Mr. Robert J. Daniel  
778 Mulberry Street  
Macon, GA 31201-2640  
(912) 741-0072

Mr. J. Gregory Spicer  
P. O. Box 1863  
Macon, GA 31202-1863  
(912) 474-1618

Mr. C. Rauch Wise  
305 Main Street  
Greenwood, SC 29646  
(864) 229 5010

Mr. Floyd M. Buford, Jr.  
P. O. Box 4747  
Macon, GA 31208  
(912) 742-3605

2            United States v. Dean  
              U. S. District Court, Middle District of Georgia  
              Crim. No. 3:95-CR-1(DF)

I represented the United States government in this prosecution of five defendants charged with conspiracy to distribute crack cocaine in the Athens, Georgia area. Each of the defendants entered a plea of guilty prior to the matter going to trial, putting to an end what had been a major crack cocaine operation in Athens, Georgia.

a)        This case was indicted in February 1995, and the last defendant was sentenced in October 1995.

b)        The Honorable Duross Fitzpatrick  
              U.S. District Court, Middle District of Georgia

c)        The opposing counsel were as follows:

Ms. Christina L. Hunt  
Federal Defender's Office  
306 E. Chestnut Street  
Yakima, WA 98901  
(509) 248-8920

Ms. Sandra Popson  
355 Cotton Avenue  
Macon, GA 31201-2640  
(912) 742-6481

Mr. Doye E. Green, Jr.  
577 Mulberry Street  
912 Charter Medical Bldg.  
Macon, GA 31208-4077  
(912) 743-9517

Mr. Gregory J. Spicer  
P. O. Box 1863  
Macon, GA 31202-1863  
(912) 474-1618

Mr. John R. Francisco  
P. O. Box 181  
Macon, GA 31202-0181  
(912) 746-7606

Mr. Floyd M. Buford, Jr.  
P. O. Box 4747  
Macon, GA 31208  
(912) 742-3605

Mr. C. Alan Wheeler  
637 Cherry Street  
Macon, GA 31201-2623  
(912) 742-7488

Mr. Curtis W. Miller  
P. O. Box 811  
Lithonia, GA 30058  
(770) 482-4814

3            United States v. Graves  
              U. S. District Court, Middle District of Georgia  
              Crim. No. 5:95-CR(WDO)

I represented the United States government in this prosecution of a violation of a federal firearms statute, specifically, possession of a firearm by a three-time convicted felon. In this case, the defendant, a three-time convicted felon, held his firearm to the head of a fourteen-year-old victim as he raped her. In addition to his three prior felony convictions, this defendant had an extensive history of being arrested for rapes for which he had never been successfully prosecuted. The investigation of the case demonstrated that because Mr. Graves' victims were often involved in illegal drug use at the time they were raped, they were either unwilling to come forward or subject to attack if they chose to testify.

In our federal firearms prosecution, Mr. Graves was convicted by the jury. Because of his extensive criminal history and the violence associated with his crimes, the Court departed upward from the sentencing guidelines and Mr. Graves was sentenced to a term of life imprisonment.

- a) This case was tried in October 1995. The Eleventh Circuit affirmed the conviction in June 1997.
- b) The Honorable Wilbur D. Owens  
U. S. District Court, Middle District of Georgia
- c) I tried this case with Assistant U. S. Attorney Jessica Hagen, who conducted the examination of some of the witnesses at trial. Her address and telephone numbers are as follows:

Office of the United States Attorney  
433 Cherry Street - Fourth Floor  
Macon, GA 31201  
(912) 752-3511

Opposing counsel was:

Mr. J. Robert Faulkner  
3539 Vineville Avenue  
Macon, GA 31204  
(912) 471-9509



4            United States v. Pope  
              U. S. District Court, Middle District of Georgia  
              Crim. No. 5:95-CR-38

I prosecuted this case on behalf of the United States government. I prepared all witnesses for trial and was sole counsel at the trial. It involved possession of a firearm by a three-time convicted felon. At the time he was arrested, the defendant had a number of weapons in his possession, including a sawed-off shotgun, as well as a trench coat, a ski mask and a stockpile of ammunition. Mr. Pope was convicted on all counts by the jury.

- a)    This case was tried in March 1996. The appeal is still pending.
- b)    The Honorable Duross Fitzpatrick  
          U.S. District Court, Middle District of Georgia
- c)    Opposing counsel in the trial of this matter was:

                  Mr. O. Hale Almand, Jr.  
                  P. O. Box 1605  
                  Macon, GA 31202-1605  
                  (912)746-2237

5            United States v. Taylor  
              U.S. District Court, Middle District of Georgia  
              Crim. No. 5:93-CR-21 (WDO)

I represented the U.S. government in this prosecution of a member of a counterfeiting ring. Mr. Taylor was found in possession of counterfeit twenty dollar federal reserve notes, most of which had been burned in an attempt to destroy the evidence. I prepared all witnesses for trial and negotiated Mr. Taylor's guilty plea.

- a.    This case was indicted in August 1992 (prior to the time I arrived at the U.S. Attorney's office), and Mr. Taylor was sentenced in February 1995. After his sentence, there was an appeal regarding a sentencing issue, which was decided in favor of the government.

b. The Honorable Wilbur D. Owens  
U.S. District Court, Middle District of Georgia

c. Opposing Counsel in this matter was:

Mr. Floyd M. Buford  
136 College Street  
P. O. Box 4747  
Macon, GA 31208  
(912) 742-3605

6 In re: E.I. Dupont de Nemours & Company  
Benlate Litigation  
Civil Action Number 4:95-CV-36

This procedurally unique case began as a civil suit brought in the Middle District of Georgia against E.I. Dupont de Nemours & Company ("Dupont") by a number of plaintiffs who had used a Dupont product, Benlate, to treat plants they raised professionally in their nurseries. Plaintiffs were seeking damages from harm alleged to have been done by this fungicide. After extensive and prolonged discovery disputes, the civil case was tried before a jury, but was settled during jury deliberations. However, after this resolution of the matter, the trial court found that Dupont had deliberately withheld information from the plaintiffs and the Court that would have supported the plaintiffs' claims against Dupont. After a lengthy exploration of this matter by the Court, a sanction of \$115 million was levied against Dupont. The Eleventh Circuit reversed the trial court's imposition of this sanction, and remanded the case back to the trial court, while at the same time recusing the original trial judge from the matter.

Upon remand, the new trial judge indicated at status conference that he was contemplating directing the office of the United States Attorney to pursue a criminal contempt case against Dupont. He ordered all investigative material be turned over to him for review, and thereafter entered an order directing the United States Attorney's office to prepare a show cause order as to why Dupont and any other party should not be charged with criminal contempt.

Prior to the entry of the show cause order, however, the Court entered a final order holding that a civil remedy was more appropriate than criminal contempt. The Court ordered Dupont to pay a sum of \$11 million to be

used as follows: to endow a professorial chair for ethics at each of Georgia's four accredited law schools in the amount of \$2.5 million; and to fund a symposium on ethics to rotate between these four law schools on an annual basis. The Court also ordered the law firm that had represented Dupont to pay \$250,000 to the Commission on Professionalism of the Chief Justice of the Supreme Court of Georgia.

During this litigation, I dealt personally with the Court regarding those criminal contempt matters in which he had called upon my office to participate. I also participated in the closed hearing which resulted in the resolution of this matter by order in the civil case. However, the investigation was handled primarily by my co-counsel.

- a. This office first participated in this case by way of a status conference held on January 12, 1998. The Consent Order and Final Judgment was entered on December 31, 1998.
- b. The Honorable Hugh Lawson  
U. S. District Judge, Middle District of Georgia
- c. My co-counsel were Mr. Pete Peterman and Ms. Jessica Hagen. They can be reached at the following address and telephone number:

433 Cherry Street  
Macon, GA 31201  
(912) 752-3511

The counsel involved in the underlying litigation were as follows:

Mr. C. Neal Pope  
P. O. Box 2128  
Columbus, GA 31902-2128  
(706) 324-0050

Mr. Richard H. Gill  
P. O. Box 347  
Montgomery, AL 36101  
(334) 834-1180

Mr. A. Stephens Clay  
1100 Peachtree Street  
Suite 2800  
Atlanta, GA 30309-4530  
(404) 815-6514

Mr. William H. Boice  
1100 Peachtree Street  
Suite 2800  
Atlanta, GA 30309-4530  
(404) 815-6514

Mr. John A. Chandler  
999 Peachtree Street, N.E.  
Atlanta, GA 30309-3996  
(404) 853-8029

Mr. John H. Fleming  
999 Peachtree Street, N.E.  
Atlanta, GA 30309-3996  
(404) 853-8000

7 Price v. Georgia Department of Transportation  
182 Ga. App. 353 (1987)

Price v. Georgia Department of Transportation  
257 Ga. 535 (1987)

I represented the State of Georgia in this proceeding which involved the issue of sovereign immunity in the State of Georgia, specifically whether sovereign immunity had been waived by the State of Georgia due to its purchase of insurance for state employees. I made the argument on behalf of the State of Georgia that the purchase of insurance for employees had not waived the State's sovereign immunity. The Court rejected this argument.

- (a) I was first assigned this matter when I began working in the Attorney General's office in 1984. The issues related to sovereign immunity were decided in the appellate courts in 1987, and I handled the underlying legal action until I became the Director of the Business and Professional Regulation Division of the Law Department in 1991.
- (b) The trial court judge in this proceeding was the Honorable Rosser Malone, who sat in the State Court of Dougherty County. Judge Malone is now residing in a nursing home.
- (c) Opposing Counsel in this matter was:

Mr. Terry J. Marlowe  
415 Society Avenue  
P. O. Box 227  
Albany, GA 31702  
(912) 878-6500

8 Georgia Department of Transportation v. Bonnett  
257 Ga. 189 (1987)

I represented the State of Georgia in litigation which involved the question of whether a public works project may be enjoined prior to anticipated damages being paid by the State. The Georgia Supreme Court ruled in favor of the position I was advocating, holding that the public works project could not be enjoined pending a determination of damages, but could proceed with the amount of damages to be decided at a later time.

- (a) This action was filed against the state in approximately 1985, and was settled shortly after the favorable ruling from the Georgia Supreme Court in 1987.
- (b) The Honorable John D. Crosby  
Superior Court of Tift County

The appeal was decided by the Georgia Supreme Court.

- (c) Opposing counsel was:

Mr. J. Hugh Gordon  
P. O. Box 268  
Tifton, GA 31793-0268  
(912) 386-8004

9 Miller v. Medical Association of Georgia  
262 Ga. 605 (1992)

I represented the Joint Secretary of the State of Georgia Examining Boards in this action defending the constitutionality of a statute. The statute prohibited persons other than doctors, dentists, podiatrists, and veterinarians from performing "any surgery, operation, or invasive procedure in which human or animal tissue is cut, pierced or otherwise altered by the use of any mechanical means, laser, ionizing radiation, medication administered by injection, or removal of foreign bodies from within the tissues of the eye." The petitioners successfully argued that the statute had the absurd result of prohibiting diabetics from injecting themselves with insulin, barbers

from cutting hair, butchers from cutting meat, and tattoo parlors from conducting their craft. Accordingly, the Georgia Supreme Court found the statute to be unconstitutional in that it was so broad that it prohibited conduct that there was no legal basis for prohibiting.

This matter was handled on an expedited basis by both the trial and appellate courts. I participated in the hearing in the trial court, and in the writing of the appellate brief.

- (a) This matter was decided by the Georgia Supreme Court on December 3, 1997; I had been involved in the litigation for a month or so prior to that decision.
- (b) The trial judge was the Honorable Frank M. Eldridge who then sat on the Superior Court of Fulton County, and now sits on the Georgia Court of Appeals.

The appeal was decided by the Georgia Supreme Court based arguments as briefed.

- (c) My co-counsel in this matter was Ms. Julia Anderson. I participated in the hearing before the trial court, and in the writing of the appellate brief. However, Ms. Anderson bore most of the responsibility for writing the appellate brief. She can be reached as follows:

Ms. Julia Anderson  
Office of the U.S. Attorney  
Northern District of Georgia  
Suite 1800, Richard Russell Building  
75 Spring Street, SW  
Atlanta, GA 30335  
(404) 581-6231

Opposing counsel were:

Mr. Demetrius Mazacoufa  
1401 Peachtree Street - Suite 238  
Atlanta, GA 30309-3000  
(404) 897-1000

Mr. Robert P. Williams  
600 Peachtree Street  
Suite 5200  
Atlanta, GA 30308-2216  
(404) 885-3438

Mr. Everett W. Gee  
One Atlantic Center  
1201 W. Peachtree Street  
Atlanta, GA 30309  
(404) 888-7455

- 10 In re: Franklin Thomas McElwaney  
Federal Land Bank of Columbia v. J. Coleman Tidwell, Trustee  
40 B.R. 66 (1984)

In this matter I represented the Federal Land Bank of Columbia in a Chapter 7 Bankruptcy Proceeding filed by Mr. McElwaney. The subject of the litigation was certain Federal Land Bank stock which Mr. McElwaney had purchased as a condition of receiving a loan from the Federal Land Bank to purchase property. Mr. McElwaney was in default in his payments to the Bank, and had declared bankruptcy. The Bankruptcy Trustee claimed the stock as a part of the bankrupt estate, however I argued that the Federal Land Bank was entitled to the stock to satisfy part of Mr. McElwaney's indebtedness to the Bank. The Court upheld the position of the Federal Land Bank, and permitted the Bank to apply the value of the stock to Mr. McElwaney's indebtedness before proceeding against the land which also secured his indebtedness.

- (a) The McElwaney bankruptcy proceeding was filed on February 3, 1983, and I represented the Federal Land Bank until this issue was decided on May 3, 1984.
- (b) The Honorable Robert F. Hershner, Jr.  
U.S. Bankruptcy Judge  
Middle District of Georgia  
Macon, GA 31202-0086  
(912) 752-3505
- (c) Opposing Counsel were:
- |  |   |
|--|---|
| Mr. Thomas W. Talbot<br>175 New Street<br>P. O. Box 6737<br>Macon, GA 31208-6237<br>(912) 745-0885 | Ms. Lillian Lockery<br>Office of the U. S. Attorney<br>433 Cherry Street - 4 <sup>th</sup> Floor<br>Macon, GA 31201<br>(912) 752-3511 |
|--|---|

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

During my tenure as United States Attorney, I have worked extensively to develop and encourage participation in a Department of Justice program known as "Weed and Seed." This program is available to communities to assist residents in reclaiming their neighborhood from the problems associated with crime, violence, and poverty. Through the efforts of the Office of the United States Attorney, the Middle District of Georgia is now home to four officially recognized "Weed and Seed" sites located in Albany, Athens, Macon and Valdosta. In conjunction with these sites, this U.S. Attorney's office has cultivated and participated in camps for children age 9 to 12 from the "Weed and Seed" neighborhoods in Valdosta, Albany and Athens. This camp is known as the "Drug Education for Youth" or "DEFY" camp, and camps are planned for each of the four "Weed and Seed" sites for the summer of 2000.

Also, during my tenure as United States Attorney, I have participated in the oversight of the Organized Crime Drug Enforcement Task Force ("OCDETF") program in the Southeast region of the United States. This program seeks to bring together all federal, state and local agencies who are investigating and prosecuting narcotics organizations, and has served as a mechanism for combining resources and intelligence in combating illegal narcotics trafficking. In 1997, I was selected by the members of the Advisory Council for the OCDETF program Southeast region of the United States to serve as the Chair of their Executive Committee. The Southeast OCDETF region consists of 7 states and 18 federal judicial districts. This job requires that I work with the representatives of the federal agencies involved in the OCDETF program to implement the program and resolve problems that arise in the Southeast region.

During my employment at the Office of the Attorney General of Georgia, I worked on an investigation conducted by that office into the lending and related business practices of Fleet Finance Co. While this investigation was handled primarily by outside counsel, I acted as liaison between the Attorney General's office and the outside counsel, and also briefed the matter in an amicus brief on behalf of the State of Georgia for the Supreme Court of Georgia. In this investigation, the State investigated claims of usurious lending practices and fraudulent home repair loan operations which victimized low income and poorly educated citizens of



Georgia. This investigation was resolved by the establishment of a multimillion dollar loan pool by Fleet Finance, which was to be administered by the State of Georgia. This loan pool was designed to benefit those who had been harmed by the lending practices along with others in like circumstances.

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

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

I do not anticipate receipt of future income from previous business relationships, other than amounts from the deferred compensation plan I contributed to when I was a State employee, and the thrift savings plan I have contributed to while employed by the federal government.

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

I do not have any litigation or financial arrangements which would present potential conflicts-of-interest during my initial service in the position to which I have been nominated. However, I will follow the guidelines of the Code of Judicial Conduct in the event any conflicts arise in the future.

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

I currently serve on the Board of a closely held family corporation, of which I am a minority shareholder. I will comply with the applicable ethics rules for federal judges.

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

See attached Financial Disclosure Report (AO - 10).

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

See attached net worth statement.

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

Immediately upon graduation from college, during the summer and fall of 1976, I worked for the father of one of my friends who was running for a seat in the United States Congress. His name was William J. "Billy" Adams, and he was defeated. I was an office worker, and served as an assistant to the campaign manager.

AO-10 (w)  
Rev. 1/98

**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**

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

<b>1. Person Reporting</b> (Last name, first, middle initial) Martin, Beverly B.		<b>2. Court or Organization</b> Northern District of Georgia	<b>3. Date of Report</b> 03/30/2000
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge - Nominee		<b>5. Report Type (check type)</b> X Nomination, Date 03/27/2000 Initial Annual Final	<b>6. Reporting Period</b> 01/01/1999 to 03/30/2000
<b>7. Chambers or Office Address</b> Office of the U.S. Attorney 433 Cherry Street Macon, GA 31201		<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b> Reviewing Officer _____ Date _____	

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

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

	POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/>	NONE (No reportable positions.)	
1	Director	Macon State College Foundation
2	Director	Lone Star Corporation (closely held family corporation)
3		

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

	DATE	PARTIES AND TERMS
<input type="checkbox"/>	NONE (No reportable agreements.)	
1	1990	State of Georgia Deferred Compensation Plan
2	1990	Lone Star Corporation Board of Directors
3	1994	United States Government Employee Thrift Savings Plan

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input checked="" type="checkbox"/>	NONE (No reportable non-investment income.)		
1			
2			
3			
4			

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Martin, Beverly B.	03/30/2000

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

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

	SOURCE	DESCRIPTION
<input type="checkbox"/>	<b>NONE</b> (No such reportable reimbursements.)	
1	Exempt	
2		
3		
4		
5		
6		
7		

**V. GIFTS**

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

	SOURCE	DESCRIPTION	VALUE
<input type="checkbox"/>	<b>NONE</b> (No such reportable gifts.)		
1	Exempt		
2			
3			

**VI. LIABILITIES**

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

	CREDITOR	DESCRIPTION	VALUE CODE*
<input checked="" type="checkbox"/>	<b>NONE</b> (No reportable liabilities.)		
1			
2			
3			
4			
5			
6			

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

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Martin, Beverly B.	Date of Report 03/30/2000
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**VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions** *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets <i>Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.  Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
					If not exempt from disclosure				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
1	Bank of America account	A	Interest	J	T				
2	Bank of America Account #2	B	Interest	L	T				
3	Bank of America Account #3	A	Interest	J	T				
4	100 shares of Abbott Laboratories	A	Dividend	J	T				
5	50 shares of ADC Telecommunications		None	J	T				
6	150 shares A D C Telecommunications	A	None	J	T				
7	200 shares Albertsons Inc.	A	Dividend						
8	5,168.727 shares Alliance Fund	C	Distribut ion	K	T				
9	100 shares American Home Products	A	Dividend						
10	143 shares American International Group	A	Dividend	J	T				
11	100 shares Amgen Inc.	C	Distribut ion						
12	200 shares Amgen Inc.	A	None	J	T				
13	100 shares Anheuser Busch Co. Inc.	A	Dividend	J	T				
14	100 shares Applied Materials Inc.		None	K	T				
15	50 shares of Applied Materials		None	J	T				
16	112 shares of A T & T Corporation	A	Dividend	J	T				
17	100 shares of Avnet, Inc.	A	Dividend						
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000		B=\$1,001-\$2,500 G=\$100,001-\$1,000,000		C=\$2,801-\$5,000 H1=\$1,000,001-\$5,000,000		D=\$5,001-\$15,000 H2=\$5,000,001 or more		E=\$15,001-\$50,000	
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000		K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000		L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000		M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000		N=\$250,001-\$500,000 P4=\$50,000,001 or more	
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value		R=Cost (real estate only) V=Other		S=Assessment W=Estimated		T=Cash/Market			

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Martin, Beverly B.	Date of Report 03/30/2000
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(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

**VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions**

A. Description of Assets  <i>Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.  Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period														
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (I-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure													
						(2) Date: Month- Day	(3) Value Code (I-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)										
NONE (No reportable income, assets, or transactions.)																			
18 96 shares of Bank of America Corp.	A	Dividend	J	T															
19 110 shares of Banc One		None																	
20 75 shares Bestfoods, Inc.		None	J	T															
21 100 shares Bristol-Myers Squibb Co.	A	Dividend	J	T															
22 100 shares Cardinal Health, Inc.	A	None	J	T															
23 212 shares Centurytel, Inc.	A	Dividend	J	T															
24 78 shares Charter One Financial	A	Dividend	J	T															
25 205 shares Charter One Financial	A	Dividend	J	T															
26 75 shares Cisco Systems	C	Distribut ion																	
27 200 shares Cisco Systemes, Inc.		None	K	T															
28 236 shares of Coca Cola	A	Dividend	K	T															
29 207 shares of Coca Cola Co.	C	Distribut ion																	
30 150 shares of Computer Association International, Inc.	A	Dividend	J	T															
31 50 shares of Compaq Computer Corp.	A	Dividend																	
32 50 shares of Compaq Computer Corporation	A	Dividend																	
33 100 Shares Dayton-Hudson Corp. (now Target Corp.)	A	Dividend																	
34 325 shares Dell Computer Corp.		None	J	T															
<table style="width:100%; border: none;"> <tr> <td style="width: 20%;">1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4)</td> <td style="width: 20%;">B=\$1,001-\$2,500</td> <td style="width: 20%;">C=\$2,501-\$5,000</td> <td style="width: 20%;">D=\$5,001-\$15,000</td> <td style="width: 20%;">E=\$15,001-\$50,000</td> </tr> <tr> <td>F=\$50,001-\$100,000</td> <td>G=\$100,001-\$1,000,000</td> <td>H1=\$1,000,001-\$5,000,000</td> <td>H2=\$5,000,001 or more</td> <td></td> </tr> </table>										1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4)	B=\$1,001-\$2,500	C=\$2,501-\$5,000	D=\$5,001-\$15,000	E=\$15,001-\$50,000	F=\$50,001-\$100,000	G=\$100,001-\$1,000,000	H1=\$1,000,001-\$5,000,000	H2=\$5,000,001 or more	
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4)	B=\$1,001-\$2,500	C=\$2,501-\$5,000	D=\$5,001-\$15,000	E=\$15,001-\$50,000															
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2 Val Codes: J=\$15,000 or less (Col. C1, D3)	K=\$15,001-\$50,000	L=\$50,001-\$100,000	M=\$100,001-\$250,000	N=\$250,001-\$500,000															
O=\$500,001-\$1,000,000	P1=\$1,000,001-\$5,000,000	P2=\$5,000,001-\$25,000,000	P3=\$25,000,001-\$50,000,000	P4=\$50,000,001 or more															
<table style="width:100%; border: none;"> <tr> <td style="width: 20%;">3 Val Meth Codes: Q=Appraisal (Col. C2)</td> <td style="width: 20%;">R=Cost (real estate only)</td> <td style="width: 20%;">S=Assessment</td> <td style="width: 20%;">T=Cash/Market</td> <td style="width: 20%;"></td> </tr> <tr> <td>U=Book Value</td> <td>V=Other</td> <td>W=Estimated</td> <td></td> <td></td> </tr> </table>										3 Val Meth Codes: Q=Appraisal (Col. C2)	R=Cost (real estate only)	S=Assessment	T=Cash/Market		U=Book Value	V=Other	W=Estimated		
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<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Martin, Beverly B.	Date of Report 03/30/2000
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(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets  <i>Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.  Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value (I-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
35 100 shares Deere & Co.	A	Dividend							
36 125 shares Disney Walt Holding	A	Dividend	J	T					
37 50 shares Disney Walt Holding Co.	A	Dividend	J	T					
38 100 shares Ecolab, Inc.		None	J	T					
39 225 shares of Equifax	A	Dividend	J	T					
40 100 shares of Equifax Inc.	A	Dividend	J	T					
41 100 shares of Equifax, Inc.	A	Dividend							
42 99 shares of Exxon Mobil Corp.	A	Dividend	J	T					
43 75 shares of Federal National Mortgage Ass.	A	Dividend	J	T					
44 100 shares Feder National Mortgage Assoc.	A	Dividend	J	T					
45 100 shares First Union Corp.	A	Dividend							
46 75 shares General Electric Co.	A	Dividend	J	T					
47 175 shares of Genuine Parts Co.	A	Dividend							
48 100 shares Gillette Co.	A	Dividend							
49 100 shares of Halliburton Holding Co.		None	J	T					
50 100 shares Harris Corporation	A	Dividend							
51 50 shares Hewlett-Packard Co.	B	Distribut ion							
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more									
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<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Martin, Beverly B.	Date of Report 03/30/2000
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*(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

**VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions**

A. Description of Assets  <i>Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.  Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period																			
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						(2) Date: Month- Day	(3) Value Code (T-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)															
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)																								
52 100 shares of Hewlett-Packard Co.	C	Distribut ion																						
53 150 shares of Home Depot, Inc.	A	Dividend	J	T																				
54 50 shares of Honeywell Incorporated	B	Distribut ion																						
55 100 shares Intel Copr.	A	Dividend	J	T																				
56 150 shares Jefferson-Pilot	A	Dividend	J	T																				
57 100 shares Johnson & Johnson	A	Dividend	J	T																				
58 J. M. & Star	B	Rent	J	W																				
59 50 shares of Kimberly-Clark Corp.	A	Dividend	J	T																				
60 100 shares Kimberly-Clark Corp.	A	Dividend	J	T																				
61 113 shares Lone Star Corp.		None	M	W																				
62 50 shares Lowes Companies, Inc.	A	Distribut ion																						
63 100 shares Lucent Technologies, Inc.	B	Distribut ion																						
64 400 shares of MBNA	A	Dividend	J	T																				
65 100 shares of MBNA Corporation	A	Distribut ion																						
66 150 shares of MBNA	B	Distribut ion																						
67 150 shares of Medtronic Inc.	A	Dividend	J	T																				
68 100 shares Merck & Co. Inc.	A	Dividend	J	T																				
<table style="width:100%; border: none;"> <tr> <td style="width: 20%;">1 Line Codes: A=\$1,000 or less (Col. B1, D4)</td> <td style="width: 20%;">B=\$1,001-\$2,500 G=\$100,001-\$1,000,000</td> <td style="width: 20%;">C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000</td> <td style="width: 20%;">D=\$5,001-\$15,000 H2=\$5,000,001 or more</td> <td style="width: 20%;">E=\$15,001-\$50,000</td> </tr> <tr> <td>2 Val Codes: J=\$15,000 or less (Col. C1, D3)</td> <td>K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000</td> <td>L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000</td> <td>M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000</td> <td>N=\$250,001-\$500,000 P4=\$50,000,001 or more</td> </tr> <tr> <td>3 Val Mth Codes: Q=Appraisal (Col. C2)</td> <td>R=Cost (real estate only) V=Other</td> <td>S=Assessment W=Estimated</td> <td colspan="2">T=Cash/Market</td> </tr> </table>										1 Line Codes: A=\$1,000 or less (Col. B1, D4)	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000	2 Val Codes: J=\$15,000 or less (Col. C1, D3)	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more	3 Val Mth Codes: Q=Appraisal (Col. C2)	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	
1 Line Codes: A=\$1,000 or less (Col. B1, D4)	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000																				
2 Val Codes: J=\$15,000 or less (Col. C1, D3)	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more																				
3 Val Mth Codes: Q=Appraisal (Col. C2)	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market																					

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Martin, Beverly B.	Date of Report 03/30/2000
	<i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>	

**VII. Page 5 INVESTMENTS and TRUSTS -- income, value, transactions**

A. Description of Assets  <i>Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.  Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-I)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-I)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
69 50 shares Microsoft		None	J	T					
70 100 shares Morgan J.P. & Co. Inc.	A	Dividend	J	T					
71 200 shares Newell Rubbermaid Inc.	A	Dividend							
72 150 shares of Nucor	B	Distribution							
73 250 shares of Oakwood Homes, Inc.	A	Dividend							
74 300 shares Oracle Corporation		None	K	T					
75 50 shares Oracle Corporation	B	Distribution							
76 50 shares Paccar Inc.	A	Dividend	J	T					
77 50 shares Paccar, Inc.	A	Dividend	J	T					
78 275 shares Pepsico Inc.	A	Dividend	J	T					
79 100 shares Pepsico Inc.	A	Dividend	J	T					
80 125 shares Pfizer Inc.	A	None	J	T					
81 150 shares Pharmacia & Upjohn	A	Distribution							
82 400 shares Phillip Morris Co. Inc.	A	Dividend							
83 100 shares Potash Corp Sask Inc.	B	Distribution							
84 100 shares PPG Industries Inc.	A	Distribution							
85 100 shares Procter & Gamble Co.	A	Dividend	J	T					
<b>1 Inc/Gain Codes:</b> A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more D=\$5,001-\$15,000 E=\$15,001-\$50,000									
<b>2 Val Codes:</b> J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000 L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more									
<b>3 Val Mth Codes:</b> Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Martin, Beverly B.	03/30/2000

**VII. Page 6 INVESTMENTS and TRUSTS -- income, value, transactions** *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets <i>Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.  Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
86 50 shares Raytheon Co. New	A	Dividend							
87 100 shares Regions Financial Corp.	A	Dividend							
88 225 Repsol S A ADR	A	Dividend	J	T					
89 300 shares Ross Stores, Inc.	A	Dividend	J	T					
90 100 Rowe T. Price Assoc. Inc.		None	J	T					
91 100 Royal Dutch	A	Dividend	J	T					
92 125 shares S B C Communications Inc.		None	J	T					
93 100 shares Schering Plough Corp.	A	Dividend	J	T					
94 100 shares Schlumberger	A	Dividend	J	T					
95 Schwab Money Market Fund	A	Dividend	J	T					
96 Schwab Money Market Fund (IRA)	A	Dividend	J	T					
97 Schwab Value Advantage	B	Dividend	J	T					
98 125 shares Shared Medical Sys Corp.	A	Dividend							
99 125 shares Southtrust Corp.	A	Dividend	J	T					
100 50 shares State Street Corp.	A	Dividend	J	T					
101 50 shares State Street Corp.	A	Dividend							
102 75 shares State Street Corp.	A	Dividend	J	T					
1 In/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more D=\$5,001-\$15,000 E=\$15,001-\$50,000									
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000									
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Martin, Beverly B.	Date of Report 03/30/2000
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**VII. Page 7 INVESTMENTS and TRUSTS -- income, value, transactions** (Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets <small>Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.  Place "(X)" after each asset exempt from prior disclosure.</small>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (I-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-F)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
103 50 shares Sun Microsystems		None	J	T					
104 100 shares Sun Microsystems		None	J	T					
105 250 shares Sysco Corp	A	Dividend	J	T					
106 100 shares Target Corp.		None	J	T					
107 100 shares TCA Cable TV Inc.	B	Distribut ion							
108 125 shares Valspar Corp.	A	Distribut ion							
109 125 Vodafone Airtouch ADR F	A	None	J	T					
110 150 shares Vulcan Materials Company	A	Distribut ion							
111 175 shares Vulcan Materials Co.	A	Dividend	J	T					
112 150 shares Walgreen Co.	A	Dividend	J	T					
113 150 shares Watson Pharmaceuticals		None	J	T					
114 175 shares Watson Pharmaceuticals		None	J	T					
115									
116									
117									
118									
119									
<b>1 Inc/Gain Codes:</b> A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000									
<b>2 Val Codes:</b> J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000 L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000 M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000 N=\$250,001-\$500,000 P4=\$50,000,001 or more									
<b>3 Val Mth Codes:</b> Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Martin, Beverly B.	03/30/2000

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.**

*(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Martin, Beverly B.	03/30/2000

**IX. CERTIFICATION**

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

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

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Beverly B. Martin Date 3/30/2000

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

**FILING INSTRUCTIONS**

Mail original and three additional copies to:

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

## FINANCIAL STATEMENT

## NET WORTH

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

ASSETS				LIABILITIES		
Cash on hand and in banks	60	000	00	Notes payable to banks-secured		00
U.S. Government securities -- add schedule			00	Notes payable to banks-unsecured		00
Listed securities -- add schedule (Schedule A)	438	530	43	Notes payable to relatives		00
Unlisted securities -- add schedule (Schedule B)	139	000	00	Notes payable to others		00
Accounts and notes receivable:			00	Accounts and bills due (current only)		00
Due from relatives and friends			00	Unpaid income tax		00
Due from others			00	Other unpaid tax and interest		00
Doubtful				Real estate mortgages payable -- add schedule		00
Real estate owned -- add schedule (Schedule C)	135	500	00	Chattel mortgages and other liens payable		00
Real estate mortgages receivable			00	Other debts -- itemize:		00
Autos and other personal property (Schedule D)	5	000	00			
Cash value -- life insurance			00			
Other assets -- itemize:						
Schedule E: Individual Retirement Account	67	145	96			
Schedule F: Thrift Savings Account	116	471	38			
Schedule G: GA Deferred Comp. Plan	128	430	86	Total liabilities		00
				Net Worth	1,090	078 63
Total Assets	1,090	078	63	Total liabilities and net worth	1,090	078 63
CONTINGENT LIABILITIES				GENERAL INFORMATION		
As endorser, comaker or guarantor			00	Are any assets pledged? (Add schedule.)		No
On leases or contracts			00	Are you defendant in any suits or legal actions?		No
Legal Claims			00	Have you ever taken bankruptcy?		No
Provisions for Federal Income Tax			00			
Other specific debt			00			

## SCHEDULE "A"

## LISTED SECURITIES

1) See Schwab One Account	Total Value: \$385,712.80
Value as of February 29, 2000	
250 shares ADC Telecommunications	\$11,218.75
100 shares Abbott Laboratories	\$3,300.00
143 shares American International Group Inc.	\$12,646.56
200 shares Amgen Incorporated	\$13,637.50
100 shares Anheuser Busch Co. Inc.	\$6,400.00
100 shares Applied Materials	\$18,293.75
100 shares Bristol-Myers Squibb Co.	\$5,725.00
100 shares Cardinal Health Inc.	\$4,181.25
212 shares Centurytel Inc.	\$7,128.50
78 shares Charter One Financial	\$1,228.50
200 shares Cisco Systems, Inc.	\$26,437.50
150 shares Computer Assoc. International, Inc.	\$9,637.50
325 shares Dell Computer Corp.	\$13,264.06
125 shares Disney Walt Holding Co.	\$4,250.00
225 shares Equifax, Inc.	\$4,767.19
66 shares Exxon Mobil Corp.	\$4,970.63



SCHEDULE "A"  
Page 2.

75 shares Fannie Mae	\$3,975.00
75 shares General Electric Co.	\$9,928.13
100 shares Halliburton Co. Holding Co.	\$3,818.75
150 shares Home Depot Inc.	\$8,625.00
100 shares Intel Corp.	\$11,300.00
150 shares Jefferson-Pilot Corp.	\$7,809.38
100 shares Johnson & Johnson	\$7,200.00
50 shares Kimberly Clark Corp.	\$2,575.00
400 shares MBNA Corp.	\$9,150.00
150 shares Medtronic Inc.	\$7,265.63
100 shares Merck & Co.	\$6,156.25
50 shares Microsoft Corp.	\$4,468.75
100 shares Morgan J.P. & Co. Inc.	\$11,118.75
300 shares Oracle Corp.	\$22,275.00
50 shares Paccar, Inc.	\$2,153.13
275 shares Pepsico Inc.	\$8,834.38
125 shares Pfizer Inc.	\$4,015.63
100 shares Potash Corp. Sask. Inc.	\$4,525.00
100 shares Procter & Gamble Co.	\$8,787.50

## SCHEDULE "A"

Page 3.

225 shares Repsol S A ADR	\$4,303.13
300 shares Ross Stores, Inc.	\$4,350.00
100 shares Royal Dutch	\$5,275.00
125 shares S B C Communications Inc.	\$4,718.75
100 shares Schering Plough Corp.	\$3,500.00
100 shares Schlumberger LTD	\$7,385.94
125 shares Southtrust Corp.	\$2,867.19
50 shares State Street Corp.	\$3,643.75
100 shares Sun Microsystems Inc.	\$9,525.00
250 shares Sysco Corp.	\$8,203.13
100 shares Target Corp.	\$5,900.00
125 shares Vodafone Airtouch, ADR	\$7,187.50
175 shares Vulcan Materials Co.	\$7,000.00
150 shares Walgreen Co.	\$3,871.88
150 shares Watson Pharmaceuticals	\$6,000.00
Schwab Money Market Fund/cash	\$8,159.63
Schwab Value Advantage Fund	\$2,753.93
<b>TOTAL VALUE OF SCHWAB ONE ACCOUNT</b>	<b>\$385,712.80</b>

## SCHEDULE "A"

Page 4.

2)	See Schwab Brokerage Account Value as of February 29, 2000	Total Value: \$16,998.35
	96 shares Bank of America Corp	\$4,416.00
	235.7572 shares Coca Cola Company	\$11,463.69
	Schwab Money Market Fund	\$1,118.66
	<b>TOTAL VALUE</b>	<b>\$16,998.35</b>
3)	5,168.727 shares of Alliance Fund Value as of February 29, 2000: \$6.93 per share.	Total Value: \$35,819.28
	<b>TOTAL VALUE OF LISTED SECURITIES:</b>	<b>\$438,530.43</b>

250

SCHEDULE "B"

UNLISTED SECURITIES

- 1) 113 Shares of the common capital stock of Lone Star Corporation, a Georgia Corporation, representing 24.72% of the total shares issued. No dividends, no market, stock closely held, estimated approximate value - \$139,000.00.

251

SCHEDULE "C"

REAL ESTATE OWNED

- |    |                                       |              |
|----|---------------------------------------|--------------|
| 1) | Residence (Estimated value).          | \$125,000.00 |
| 2) | commercial property (Estimated value) | \$10,500.00  |

TOTAL VALUE: \$135,500.00

252

SCHEDULE "D"

Personal Vehicle (estimated value)	\$5,000.00
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## SCHEDULE "E"

(1) Individual Retirement Account Value as of February 29, 2000	Total Value: \$67,145.96
112 shares A T & T Corp.	\$5,530.00
50 shares Applied Materials Inc.	\$9,146.88
75 shares Bestfoods	\$3,145.31
205 shares Charter One Financial	\$3,228.75
50 shares Disney Walt Holding Co.	\$1,700.00
100 shares Equifax Inc.	\$2,118.75
99 shares Exxon Mobil Corp.	\$7,455.94
100 shares Fannie Mae	\$5,300.00
100 shares Kimberly-Clark Corp.	\$5,150.00
50 shares Paccar Inc.	\$2,153.13
100 shares Pepsico Inc.	\$3,212.50
100 shares Rowe T Price Assoc. Inc.	\$3,293.75
75 shares State Street Corp.	\$5,465.63
50 shares Sun Microsystems	\$4,762.50
Schwab Money Market Fund	\$5,482.82
<b>TOTAL VALUE</b>	<b>\$67,145.96</b>

254

SCHEDULE "F"

OTHER

1)	United States Thrift Savings Account Value as of most recent statement (October 31, 1999)	\$116,471.38
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255

SCHEDULE "G"

OTHER

State of Georgia Deferred  
Compensation Plan  
Value as of most recent statement  
(December 31, 1999)

Total Value: \$128,430.86

**III. GENERAL (PUBLIC)**

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

During my tenure as United States Attorney, I have been very committed to the development of "Weed and Seed" sites in the Middle District of Georgia. "Weed and Seed" is an initiative available to specified neighborhoods through the Department of Justice. The Middle District of Georgia now has four officially recognized "Weed and Seed" sites located in Albany, Athens, Macon, and Columbus, Georgia. The goal of this initiative is to empower neighborhoods to "weed" out crime and "seed" in opportunities for its residents. I spend several hours a week, and on occasion up to a day or two a week, on these initiatives.

Each "Weed and Seed" site is eligible to participate in a camping program which is designed to include children from the "Weed and Seed" neighborhood, and is done in conjunction with a military base in the area. In the Middle District of Georgia, last summer we had three of these camps drawing approximately fifty children from the "Weed and Seed" sites in Albany, Athens and Valdosta, Georgia. We are working toward having our fourth site in Macon, Georgia this summer. I devote an average of one day of my time per camp.

Additionally, I currently serve on the Mercer University Executive Forum Steering Committee, the purpose of which is to serve as a resource to the business community in Macon, and is intended to serve as a business enrichment program. I was appointed to a two-year term, which will expire in 2001. I attend meetings of the Forum Steering Committee on a quarterly basis, and talk with the Forum staff by phone on at least a monthly basis.

I also helped set up a scholarship program for students in the Middle Georgia area through the Career Women's Network. This scholarship fund was established to assist women who were returning to school after having had to drop out to raise children or for other economic reasons. For two

years, 1996 - 1997, I spent time setting up the application process, interviewing candidates, and awarding the scholarships. During 1996 - 1997, I spent approximately ten hours a month on this project.

I have also been involved in several projects to build or improve housing for the needy in our community. For example, I have worked with Habitat for Humanity and another effort known as "Christmas in April" in Macon, in a hands-on setting, building or repairing housing for those in need. I spend an average of two eight-hour days per year on these projects.

In addition, while I practiced at Martin, Snow, Grant and Napier (1981 - 1984), I represented a number of indigent criminal defendants in the Superior Court of Bibb County, Georgia. During this period I represented each of approximately four defendants from the time they were charged with the crime until their case was resolved. In each instance, the defendant entered a plea of guilty. I would estimate that I spent an average of one or two hours per week on these cases. This amount varied according to whether and when hearings were conducted.

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

I have never belonged to an organization that discriminates on the basis of race, sex or religion - through either formal membership requirements or the practical implementation of membership policies.

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

There is not a standing selection commission in this jurisdiction to recommend candidates for nomination to the federal bench, however commissions have been named on an ad hoc basis when positions come available.

I did not interview with a selection commission for this judicial position, but was notified by Senator Cleland on February 2, 2000 that he would be recommending to the President that I be nominated for the judicial vacancy in the Northern District of Georgia.

Since Senator Cleland recommended me for this position, I have met with individuals from the Department of Justice, the Federal Bureau of Investigation and the American Bar Association to discuss my background and qualifications for the position. I have also met with a staff member for Senator Paul Coverdell and interviewed with members of Senator Coverdell's judicial review panel.

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

No.

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

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

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

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

- b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**
- c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**
- d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**
- e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

The United States Constitution establishes a system of separate powers, granting limited jurisdiction to federal courts to decide actual cases and controversies of parties with standing to bring the action. The doctrine of standing requires that federal courts look to the status of the party seeking to have his complaint heard before a federal court and not to the issue he wishes to have adjudicated. This inquiry into standing arises from a concern about the proper, and properly limited role, of federal courts in our democratic system of government. Similarly, a federal court must inquire into the ripeness of an issue to avoid premature adjudication, and must avoid entangling itself in abstract policy issues, the resolution of which is committed to the political branches.

Once a case is properly before a court, a judge is obligated to follow the United States Constitution, statutory law, and the doctrine of stare decisis to adhere to legal precedent. This precept is paramount because it is necessary to the stability of our system for individuals and commercial concerns to find predictability in our judicial system and anticipate what actions are legally permissible. United States District Courts have limited jurisdiction, and it is the solemn obligation of the judge not to find jurisdiction where none exists.

AFFIDAVIT

I, Joely B. Martin, do swear that  
the information provided in this statement is, to the best of my  
knowledge, true and accurate.

March 30, 2000  
(DATE)

Joely B. Martin  
(NAME)

Cathy L. Barnes  
(NOTARY)  
My Commission Expires May 1, 2002

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY  
QUESTIONNAIRE FOR JUDICIAL NOMINEES

BIOGRAPHICAL INFORMATION (PUBLIC)

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

Laura Taylor Swain

Laura Anne Taylor

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

Residences: Brooklyn, New York

Rhinebeck, New York

Office: United States Bankruptcy Court  
75 Clinton Street  
Brooklyn, New York 11201

3. Date and place of birth.

November 21, 1958

Brooklyn, New York

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

Married (to Andrew J. Swain, October 12, 1991).

Andrew Swain is employed by Stark Carpet Corporation, 83 Harbor Road, Port Washington, New York 11050, as a manager in the company's Old World Weavers division.

5. Education: List each college and law school you have attended, including dates

of attendance, degrees received, and dates degrees were granted.

Harvard-Radcliffe College  
September 1975 to June 1979  
A.B. cum laude (Government) granted June 1979

Harvard Law School  
September 1979 to June 1982  
J.D. granted June 1982

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

***Employment:***

- 1979: Don Aux Associates (now defunct) - Receptionist
- 1980: Gaston Snow & Ely Bartlett (now defunct) - Summer Associate
- 1980-1982: Harvard University - Pre-law tutor in South House, Harvard College
- 1981: Gaston Snow & Ely Bartlett (now defunct) - Part time law clerk (spring semester)
- Skadden, Arps, Slate, Meagher & Flom - Summer Associate
- McCutchen, Doyle, Brown & Enerson - Summer Associate
- Harvard University - Legal Methods Instructor, Harvard Law School (fall semester)
- 1982: Skadden Arps Slate Meagher & Flom - Part time law clerk (spring semester)
- 1982-1983: Law Clerk to the Honorable Constance Baker Motley, Chief Judge, United States District Court for the Southern District of New York



1983-1996: Debevoise & Plimpton - Associate 1983-1995, Counsel 1995-1996  
 1986-1996: New York State Board of Law Examiners - Member of the Board  
 1996-Present: United States Bankruptcy Judge, Eastern District of New York

***Volunteer Positions:***

1984-1985: The Dessoff Choirs - Member of the Board of Directors  
 1989-1995: Grace Church in New York (Episcopal) - Member of Vestry (lay governing board)  
 1990-1991: Board of Trustees of the Diocese of New York (Episcopal) - Member of the Board  
 1996-Present: Episcopal Charities, Inc. - Member of the Board of Directors  
 1997-1999: Grace Church in New York (Episcopal) - Warden (lay leader of Vestry)  
 1997-Present: Community Partnership Charter School - Working Group member 1997-Present; lead charter applicant 1999-2000; designated for membership on Board of Trustees 2000-2002

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

No.

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

Dean's list throughout undergraduate career; National Merit Semi-Finalist; National Achievement Scholarship; New York State Regents' Scholarship.

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

dates of any offices which you have held in such groups.

American Bankruptcy Institute

American Bar Association

Association of the Bar of the City of New York:

Secretary, Committee on Minorities in the Profession (approximately 1984-1986)

Coalition for Consumer Bankruptcy Debtor Education (Board of Directors 1998-present)

Commercial Law League

Federal Judicial Center Advisory Committee for Bankruptcy Education Project

The Judicial Friends

Metropolitan Black Bar Association

National Association of Women Judges

National Conference of Bankruptcy Judges

National Conference of Bar Examiners

New York Professional Education Project (Consultant 1995)

New York State Bar Association

Practising Law Institute Bankruptcy/Creditors Rights Advisory Committee

WEB/Network of Benefits Professionals

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

*Organizations that are active in lobbying:*

None, to my knowledge.

*Other Current Organizational Memberships:*

*Community-Based Organizations:*

Community Partnership Charter School Project  
Sepasco Village, Inc. (homeowners' association)  
Brooklyn Public Library

*Churches and Church-Related Organizations:*

Grace Church in New York (New York, New York)  
Church of the Messiah (Rhinebeck, New York)  
Episcopal Charities, Inc. (Diocese of New York)  
Congregational Support Plan Review Task Force (Diocese of New York)

*Arts-Related, Historic Preservation and Charitable Organizations:*

Big Apple Knitters Guild  
The Knitting Guild of America  
Brooklyn Botanic Garden  
Brooklyn Museum of Art  
Friends of BAM (Brooklyn Academy of Music)  
Friends of Carnegie Hall  
Friends of the Mills Mansion  
Friends of Olana (historic mansion)  
Hancock Shaker Village

National Geographic Society

Prospect Park Alliance

Shaker Library and Museum

WAMC (public radio station)

WNET (public television station)

WNYC (public radio station)

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

Courts	Date of Admission
Commonwealth of Massachusetts Bar	12/23/82
New York State Bar	6/22/83
United States District Court for the Southern District of New York	8/12/83
United States District Court for the Eastern District of New York	8/30/83

Administrative Agency:

IRS Representative (CAF) number issued June 1992

I have maintained "retired" (New York) or "withdrawn from practice" (Massachusetts) status with respect to the Bar since my appointment as a United States Bankruptcy Judge.

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

*Publications in whose preparation I was involved directly:*

Enclosed are copies of the articles that were published under my by-line in the Harvard Law Record, a weekly student newspaper, during my time as a law student (1979-1982). (*Attachment 12A-1(A)*)

Enclosed are copies of all of the tongue-in-cheek "Fenno" columns that were published in the paper during the 1980-1981 and 1981-1982 academic years. I wrote this column on a semi-regular basis for part of that period and do not recall which of the columns I wrote. (*Attachment 12A-1(B)*.) During the years 1980-1982, I served as Senior Editor, Managing Editor and/or Consulting Editor to the paper. In those capacities, I participated in nonsubstantive final editorial and composition work on the paper.

"A Closer Look at Defensive ESOPs," 3 Insights 3 (June 1989). (*Attachment 12A-2*)

"Postretirement Welfare Benefits: A New Look at Old Commitments," 21 Compensation and Benefits Review 5 (Sept.-Oct. 1989). (*Attachment 12A-3*)

"The Applicability of Federal Securities Laws to Employee Bargained-For ESOPs" – Course Handbook for Prentice-Hall "11<sup>th</sup> Annual Proxy Statements" seminar 1989. (*Attachment 12A-4*)

Sections 22.02, 22.03, 22.04 (relating to employee welfare funds, retirement systems and ERISA preemption), New York Insurance Law (Matthew Bender 1991). (*Attachment 12A-5*)

"Employee Benefits Communications – Important Legal Considerations" – Course Handbook for Institute for International Research "Efficient and Cost-Effective Employee Benefits Communications" seminar 1991. (*Attachment 12A-6*)

"Interpreting the ADA on Health Coverage, Workplace Harassment," 16 National Law Journal 11, at S5 (November 15, 1993). (*Attachment 12A-7*)

Materials on Property of the Estate, Exemptions, Personal Injury Claims, Appraisal, Redemption, Abandonment and Matrimonial Issues – Course Handbook for New York State Bar Association "Consumer Bankruptcy" seminar 1997. (*Attachment 12A-8*)

Materials on Property of the Estate, Exemptions, and Interplay between Personal Injury Actions and Bankruptcy Law – Course Handbooks for Practising Law Institute "How to Handle Consumer Bankruptcy Cases" seminars 1997, 1998

and 1999. (*Attachments 12A-9 (A), (B), (C)*)

Materials on Property of the Estate, Exemptions, Redemption – Course Handbook for Brooklyn Bar Association Volunteer Bankruptcy Lawyers' Training Program 1998. (*Attachment 12A-10*)

"Thoughts on the LSAC Bar Passage Study – Good News and Good News," 67 *The Bar Examiner* 4, at 16 (November 1998). (*Attachment 12A-11*)

"Current Developments - Jurisdiction and Related Issues" – Course Handbook for Alabama Bar Institute for Continuing Legal Education Bankruptcy Update 1999. (*Attachment 12A-12*)

Debevoise & Plimpton Announcements to Clients:

- (a) "Employment Provisions of Americans with Disabilities Act Take Effect," June 27, 1992 (*Attachment 12A-13(A)*);
- (b) "Conduct Does Not Have to be 'Outrageous' to Prompt a Double Damage Award in an Age Discrimination Case." May 6, 1993 (*Attachment 12A-13(B)*);
- (c) "EEOC Issues Guidance on Health Plans under Americans with Disabilities Act," June 11, 1993 (*Attachment 12A-13(C)*);
- (d) "DOL Revisits Pension Proxy Voting," August 3, 1994 (*Attachment 12A-13(D)*).

***Committee reports for which I did not have principal drafting responsibility:***

"Legal Education and Professional Development in New York State – Report of the Professional Education Project," June 1996. (Excerpts relating to New York State Bar Examination are enclosed. I was a consultant to the Project with respect to the Bar Examination only.) (*Attachment 12A-14*)

1996-1998 Reports and Comment Letters by the Committee on Employee Benefits of the Association of the Bar of the City of New York:

- (a) February 16, 1996 letter to the United States Department of Labor Pension and Welfare Benefits Administration regarding Proposed Participant Contribution Regulation (*Attachment 12A-15(A)*);
- (b) March 4, 1996 letter to the United States Department of Labor, United States Department of the Treasury, Pension Benefit Guaranty Corporation, House of Representatives Committee on Ways and Means, and Senate Committee on Finance regarding

Pension Asset Reversion Proposal (*Attachment 12A-15(B)*);

- (c) July 18, 1996 letter to United States Department of Labor Pension and Welfare Benefits Administration regarding Interpretive Bulletin 96-1 (Participant Investment Education) (*Attachment 12A-15(C)*);
- (d) July 6, 1998 letter to Internal Revenue Service regarding IRS Procedures for Resolving Plan Qualification Defects (*Attachment 12A-15(D)*);
- (e) Undated comment on SEC Alternative Proposed Rules Under Section 16 (*Attachment 12A-15(E)*).

Report: "Is Professionalism Declining?", by the Committee on the Profession of the Association of the Bar of the City of New York, March 1992. (*Attachment 12A-16*)

**Speech texts and/or notes:**

*Subject:* New York State Bar Examination  
*Dates:* January 1989, November 1989, June 1991, May 1992, December 1993, June 1996, October 1996  
*Groups:* Various groups of law students and other bar examination candidates gathered by the Legal Aid Society, CUNY Law School, and Practicing Attorneys for Law Students program. (*Attachments 12B-1 (A) through (G)*)

*Subject:* Defensive Use of Employee Stock Ownership Plans  
*Date(s):* December 1989  
*Group:* Prentice-Hall "11th Annual Proxy Statements" program (substitute speaker for Mario Baeza) (*Attachment 12B-2*)

*Subject:* New York State Bar Examination  
*Date(s):* January 16, 1990  
*Group:* New York State Bar Association Committee on Legal Education and Admission to the Bar -- open meeting on "Putting the Bar Examination to the Test" (*Attachments 12B-3 (A) (transcript), (B) (press report), (C) (press report)*)

*Subject:* Legal Considerations in Employee Benefits Communications  
*Date(s):* December 5, 1991  
*Group:* Institute for International Research program on "Efficient and Cost Effective Employee Benefits Communications"  
 (Attachment 12B-4)

*Subject:* Family and Medical Leave Act  
*Date:* August 10, 1993  
*Group:* Debevoise & Plimpton Breakfast Program for Clients  
 (Attachment 12B-5)

*Subject:* Americans with Disabilities Act  
*Date:* December 3, 1993  
*Group:* Council of National Library and Information Associations, Inc.  
 (Attachment 12B-6)

*Occasion:* Induction as United States Bankruptcy Judge  
*Date:* January 13, 1997  
*Group:* Public ceremonial induction, United States District Court Ceremonial Courtroom, Brooklyn, New York  
 (Attachment 12B-7)

*Subject:* Opinion Writing  
*Date(s):* June 1997, February 2000  
*Group:* Brooklyn Law School Lawyering Course, Advanced Legal Writing Course  
 (Attachment 12B-8)

*Subject:* Property of the Estate, Exemptions, Interplay between Personal Injury Actions and Bankruptcy Law  
*Date(s):* July 1997, July 1998, July 1999  
*Group:* Practising Law Institute "How to Handle Consumer Bankruptcy Cases" seminar  
 (Attachments 12B-9 (A), (B), (C))

*Subject:* Property of the Estate, Exemptions, Appraisal, Personal Injury Claims, Redemption of Property, Abandonment of Property,



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*Subject:* Matrimonial (Divorce) Issues, Sale of Jointly-Owned Property  
*Date:* October 1997  
*Group:* New York State Bar Association Consumer Bankruptcy seminar  
(Attachment 12B-10)

*Subject:* First Year on the Bench, Issues Facing the Court  
*Date(s):* January 30, 1998  
*Group:* Nassau County Bar Association  
(Attachment 12B-11)

*Subject:* Personal Experience in the Legal Profession and the Judiciary  
*Date(s):* March 24, 1998  
*Group:* New York Law School "L.A.W." (Legal Association for Women)  
Judicial Reception  
(Attachment 12B-12)

*Subject:* Exemptions, Property of the Estate  
*Date:* March 25, 1998  
*Group:* Brooklyn Bar Association Volunteer Lawyers' Project Training  
Program  
(Attachment 12B-13)

*Subject:* "Woman to Woman" -- God's Work in Women's Lives  
*Date(s):* May 9, 1998  
*Group:* The Baptist Temple (Brooklyn, NY) Mother's Day Celebration  
(Attachment 12B-14)

*Subject:* Discharge and Dischargeability, Ethical Issues in Bankruptcy  
*Date:* May 15, 1998  
*Group:* Matthew Bender "Current Developments in Consumer  
Bankruptcy" seminar  
(Attachments 12B-15(A), (B))

*Subject:* Issues Facing the Court, New Legislative Developments, Recent Second Circuit Decisions  
*Date(s):* November 18, 1998  
*Group:* Nassau and Suffolk County Bar Academics of Law "Bankruptcy Law Update '98" seminar  
*(Attachment 12B-16)*

*Subject:* Personal Path to Judgeship  
*Date(s):* December 5, 1998  
*Group:* Association of the Bar of the City of New York "How to Become a Judge" program (part of panel discussion)  
*(Attachment 12B-17)*

*Subject:* Bankruptcy Court Jurisdiction, Venue, Abstention, Remand and Removal, Withdrawal of the Reference, Jury Trials, Appeals  
*Date(s):* April 5, 1999  
*Group:* Practising Law Institute "Current Developments in Bankruptcy and Reorganization 1998" seminar  
*(Attachment 12B-18)*

*Subject:* Community Partnership Charter School  
*Dates:* June 1999, July 1999, August 1999, January 2000 and various other dates  
*Groups:* Community meetings, Board of Education public hearing  
*(Attachments 12B-19 (A), (B), (C), (D))*

*Subject:* Current Bankruptcy Developments (redemption agreements, interest payable under Chapter 13 plans)  
*Date:* July 15, 1999  
*Group:* National Association of Consumer Bankruptcy Attorneys (panel discussion)  
*(Attachment 12B-20)*

*Subject:* Judicial Clerkships  
*Date:* October 19, 1999  
*Group:* Law students invited by the Association of the Bar of the City of New York  
*(Attachment 12B-21)*

*Subject:* Current Developments in Jurisdiction and Related Issues  
*Date:* November 19, 1999  
*Group:* Alabama Bar Institute for Continuing Legal Education  
 (Attachment 12B-22 (A), (B))

*Subjects:* Recent Legislative Developments; Reaffirmations and Redemptions  
*Date:* November 7, 1999  
*Group:* National Consumer Law Center Consumer Rights Litigation Conference (panel discussions)  
 (Attachments 12B-23 (A), (B))

*Subject:* Introduction of former United States Attorney Zachary Carter  
*Date:* December 2, 1999  
*Group:* Annual Dinner of The Judicial Friends  
 (Attachment 12B-24)

*Occasion:* Black History Month  
*Date:* February 16, 2000  
*Group:* Black History Month Program for United States Attorney's Office for the Southern District of New York  
 (Attachment 12B-25)

*Subjects:* Jurisdiction, Appeals  
*Date:* April 3, 2000  
*Group:* Practising Law Institute "Current Developments in Bankruptcy and Reorganization 2000" seminar  
 (Attachment 12B-26)

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

My health is good. I have two long-term conditions, (1) an underactive thyroid gland and (2) a connective tissue disorder related to lupus that at times develops into indicators for lupus, as to which conditions I am under the care of an endocrinologist and an internist/rheumatologist, respectively. Both conditions are controlled by regular medication.

I see the internist/rheumatologist, endocrinologist, and OB/GYN regularly. My most recent visits were as follows:

Allen Radin, M.D. (internist/rheumatologist): Last visit March 3, 2000

Andrew Szabo, M.D. (endocrinologist): Last visit March 6, 2000

Raufa Faroqui, M.D. (OB/GYN): Last visit December 10, 1999

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

I am currently a United States Bankruptcy Judge for the Eastern District of New York. I was appointed by the judges of the United States Court of Appeals for the Second Circuit and have served in this capacity since November 1, 1996. The Bankruptcy Court's subject matter jurisdiction comprises matters arising under the Federal Bankruptcy Code (11 U.S.C. § 101 et seq.), arising in bankruptcy cases, and related to bankruptcy cases. See 28 U.S.C. §§ 157, 1334. I have held no other judicial offices. Our court's geographic jurisdiction covers the New York counties of Richmond, Kings, Queens, Nassau and Suffolk.

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

(1) ***Opinions:***

- a. In re Maloney, 204 B.R. 671 (Bankr. E.D.N.Y. 1996)
- b. In re Antoine, 208 B.R. 17 (Bankr. E.D.N.Y. 1997)

- c. In re American Media Distrib., LLC, 216 B.R. 486 (Bankr. E.D.N.Y. 1998)
- d. In re Colish (Colish v. U. S.), 239 B.R. 670 (Bankr. E.D.N.Y. 1999)
- e. In re E&J Restaurant Corp., No. 197-17937-575 (Bankr. E.D.N.Y., Slip Op. September 10, 1997), aff'd mem., In re E&J Restaurant Corp. v. Meadow Village Associates, No. 97 CV 6377 (E.D.N.Y., Order dated March 9, 1998)
- Attachment 15-1:* Copy of the unpublished Bankruptcy Court opinion.
- Attachment 15-2:* Copies of the unpublished District Court order and the transcript of the oral District Court opinion affirming the decision.
- f. In re Kopel (Kopel v. Campanile), 232 B.R. 57 (Bankr. E.D.N.Y. 1999)
- g. In re Energy Control Sys., Inc. (Energy Control Sys., Inc. v. Fourth Ave. Ent. Piping, Inc.), No. 197-23812-575, Adv. Pro. No. 198-1561-575 (Bankr. E.D.N.Y. Slip Op. April 1, 1999)
- Attachment 15-3:* Copy of the unpublished opinion.
- h. In re Baumblyt (Desert Palace v. Baumblyt), 229 B.R. 50 (Bankr. E.D.N.Y. 1999)
- i. In re Maloney (Acker v. Maloney), No. 196-21116-575, Adv. Pro. No. 197-1061-575 (Bankr. E.D.N.Y., Slip Op. March 12, 1999)
- Attachment 15-4:* Copy of the unpublished opinion.
- j. In re Weis, No. 198-16101-575 (Bankr. E.D.N.Y., Oral Op. February 3, 1999), aff'd, In re Weis, No. CV-99-2072/2073(CPS) (E.D.N.Y., Slip Op. August 10, 1999)
- Attachment 15-5:* Transcript of the oral Bankruptcy Court opinion.

*Attachment 15-6:* Copy of the unpublished District Court opinion affirming the decision.

(2) *Reversals:*

- a. In re Cacciatore (F.C.C. National Bank v. Cacciatore), 1998 WL 412644 (E.D.N.Y. 1998), reversing 209 B.R. 609 (Bankr. E.D.N.Y. 1997)

The District Court reversed my grant of summary judgment in favor of the defendant debtor in an adversary proceeding concerning the dischargeability of certain credit card debt, holding that there were factual issues material to the questions of justifiable reliance and intent.

- b. In re Barbieri (Barbieri v. RAJ Acquisition Corp.), 199 F.3d 616 (2d Cir. 1999), reversing 226 B.R. 531 (E.D.N.Y. 1998), which had affirmed my oral decision.

This case presented a matter of first impression in the Second Circuit. The Court of Appeals, rejecting Eighth Circuit precedent, reversed the District Court's decision upholding my denial of a debtor's request for voluntary dismissal of a Chapter 13 case, holding that a debtor has an absolute right under 11 U.S.C. § 1307(b) to withdraw a Chapter 13 petition prior to actual entry of an order of conversion.

*Attachment 15-7:* Transcript of the Bankruptcy Court proceedings and oral decision.

(3) *Significant Opinions on State or Federal Constitutional Issues:*

None.

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

I was a member of the New York State Board of Law Examiners from 1986 to 1996. I was appointed to that office by the Court of Appeals of the State of New York.

I have never been a candidate for elective public office.

17. Legal Career:

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

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

I served as a law clerk to the Honorable Constance Baker Motley, then Chief Judge of the United States District Court for the Southern District of New York, from September 1982 to September 1983.

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

I did not practice alone.

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

Debevoise & Plimpton (Associate 1983-1995; Counsel 1995-1996)  
875 Third Avenue  
New York, New York 10022

New York State Board of Law Examiners (Member of Board 1986-1996)  
7 Executive Centre Drive  
Albany, New York 12203

United States Bankruptcy Court for the Eastern District of New York (United States Bankruptcy Judge 1996-present)  
75 Clinton Street  
Brooklyn, New York 11201

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

After completing my clerkship, I joined Debevoise & Plimpton as an associate, concentrating initially in general commercial litigation. During my first three years with the firm, I worked on a number of commercial litigation and arbitration matters, including antitrust matters (both antitrust litigation and the formulation of compliance programs). I also developed a substantive expertise in covenants not to compete; throughout my tenure with Debevoise I worked on litigation and transactional matters involving such covenants. As a young associate, I spent a fair amount of time on discovery matters, including attending, taking and defending depositions and managing document productions.

In or about the spring of 1986, I began to do employee benefits work (initially, plan drafting, IRS submissions and ERISA compliance) in the firm's tax department in addition to my general litigation work. Toward the end of 1986, I joined the tax department.

From about 1986, my practice was focused principally on employee benefits, ERISA, executive compensation, employment law (including Federal and State anti-discrimination statutes) and related litigation. I counseled firm clients, primarily large corporate organizations and some non-profits, with respect to their compensation programs and policies, employee benefit plans, and compliance with anti-discrimination laws. Drawing on my initial training in the litigation department, my employee benefits practice included participation in and management of fiduciary, employee benefits and employment-law related litigation; I was ultimately appointed Counsel in the litigation department.

My practice also included advice to bank trustees, investment managers and other employee benefit plan fiduciaries as to compliance with ERISA's fiduciary duty and other requirements, as well as investment partnership, merger/acquisition and other transactional work. Over the years, I represented numerous firm clients in merger and acquisition, investment, leveraged buy-out, leveraged lease and other corporate transactions. I prepared employee benefit plans and related materials, employee communications, employment contracts, and compensation and benefits-related disclosure provisions of proxy statements and other securities law filings. During my final year with the firm, I supervised a major international document production effort in connection with a complex white collar criminal defense matter.



I was appointed to the bench as a United States Bankruptcy Judge in November 1996 and have held that position since that time.

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

My typical former clients were major corporations and their affiliates, including two major media clients for whose employee benefits and executive compensation matters I had principal responsibility, banks, insurance companies, buy-out firms, airlines, and broker/dealers. I also represented non-profit organizations.

My areas of concentration were ERISA, employee benefits, executive compensation, employment law (including anti-discrimination statutes), covenants not to compete, and litigation relating to the foregoing.

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

Before becoming a United States Bankruptcy Judge in 1996, I appeared in court infrequently because the complex civil matters I generally handled rarely went to trial, and because a substantial portion of my practice involved counseling, transactional and/or compliance work.

2. What percentage of these appearances was in:

- (a) federal courts: 100\*;  
 (b) state courts of record: 0%\*

\*I made one appearance in New York State Supreme Court on a calendar call matter during my first year with the Debevoise firm;

- (c) other courts: 0%.

3. What percentage of your litigation was:

- (a) civil: 90%;
- (b) criminal: 10%.

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

None.

5. What percentage of these trials was:

- (a) jury;  
Not applicable.

- (b) non-jury.  
Not applicable.

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

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

1. Tourangeau v. Uniroyal, Inc., Civ. No. N-86-208 (D. Conn.) United States District Judge Alan H. Nevas, United States Magistrate Judge Owen Eagan

*Date of Representation:*

1986 to 1996

*Issues Presented, Parties Represented, Disposition:*

This case was brought as a class action. Plaintiffs, salaried retirees of Uniroyal, Inc., and certain of its affiliates, asserted that they had vested rights to receive retiree medical and life insurance benefits and sought to enjoin the liquidation of Uniroyal, Inc., and its affiliates unless such benefits were pre-funded. The case raised significant issues as to the mutability of retiree welfare benefit programs and whether the funding of such programs can be compelled. It was settled pursuant to an agreement providing for certain vested benefits, and the liquidation proceeded. The litigation included a lengthy evidentiary hearing on a preliminary injunction motion and an evidentiary hearing on a motion for approval of the class settlement; litigation and negotiations concerning interpretation, modification and enforcement of settlement continued for a number of years after approval of the settlement. Debevoise & Plimpton represented Uniroyal, Inc., and company officers and directors named as defendants.

*Personal Involvement:*

I formulated litigation strategies for the ERISA aspects of the case, and drafted briefs, affidavits and other court papers in connection with the preliminary injunction hearing and the motion for approval of the settlement, as well as in connection with contested matters involving implementation of the settlement. I defended depositions and conducted discovery. I made court appearances to argue discovery and settlement implementation controversies.

*Opposing Counsel:*

Seth Kupferberg, Esq., and Jerome Tauber, Esq., of Sipser Weinstock, Harper & Dorn, L.L.P., 275 Madison Avenue, New York, New York 10016 (212) 252-0072

*Debevoise & Plimpton Partners Involved:*

John H. Hall, Esq. (212) 909-6591  
Daniel M. Abuhoff, Esq. (212) 909-6381  
Joseph P. Moodhe, Esq. (212) 909-6241

***Related Post-Settlement Activity:***

In the ensuing years I worked closely with the entities that survived to service Uniroyal's unliquidated obligations. In or about 1990, I was the principal Debevoise lawyer involved in the successful formulation and implementation of a "buy-out" of certain of the benefit obligations. I coordinated the efforts of lawyers, actuaries, company personnel and communications specialists in designing a program that valued each retiree's benefits and met applicable legal requirements, and I participated in negotiations with the class representative regarding the impact of the buyout on the settlement structure. I helped design appropriate mailings and an interactive telephone election/information "hotline" to communicate and implement the buyout offer. Later, I coordinated efforts to design, negotiate, communicate and implement benefit structure changes for union retirees. This included participation in negotiation of a memorandum of understanding with the United Rubber Workers Union.

***Other Attorneys Involved:***

Alan R. Elton, Esq. (General Counsel of Uniroyal, Inc. and Uniroyal Holding Inc.), c/o Uniroyal Holding Inc. 70 Great Hill Road, Naugatuck, CT 06770 (203) 720-1427

Debevoise & Plimpton partners John H. Hall, Esq. (212) 909-6591, David A. Duff, Esq. (212) 909-6629, and Daniel M. Abuhoff, Esq. (212) 909-6381

Retiree class counsel Seth M. Kupferberg, Esq., and Jerome Tauber, Esq., of Sipser Weinstock, Harper & Dorn, L.L.P., 275 Madison Avenue, New York, New York 10016 (212) 252-0072

2. In re Masters, Mates & Pilots Pension Plan and IRAP Litig. (Lowen v. Marine Midland), No. 86 Civ. 9719 (DLC) (S.D.N.Y.) United States District Judge Vincent L. Broderick, (then-) United States Magistrate Judge Naomi Reice Buchwald

***Date of Representation:***

1986 to 1991

***Issues Presented, Party Represented, Disposition:***

In this case, the plaintiff trustees of two union employee benefit plans alleged that the plans' bank trustee had breached its ERISA fiduciary duties in connection with the supervision of employee benefit plan investments. The case

raised significant issues as to the scope of duties of a custodial trustee and the interpretation of the "prohibited transaction" provisions of ERISA. The litigation in this and related cases terminated after several years pursuant to a global settlement. Debevoise & Plimpton represented Marine Midland Bank, the custodial trustee of the two employee benefit plans involved.

*Personal Involvement:*

I formulated litigation strategy, especially with regard to ERISA issues, and was responsible for day to day leadership and deployment of the D&P litigation team. I was the principal draftsman for court papers on substantive and procedural motion practice; I supervised and conducted extensive discovery, including taking and defending numerous depositions, and participated in settlement negotiations and negotiations with the bank's insurer. I made court appearances on discovery and settlement matters.

*Opposing Counsel:*

Paul J. Ondrasik, Jr., Esq., of Steptoe & Johnson LLP, 1330 Connecticut Ave, NW, Washington, DC 20036 (202) 429-3000

Plaintiffs' predecessor counsel were Bettina B. Plevan, Esq., and Myron D. Rumeld, Esq., of Proskauer Rose LLP, 1595 Broadway, New York, New York 10036 (212) 969-3000

Counsel for a class of private plaintiffs in a related action: David S. Preminger, Esq., of Rosen, Preminger & Bloom, 67 Wall Street, New York, New York 10005 (212) 962-5858

*Debevoise & Plimpton Partner Involved:*

John H. Hall, Esq. (212) 909-6591

3. United States v. Daiwa Bank Ltd., (S.D.N.Y. 1995) United States District Judge Kimba Wood [Please note: I lack detailed information on this and other matters, having left the relevant files with Debevoise & Plimpton when I departed the firm to become a United States Bankruptcy Judge.]

*Date of Representation:*

1995 to 1996

*Issues Presented, Parties Represented, Disposition:*

In this case, the Government alleged criminal violations of federal banking laws by reason of the failure timely to report a significant employee defalcation. There were concurrent investigations by state and federal regulatory authorities and a concurrent corporate asset disposition transaction. The case involved significant issues as to reporting duties under federal banking laws, and implicated comity and cross-cultural business practice concerns as well. Debevoise & Plimpton represented Daiwa Bank Ltd. and one of its corporate affiliates. The criminal case terminated pursuant to a plea agreement in early 1996; the corporate transaction (sale of Daiwa's U.S. banking assets to Sumitomo Bank) was completed in late 1995 or early 1996. The regulatory investigations continued after I left the firm.

*Personal Involvement:*

I managed the document review and production aspect of the defense, including supervision of a team of up to 200 lawyers, paraprofessionals and translators. I coordinated document gathering and review efforts in Japan and United States. I also coordinated relations with regulatory investigators and aspects of the documentary due diligence disclosure in connection with the concurrent corporate asset disposition transaction.

*Debevoise & Plimpton Partners Involved:*

Robert N. Shwartz, Esq. (212) 909-6850

Judah Best, Esq. (202) 383-8060

Bruce G. Merritt, Esq. (212) 909-6830

Louis Begley, Esq. (212) 909-6273

4. Laker Airways Ltd. v. Pan American World Airways, Civ. Nos. 82-3362, 83-0416, 83-2791 (D.D.C.) United States District Judge Harold H. Greene

*Date of Representation:*

1983 to approximately 1986

*Issues Presented, Party Represented, Disposition:*

Laker Airways Ltd. asserted antitrust claims against major U.S. and European airlines, claiming that its low-cost airline business had failed by reason of predatory pricing, price-fixing and other conspiracies. The case involved significant issues of international jurisdiction, comity, and substantive antitrust

law. Debevoise Plimpton represented defendant KLM Royal Dutch Airlines. The litigation terminated, after several years of intensive litigation and discovery, with a global settlement.

*Personal Involvement:*

I appeared for KLM at numerous depositions. I handled document reviews and productions, and performed legal and factual research.

*Debevoise & Plimpton Partners Involved:*

Robert B. von Mehren, Esq. (retired) (212) 909-6588, (212) 570-0551

Robert N. Shwartz, Esq. (212) 909-6850

5. Hanley v. Railway Bar & Restaurant, Inc., Civ. No. 91 C 484 (N.D. Ill.)  
United States District Judge Holderman

*Date of Representation:*

1991 - 1992

*Issues Presented, Party Represented, Disposition:*

This case involved a claim for withdrawal liability under the Multiple Employer Pension Plan Amendments Act of 1980 by a union-sponsored employee benefit plan. The issues involved included the calculation and timing of the assertion of the withdrawal liability claim and the timing of the assertion of defenses thereto. It was settled prior to litigation on the merits. Debevoise & Plimpton represented the employer-defendant.

*Personal Involvement:*

I was the attorney principally responsible for the case. I formulated the defense strategy, drafted all pleadings and court papers, instructed local counsel, and negotiated the settlement.

*Opposing Counsel:*

Robert Landau, Esq., and David R. Levin, Esq., of Feder & Associates, 1350 Connecticut Avenue, NW, Washington, DC 20036 (202) 955-8305

*Debevoise & Plimpton Partner Familiar with Matter:*

The Honorable John G. Koeltl (former partner), United States District Judge - Southern District of New York, 500 Pearl Street, New York, New York 10007 (212) 805-0223.

6. Coppola v. Convent of the Sacred Heart, et al., Complaint No. E-94-1113  
(New York City Commission on Human Rights) Randolph Wills  
(Managing Attorney), presiding officer

*Date of Representation:*  
1994 to 1995

*Issues Presented, Parties Represented, Disposition:*  
This matter arose from a claim of employment discrimination in violation of Federal, State and local laws. Debevoise & Plimpton represented the respondent private school, which had employed the claimant as a teacher, and school officials named as respondents. The agency closed its file without taking action on the complaint.

*Personal Involvement:*  
I was the attorney principally responsible for the matter. I performed an internal investigation, formulated the litigation strategy, and handled all communications with the agency, including the preparation of written submissions.

*Opposing Counsel:*  
The complainant initially proceeded pro se, and was represented in her later unsuccessful application to reopen the case by Svi Zer, Esq., whose office address was 319 Fifth Avenue, New York, New York 10016 (212) 779-8339. Mr. Zer was disbarred in 1997 following his conviction on unrelated felony charges (see "Matter of Svi Zer, a Suspended Attorney," New York Law Journal May 22, 1997 at 7).

*Debevoise & Plimpton Partner Familiar with Matter:*  
David A. Duff, Esq. (212) 909-6629

7. Schmader v. Cablevision Systems Corporation, Civ. No. H-95-4277 (S.D. Tex. App. 1995) United States District Judge Lee H. Rosenthal

*Date of Representation:*  
1995 to 1996

*Issues Presented, Parties Represented, Disposition:*  
In this case, a former company employee asserted a claim for substantial civil



penalties under ERISA for failure to provide certain employee benefit plan documents upon request. Debevoise & Plimpton represented Cablevision. The matter was settled prior to substantive litigation.

*Personal Involvement:*

I was the attorney principally responsible for the matter. I performed an internal investigation, formulated the litigation strategy, and reviewed and provided advice to the company concerning plan administration procedures. I prepared all pleadings and court papers, and conducted telephonic court conferences, discovery, and settlement negotiations.

*Opposing Counsel:*

Blair Brininger, Esq., Four Houston Center, Houston, TX 77010 (713) 659-3737

*Debevoise & Plimpton Partner Familiar with Matter:*

David A. Duff, Esq. (212) 909-6629

*Client Officer Familiar with Matter:*

Charles A. Forma, Esq., Vice President - Law - Cable Operations, Cablevision Systems Corporation, 1111 Stewart Avenue, Bethpage, New York 11714 (516) 803-2551

8. Sinhogar v. Parry (S. Ct. N.Y. County)

*Date of Representation:*

1983 to approximately 1986

*Issues Presented; Parties Represented; Disposition:*

This case was commenced by the American Civil Liberties Union Children's Rights Project in or about the late 1970's as a class action challenging New York City and State practices of placing troubled foster children in out-of-state institutions. Debevoise & Plimpton became co-counsel to the ACLU in 1982 or 1983, by which time the issues that remained related principally to damages suffered by the named plaintiffs. I negotiated a favorable settlement resulting in a monetary recovery for the named plaintiffs.

*Personal Involvement:*

I was the Debevoise & Plimpton attorney principally responsible for the matter from early 1984 until it was concluded. I conducted an extensive factual

investigation and discovery, including defending depositions. I also conducted the settlement negotiations and made a court appearance.

*Opposing Counsel:*

Marilyn Richter, Esq., New York City Law Department, 100 Church Street, New York, New York 10007 (212) 788-0931

*Debevoise & Plimpton Partner who Supervised Matter:*

The Honorable Mary Jo White (former partner), United States Attorney for the Southern District of New York, One St. Andrew's Plaza, New York New York 10007 (212) 637-2573

9. Representation and counseling of Union Bank of Switzerland in connection with insurance and third-party negotiations concerning liability for losses, arising from failed investments in certain securities, of trust funds for which bank served as investment manager.

*Date of Representation:*

1994

*Issues Presented, Disposition:*

The matter presented issues of contractual and ERISA fiduciary responsibility of an investment manager, including investment monitoring practices. The matter was concluded with a global settlement.

*Personal Involvement:*

I assisted in the formulation of the settlement strategy, reviewed and gave advice concerning internal procedures, performed legal research and participated in negotiations.

*Debevoise & Plimpton Partners Involved:*

Theodore A. Kurz, Esq. (212) 909-6388

David A. Duff, Esq. (212) 909-6629

10. Representation and counseling of the Equitable Life Assurance Society in connection with threatened private civil litigation concerning propriety of employee benefit plan trust fund investments in certain guaranteed annuity and guaranteed interest contracts.

*Dates of Representation:*

Approximately 1991-1992

*Issues Presented, Disposition:*

The substantive legal issues involved in this matter included ERISA fiduciary duties in connection with plan investments, as well as the interpretation of statutory provisions and administrative rulings concerning "prohibited transactions." The matter was resolved without litigation.

*Personal Involvement:*

I formulated strategy, conducted an internal factual investigation and informal discovery, and gave advice to plan fiduciaries concerning duties and procedures.

*Debevoise & Plimpton Partner Involved:*

David A. Duff, Esq. (212) 909-6629

11. *Other:*

The following is a list of members of the legal community who have appeared before me as counsel in lengthy or complex bankruptcy matters.

Edward Flint, Esq.  
Shaw, Licitra, Bohner, Esermio & Schwartz  
1010 Franklin Avenue  
Garden City, New York 11530  
(516) 742-0610

Brooks Burdette, Esq.  
Schulte, Roth & Zabel  
900 Third Avenue  
New York, New York 10022  
(212) 756-2000

David Feldman, Esq.  
Philip Bertley, Esq.  
Kramer, Levin, Naftalis & Frankel LLP  
919 Third Avenue  
New York, New York 10022  
(212) 715-9100

Robin E. Keller, Esq.  
Stroock & Stroock & Lavan LLP  
180 Maiden Lane  
New York, New York 10038  
(212) 806-5400

Bruce Weiner, Esq.  
Rosenberg, Musso & Weiner  
26 Court Street  
Suite 2511  
Brooklyn, New York 11242  
(718) 855-6840

Anthony C. Acampora, Esq.  
Silverman Pearlstein & Acampora  
100 Jericho Quadrangle, Suite 300  
Jericho, New York 11753  
(516) 746-8000

Jeffrey Hertzberg, Esq.  
Flower & Medalie  
24 East Main Street  
Suite 201  
Bay Shore, New York 11706  
(516) 968-7600

Michael Z. Brownstein, Esq.  
Edward J. LoBello, Esq.  
Tenzer Greenblatt LLP  
405 Lexington Avenue  
New York, New York 10174  
(212) 885-5000

Steven J. Reisman, Esq.  
Curtis, Mallet-Prevost, Colt & Mosle  
101 Park Avenue  
New York, New York 10178-0061  
(212) 696-6000

Eugene J. Chikowski, Esq.  
 Becket & Lee LLP  
 500 Chester Field Parkway  
 Malvern, Pennsylvania 19355-0701  
 (610) 644-7800

Marc A. Pergament, Esq.  
 Weinberg, Kaley, Grosso & Pergament LLP  
 400 Garden City Plaza, Suite 403  
 Garden City, New York 11530  
 (516) 877-2424

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

***Judicial Experience:***

In my service as a United States Bankruptcy Judge since November 1996, I have gained extensive experience in presiding over and managing litigation. I hear on average 100-200 litigated matters each week, ranging from motions for relief from the automatic stay, to objections to claims raising complex legal issues, to factual and legal disputes within chapter 13 matters. I also conference regularly and follow carefully all Chapter 11 reorganization matters. Over 6500 bankruptcy cases were assigned to my personal docket in 1999; over 6000 cases were assigned to me in 1998. I estimate that roughly 20% of my cases generate active litigation in the form of contested matters or adversary proceedings at any given time. My trial experience has ranged from complex valuation issues involving extensive expert testimony to credit card debt dischargeability issues.

In order to manage effectively this heavy caseload I rule from the bench the vast majority of the time, and have had to develop effective and efficient case management techniques to ensure proper substantive review of all matters before they are heard. Management of this caseload also places a premium on effective communication skills in that, as noted, most of my decisions must be delivered orally.

*Court- and Bar- Related Work:*

*Court and Judicial Committee Work:*

United States Bankruptcy Court for the Eastern District of New York:

Since joining the United States Bankruptcy Court for the Eastern District of New York, I have been an active participant in the development of local court rules, programs and policies as a member of the Board of Judges. Among other things, I helped to lay the groundwork for a formal mediation program in the District, devising a form that was used to solicit expressions of interest in serving as mediators and in working with the Court to design a program, meeting with outside administrators of similar programs, and devising ad hoc procedures for mediation of cases pending before me.

Federal Judicial Center Advisory Committee for Bankruptcy Education Project

I was appointed to this Committee in November 1999 and since that time have reviewed and commented on existing debtor education materials, and participated in the formulation of a schematic for an FJC-sponsored debtor education program centered on substantive law issues.

National Conference of Bankruptcy Judges:

I attend regularly the annual meetings of the National Conference of Bankruptcy Judges, and have participated in each of the last three years as a discussion leader in the Judges' Round Table portion of the annual meeting.

*Bar Committees, National Bar Examination, and Debtor Education:*

Association of the Bar of the City of New York:

Secretary, Committee on Minorities in the Profession (approximately 1984-1986)

Member, Committee on the Profession

Member, Committee on Employee Benefits

Coalition for Consumer Bankruptcy Debtor Education (Working Group member 1997-1998; founding member of Board of Directors 1998-present):

The Coalition brings together representatives of the diverse constituencies with interests in consumer debtor issues (e.g., consumer debtor advocates, financial institutions, bankruptcy trustees, judges and other government officials, academics, debtor educators, psychotherapists). Its mission is to assist consumer debtors who file bankruptcy in understanding and improving their ability to manage their financial affairs. I have participated actively in the development of the Coalition, including the identification of relevant issues and interest groups, its formal establishment as a non-profit organization, the development of Coalition's mission, vision and case statements, and other tasks central to the pursuit of its mission. I coordinated a demonstration debtor education program, which was presented my courtroom on June 28, 1999 under the co-sponsorship of our Court, the Office of the United States Trustee (Region Two) and the Coalition. I serve on the Curriculum and Long Range Planning Committees of the Board, which is developing a model program to be offered in one judicial District as a prototype for future nationwide implementation.

National Conference of Bar Examiners:

Member, Multistate Bar Examination Committee 1987-1999. This six-to eight-member committee is responsible for the oversight of test development and of the work of drafting committees, and is responsible for policy decisions with respect to the examination. I was personally responsible for review (with the expert assistance of Professor Neil B. Cohen of Brooklyn Law School) of the Constitutional Law section of the examination for several years. I participated in decisions to commission validity studies and in other important policy decisions as a member of this committee.

Member Testing, Research and Development Committee 1990-1995. This committee was responsible for the development of the Multistate Performance Test during my tenure. We held numerous meetings and workshops, and consulted with a number of professionals in the field in a successful effort to develop and offer a "performance test" bar examination component that addresses skills in addition to those tested in the more traditional essay and multiple choice formats.

Member, Long Range Planning Committee 1995-1996

New York Professional Education Project, Consultant 1995:

The Project was established by Chief Judge Kaye of the Court of Appeals of the State of New York and chaired by Justice Joseph P. Sullivan of the New York State Supreme Court Appellate Division, First Department. I participated in the formulation of the portion of the Project's report that related to the New York State Bar Examination.



II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

I have a vested right to an annuity benefit (\$2,044.27 per month), payable after my age 65 "normal retirement date" in accordance with the terms of the plan, under Debevoise & Plimpton's Pension Plan. The Plan does not permit a pre-retirement lump sum cash-out of the benefit.

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

With respect to the interest in the Debevoise & Plimpton Pension Plan, I am exploring informally with the Codes of Conduct Committee of the Judicial Conference whether, in light of Federal pension benefit guarantees provided through the Pension Benefit Guaranty Corporation, this financial interest would mandate recusal on a permanent basis. Pending resolution of the issue, I plan to recuse myself if the Debevoise firm appears before me.

I maintain a list of the entities with which my current or former affiliations might present a conflict issue, and I review the names of parties and counsel prior to taking substantive action on litigated matters. I will recuse myself in any conflict of interest situation.

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

No.

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

Please see the attached financial disclosure report.

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

Please see the attached financial net worth statement.

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

In 1972, I did leafletting and voter assistance work in Brooklyn, New York, for the George McGovern presidential campaign. In 1974, I served as "Assistant Brooklyn Coordinator" for the (New York State) lieutenant gubernatorial campaign of Mary Anne Krupsak. In that capacity, I did advance work in connection with public campaign appearances and accompanied the candidate on appearances in Brooklyn. Both of those activities were prior to my eighteenth birthday.

III. GENERAL (PUBLIC)

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

I worked on and/or supervised a number of pro bono litigation matters during my time at Debevoise & Plimpton, including the final stages of Sinhogar v. Parry (see, e.g., 53 N.Y.2d 424 (N.Y. 1981)), in which I secured a favorable financial settlement from New York City and New York State for the two named plaintiffs. I also did employment and employee benefits-related work for a number of non-profit organizations represented by the firm on a pro-bono basis. I was instrumental in establishing Debevoise & Plimpton's ongoing relationship (for which it recently received an award) with Network for Women's Services, an organization that provides pro bono legal assistance to battered women on domestic relations and immigration issues.

In connection with my work as a member of the New York State Board of Law Examiners, I spoke regularly with groups of law students and gatherings of bar applicants organized by not-for-profit entities regarding preparation for the bar examination and related matters. I considered my work as a bar examiner to be very much in the public interest. I devoted approximately 400 hours per year to bar examination-related activities.

The substantial time I devoted to leadership work at Grace Church in New York over the past decade helped to support and facilitate not only the direct Christian ministry of the church but also its outreach activities, including Grace Church School, which is a leading independent school with a diverse student body and a healthy scholarship program, the Grace Opportunity Project, a tutoring program for public elementary school students from the Lower East Side and Chinatown, and the Grace Church Men's Shelter.

I currently devote substantial time to work as a board member of Episcopal Charities, Inc. Episcopal Charities' mission is to fund non-sectarian outreach programs based in Episcopal parishes in New York City and northern counties. Episcopal Charities raises and administers over \$600,000 per year in grants that fund feeding programs, senior citizens' programs, tutoring and after school

programs, and ministries to other under-served groups, including rural and migrant farm workers. In the past year, I have worked with a small subcommittee and a consultant to formulate a long-range plan for the next five years, among other responsibilities.

I have also devoted substantial time over the past year to service on the Congregational Support Plan Task Force of the Episcopal Diocese of New York. The charge of this Task Force was to review and to make recommendations to the Bishop of New York concerning the Congregational Support Plan, which is a major mission effort of the Diocese. Under this program, the Diocese contributes substantial funding for clergy salaries for congregations whose resources are insufficient to provide for clergy compensation. I personally visited two parishes that participate in the plan, helped to devise a survey form that was sent to all 59 parishes participating in the plan, and worked on the Committee's written report and recommendations for the Bishop, including design of a proposed transition formula for congregations whose resources have improved sufficiently to be leaving the Plan.

For the past three years, I have worked with other parents to bring to fruition the Community Partnership Charter School project (a partnership of parents from my local Brooklyn community and the Beginning with Children Foundation that has received approval from the State University of New York Board of Trustees and the New York State Board of Regents to open a public elementary school in Brooklyn in the fall of 2000). Our goal is to improve public educational opportunities for all children in our local community, including those at-risk of academic failure by reason of socioeconomic disadvantage. We have done outreach targeted to the families of such children and expect that at least 60% of the children who will attend the school will meet poverty criteria. As a parent founder, I have participated in all phases of the project, including development and articulation of vision, curriculum design, the charter application process, outreach to prospective students, their families and other community members, facilities and staff search, and work on various matters in conjunction with the Foundation.

I speak annually to a legal writing class at Brooklyn Law School, have spoken to students in Columbia Law School's Judicial Clerkship Workshop, and have twice hosted and participated in a moot court exercise led by New York Law School faculty members. I served as a judge for the Semi-Final Round of the Conrad B. Duberstein National Moot Court Competition in 1998 and 1999, and have also served as a moot court judge for Brooklyn Law School. I am a

frequent speaker on bankruptcy-related topics at continuing legal education seminars in New York and elsewhere.

As a member of the Board of Judges of the United States Bankruptcy Court for the Eastern District of New York, I played an important role in the revitalization and regularization of this Court's pro bono panel of attorneys. I devised a form that was used to solicit a panel of attorneys who are willing to represent debtors or creditors pro bono or for a reduced fee or upon extended payout terms where the Court determines that such representation is appropriate, and formulated procedures for the program, which has been implemented successfully.

As explained above in response to Part I, item 19, I was one of the founders of the Coalition for Consumer Bankruptcy Debtor Education and continue to be involved extensively in the Coalition's work of designing and implementing a financial education program for persons who have filed for bankruptcy.

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

I have never belonged to any organization that discriminates. I have belonged to several churches, which generally use Christianity as a membership criterion, as follows: Sixth Avenue Baptist Church (Brooklyn, NY), approximately 1965 to 1973; Park Slope United Methodist Church (Brooklyn, NY), approximately 1973 to 1975; Old South Church (Boston, MA), approximately 1980 to 1982; Grace Church in New York (NY, NY), 1982 to present; Church of the Messiah (Rhinebeck, NY), 2000-present.

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

Yes. Senator Charles E. Schumer maintains a judicial screening panel, which recommended me to him as a potential nominee.

In May 1999, I received a telephone call from a representative of the panel, who asked if I would be willing to be considered for potential nomination to the District Court. I responded in the affirmative, and was instructed to request the appropriate forms from the office of the Chair of the panel and submit them as soon as possible. I made my 42-page submission to the panel in early June 1999. I was interviewed by approximately ten members of the panel in September 1999 and by Senator Schumer in December 1999.

On February 14, 2000, the Chair of Senator Schumer's panel advised me that the Senator had in mind to propose me for the instant nomination if I remained interested in Article III service. I responded that I would be honored. I subsequently spoke with representatives of Senator Schumer, the White House and the Department of Justice, and met with officials from the Office of Policy Development of the United States Department of Justice, a representative of the Federal Bureau of Investigation, and a representative of the American Bar Association Standing Committee on the Federal Judiciary.

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

No.

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

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

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

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness;
- d. A tendency in the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Like that of any public institution with significant responsibilities affecting lives and economic and social relationships, the work of the judiciary invites both scrutiny and criticism.

The above-cited criticisms spotlight tensions inherent in judicial work, areas in which judges must be vigilant in ensuring that they do not overstep the Constitutional and statutory boundaries of the Federal judicial function. Federal courts are ones of limited jurisdiction. Their Constitutionally-prescribed role in our system of government is to resolve cases and controversies in certain legal contexts. It is thus always important for a Federal court to consider whether a justiciable issue within its grant of jurisdiction has been raised by parties with standing to seek resolution of the issue prior to reaching the merits of a particular dispute, no matter how earnestly the parties may desire judicial intervention or how important the issue may be.

Similarly, courts must attend to the separation of powers among the three

branches of government. When presented with justiciable controversies, courts apply, and where necessary interpret, statutes that embody policy choices made by the legislative and executive branches of government. The interpretation of statutes and case law is guided by precedent in our system of justice, in which the principle of *stare decisis* plays a key role in the continuity and development of the law.



FINANCIAL STATEMENT  
NET WORTH  
(As of March 18, 2000)  
LAURA TAYLOR SWAIN

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) and all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	16,150	Notes payable to banks - secured	0
U.S. Government securities – add schedule	0	Notes payable to banks - unsecured	0
Listed securities – add schedule (See Schedule A)	203,934	Notes payable to relatives	0
Unlisted securities – add schedule	0	Notes payable to others	0
Accounts and notes receivable:	0	Accounts and bills due	5,000
Due from relatives and friends		Unpaid income	0
Due from others		Other unpaid tax and interest	0
Doubtful		Real estate mortgages payable – add schedule (See Schedule C)	292,000
Real estate owned – add schedule (See Schedule B)	754,000	Chattel mortgages and other liens payable	0
Real estate mortgages receivable	0	Other debts – itemize	0
Autos and other personal property	150,000		
Cash value - life insurance	24,000		
Other assets – itemize:			

ASSETS		LIABILITIES	
Interest in US Government Thrift Savings Plan (L.T. Swain)	37,962		
Interest in Stark Carpet Corporation Profit Sharing Plan (A.J. Swain)	5,984		
		Total liabilities	297,000
		Net Worth	895,030
<b>Total Assets</b>	<b>1,192,030</b>	<b>Total liabilities and net worth</b>	<b>1,192,030</b>
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, co-maker or guarantor	0	Are any assets pledged? (Add schedule)	None other than real estate
On leases or contracts	0	Are you defendant in any suits or legal actions?	Yes. See item IV.10.
Legal Claims	0	Have you ever taken bankruptcy?	No.
Provision for Federal Income Tax	25,000		
Other special debt	0		

## SCHEDULE A - LISTED SECURITIES

SECURITY	NUMBER OF SHARES	MARKET VALUE
Citifunds US Treasury Reserves	1,370	1,370
Dreyfus Appreciation Fund (IRA)	2,345	105,066
Scudder Growth & Income Fund (IRA)	875	23,317
Neuberger & Berman Socially Responsive Fund (IRA)	660	12,925
Neuberger & Berman Genesis Fund (IRA)	149	2,384
Strong Corporate Bond Fund (IRA)	3,880	40,749
Oppenheimer Government Bond Fund (401(k) Plan)	(not reported)	2,232
Oppenheimer Champion Income Fund (401(k) Plan)	(not reported)	2,396
AIM Charter Fund (401(k) Plan)	(not reported)	4,182
AIM Value Fund (401(k) Plan)	(not reported)	5,088
Fidelity Dividend Growth Fund (401(k) Plan)	(not reported)	4,225
TOTAL VALUE		203,934

**SCHEDULE B - REAL ESTATE OWNED**

<b>PROPERTY LOCATION/DESCRIPTION</b>	<b>VALUE</b>
Rhinebeck, NY - House and Land	240,000
Rhinebeck, NY - Land	14,000
Brooklyn, NY - Cooperative Apartment	500,000
<b>TOTAL VALUE</b>	<b>754,000</b>

**SCHEDULE C - REAL ESTATE MORTGAGES PAYABLE**

<b>PROPERTY LOCATION</b>	<b>BANK</b>	<b>BALANCE</b>
Rhinebeck, NY	Ulster Savings Bank	115,000
Rhinebeck, NY	Norwest Bank Colorado, NA	58,000
Brooklyn, NY	Citicorp Mortgage	95,000
Brooklyn, NY	Citicorp Mortgage	24,000
<b>TOTAL PAYABLE</b>		<b>292,000</b>

[Whereupon, at 3:31 p.m., the committee was adjourned.]



## QUESTIONS AND ANSWERS

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### RESPONSES OF DANIEL MARCUS TO QUESTIONS OF SENATOR HATCH

*Question 1.* As the Wall Street Journal reported on Monday, the Community Oriented Policing Services Office—the so-called COPS program—has vastly overstated the number of policemen put on the streets, and has ignored some very serious problems resulting from poor administration and use of COPS grants. Indeed, the Department of Justice's own Inspector General determined in its most recent audit report that only one-half of the widely proclaimed "100,000" new officers have actually been deployed. Moreover, even that figure is suspect because the COPS office does not maintain an accurate tally of police officers actually deployed on the streets; it bolsters its figures by including grants that have not even been accepted let alone used to hire officers, and by counting equipment such as new radios as equivalent to a certain number of officers. This program, which costs the American taxpayers \$8.8 billion, reportedly has been used for all sorts of inappropriate things including the purchase of liquor for officers. I'd like to know how you are planning to reform the COPS programs to make sure that the American people are getting their money's worth from this program, and to stop the COPS office from making highly misleading public relations statements concerning the results of the COPS program?

Answer 1. We have made substantial progress in managing the COPS program more effectively during this past year, and I assure you that this important program will continue to receive my close attention and supervision. I believe that COPS is a vital program that is promoting important goals by assisting local police departments to fight crime by getting more police officers on the street and involved in community policing.

Let me address some of the specific points raised by your question. First, as to the numbers: The Department and the COPS Office have tried to be careful and accurate in our public statements about our progress toward achieving the goal of getting 100,000 additional officers on the street. Since its inception, the program has made grants to fund more than 100,000 officers—through direct hiring grants and through MORE (Making Officer Redeployment Effective) grants for purchasing technology or hiring civilians to free up existing police officers to be redeployed on the street. There is obviously a time lag (averaging 18 months) caused by the need to hire and train officers before they can be deployed. But substantial progress is being made: more than 60,000 of the 100,000 funded officers are already on the beat.

The Inspector General's report to which you refer has been taken to heart by COPS management. The COPS Office and the Office of the Inspector General have resolved virtually all disagreements as to specific audit findings, and COPS continues to work with OIG to implement the recommendations contained in the report. I am confident that grant management and monitoring in the COPS program have improved substantially as a result of the concerted effort by the Director of the COPS Office and his management team to respond to the problems revealed by the IG report.

Management of a major grant program like COPS requires constant attention to assure, as you put it, that "the American people are getting their money's worth" from the program. I assure you that Director Frazier and I will keep up our efforts to build on the progress already made in improving program management.

*Question 2.* I am concerned about the politicization of the Department and the perception that it has brought the tobacco suit for political reasons. I am concerned that if this is true, no industry would be immune from efforts by the federal government to use litigation as a tool to regulate unpopular industries. This would bypass Congress' constitutional role to set policy through the legislative process. I believe that the federal tobacco suit may be the start of a pernicious trend to sue entire industries—which was never done until very recently—in order to coerce settlements or force judgments that *ipso facto* regulate entire sectors of our economy.

Don't get me wrong, I am against tobacco use and believe that the tobacco companies have been bad actors. Senator Feinstein and myself introduced legislation that regulated tobacco and would have cost the companies over \$400 billion. But such regulation is the job of Congress under our Constitution and in a democracy. And it doesn't matter if Congress is slow to Act. That is the will of the representatives of the American people. The danger is that such litigation is undemocratic and violates separation of powers. This is the view of many Senators and former Clinton Labor Secretary Robert Reich, who vehemently opposes such government lawsuits and said so in the *Wall Street Journal*. Would you comment? Does the Department have any other block-buster litigation planned?

Answer 2. I share your opinion that the Justice Department should be wary of using litigation as a tool to regulate unpopular industries. Congress, not the courts should make the policy decisions about how to regulate our economy. The tobacco lawsuit, I can assure you, is based on the unusual history and conduct of that industry and is not the forerunner of similar litigation against other industries.

When I arrived at the Department in April 1999, consideration of a possible lawsuit against the cigarette companies to recover expenditures by Medicare and other federal programs on cigarette-related illnesses was already underway. That process continued right up to the final decision by the Attorney General to approve the lawsuits the day before it was filed last September. It was a very careful process in which we focused not only on the merits of the potential lawsuit but also on the policy question of whether such a suit was appropriate. We concluded that the lawsuit has substantial merit, and that filing it would not establish a harmful precedent for other industries with products whose safety or environmental impact has been questioned. We remain convinced that there are special facts about cigarettes and the tobacco companies that make this suit against the tobacco industry appropriate: the industry's history of misleading the public about the safety of cigarettes and the addictiveness of nicotine; the suppression of research results; the manipulation of nicotine levels in cigarettes; and the targeting of young people as consumers. We are not aware of any other industry with a similar history and pattern of conduct.

*Question 3.* I have to say that I am not happy about not being informed about the tobacco lawsuit. Indeed, I learned about the filing of the lawsuit in the *Washington Post*. As the oversight Committee for the Department, I believe the Committee ought to be better informed about the Department's activities. What steps will you take to improve consultations?

Answer 3. As you know, the Department very much regrets that leaked information resulted in the publication of a newspaper report about our plans to file the tobacco lawsuit before you were informed that the suit would be filed. Because it is important to maintain the independence of the Justice Department's decisional process in determining whether to bring lawsuits (and some areas—like criminal and enforcement matters—are particularly sensitive), there are limits on the extent to which we should disclose our litigation plans to the Congress before we file suit. But we have learned from our experience with the tobacco case, and I can assure you that where you or the Committee express interest in a particular prospective lawsuit, we will do everything we can to notify you of our decision to sue contemporaneously with or before public announcement of the suit or disclosure to the press. We also will be happy to provide briefings on such litigation after it is filed.

*Question 4.* The Department of Housing and Urban Development has no independent litigating authority and yet it has interjected itself in the suits against the firearms industry, particularly in the settlement talks. My understanding is that DOJ has opined that no federal cause of action exists against the firearms manufacturers. Think of the implications if the United States intervenes in lawsuits—not as a party plaintiff or defendant to legitimately uphold the rule of law—but as political club to force settlements that bypass the policy-making role of Congress. In light of this do you not think improper that HUD has taken a role in support of one side of the litigation?

Answer 4. While the Justice Department is not contemplating or considering any federal lawsuit against the firearms industry, it is true that HUD assisted public housing authorities funded by HUD (which are not themselves federal entities) in investigating a possible lawsuit by those housing authorities against firearms manufacturers. The Department of Justice did not assist HUD in that effort.

No such lawsuit has in fact been brought, nor has HUD or any other federal agency intervened in the lawsuits against the manufacturers brought by a number of cities and states. HUD and Treasury did, however, negotiate an agreement with one leading firearms manufacturer to make changes in the manufacture and distribu-



tion of its products that were consistent with Administration policy and proposals on gun safety.

I agree with you that the United States must be very cautious in using litigation or the threat of litigation as a means of reforming an industry, and that Congress, not the courts, is in the best position to make these kinds of far-reaching decisions. The Department of Justice will continue to maintain a skeptical view of industry-reform litigation, particularly where such litigation is not supported by specific statutory or regulatory authority.

*Question 5.* I've worked for many years to protect the religious freedoms of Americans. I believe that such freedoms are among the very most fundamental and important rights protected by the Constitution. The Clinton administration supported the Religious Freedom Restoration Act which passed a few years ago and has been struck down by the Supreme Court. I'm now working on the Religious Liberty Protect Act. Will you make a commitment not only to supporting such legislation but also to working with me to pass legislation on this topic this year?

*Answer 5.* As you note in your question, the Administration has shared your concerns about ensuring that federal, state and local governments protect and preserve the precious religious freedoms of Americans. We supported the Religious Freedom Restoration Act, and we shared your disappointment in the Supreme Court's decision in *City of Boerne*. The Justice Department believes it is possible to craft targeted legislation that will pass constitutional muster. We will be happy to work with you and your staff to craft and enact legislation on this important subject.

*Question 6.* The Judiciary Committee along with other congressional committees, have experienced a great deal of frustration in conducting oversight of the Justice Department. Requests for documents and other information are generally met with conciliatory statements and indications of cooperation—but actually getting documents from the Justice Department is like pulling teeth. The Department has stonewalled us citing “Department policy,” “deliberative process” and “sensitive matters”—all the while denying the Congress—and the American people—the necessary information to evaluate the performance of the Justice Department. Despite the overwhelming support in the case law upholding the Congress' authority to get information related to its oversight function—including information relevant to internal deliberations by prosecutors and open investigations—the Justice has refused to produce materials simply because of Departmental policy.

For example, the Department of Justice has refused to produce certain materials related to the Loral Hughes matter, solely on the basis that it would go against Department policy with regards to open cases. This is despite the fact that courts—from investigations since Teapot Dome to Iran Contra—have rules that Congress is entitled to information on open cases.

When a subpoena is issued to the Justice Department do you believe that it is proper to refuse to produce documents on the basis of anything other than a recognized legal privilege such as executive privilege or attorney client privilege? What will you do to ensure that the Department fully complies with congressional subpoenas?

*Answer 6.* I agree that, absent a legal impediments such as Rule 6(e) (grant jury information), the Department should produce documents sought by a Congressional committee unless there is a basis for asserting executive privilege. I also would emphasize our long-standing policy of making a request to the President to assert executive privilege only in the most compelling circumstances and after good faith negotiations to accommodate Congress's requests have failed. That policy was set forth in a 1982 memorandum by President Reagan:

The policy of this Administration is to comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch. While this Administration, like its predecessors, has an obligation to protect the confidentiality of some communications, executive privilege will be asserted only in the most compelling circumstances, and only after careful review demonstrates that assertion of the privilege is necessary. Historically, good faith negotiations between Congress and the Executive Branch have minimized the need for invoking executive privilege, and this tradition of accommodations should continue as the primary means of resolving conflicts between the Branches.

Thus, the Department believes that we should continue to engage with the Committee in a good faith process of accommodation of the Committee's oversight needs and the Department's institutional concerns. Of course, some disagreements in the process of accommodation are perhaps inevitable. You have my commitment, how-

ever, that when I and those who report to me are involved in this process, I will be candid and forthright in dealing with Members and staff, and I will work hard to make sure that your investigative and oversight needs are met and that any disagreements are resolved as quickly as possible.

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RESPONSES OF DANIEL MARCUS TO QUESTIONS FROM SENATOR SESSIONS

*Question 1A.* In 1999, Bill Lann Lee, Acting Assistant Attorney General in charge of the Civil Rights Division under your authority, began an investigation of a high school in Asheville, North Carolina. The investigation related to the school's use of an Indian for a high school mascot.

Mr. Marcus, do you think that it is appropriate legal policy for the Justice Department, under your subordinate Bill Lann Lee, to expend resources to force school districts to change their mascots?

*Answer 1A.* The investigation to which you refer was begun and completed before I joined the Department. To respond to your question, I have informed myself as to the investigation, and I am satisfied that it was handled appropriately by the Civil Rights Division.

The Department received a written complaint from parents of American Indian children who attended the Buncombe County (N.C.) Public Schools, alleging that their children were being denied equal educational opportunities on account of the children's race or national origin, American Indian. Specifically, the parents alleged that their children were being subjected to a racially hostile environment at the Clyde A. Erwin High School, which used the terms "warriors" and "squaws" to describe male and female students, respectively, and which used American Indian religious symbols in allegedly offensive and/or disrespectful ways. Because these allegations, if true, might have implicated our enforcement responsibilities under Title IV of the Civil Rights Act of 1964, we opened a preliminary inquiry to determine whether action by the Department was warranted. Our inquiry did not focus solely on the school's choice of mascot but more generally on the allegations that Native American students were subjected to a racially hostile environment. Such claims fall within the Department's jurisdiction, and it is appropriate for the Division to make inquiries about credible allegations of a racially hostile school environment. We have no general policy about school mascots.

*Question 1B.* How many times in the history of the Justice Department has the Civil Rights Division investigated high-school-mascot complaints?

*Answer 1B.* Title IV of the Civil Rights Act is triggered by a complaint from a student or parent. This was the first time that the Department received a complaint alleging a racially hostile environment based, in part, on the existence of allegedly offensive school mascots.

*Question 1C.* What was the date of the letter sent by the Justice Department to the school district that tentatively resolved the issue?

*Answer 1C.* By letter dated March 4, 1999, the Civil Rights Division informed the school district that we were closing our preliminary inquiry into the allegations of a racially hostile environment and denial of educational opportunities after reaching agreement on positive changes aimed at improving the school environment for all students. Those changes did not include a change in the school mascot.

*Question 1D.* What was the date that Bill Lann Lee, your subordinate, was renominated to be Assistant Attorney General for Civil Rights?

*Answer 1D.* The President renominated Bill Lann Lee on March 5, 1999.

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RESPONSES OF BONNIE J. CAMPBELL TO QUESTIONS FROM SENATOR SESSIONS

*Question 1A.* Ms. Campbell, as an 8th Circuit Judge you would have to review the decisions and records of trial courts. Please list the number of cases that you have personally tried to verdict before a jury before state courts?

*Answer 1A.* I have not tried any case to a verdict before a jury in state court, however, while I was in private practice, I appeared in trial proceedings in state court frequently. I handled a broad range of legal concerns, but my work focused primarily on family and employment discrimination law. In family law cases, I represented both husbands and wives and dealt with a full range of dissolution issues, including property division, child custody, alimony, and child support. I also represented juveniles in delinquency cases, served as *guardian ad litem* for minor children, represented clients in criminal cases, and managed a number of complex personal injury cases.

While I no longer have access to may files from private practice, I estimate that I tried fifteen to twenty cases in state court, mostly family law cases which are equity cases tried to the court rather than a jury. Nonetheless, I wrote all the pleadings and briefs, appeared in court regularly on pre-trial motions, handled all discovery matters, including writing and responding to interrogatories, conducted depositions, retained expert witnesses, examined witnesses at trial, handled the introduction of exhibits, presented opening and closing arguments, and dealt with all post-trial matters.

In employment law cases, the majority of my cases and work was for defendants, although I did some plaintiffs' work. My clients included business entities facing issues ranging from hiring and firing issues to wage disputes to employment discrimination and sexual harassment. In this context, I became quite familiar with administrative law and procedures because I frequently represented clients before various administrative boards and agencies. While I did a fair amount of pre-trial writing of pleadings and I did appear in court as necessary, in these employment cases my primary focus was on providing legal advice and training to employer-clients in the hope of preventing the need to go to trial.

*Question 1B.* Before federal courts?

Answer 1B. I have not tried any case to a verdict before a federal court, however, in private practice, I represented a number of clients in matters before the federal courts. In one instance, my firm represented a large corporate entity, Kmart, in a contract dispute involving the potential for substantial monetary damages, and I was responsible for much of the pre-trial discovery and trial preparation for this case.

The case was tried by my partners before a jury in the federal district court and ultimately was appealed to the Eighth Circuit, which ruled in favor of Kmart. In another case involving an antitrust matter, I prepared a number of pleadings and briefs' and represented my client in an evidentiary hearing. Additionally, one of the firm's partners was a Trustee in Bankruptcy Court, and I frequently prepared pleadings and other documents for him and occasionally appeared in Bankruptcy Court on matters with which I was assisting him.

As Iowa Attorney General from 1991 to 1995, I worked closely with staff attorneys in the development of significant cases before the federal courts. While I did not personally try the cases, in many instances, I directed the litigation strategy and made key decisions with respect to whether and how the State would proceed with its case. One example of an extraordinary complex legal matter is the Iowa Trust litigation which encompassed several cases in state and federal courts. The legal proceedings involved the fraudulent conversion of \$107 million in public funds from Iowa cities that had banded together to invest municipal funds in an entity that became known as Iowa Trust. The end result of the litigation was 100% recovery of the lost funds, as well as recovery of the costs of litigation for Iowa Trust participants. Aspects of the case were tried in state court in Polk County, Iowa; the Iowa Supreme Court; the federal district court in the Northern District of Iowa; the federal district court in Colorado; the Court of Appeals for the Tenth Circuit; and several California state and federal courts. I personally participated in setting out the initial litigation strategy and reviewing that strategy on a regular basis and frequently consulted with the various attorneys in the office who were handling the many different aspects of the case.

*Question 2A.* Ms. Campbell, as a federal appellate judge, you would have to sit in cases that are orally argued before the bench and engage in questioning with lawyers. You would also have to evaluate the strength of these lawyers' arguments. Please list the number of cases for which you have personally led oral argument in state appellate courts.

Answer 2A. I have not personally had any oral arguments in state appellate courts, however, I believe my experience as Iowa Attorney General has given me insight into the role of an appellate judge. In the Attorney General's office, staff attorneys consulted frequently with me about cases before the Iowa Court of Appeals and the Iowa Supreme Court, as well as the federal circuit courts. Often, attorneys involved with cases—especially high profile or novel cases—disagree with each other about legal strategy, and they presented their positions to me for a final determination in the matter. My experience in this context was somewhat similar to that of an appellate court judge in that I was frequently placed in the position of having to evaluate cases, consider the strength of arguments, and the wisdom of recommended legal strategies. In the final analysis, I made the decision about which arguments and strategies were most consistent with the best interests of the State and which the State would, therefore, pursue. While I did not personally argue these cases and certainly was not directly involved with every case in my office, I

was intimately involved with the development of many of the most significant cases my office had before the courts.

Since staying abreast of court decisions—especially appellate court decisions that affected the rights and interests of Iowans and the State of Iowa—was a key part of my responsibilities as the State’s chief legal officer, I worked very hard to follow the decisions of the Iowa and federal appellate courts. Moreover, I was often asked to comment publicly on judicial decisions, so I had to be familiar with the cases being decided by the Iowa and federal appellate courts as well as those pending before the courts.

In my current position as Director of the Violence Against Women Office at the Department of Justice, I have worked closely with federal prosecutors in developing their arguments and strategies in various prosecutions under the Violence Against Women Act before both federal district courts and on appeal—before federal circuit courts. I have also had the opportunity on several occasions to work closely with the Solicitor General’s Office in reviewing and analyzing cases for possible appeal to federal circuit courts or the Supreme Court. Also, I have conducted many training seminars for federal prosecutors on their responsibilities under the Violence Against Women Act, including how they can best develop their cases for effective prosecutions.

*Question 2B.* In federal appellate courts?

Answer 2B. I have not personally had any oral arguments in federal appellate courts, however, during my years in private practice, I worked on several cases before the Eighth Court of Appeals for the Eighth Circuit but did not argue the cases.

In addition, State Attorneys General offices are the largest practitioners before the circuit courts of appeals. Consequently, I regularly worked closely with staff attorneys to develop the legal position of the State in cases before the various appellate courts, as I have indicated in my previous response. While I cannot say how many cases I was directly involved with during my tenure as Iowa Attorney General, I can say that my office had many cases of great importance to the citizens of Iowa before various federal circuit courts, usually the Eighth Circuit, and that the more significant the impact of a court’s decision would be for our citizens, the more likely I was directly involved with the decision-making relative to the case.

In my current position as Director of the Violence Against Women Office at the Department of Justice, I have had numerous opportunities to work closely with federal prosecutors in developing their arguments and strategies in various prosecutions under the Violence Against Women Act before both federal district courts and on appeal before federal circuit courts. On several occasions, I have worked closely with the Solicitor General’s Office in reviewing and analyzing cases for possible appeal to federal circuit courts or the Supreme Court. I have conducted many training seminars for federal prosecutors on their responsibilities under the Violence Against Women Act, including how they can best develop their cases for effective prosecutions.

I believe that my years working in the legislative branch, my experience in private practice, my tenure as Iowa Attorney General, and my service as Director of the Violence Against Women Office have given me a strong foundation in the law and knowledge of the work of the federal courts, a well as a special understanding of and appreciation for the separation of powers among the branches of government.

*Question 3A.* In your campaign for governor of Iowa in 1994, you opposed the death penalty. You opposed the death penalty as the Attorney General of Iowa. You argued that it was more expensive to execute a convicted murderer than it was to keep them in prison for life. What is your current position on the death penalty in general? With respect to a judge’s duty to interpret the law?

Answer 3A. The Supreme Court has held unambiguously that the death penalty is constitutional. It is the absolute duty of a judge to follow Supreme Court precedent, and I can assure you that, if I am confirmed, I will always do so.

*Question 3B.* When a federal or state legislature rules that the death penalty is appropriate for premeditated and aggravated murder, is it the duty of the Executive Branch to carry out that legislative policy choice even though it is more expensive? Is it the legislature who should strike the balance between effective punishment and financial cost? Is it a judge’s duty to enforce the policy choice of the legislature?

Answer 3B. It is the duty of the Executive Branch to carry out legislative policy choices, irrespective of cost, and I always did so as Iowa Attorney General. It is the legislature which should strike the balance between effective punishment and financial cost. It is a judge’s duty to enforce the policy choice of the legislature.

*Question 4A.* As a candidate for Governor of Iowa in 1994, you indicated that religious groups, which you termed the “radical right,” were out to destroy . . . education.” You are further quoted as saying with respect to politically active religious

persons, "I promise you that when there is a discussion on education policy, there is one group that is not going to be there and that is them." Do you believe that conservative religious people should be excluded from political discussions on education or other issues?

Answer 4A. The words quoted were spoken in the heat of a campaign in which overstated things were being said on both sides. I regret saying them. These comments do not suggest an individual who is always respectful of the views of others, which I consider myself to be. I do not believe that conservative religious people should be excluded from political discussions on any issues.

*Question 4B.* Do you believe that the Free Speech Clause of the 1st Amendment to the U.S. Constitution applies equally to religious people as to non-religious people?

Answer 4B. I believe that the Free Speech Clause of the First Amendment to the U.S. Constitution applies equally to religious people as to non-religious people.

*Question 5.* 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?

Answer 5. Yes. I am committed to following the precedents of higher courts faithfully and giving them full force and effect, even if I personally disagree with such precedents.

*Question 6.* How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision or your own best judgment of the merits? Take, for example, the Supreme Court's recent decision in the *City of Boerne v. Flores* where the Court struck down the Religious Freedom Restoration Act.

Answer 6. If I am fortunate enough to become a federal circuit court judge, I will be obligated to follow, and I will follow, Supreme Court precedent, as well as precedent of the Eighth Circuit, even if I believed the Courts had seriously erred.

*Question 7.* Regardless of your personal feelings on these issues, are you committed to following precedent of higher courts on equal protection issues?

Answer 7. Yes. I am committed to following precedent of higher courts on equal protection issues, and all issues.

*Question 8.* Do you have any legal or moral beliefs which would inhibit or prevent you from imposing or upholding a death sentence in any criminal case that might come before you as a federal judge?

Answer 8. No. I have no legal or moral beliefs which would inhibit or prevent me from imposing or upholding a death sentence in any criminal case that might come before me as a federal judge.

*Question 9.* Do you believe that 10, 15, or even 20-year delays between conviction of a capital offender and execution is too long? Do you believe that once Congress or a state legislature has made the policy decision that capital punishment is appropriate that the federal courts should focus their resources on resolving capital cases fairly and expeditiously?

Answer 9. Delays of the length you describe certainly seem excessive. Once Congress or a state legislature has made the policy decision that capital punishment is appropriate, federal courts should uphold the will of Congress and state legislatures, using as guidance any Supreme Court or other relevant and binding precedent. Further, Congress has enacted legislation to address prisoner litigation, and the Eighth Circuit has upheld one of the recent statutes against a constitutional challenge, *Gavin v. Branstad*, 122 F.3d (Prison Litigation Reform Act provision requiring immediate termination of prospective relief in absence of certain findings by district court did not violate separation of powers doctrine, equal protection or due process.)

*Question 10.* What authorities may a federal judge legitimately use in determining the legal effect of a statute or constitutional provision? Discuss how the use of each of these authorities is consistent with the exercise of the Article III judicial power.

Answer 10. A federal judge must look to the Constitution and Supreme Court or circuit precedent, if any, for guidance in determining the legal effect of a constitutional provision. A federal judge must look to the plain language in the statute to determine its meaning or effect. If a constitutional provision or a statute is unclear or its application in a given context uncertain, a federal judge may review the constitutional debates or legislative history. In the case of a federal appellate court judge, precedent of the circuit court is also a source of legal authority. Federal district court judges are also bound by the law of their circuit court as well. These au-

thorities recognize that federal courts are limited by the Constitution, by statute, and by a higher court precedent.

*Question 11.* Please assess the legitimacy of the following three approaches to establishing a constitutional right not previously upheld by a court: (1) interpretation of the plain meaning of the text and the original intent of the Framers of the Constitution; (2) discernment of the “community’s interpretation” of constitutional text, see William J. Brennan, *The Constitution of the United States: Contemporary Ratification, Text and Teaching Symposium*, Georgetown University (October 12, 1985); and (3) ratification of an amendment under Article V of the Constitution. Assess the impact of each approach on the judicial power established by Article III of the Constitution.

*Answer 11.* Clearly, approach one—interpretation of the plain meaning of the language in the Constitution and the original intent of the Framers of the Constitution—is legitimate. Also, if Congress or the state legislatures determines that a right needs to be established which was not contemplated by the Constitutional authors, then the proper mechanism for establishing such a right is amendment of the Constitution through the process outlined in Article V of the Constitution. This approach is also entirely legitimate to establish a constitutional right not previously upheld by a court.

Justice Brennan’s “community’s interpretation” approach is not a legitimate approach establishing a constitutional right not previously upheld by a court. It is not the responsibility of judges to attempt to ascertain the “community’s interpretation” of constitutional text. Our Constitution mandates a separation of powers and vests the authority to determine such community sentiments in the political branches of the government.

*Question 12.* How would you, if confirmed, analyze a challenge to the constitutionality of a statute in a case that was not one of first impression? In a case of first impression?

*Answer 12.* If a case or controversy involving the constitutionality of a statute came before me, I would look first to the statute, consider its plain meaning, and assume its constitutionality. I would then look to the Constitution and Supreme Court precedent for guidance, and would follow the Supreme Court or other controlling precedent as required.

While cases of first impression are rare, if a such a case came before me in a case or controversy, I would presume the statute is constitutional, look the plain meaning of the Constitution and of the statute in question, and next to the Supreme Court for guidance. If there were no Supreme Court precedent, then I would review the Supreme Court’s holdings in analogous cases and look to other jurisdictions for similar cases. In both circumstances, I would strive to uphold the legislative enactment.

*Question 13.* In your view, what are the sources of law and methods of interpretation used in reaching the Court’s judgment in the following cases? How does the use of these sources of law impact the source of the judicial power and the federal government’s power under Article III?

A. *Griswold v. Connecticut*, 381 U.S. 479 (1966).

*Answer 13A.* In *Griswold v. Connecticut*, The Supreme Court found a “zone of privacy” that “emanated” from several of the first ten amendment—The First, Third, Fourth, Fifth, and Ninth—as a basis to recognize a “privacy right” in marital relationships that was invaded by a Connecticut law restricting married couples’ access to birth control. In reaching this holding, the Court relied upon prior decisions that recognized a constitutional basis for privacy-related rights that gave effects to rights explicitly enumerated in the Constitution. Because constitutional adjudication traditionally looks primarily to the text of the Constitution, *Griswold’s* use of other sources to help define the meaning of the Constitution was a departure.

B. *Alden v. Maine*, 119 S. Ct. 2240 (1999).

*Answer 11B.* The Supreme Court in *Alden v. Maine* held that the Eleventh Amendment barred lawsuits against a state by its own citizens on the basis of a right in federal law, unless the state consented to the action. The Court reasoned that the Eleventh Amendment embodies a broader principle of sovereign immunity than its text, which seemingly bars only lawsuits in federal court by a citizen of one state against another state, would indicate.

*Question 14.* Compare the following cases with respect to their fidelity to the text and original intent of the Constitution. Also assess their impact on the judicial power compared with Congress’s power and on the federal government’s power compared with the power of state governments.

A. *Wickard v. Filburn*, 317 U.S. 111 (1942).

Answer 14A. In this case, the Supreme Court upheld the constitutionality of a federal law that prevented individual farmers from growing more than a pre-determined amount of wheat. The Court reasoned that the law fell within Congress' power to regulate "Commerce . . . among the several States" because overproduction by individual farmers, in the aggregate, could affect the interstate wheat market and thus interstate commerce. *Wickard* recognized a broad Constitutional power to enact legislation under the Commerce Clause.

B. *United States v. Lopez*, 514 U.S. 549 (1995).

Answer 14B. The Supreme Court in *United States v. Lopez* struck down the federal Gun-Free School Zones Act which made it a crime to knowingly carry a firearm within a "school zone." The Court held that the Act exceeded the Commerce Clause authority of Congress as defined by *Wickard* because the aggregate effect of carrying guns near schools did not, in the Court's view, substantially affect interstate commerce. In reaching this holding, the Court stressed the non-economic nature of the regulated activity.

Both *Wickard* and *Lopez* interpreted the boundaries set by the Commerce Clause on Congress' power to regulate matters affecting the states.

*Question 15.* What role does the division of power between the national government and state governments play in our federal system? What impact does this division have on the liberty of the individual and the power of federal judges? Assess the impact of the following cases on the division of power between the national and state governments.

Answer 15. The Constitution specifically enumerates the powers vested in the federal government and reserves all remaining power to the states or to the people. In the cases listed below, the Supreme Court has been called upon to determine whether an official act improperly exceeds the Constitution's grant of limited powers.

A. *United States v. Lopez*, 514 U.S. 549 (1995).

Answer 15A. In this case, the Supreme Court held that the Gun-Free School Zones Act exceeded Congress' authority to enact legislation under the Commerce Clause. This case reaffirms limits on the commerce power regarding activities traditionally regulated by the states.

B. *Printz v. United States*, 521 U.S. 898 (1997).

Answer 15B. The Supreme Court held in *Printz v. United States* that certain interim provisions of the Brady Handgun Violence Prevention Act unconstitutionally pressed state law enforcement officers into federal service by requiring them to run background checks on prospective gun buyers and to perform other related duties. Adhering to its prior precedent that the Tenth Amendment forbids Congress from commandeering a state's legislature to enact legislation that effectuates federal law, the Court in *Printz* held that Congress also may not commandeer a state's executive officers to execute federal law. This decision reaffirmed the Court's precedent placing certain types of federal legislation that imposed duties on the states outside of Congress' power to enact. The Court held that Congress had no greater power under the Tenth Amendment.

C. *Alden v. Maine*, 119 S. Ct. 2240 (1999).

Answer 15C. *Alden v. Maine* construed the Eleventh Amendment to bar lawsuits by state employees against a state under the Fair Labor Standards Act in the absence of the state's consent. This decision, which followed earlier precedent, established a principle of sovereign immunity broader than the text of the Eleventh Amendment by placing limits on when Congress can require states to be litigants without their consent.

D. *Baker v. Carr*, 369 U.S. 186 (1962).

Answer 15D. In this case, the Court held that a civil action challenging as unconstitutional a Tennessee statute apportioning the members of the General Assembly among the State's counties was not a "political question" outside the competence of the judiciary to adjudicate. The Court's opinion reduced the scope of the "political question" doctrine, allowing courts to consider challenges to apportionment.

E. *Shaw v. Reno*, 509 U.S. 630 (1993).

Answer 15E. This case involved an action brought by North Carolina residents challenging North Carolina's congressional redistricting plan. The Court held that the residents had stated a claim under the Equal Protection Clause by alleging that the state had adopted a reapportionment scheme based on race, and thus the strict scrutiny standard applied.

*Question 16.* Do you believe that a federal district court has the institutional expertise to set rules for and oversee the administration of prisons, schools, or state agencies?

Answer 16. No. I do not think that the federal trial courts have the institutional expertise to set rules for and oversee the administration of prisons, school, or state agencies.

*Question 17.* In ruling on the constitutionality of a statute, what weight should a court give to the fact that the challenged statute existed before and after the ratification of the constitutional provision at issue. Assume the court faces this issue as a matter of first impression.

Answer 17. If I were fortunate enough to be confirmed as a federal circuit court judge and I were confronted with a case or controversy involving such an issue as a matter of first impression, I would apply the maxims of statutory construction. I would start with the presumption that the statute is constitutional. Then, I would look to the plain meaning of the statute and to the Constitution and consider the historical facts surrounding ratification of the constitutional provision at issue. I would take note of the fact that the challenged statute had not been repealed or (if it were the case) expressly addressed by the subsequent constitutional provision, and I would look to determine whether there was any legislative history to the constitutional provision that addressed the statute or how it should be read. Next, I would review Supreme Court precedent, and if there were none, I would then consider analogous cases in the Supreme Court and other jurisdictions in order to find precedential guidance in the matter.

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RESPONSES OF BONNIE J. CAMPBELL TO QUESTIONS FROM SENATOR THURMOND

*Question 1.* We frequently hear the argument that the courts act in response to various social problems because the legislature has failed to act on important issues. What is your view of courts acting in this manner?

Answer 1. Judges must abide by the separation of powers established in our Constitution and should understand that legislatures may choose not to act. Legislative inaction should not be considered an oversight by the legislators. If legislatures choose not to address a matter or leave an issue unaddressed, it is not the responsibility of courts to step in.

*Question 2.* Do you have any personal objections to the death penalty that would cause you to be reluctant to impose or uphold a death sentence?

Answer 2. No. I have no personal objections to the death penalty that cause me to be reluctant to impose or uphold a death sentence.

*Question 3.* What is your view of mandatory minimum criminal sentences, and would you have any reluctance to impose or uphold them as a Federal judge?

Answer 3. If I am fortunate enough to be confirmed, I will have no reluctance to impose or uphold mandatory minimum criminal sentences.

*Question 4.* As you are well aware, the sentencing of criminal defendants in Federal court is conducted under the Federal Sentencing Guidelines. Some argue that the Guidelines do not provide enough flexibility for the sentencing judge, while others say the Guidelines provided needed consistency. What is your view of the Federal Sentencing Guidelines and their application?

Answer 4. Congress adopted the Federal Sentencing Guidelines, and they have been held to be constitutional. If I am fortunate enough to be confirmed as a federal appellate court judge, I will faithfully follow the mandates of the Federal Sentencing Guidelines.

*Question 5.* Recently, the Supreme Court found that Congress does not have the authority under the Commerce Clause and the Fourteenth Amendment to address violence against women. The Court wrote: "If Congress may regulate gender-motivated violence, it would be able to regulate murder or any other type of violence since gender-motivated violence, as a subset of all violent crime, is certain to have lesser economic impacts than the larger class of which it is a part. You are currently serving as Director of the Department of Justice's Violence Against Women Office. Do you agree with the Supreme Court's decision?"

Answer 5. The Supreme Court's recent decision in *United States v. Morrison* invalidated the federal cause of action for victims of sexual assault, rape, and other sexually-related violence against their assailants for damages, but it did not address other provision of the Violence Against Women Act. In my role as Director of the Violence Against Women Office, I publicly expressed my policy view that the Supreme Court should uphold this provision of the Violence Against Women Act. However, if I am confirmed, I can assure you that I would follow the Supreme Court's precedent with respect to the issues presented in this case, and all other cases.



*Question 6.* Do you believe that state courts and justice systems are as capable as federal courts in providing fair hearings and treatment for women who are victims of violence?

Answer 6. Congressional hearings amassed a great deal of evidence suggesting that women who are victims of domestic and sexual violence are frequently discriminated against in the criminal justice system. Since these cases have historically been handled at the state level, it is impossible to know how state courts would compare to federal courts in this regard. The approach of the Violence Against Women Office was to direct resources to criminal justice officials at all levels and improve the response to women victims of domestic and sexual violence across the criminal justice system.

*Question 7.* If you were a federal judge, would you consider it appropriate for domestic violence cases to be heard in your court?

Answer 7. If I am fortunate enough to be confirmed, I would follow the Code of Conduct for federal judges, and always err on the side of caution, to assure that I avoid even the appearance of bias.

*Question 8.* Is prior courtroom experience important for a nominee for the federal bench?

Answer 8. It is important for a candidate for the federal appeals court to have a knowledge and understanding of pre-trial litigation practice and trial practice—civil and criminal, the rules of evidence, and other basic process and structural aspects of litigation, as well as the appeals process, its standards, rules and practices. Courtroom experience, of which I have some, is of course, valuable.

I believe that my years working in the legislative branch, my experience in private practice, my tenure as Iowa Attorney General, and my service as Director of the Violence Against Women Office have given me a strong foundation in the law and a keen knowledge of the work of the federal courts, as well as a special understanding of and appreciation for the separation of powers among the branches of government and the Constitution's division of power between the States and the federal government.

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RESPONSES OF BONNIE J. CAMPBELL TO QUESTIONS FROM SENATOR ASHCROFT

*Question 1.* In your view, to what extent, if any, do the rights protected by the Constitution grow or shrink with changing historical circumstances?

Answer 1. The rights protected by the Constitution are set forth in that document or found there by the Supreme Court; they do not grow or shrink with changing historical circumstances. From time to time, they may have to be applied in new contexts as technological developments create new situations and present new issues.

*Question 2.* If a particular judge or court has a high rate of reversal on appeal, or by the Supreme Court, is that a problem? If it is, what can and should be done to remedy that problem?

Answer 2. It is a problem. Any judge with a high reversal rate should examine the appellate court opinions and her understanding of her role and the way she is doing her job to remedy this problem.

*Question 3.* Is "substantive due process" a legitimate constitutional doctrine?

Answer 3. The Supreme Court addressed this question in *Washington v. Glucksberg*, 521 U.S. 702 (1997) and identified a small number of "fundamental rights and liberty interests" specially protected by the Due Process Clause. The Court expressed its reluctance to expand the concept of substantive due process beyond these "fundamental rights and liberty interests" because to do so would "place the matter outside the arena of public debate and legislative action." *Id.* at 720. Substantive due process is still recognized by the Supreme Court but clearly will rarely be applied by the Court.

*Question 4.* Is it appropriate for federal judges to recognize new "substantive due process" rights? If yes, what should the guiding principles be?

Answer 4. It is appropriate for federal judges to follow Supreme Court and circuit court precedent. The guiding principles are to look first to the Constitution and then to Supreme Court, and circuit court precedent. In this regard, I would look to Justice Rehnquist's majority opinion in *Washington v. Glucksberg* discussing the very limited scope of substantive due process.

*Question 5.* What is your understanding of the holding in *United States v. Lopez*, 514 U.S. 549 (1995)? What test would you apply to determine if a statute exceeded the power of Congress to enact under the Commerce Clause?

Answer 5. The Supreme Court in *United States v. Lopez* struck down the federal Gun-Free School Zones Act, a law which made it a crime to knowingly carry a firearm within a “school zone,” holding that the Act exceeds the Commerce Clause authority of Congress. The Court held that this law did not have a sufficient effect on interstate commerce; that the Act contained no jurisdictional requirement that the firearm at issue had traveled across State lines; and that Congress had made scant findings about the interstate effects of the criminal act at issue. Consequently, the Court concluded that it was left with a law that dealt with criminal activity—not economic activity—which was on its face, unsupported by any link to interstate commerce. The Court rejected the Government’s argument that the “costs of crime” in general justified the law on the grounds that such an argument would justify a general federal “police power,” which the Court said was inconsistent with the structure of the federal system of government.

The test outlines in *Lopez* states the Congress may regulate: (i) the use of the channels of interstate commerce; (ii) the instrumentalities of interstate commerce, or persons or things in interstate commerce; and (iii) those activities “having a substantial relation to interstate commerce” because they “substantially affect interstate commerce.”

*Question 6.* Do you think that there is tension between the Supreme Court’s holdings in *Romer v. Evans*, 517 U.S. 620 (1996) and *Bowers v. Hardwick*, 478 U.S. 186 (1986)? If there is, how would you reconcile that tension? If there is not, how are they reconcilable?

Answer 6. I believe that these cases are reconcilable in that they arise under different clauses of the Fourteenth Amendment to the Constitution, and because one (*Romer*) involved the political process, and the other (*Bowers*) involved a claimed right to certain sexual conduct. The Supreme Court, in *Romer v. Evans*, applying the standard of rational basis scrutiny, struck down a Colorado constitutional amendment that would have precluded state and local governments from enacting laws prohibiting discrimination on the basis of sexual orientation. The Court concluded that the constitutional amendment “lacks a rational relationship to legitimate state interests” and, therefore, violates the Equal Protection Clause.

The Court in *Bowers v. Hardwick*, held that the State of Georgia could criminalize private, consensual homosexual conduct. In its opinion, the Court wrote that “The law . . . is constantly based on notions of morality, and if all laws representing essentially moral choices are to be invalidated under the Due Process Clause, the courts will be very busy indeed.” *Bowers* has not been overturned by the Supreme Court and must be followed by district and circuit court judges in applicable cases.

*Question 7.* Is there a legislative classification that would fail rational basis review?

Answer 7. Generally, State and Federal laws are constitutional under the Equal Protection Clause of the Fourteenth Amendment as long as they satisfy “rational basis scrutiny,” i.e., as long as those laws rationally serve a legitimate goal. While *Romer v. Evans* (asked about in the previous question) is a modern-day example of a legislative classification that the Supreme Court found failed rational basis, the test is very deferential.

*Question 8.* Is a state program that gives parents a set sum of money to be used by the parent to pay for tuition at any school they choose, public, private, religious or non-sectarian, constitutional?

Answer 8. It is likely that the Supreme Court will be addressing this question soon, and its decision will determine whether such a program is a violation of the Establishment Clause of the First Amendment. If I had to consider such a question, I would, of course, extend to any statute(s) setting up such a program the presumption of constitutionality and look to *Lemon v. Kurtzman*, 403 U.S. 602 (1971) and subsequent Supreme Court and Eighth Circuit precedent for guidance.

*Question 9.* Please define judicial activism. Is *Lochner v. New York*, 198 U.S. 45 (1905) an example of judicial activism? Please identify three Supreme Court opinions that you believe are examples of judicial activism (not including *Lochner* if your answer to the prior question was yes). Is *Roe v. Wade*, 410 U.S. 113 (1973) an example of judicial activism.

Answer 9. When the term “judicial activism” arises, it usually refers to a belief that judges have engaged in setting imposing their personal views rather than staying within the boundaries of their authority set by the Constitution and Acts of Congress. Over my career as a practicing attorney, State of Iowa Attorney General, and Director of the Justice Department’s Violence Against Women Office, I have always considered Supreme Court decisions for their content and the law they handed down, not whether it was “activist.” As one who hopes to be a federal judge, I do not think it is appropriate for me to attach labels to certain Supreme Court cases.

If I am fortunate enough to be confirmed, I will be duty-bound to follow those Supreme Court precedents, irrespective of any opinions I may have about them.

*Question 10.* Do you believe that the view of the death penalty taken by Justices Brennan, Marshall and Blackmun—that it is unconstitutional despite clear constitutional text sanctioning it—is a permissible view for a federal judge to hold?

Answer 10. The Constitution clearly references the death penalty, and the Supreme Court has held unambiguously that it is constitutional for states to impose a death penalty. Again, I do not feel it is appropriate for me to critique members of the Supreme Court; I would follow Supreme Court precedent and apply the law fairly and equitably.

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RESPONSES OF BONNIE J. CAMPBELL'S TO QUESTIONS FROM SENATOR SMITH

*Question 1.* Article II, Section 2 of the Constitution states that the President shall have the power to appoint federal judges with “the advice and consent” of the Senate. If a nominee for any federal judgeship refuses to answer questions about a Constitutional issue, should that individual be confirmed?

Answer 1. Since it is the duty of federal judges to always follow the law, as well as to avoid the appearance of pre-judging issues which might come before them, I understand a nominee’s general reluctance to offer more than a discussion of their understanding of the Supreme Court’s holdings, if any, with respect to any particular issue. Thus, a nominee’s declination to go beyond that point should not, I respectfully submit, prevent that nominee’s confirmation.

*Question 2.* Article II, Section 2 of the Constitution states that the President shall have the power to appoint federal judges with “the advice and consent” of the Senate. If you were a member of the United States Senate, would you agree that it is difficult to advise and consent to a nominee when a candidate refuses to answer questions on Constitutional issues.

Answer 2. If I were a member of the Senate, I think I would attempt to ascertain the character and ability of the nominee in ways that did not cause concerns about prejudging of issues.

*Question 3.* What is the purpose of the United States Senate in holding hearings on nominees for the federal bench?

Answer 3. My understanding is that the purpose of the United States Senate in holding hearings on nominees for the federal bench is to have the opportunity to gain a clearer understanding of the character and professional competence of the nominee.

*Question 4.* Is it possible for a Senator to advise and consent to a nominee if the nominee simply refers to precedent without explaining his or her legal analysis?

Answer 4. I can say only that I am glad to share my understanding of the Court’s legal analysis with respect to cases which have been decided, and I will willingly discuss the analytical process I will employ in considering cases or controversies which may come before me if I am confirmed.

*Question 5.* How can I as a Senator advise and consent to a nominee without answers to Constitutional questions?

Answer 5. I have indicated that I am glad to discuss Constitutional questions with members of the Senate, as long as the questions do not put me in the position of appearing to pre-judge an issue which might at some point in the future come before me.

*Question 6.* What questions are legitimate to ask a candidate without the candidate prejudging himself or herself?

Answer 6. I believe that any questions regarding the nominee’s understanding of the law and questions about his or her professional experience and background are appropriate.

*Question 7.* Are there any questions that you feel are off limits for a Senator to ask?

Answer 7. No. I believe a Senator can ask any question he or she wishes to ask. However, the nominee, wearing the hat of a judge, may not be able to answer every question in light of the obligation to appear, and be, impartial and fair. The onus is on the nominee to respond in an appropriate fashion, not on the Senator to refrain from asking the question.

*Question 8.* If a U.S. District Court Judge or U.S. Court of Appeals Judge concludes that a Supreme Court precedent is flatly contrary to the Constitution, are there any circumstances under which the Judge may refuse to apply that precedent to the case before him or her?

Answer 8. No. The Judge must apply Supreme Court precedent irrespective of his or her view of the matter.

*Question 9.* If you were a Supreme Court Justice in 1856, what would you have held in *Dred Scott v. Sandford*, 60 U.S. (19How.) 393?

Answer 9. It is impossible to know how I would have ruled or voted in *Dred Scott v. Sandford* had I been a member of the Supreme Court in 1856. I cannot put myself back in that time, and I have not had the benefit of the record, briefs and arguments, and consultations with other members of the Court.

*Question 10.* In *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856), the court apparently held, as you well know there were eight separate opinions in the case, that black slaves were not citizens of the United States? How should that precedent be treated by the courts today?

Answer 10. Since the *Dred Scott* decision was reversed by the ratification of the Thirteenth and Fourteenth Amendments, it is no longer controlling law.

*Question 11.* If you were a judge in 1857, would you have been bound by your Oath and would you have been mandated to follow the binding precedent of *Dred Scott v. Sandford*, 60 U.S. (19How.) 393 (1856)?

Answer 11. Yes. If I were a judge in 1857, I would have been bound to follow the binding precedent of *Dred Scott v. Sandford*.

*Question 12.* If you were a Supreme Court Justice in 1896, what would you have held in *Plessy v. Ferguson*, 163 U.S. 539 (1896)?

Answer 12. It is impossible to know how I would have ruled or voted in *Plessy v. Ferguson* if I had been a member of the Supreme Court in 1896. I cannot put myself in that time, and I have not had the benefit of the record, briefs and arguments, and the consultation with other members of the Court.

*Question 13.* In *Plessy v. Ferguson*, 169 U.S. 539 (1896), a majority of the court held as not a violation of the Fourteenth Amendment to the Constitution a Louisiana statute which provided that all railway companies provide “equal but separate accommodations” for black and white passengers, imposing criminal penalties for violations by railway officials. How should that precedent be treated by the Courts?

Answer 13. Since *Plessy v. Ferguson* was overturned by the Supreme Court in *Brown v. Board of Education*, *Brown v. Board of Education* is controlling law today.

*Question 14.* If you were a Supreme Court Judge in 1954, what would you have held in *Brown v. Board of Education*, 347 U.S. 483 (1954)?

Answer 14. It is impossible to know how I would have ruled or voted in *Brown v. Board of Education* if I had been a member of the Supreme Court when the case was decided. I cannot put myself in that time, and I have not had the benefit of the record, briefs and arguments, and the consultation with the other members of the Court.

*Question 15.* In *Brown v. Board of Education*, 347 U.S. 483 (1954), the court held that the segregation of children in public schools solely on the basis of race, even though the physical facilities and other tangible factors may be equal, deprive the children of the minority group of equal educational opportunities contrary to the protections contained within the Fourteenth Amendment to the Constitution. How should that precedent be treated by the Courts?

Answer 15. This case is controlling precedent today.

*Question 16.* If you were a Supreme Court Justice in 1975, what would you have held in *Roe v. Wade*, 410 U.S. 113 (1973)?

Answer 16. It is impossible to know how I would have ruled or voted in *Roe v. Wade*, had I been a member of the Supreme Court at that time. I cannot put myself in that time, and I have not had the benefit of the record, briefs and arguments, and the consultation with other members of the Court.

*Question 17.* In *Roe v. Wade*, 410 U.S. 113 (1973), the court held that a Texas statute which proscribed an abortion except when necessary to save the life of the mother was a violation of the due process clause of the Fourteenth Amendment as an unjustified deprivation of liberty. Do you agree with the legal reasoning of the holding or of the Justice Rehnquist dissent in that case?

Answer 17. *Roe v. Wade*, as modified by *Planned Parenthood v. Casey*, is controlling precedent today. I do not feel it would be appropriate for me to critique the legal reasoning of the holding in the case. It is, however, my duty to follow Supreme Court precedent.

*Question 18.* We understand the Supreme Court precedent, but what is your personal view on the issue of abortion?

Answer 18. Since I am obligated to follow Supreme Court precedent in all cases, I do not feel that is appropriate for me to say more than that I have no opinions which would prevent me from following Supreme Court precedent.

*Question 19.* We understand the Supreme Court precedent, but what is your personal view on the issue of the death penalty?

Answer 19. Since I am obligated to follow Supreme Court precedent in all cases, I do not feel that is appropriate for me to say more than that I have no personal views on the death penalty which would prevent me from following Supreme Court precedent.

*Question 20.* We understand the Supreme Court precedent, but what is your personal view on the issue of the Second Amendment to the Constitution?

Answer 20. Since I am obligated to follow Supreme Court precedent in all cases, I do not feel that it is appropriate for me to say more than that I have no opinions which would prevent me from following Supreme Court precedent.

*Question 21.* In *Planned Parenthood v. Casey*, (505 U.S. 833 (1993)) the Supreme Court held that the government interest in preserving life must be balanced against a mother's right of privacy and access to abortion which may not be unduly burdened. Do you believe the "right to privacy" includes the right to take away the life of an unborn child?

Answer 21. *Roe v. Wade*, as modified by *Planned Parenthood v. Casey* is controlling law with respect to this issue today, and I would be obligated to follow the Supreme Court precedent.

*Question 22.* Again, I understand the state of the law on the Supreme Court's interpretation on the issue of abortion, but I am interested in your personal beliefs on the issue. Do you personally believe that an unborn child is a human being?

Answer 22. *Roe v. Wade*, as modified by *Planned Parenthood v. Casey* is controlling law with respect to this issue today, and I would be obligated to follow the Supreme Court precedent.

*Question 23.* Do you believe that the death penalty is Constitutional?

Answer 23. Yes. The Supreme Court has held that states may enact a death penalty, and I would follow the Supreme Court precedent.

*Question 24.* If you were a Supreme Court Justice, under what circumstances would you vote to overrule a precedent of the Court?

Answer 24. If I were a Supreme Court Justice, I would follow the Court's own guidance for overruling a precedent of the Court. The Supreme Court offered this discussion in *Planned Parenthood v. Casey* and in *Agostini v. Felton*. The Court noted that the factors for the Supreme Court to consider when asked to overrule a precedent include: whether the rule of law has defied practical workability; whether the rule is subject to a kind of reliance that would cause special hardship if it were overruled; whether related principles of law have so developed as to have left the rule a remnant of an abandoned doctrine; and whether facts have so changed as to have stripped the old rule of significant application.

*Question 25.* Do you consider legislative intent and the testimony of elected officials in debates leading up to passage of an act? And what weight do you give legislative intent?

Answer 25. I think a review of the legislative history of a statute might be informative, but I would consider it with caution and only if the plain language of the statute were ambiguous. The testimony of elected officials in debates tells only the views of those particular officials, whereas committee reports may be more representative of the intent of the legislative body as a whole.

*Question 26.* The Supreme Court recently ruled that part of the Violence Against Women Act violated the Commerce Clause of the Constitution. Do you believe that the ruling was a correct interpretation of the Constitution?

Answer 26. In my role as Director of the Violence Against Women Office, I stated publicly that I hoped the Supreme Court would uphold the civil rights remedy in the Violence Against Women Act. However, I understand that judges must follow Supreme Court precedent and if I am fortunate enough to be confirmed, I would follow that precedent and all applicable precedent of the Supreme Court.

*Question 27.* Does the prior mentioned ruling change any of your current job responsibilities as Director of the Violence Against Women Office of the U.S. Justice Department?

Answer 27. No. The provision which was invalidated was a private right of action, and the Department of Justice had no enforcement authority. Consequently, the Court's ruling did not change any of my job responsibilities.

*Question 28.* As a member of Emily's List, what lobbying activities of the organization have you been active in?

*Answer 28.* I have not been involved in any lobbying activities as a member of Emily's List. I am a member by virtue of making a financial contribution.

*Question 29.* You spoke in February of 1992 at a "Hate Crimes Seminar" in Iowa. What was the substance of your remarks?

*Answer 29.* I believe the context of the seminar was that the Iowa Legislature was considering various hate crimes legislation, and the seminar attendees were interested in being briefed on possible legislative action. I included a copy of my written comments for that presentation with the documents I provided to the Senate Judiciary Committee when I was nominated. Beyond the comments which I have provided, I have no memory of my remarks. A review of the comments suggests that they were introductory in tone rather than substantive. If I am fortunate enough to be confirmed, I would follow any applicable precedent of the Supreme Court regarding hate crimes.

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RESPONSES OF BONNIE J. CAMPBELL'S TO QUESTIONS FROM SENATOR DEWINE

*Question 1.* In September, 1999, in *Stenberg v. Carhart*, a three-judge panel of the Eighth Circuit struck down Nebraska's ban on most partial-birth abortions. However, the following month, the entire Seventh Circuit adopted a different analysis and upheld very similar bans enacted by Illinois and Wisconsin. In your view, which circuit applied the correct analysis to state bans on partial-birth abortion?

*Answer 1.* In *Stenberg v. Carhart*, 192 F.3rd 1142, the Eighth Circuit based its ruling striking Nebraska's ban on certain late-term abortions on *Planned Parenthood v. Casey*. The Court held that the ban imposed an undue burden on a woman's right to an abortion because, based on the facts found by the district court, it would prohibit the most common procedure for second trimester abortions.

The Seventh Circuit cases involve somewhat different sets of facts but also relied on an analysis based on *Planned Parenthood v. Casey*. The Seventh Circuit found that the bans in question did not affect the same procedure at issue in *Carhart*. They found that prohibiting the procedure that was affected by the ban did not unduly burden a woman's right to an abortion. Both the Seventh and Eighth Circuits applied *Casey* to different sets of facts, resulting in differing conclusions.

The Supreme Court granted certiorari in the case of *Stenberg v. Carhart* to further clarify the application of *Casey* in this context, and its decision will determine the correct analysis to state bans on partial-birth abortion. If I am fortunate enough to be confirmed, I will, of course, follow the Supreme Court's precedent on this and all other matters.

*Question 2.* In 1992, as Iowa's attorney general, you joined in a friend-of-the-court brief to the Supreme Court in the case of *Planned Parenthood v. Casey*, urging the Court to reaffirm *Roe v. Wade*, but also said that it would permit state regulations that do not place an "undue burden" on access to abortion. Do you believe that the Court's holding was consistent with the position that you urged in the brief?

*Answer 2.* Yes, I do believe that the Court's holding in *Planned Parenthood v. Casey* was consistent with the position urged in the friend-of-the-court brief I filed as Attorney General of Iowa. The central thrust of the brief, which was one of many filed by states, including New Jersey, North Carolina, Utah, Illinois, and Texas, was an argument in favor of *stare decisis*, i.e., respecting the precedent in *Roe v. Wade*, which the Court clearly did in its opinion. Justice O'Connor, writing for the majority, emphatically reaffirmed the Court's holding in *Roe* when she wrote: "A decision to overrule *Roe's* essential holding . . . would address error, if error there was, at the cost of both profound and unnecessary damage to the Court's legitimacy, and to the Nation's commitment to the rule of law. It is therefore imperative to adhere to the essence of *Roe's* original decision and we do so today." *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 863 (1992). However, irrespective of any positions I took as Iowa, Attorney General, or at any other time, if I am fortunate enough to be confirmed to the Eighth Circuit of Appeals, I will always fulfill my obligation as a judge and follow binding precedent of the Supreme Court.

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RESPONSES OF JAY A. GARCIA-GREGORY TO QUESTIONS FROM SENATOR THURMOND

*Question 1.* We frequently hear the argument that the courts act in response to various social problems because the legislature has failed to act on important issues. What is your view of courts acting in this manner?

Answer 1. Under the constitutional system of separation of powers, it is up to the legislature to act or not to act in response to social problems, not the courts. Courts should not act in response to social problems but must only adjudicate actual cases or controversies under Article III of the Constitution.

*Question 2.* Do you have any personal objections to the death penalty that would cause you to be reluctant to impose or uphold a death sentence?

Answer 2. No, I have no personal objections that would cause me to be reluctant to impose or uphold a death sentence.

*Question 3.* What is your view of mandatory minimum criminal sentences, and would you have any reluctance to impose or uphold them as a Federal judge?

Answer 3. Mandatory minimum sentences have been held to be constitutional and I would have no reluctance to impose or uphold them as a Federal judge.

*Question 4.* As you are well aware, the sentencing of criminal defendants in Federal court is conducted under the Federal Sentencing Guidelines. Some argue that the Guidelines do not provide enough flexibility for the sentencing judge, while others say the Guidelines provided needed consistency. What is your view of the Federal Sentencing Guidelines and their application?

Answer 4. The Federal Sentencing Guidelines—which balance consistency and flexibility in sentencing—have been found to be constitutional, and I would apply them in the sentencing of criminal defendants consistent with Supreme Court and Circuit precedent.

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RESPONSES OF JAY A. GARCIA-GREGORY TO QUESTIONS FROM SENATOR HATCH

*Question 1.* Are you aware of the Supreme Court's decision in *Bowers v. Hardwick*, 478 U.S. 186 (1986)? Please explain to the Committee your understanding of that decision, and its holding regarding the Constitution's Due Process Clause.

Answer 1. Yes, I am aware of *Bowers v. Hardwick*, 478 U.S. 186 (1986). It is my understanding that in *Bowers*, the Supreme Court held that the Constitution does not confer a fundamental right upon homosexuals to engage in consensual sodomy. In that case, the Court rejected a challenge under the Fourteenth Amendment to Georgia's exercise of police powers in enacting that State's criminal sodomy statute, which specified the elements of the offense. The Court also noted that federal courts should not expand the reach of the Due Process clauses of the Fifth and Fourteenth Amendments to such cases. If I were so fortunate as to be confirmed as a Federal judge, I would fully comply with the Supreme Court holding and would have no reluctance to follow that precedent.

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RESPONSES OF JAY A. GARCIA-GREGORY TO QUESTIONS FROM SENATOR ASHCROFT

*Question 1.* In your view, to what extent, if any, do the rights protected by the Constitution grow or shrink with changing historical circumstances?

Answer 1. The rights protected by the Constitution are found in the Constitution and its Amendments as interpreted by the Supreme Court of the United States. A Federal District Court judge is bound by the Constitutional text as interpreted by the Supreme Court, regardless of any changing circumstances.

*Question 2.* If a particular judge or court has a high rate of reversal on appeal, or by the Supreme Court, is that a problem? If it is, what can and should be done to remedy that problem?

Answer 2. If a judge or court has a high rate of reversal on appeal, that would be a problem. Such a situation could be remedied through remand instructions and directives by the reviewing Court and through the work of the lower courts to thoroughly read any reversals and closely follow the rulings of the higher courts. If I were so fortunate as to be confirmed, I would examine any reversal and review my own opinion and other orders to determine the problem and rectify it.

*Question 3.* Is "substantive due process" a legitimate constitutional doctrine?

Answer 3. The concept of "substantive due process" is legitimate only insofar as Supreme Court precedent may have recognized it or allowed it to be. For example, in *Washington v. Glucksberg*, 521 U.S. 702 (1997) Chief Justice Rehnquist, writing for the majority, concluded that "substantive due process" was a viable constitutional doctrine, but only within very narrow limits so as to avoid impeding the democratic process. In *Glucksberg*, the Supreme Court upheld a State ban on assisted suicide and found that the liberty interest protected by the due process clause did not render such a ban unconstitutional. If I were so fortunate as to be con-

firmed, I would be bound by that precedent and all precedents of the Supreme Court.

*Question 4.* Is it appropriate for federal judges to recognize new “substantive due process” rights? If yes, what should the guiding principles be?

Answer 4. No, it is not appropriate for Federal judges to recognize new “substantive due process” rights, and Federal District Court judges are obligated to follow precedent in this area and all areas of the law.

*Question 5.* What is your understanding of the holding in *United States v. Lopez*, 514 U.S. 549 (1995)? What test would you apply to determine if a statute exceeded the power of Congress to enact under the Commerce Clause?

Answer 5. In *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court held that the prohibition found in the Gun-Free School Zones Act of 1990 that forbade any individual from knowingly possessing a firearm in a school zone exceeded Congress’ authority under the Commerce Clause. The Court found that the possession of a gun in a local school zone is not an economic activity that might through repetition elsewhere have a substantial effect on interstate commerce. If I were so fortunate as to be confirmed, I would be bound to apply this test where applicable after according the statute a presumption of constitutionality.

*Question 6.* Do you think that there is tension between the Supreme Court’s holdings in *Romer v. Evans*, 517 U.S. 620 (1996) and *Bowers v. Hardwick*, 478 U.S. 186 (1986)? If there is, how would you reconcile that tension? If there is not, how are they reconcilable?

Answer 6. I do not think there is tension between the Supreme Court holdings in these cases *Romer* was based on the Equal Protection clause while *Bowers* was based on the Due Process clause. *Bowers* held that individuals have no constitutional rights to engage in homosexual activity under the Due Process clause, and thus, the State of Georgia’s exercise of its police power to make such conduct criminal is clearly lawful. *Romer* held that a Colorado state constitutional amendment, adopted in a statewide referendum, that effectively repealed state and local provisions barring discrimination on the basis of homosexual, lesbian, or bisexual orientation, failed rational basis review and violated the Constitution. *Bowers* and *Romer* are reconcilable because they constitute precedent in different factual situations and legal postures, and in my view both still call for deference to the legislative process.

*Question 7.* Is there a legislative classification that would fail rational basis review?

Answer 7. An invidious racial classification would have no rational relation to a legitimate end. However, such a classification would be subject to strict scrutiny review, not the rational basis test.

*Question 8.* Is a state program that gives parents a set sum of money to be used by the parent to pay for tuition at any school they choose, public, private, religious or non-sectarian, constitutional?

Answer 8. If such a question were presented in an actual case or controversy where the issue was squarely raised, I would follow the Supreme Court’s holding in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), and subsequent precedent.

*Question 9.* Please define judicial activism. Is *Lochner v. New York*, 198 U.S. 45 (1905) an example of judicial activism? Please identify three Supreme Court opinions that you believe are examples of judicial activism (not including *Lochner* if your answer to the prior question was yes). Is *Roe v. Wade*, 410 U.S. 113 (1973) an example of judicial activism?

Answer 9. I would think that Federal district court judges “legislating” or substituting their own personal views for those of appellate courts and binding precedent would be examples of judicial activism.

I do not read Supreme Court opinions to ascertain whether the Court has been “activist” or not. I only read them to ascertain their holding and whether that holding will bear on any particular issue. I read *Lochner* as having decided a particular issue at a particular time and under particular circumstances where the Supreme Court’s view of liberty of contract as a constitutional guarantee prevailed over certain State social welfare legislation. That case is no longer precedent. I cannot think of three cases I would characterize as “judicial activism,” and if I were so fortunate as to be confirmed, I would be obligated to follow all precedents of the higher courts, including *Roe v. Wade*, regardless of whether or not I thought the Court had erred in its analysis. I would also be bound to decide only actual cases or controversies based on the facts established and on appropriate legal sources, such as the Constitution, statutes, and precedent.



*Question 10.* Do you believe that the view of the death penalty taken by Justices Brennan, Marshall, and Blackmun—that it is unconstitutional, despite clear constitutional text sanctioning it—is a permissible view for a federal judge to hold?

Answer 10. No, a Federal judge is bound by the Supreme Court precedent in *Gregg v. Georgia*, 428 U.S. 193 (1976), which declared the death penalty to be constitutional.

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RESPONSES OF JAY A. GARCIA-GREGORY TO QUESTIONS FROM SENATOR SESSIONS

*Question 1.* 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?

Answer 1. Yes, I am committed to following the precedent of higher courts faithfully and giving them full force and effect even if I were to personally disagree with such precedents.

*Question 2.* How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision or your own best judgment of the merits? Take, for example, the Supreme Court's recent decision in the *City of Boerne v. Flores*<sup>1</sup> where the Court struck down the Religious Freedom Restoration Act.

Answer 2. I would rule in accordance with Supreme Court or Court of Appeals precedent regardless of whether I believed a higher court had seriously erred. I would apply the holding of the case, not my own personal judgment on the merits. If I were so fortunate as to be confirmed, I would apply the Supreme Court precedent in *City of Boerne v. Flores*, 521 U.S. 507 (1997).

*Question 3.* Regardless of your personal feelings on these issues, are you committed to following precedent of higher courts on equal protection issues?

Answer 3. Yes, I am committed to following precedent of higher courts on equal protection issues regardless of my personal feelings.

*Question 4.* Do you have any legal or moral beliefs which would inhibit or prevent you from imposing or upholding a death sentence in any criminal case that might come before you as a federal judge?

Answer 4. No, I have no legal or moral beliefs which would prevent me from imposing or upholding a death sentence in any criminal case that might come before me as a federal judge.

*Question 5.* Do you believe that 10, 15, or even 20-year delays between conviction of a capital offender and execution is too long? Do you believe that once Congress or a state legislature has made the policy decision that capital punishment is appropriate that the federal courts should focus their resources on resolving capital cases fairly and expeditiously?

Answer 5. Yes, I believe that delays of 10, 15 or 20 years between conviction of a capital offender and execution are too long.

Yes, I believe that once Congress or a State legislature has made the policy decision that capital punishment is appropriate, federal courts should focus their resources on resolving capital cases as all cases, fairly and expeditiously.

*Question 6.* What authorities may a federal judge legitimately use in determining the legal effect of a statute or constitutional provision? Discuss how the use of each of these authorities is consistent with the exercise of the Article III judicial power.

Answer 6. After determining whether the case or controversy falls within the limited jurisdiction of the federal courts, a federal judge must ascertain whether he could decide a statutory issue by relying on the plain language of the statute and available court precedent interpreting the statute. If there is any ambiguity, he or she would look to legislative intent to be ascertained on the basis of committee reports (but look with caution to legislative debates which may reflect the views of only a few Senators). A judge must try to decide the issue in accordance with principles of statutory construction and avoid reaching a constitutional question, if possible. Statutes are entitled to a presumption of constitutionality. Next, the judge must look to other available precedent or similar cases in deciding the question. With respect to a constitutional provision, the judge must respect the plain language of the constitutional provision and look to available precedent and constitutional debates in interpreting such a provision. Reliance on such sources of law limits the

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<sup>1</sup>521 U.S. 507 (1997).

exercise of judicial power and is crucial to keeping intact the separation of powers in the Constitution.

*Question 7.* Please assess the legitimacy of the following three approaches to establishing a constitutional right not previously upheld by a court: (1) interpretation of the plain meaning of the text and the original intent of the Framers of the Constitution; (2) discernment of the “community’s interpretation” of constitutional text, see William J. Brennan, *The Constitution of the United States: Contemporary Ratification. Text and Teaching Symposium*, Georgetown University (October 12, 1985); and (3) ratification of an amendment under Article V of the Constitution. Assess the impact of each approach on the judicial power established by Article III of the Constitution.

Answer 7. In analyzing any claim of a constitutional right, it would be legitimate to use (1) interpretation of the plain meaning of a text and original intent to the framers of the Constitution and (3) ratification of an amendment under Article V of the Constitution. Use of (2), Justice Brennan’s “community interpretation” approach, poses the danger of a court going beyond its jurisdiction to decide actual cases or controversies and invading an area reserved to the legislative branch. As the Supreme Court cautioned in *Bowers v. Hardwick*, 478 U.S. 186 (1986).

Nor are we inclined to take a more expansive view of our authority to discover new fundamental rights imbedded in the Due Process Clause. The Court is most vulnerable and comes nearer to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or design of the Constitution. *Id.* at 194.

If I were so fortunate as to be confirmed, I would follow Supreme Court precedent in this regard and on all issues.

*Question 8.* How would you, if confirmed, analyze a challenge to the constitutionality of a statute in a case that was not one of first impression? In a case of first impression?

Answer 8. If confirmed, I would analyze a challenge to the constitutionality of a statute in a case not of first impression by according the statute of a presumption of constitutionality, strictly adhering to precedent, and ascertaining whether the statute could be saved through interpretation so as to avoid deciding a constitutional question unnecessarily. In a case of first impression, I would also accord the statute the presumption of constitutionality, would seek to interpret it so as to not have to decide a constitutional question unnecessarily, and look to available analogous precedent. Of course, the requisite threshold standing and case of controversy jurisdictional issues would have to be analyzed initially.

*Question 9.* In your view, what are the source of law and methods of interpretation used in reaching the Court’s judgment in the following cases? How does the use of these sources of law impact the scope of the judicial power and the federal government’s power under Article III?

A. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

Answer 9A. In this case, the Court derived the “right to privacy” from certain “penumbras” in the Bill of Rights. This method of interpretation did not rely on the plain language of the Constitution but looked beyond the language to invalidate a State law regulating the use of contraceptives by married couples.

B. *Alden v. Maine*, 119 S. Ct. 2240 (1999).

Answer 9B. In this case, the Supreme Court found that “sovereign immunity derives not from the Eleventh Amendment text but from the structure of the original Constitution itself.” 119 S.Ct. at 2254. The Court exercised judicial power under Article III to limit congressional power affording a remedy to public employees in State courts unless the State consents to suit.

*Question 10.* Compare the following cases with respect to their fidelity to the text and original intent of the Constitution. Also assess their impact on the judicial power compared with Congress’s power and on the federal government’s power compared with the power of state governments.

A. *Wickard v. Filburn*, 317 U.S. 111 (1942).

Answer 10A. In this case, the Court upheld a federal law that prevented individual farmers from growing more than a pre-determined amount of wheat because overproduction by individual farmers, in the aggregate, could affect the interstate wheat market. The clause refers to “commerce among the several states” but the Court followed prior precedent in interpreting the clause to reach purely intrastate economic activity that substantially affected interstate commerce.

B. *United States v. Lopez*, 514 U.S. 549 (1995).

Answer 10B. In striking down the Gun-Free School Zones Act, which made it a crime to knowingly carry a firearm within a “school zone,” the Court adhered to a

more narrow reading of the constitutional text than in *Wickard*. The Court examined the statute and could not find a sufficient effect on interstate commerce. It found that the Act had no jurisdictional requirement that the firearm at issue would have traveled in interstate commerce and the Congress had made scant findings about the interstate effects of the local criminal activity at issue.

A federal judge would have to apply these precedents in applicable cases.

*Question 11.* What role does the division of power between the national government and state governments play in our federal system? What impact does this division have on the liberty of the individual and the power of federal judges? Assess the impact of the following cases on the division of power between the national and state governments.

The Constitution provides for a federal government of limited delegated powers and creates a system of dual sovereignty for the federal government and the States. The Supreme Court has noted that in enacting legislation that affects the States, Congress cannot require State executive officers to carry out duties imposed by federal law. These limits do not, however, preclude Congress from obtaining State cooperation through funding incentives or through federal preemption. The division of power between the State and federal governments and the separation of powers among the branches of government is intended to protect the liberty of the individual from the concentration of power.

The powers of a federal judge are limited by Article III of the Constitution to actual cases or controversies arising under the Constitution and federal statutes and treaties. A Federal judge must scrupulously adhere to jurisdictional requirements so he will at all times respect the balance of power established in the Constitution among the coordinate branches of Government and between the National and State Governments.

A. *United States v. Lopez*, 514 U.S. 549 (1995).

Answer 11A. In this case, the Court placed limits on congressional power under the Commerce Clause in the area of non-economic activity without a nexus to interstate commerce so as not to displace traditional state police power.

B. *Printz v. United States*, 521 U.S. 898 (1997).

Answer 11B. In this case, the Court addressed the interim provisions of the Brady Handgun Violence Prevention Act that required state law enforcement officers to run background checks on prospective gun buyers and perform other related duties. The Court held that Congress had no greater power under the Tenth Amendment to commandeer a State's executive officers to carry out federal law than it did to commandeer State legislatures to enact legislation to effectuate federal law. *New York v. United States*, 505 U.S. 144 (1992).

C. *Alden v. Maine*, 119 S. Ct. 2240 (1999).

Answer 11C. In this case, the Court construed the Eleventh Amendment to bar lawsuits against States in State court and held that "sovereign immunity derives not from the Eleventh Amendment text but from the structure of the original Constitution itself." *Id.* at 2254. The Court recognized that the National Government is one of delegated powers and that the states retained their original sovereign immunity except to the extent they may have been surrendered or expressly waived it.

D. *Baker v. Carr*, 369 U.S. 186 (1962).

Answer 11D. The Court decided that a claim that the legislative apportionment plan of a State resulted in the debasement of the votes of plaintiffs stated a cognizable and justiciable claim under the Equal Protection Clause of the Fourteenth Amendment. In this case, the Court held that State apportionment did not present a non-justiciable political question and thus allowed a federal judicial forum for such claims.

E. *Shaw v. Reno*, 509 U.S. 630 (1993).

Answer 11E. The Court found that a State reapportionment scheme subject to Section 5 of the Voting Rights Act of 1965 was so irrational on its face that it could be understood only as an effort to segregate voters into separate districts on the basis of race, and that such a "racial gerrymandering" was subject to a strict scrutiny standard.

*Question 12.* Do you believe that a federal district court has the institutional expertise to set rules for and oversee the administration of prisons, schools, or state agencies?

Answer 12. No, I do not believe that a federal district court has the institutional expertise to set rules for and oversee the administration of prisons, schools, or state agencies.

*Question 13.* In ruling on the constitutionality of a statute, what weight should a court give to the fact that the challenged statute existed before and after the rati-

fication of the constitutional provision at issue? Assume the court faces this issue as a matter of first impression.

Answer 13. In ruling on the constitutionality of a statute, the court should first determine whether it is necessary to reach the constitutional claim or whether the case could be disposed of on statutory grounds. If the constitutional question has to be decided, the court should be careful to ascertain the relationship between the constitutional provision ratified and the pre-existing statute. The court must follow the precedents of the Supreme court on this issue, if any. If there are no precedents, the court would be obligated to presume the statute to be constitutional and look to the plain language of the new constitutional provision. If there is ambiguity, the court would look to the intent of the drafters and to the history of the amendment. The court would also look to any analogous precedent in attempting to reconcile the statute with the constitutional provision.

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RESPONSES OF JAY A. GARCIA-GREGORY TO QUESTIONS FROM SENATOR SMITH

*Question 1.* Article II, Section 2 of the Constitution states that the President shall have the power to appoint federal judges with “the advice and consent” of the Senate. If a nominee for any federal judgeship refuses to answer questions about a Constitutional issue, should that individual be confirmed?

Answer. 1. The confirmation of a judicial nominee is an exclusive constitutional prerogative of the Senate. A nominee should try to answer all questions posed by a Senator to the best of his ability. A nominee may be constrained in answering some questions in order not to appear to have prejudged an issue or rendered an advisory opinion.

*Question 2.* Article II, Section 2 of the Constitution states that the President shall have the power to appoint federal judges with “the advice and consent” of the Senate. If you were a member of the United States Senate, would you agree that it is difficult to advise and consent to a nominee when a candidate refuses to answer questions on Constitutional issues?

Answer. 2. It is up to the Senate to evaluate a candidate’s qualifications for confirmation. I would agree that it may be difficult to advise and consent to a nominee when a candidate refuses to answer questions on constitutional issues. A nominee must take care not to appear to prejudge an issue or render an advisory opinion.

*Question 3.* What is the purpose of the United States Senate in holding hearings on nominees for the federal bench?

Answer. 3. I believe that the purpose of the United States Senate in holding hearings on nominees for the federal bench is to give Senators an opportunity to consider the nominees and their qualifications so that the Senate can discharge its constitutional duty and evaluate the nominee’s character, fitness and qualifications for the federal bench.

*Question 4.* Is it possible for a Senator to advise and consent to a nominee if the nominee simply refers to precedent without explaining his or her legal analysis?

Answer. 4. It is possible for a Senator to advise and consent to a nominee who refers to precedent without explaining his or her legal analysis. In expressing adherence to precedent, a judicial nominee is expressing his commitment to following the analysis used by the Court in that case.

*Question 5.* How can I as a Senator advise and consent to a nominee without answers to Constitutional questions?

Answer. 5. It is up to the Honorable Senator to determine whether to advise and consent to a nominee should the nominee not give pertinent answers to constitutional questions. In making this determination, a Senator may have information about a nominee’s qualifications for a federal judgeship such as his legal experience, his legal ability, his commitment to following precedent, and his ability to be fair, impartial, and respectful among other characteristics that the Senator considers important.

*Question 6.* What questions are legitimate to ask a candidate without the candidate prejudicing himself or herself?

Answer. 6. Questions regarding the candidate’s background and qualifications may be answered without the candidate prejudicing himself or herself. Other questions concerning his general knowledge of the law, his method of constitutional or statutory interpretation in an abstract sense, or understanding of applicable precedent in general, are unrelated to a particular case or real or hypothetical circumstances, and may be answered without a candidate prejudicing himself or herself. These examples, of course, are not intended to be exhaustive.

*Question 7.* Are there any questions that you feel are off limits for a Senator to ask?

Answer. 7. No, there are no questions that are off limits for a Senator to ask. It is up to the Senate to set the parameters of its investigation. There are, however, some questions that a nominee cannot answer without prejudicing himself or herself.

*Question 8.* If a U.S. District Court judge or U.S. Court of Appeals judge concludes that a Supreme Court precedent is flatly contrary to the Constitution, are there any circumstances under which the judge may refuse to apply that precedent to the case before her?

Answer. 8. A U.S. District Court judge or U.S. Court of Appeals judge is bound by Supreme Court precedent regardless of any personal views about the Supreme Court precedent.

*Question 9.* If you were a Supreme Court Justice in 1856, what would you have held in *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393?

Answer 9. It would be very difficult to say what I would have held if I were a Supreme Court Justice in *Dred Scott v. Sandford*, without the available precedent, information, briefs, oral argument and consultation with my colleagues on the Court.

*Question 10.* In *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856), the court apparently held, as you well know there were eight separate opinions in the case, that black slaves were not citizens of the United States. How should the precedent be treated by the courts today?

Answer 10. *Dred Scott* is no longer a precedent, inasmuch as it was overruled by the Thirteenth and Fourteenth Amendments to the Constitution. A court today would not be able to treat it as precedent.

*Question 11.* If you were a judge in 1857, would you have been bound by your Oath and would you have been mandated to follow the binding precedent of *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856)?

Answer 11. *Dred Scott* being precedent at that time, I would have been bound by it as well as by my oath.

*Question 12.* If you were a Supreme Court Justice in 1896, what would you have held in *Plessy v. Ferguson*, 163 U.S. 539 (1896)?

Answer 12. It would be very difficult to say what I would have held if I were a Supreme Court Justice in *Plessy v. Ferguson*, without the available precedent, information, briefs, oral argument and consultation with my colleagues on the Court.

*Question 13.* In *Plessy v. Ferguson*, 163 U.S. 539 (1896), a majority of the court held as not a violation of the Fourteenth Amendment to the Constitution a Louisiana statute which provided that all railway companies provide "equal but separate accommodations" for black and white passengers, imposing criminal penalties for violations by railway officials. How should that precedent be treated by the Courts?

Answer 13. *Plessy* is no longer a precedent. It should not be treated by the courts as precedent, having been overruled by *Brown v. Board of Education*, 347 U.S. 483 (1954).

*Question 14.* If you were a Supreme Court Justice in 1954, what would you have held in *Brown v. Board of Education*, 347 U.S. 483 (1954)?

Answer 14. It would be very difficult to say what I would have held if I were a Supreme Court Justice in *Brown v. Board of Education*, without the available precedent, information, briefs, oral argument and consultation with my colleagues on the Court.

*Question 15.* In *Brown v. Board of Education*, 347 U.S. 483 (1954), the court held that the segregation of children in public schools solely on the basis of race, even though the physical facilities and other tangible factors may be equal, deprive the children of the minority group of equal educational opportunities contrary to the protections contained within the Fourteenth Amendment to the Constitution. How should that precedent be treated by the Courts?

Answer 15. *Brown* must be treated as mandatory precedent by the Courts.

*Question 16.* If you were a Supreme Court Justice in 1973, what would you have held in *Roe v. Wade*, 410 U.S. 113 (1973)?

Answer 16. It would be very difficult to say what I would have held if I were a Supreme Court Justice in *Roe v. Wade*, without the available precedent, information, briefs, oral argument and consultation with my colleagues on the Court.

*Question 17.* In *Roe v. Wade*, 410 U.S. 13 (1973), the court held that a Texas statute which proscribed an abortion except when necessary to save the life of the moth-

er was a violation due process clause of the Fourteenth Amendment as an unjustified deprivation of liberty. Do you agree with the legal reasoning of the holding or of the Justice Rehnquist dissent in that case?

Answer 17. In any such matter coming before me, if I were so fortunate as to be confirmed, I would apply *Roe v. Wade*, as modified by *Planned Parenthood v. Casey*. Whether I agree or disagree with the legal reasoning of the holding or of the Justice Rehnquist dissent in the case would have no effect upon the discharge of my judicial function as a prospective federal judge.

*Question 18.* We understand the Supreme Court precedent, but what is your personal view on the issue of abortion?

Answer 18. I have no personal views that would interfere with my ability to follow precedent on the issue of abortion.

*Question 19.* We understand the Supreme Court precedent, but what is your personal view on the issue of death penalty?

Answer 19. I have no personal views that would prevent me from following the precedent of the Supreme Court on the issue of the death penalty.

*Question 20.* We understand the Supreme Court precedent, but what is your personal view on the issue of the Second Amendment to the Constitution?

Answer 20. Any personal views I might have on the Second Amendment to the Constitution would have no place in my judicial decision making.

*Question 21.* In *Planned Parenthood v. Casey* (505 U.S. 833 (1992)) the Supreme Court held that the government interest in preserving life must be balanced against a mother's right of privacy and access to abortion which may not be unduly burdened. Do you believe the "right to privacy" includes the right to take away the life an unborn child?

Answer 21. I have no personal views that would prevent me from following applicable precedents of the Supreme Court on this issue.

*Question 22.* Again, I understand the state of the law on the Supreme Court's interpretation on the issue of abortion, but I am interested in your personal beliefs on the issue, do you personally believe that an unborn child is a human being?

Answer 22. I have no personal views that would prevent me from following applicable precedents of the Supreme Court on this issue.

*Question 23.* Do you believe that the death penalty is Constitutional?

Answer 23. I have no personal views that would prevent me from following the Supreme Court precedent in this area. If am so fortunate as to be confirmed, I would follow Supreme Court precedent declaring the death penalty constitutional.

*Question 24.* If you were a Supreme Court Justice, under what circumstances would you vote to overrule a precedent of the Court?

Answer 24. If I were Supreme Court Justice, I would follow the guidance of *Planned Parenthood v. Casey* (505 U.S. 833 (1992)) in deciding whether to overrule precedent of the Court. In *Casey* the Court mentioned the following criteria for overruling a precedent: (1) "whether the rule [announced in the precedent] has proven to be intolerable simply in defying practical workability; (2) whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation; (3) whether related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine; and (4) whether facts have so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification." 505 U.S. at 854–855.

*Question 25.* Do you consider legislative intent and the testimony of elected officials in debates leading up to passage on an act? And what weight do you give legislative intent?

Answer 25. I would consider legislative intent and debates only if a statute were ambiguous and could not be construed on its plain words. I would also follow any available cases on point or similar statutes and/or the legislature's action or inaction after any pertinent judicial decisions concerning the issues the statute addresses. Referring to legislative history, I would look to committee reports and other sources of intent, but I would be wary of the statements of individual legislators which may not represent all of the views of the majority that passed the legislation.

LEAGUE OF UNITED LATIN AMERICAN CITIZENS,  
Washington, DC, May 22, 2000.

Hon. PATRICK LEAHY,  
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: I am writing to ask you to support the nomination of attorney Jay A. Garcia-Gregory to the United States District Court for the District of Puerto Rico. The current judicial vacancy in the District Court of Puerto Rico is over five years old and has been classified by the Administrative Office of the United States Courts as an emergency vacancy, so expeditious and swift action is urgently needed.

Mr. Garcia is a respected and highly qualified lawyer with over 25 years of trial and appellate practice at the Puerto Rico and federal courts. His vast experience and strong academic credentials, as evidenced in his résumé, makes him the ideal candidate to fill the judicial vacancy.

Besides his knowledge and practical expertise, attorney Garcia is also a dependable and enthusiastic member of the Puerto Rico branch of the Federal Bar Association. He enjoys volunteer work and has been an active member of the Federal District Court Examination Committee. As a matter of fact, he has already received the unconditional endorsement of both, the Hispanic National Bar Association and the Federal Bar Association.

As the President of the oldest Hispanic civil rights organization in the United States, I realize the importance of appointing lawyers who have the judicial temperament, knowledge and expertise to excel in the federal bench. Without any doubt, Mr. Garcia is one of those few lawyers and he has our wholehearted support.

Senator, we strongly urge you to nominate Attorney Garcia, since we are confident that he will prove worthy of our support and yours.

Sincerely,

RICK DOVALINA,  
LULAC National President.

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REPUBLICAN NATIONAL HISPANIC ASSEMBLY,  
Washington, DC, May 5, 2000.

Senator ORIN HATCH,  
Washington, DC.

DEAR FELLOW REPUBLICAN: As chairman of the only Hispanic organization officially recognized by the RNC, the Republican National Hispanic Assembly, I am writing to you in support of the nomination of Mr. Jay Garcia Gregory-Esq. to the position of District Judge for the District of Puerto Rico, U.S. Federal Court. Mr. Garcia Gregory is not only well qualified for the position, but also a very well known lawyer, respected by all in the legal community in Puerto Rico.

There has been a vacancy in the Puerto Rico District Court for some time now and Mr. Garcia Gregory's appointment will not only correct the situation, but he will be the right choice to fill that vacancy. Mr. Garcia Gregory will go to the bench to do justice, not to rewrite the law. His values are consistent with our views and those of the conservative people of the United States of America.

I urge you to consider positively Mr. Garcia Gregory's nomination and send it to the Senate floor for a final vote as soon as possible.

Thank you for your time and consideration in this most urgent matter.

Yours truly,

JOSE RIVERA,  
National Chairman.

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U.S. SENATE,  
Washington, DC, May 10, 2000.

Dr. MIRIAM J. RAMIREZ DE FERRER,  
President, Puerto Rico Foundation of Republican Women, San Juan, PR.

DEAR MIRIAM: Thank you for your letter in support of Jay A. Garcia-Gregory to be a federal district court judge for Puerto Rico. As you know, his nomination is currently in committee, pending review. A hearing has not been scheduled. I have passed along your expression of support to Chairman Orrin Hatch's office. I will follow this nomination closely.

Do not hesitate to contact me, or Stephen Higgins of my staff if you have additional comments.

Sincerely,

JOHN KYL,  
*U.S. Senator.*

I hope all is going well for you, and hope we'll be able to visit in the near future.

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REPUBLICAN NATIONAL COMMITTEE,  
*San Juan, PR, April 26, 2000.*

Hon. ORRIN HATCH,  
*Chairman, Senate Judiciary Committee,*  
*U.S. Senate, Washington, DC.*

DEAR SENATOR HATCH: It has come to our attention that a nomination hearing has been tentatively set for this week in the Senate Judiciary Committee that may include the nomination of Mr. Jay Garcia to the United States District Court for the District of Puerto Rico. Therefore on behalf of the Republican leadership of Puerto Rico we wish to add our strong endorsement and support for Mr. Garcia's nomination. He is a man of unquestionable integrity and will serve the court with dignity and honor. He has the broad base support of both Republicans and Democrats throughout the Island and especially in the legal community.

We are prepared to give supporting documentation and give testimony as may be required to ensure Mr. Garcia's nomination. Again, we wish to add our strong endorsement and support for Mr. Garcia's nomination. As the record indicates, there is an urgent need for an immediate appointment due to the tremendous back log of pending cases. Your immediate review and intervention are appreciated.

Sincerely,

LUIS A. FERRÉ.

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HISPANIC NATIONAL BAR ASSOCIATION,  
*Washington, DC, May 9, 2000.*

Hon. ORRIN HATCH,  
*U.S. Senate, Senate Russell Office Building,*  
*Washington, DC.*

DEAR SENATOR HATCH: On behalf of the Hispanic National Bar Association and the United States Hispanic Chamber of Commerce, we are writing to express our support for the nomination of Jay A. Garcia-Gregory, Esq. to the United States District Court for the District of Puerto Rico.

Both the United States Hispanic Chamber of Commerce and the Hispanic National Bar Association are non-partisan organizations that have as one of their goals to promote the appointment of qualified Hispanic candidates to the Federal judiciary. As such, we recognize and commend the work that you have undertaken, as Chairman of the Senate Judiciary Committee, on behalf of the Hispanic community. In fact, as in the case of Judge Richard Paez, we have come to count on your support. While we are conscious of—and thankful for—your prior support to our organizations' goals, we must come to you again to seek your assistance with the nomination of a highly qualified Hispanic Attorney to the Federal bench.

The Hispanic National Bar Association and the United States Hispanic Chamber of Commerce are pleased to recommend Jay Garcia-Gregory, Esq. to fill an almost six-year vacancy in the United States District Court for the District of Puerto Rico. Mr. Garcia-Gregory has over 25 years of trial and appellate practice at the Federal level as well as sterling academic credentials. Mr. Garcia Gregory's work ethic has earned him a reputation for professional excellence and the trust and respect of the legal community in Puerto Rico.

On behalf of both our organizations, we thank you again for your assistance and continued commitment to the advancement of qualified Hispanics to the Federal bench. In accordance with this commitment, we further urge you to expedite the nomination of Jay Garcia-Gregory to the United States District Court for the District of Puerto Rico, where a jurist of his caliber is desperately needed.

Sincerely,

GEORGE HERRERA,  
*President and Chief Executive Officer, U.S. Hispanic Chamber of Commerce.*

ALICE M. VELÁZQUEZ,  
*National President, Hispanic National Bar Association.*



GOVERNMENT OF PUERTO RICO,  
OFFICE OF THE GOVERNOR,  
*La Fortaleza, San Juan, PR, February 14, 1997.*

The PRESIDENT,  
*The White House,*  
*Washington, DC.*

DEAR MR. PRESIDENT: One of the seven judgeships on the United States District Court for the District of Puerto Rico has been vacant ever since June 1, 1994. Taking into account both the Court's heavy docket and the intensity of Federal and local efforts in the crusade against crime and drugs, we earnestly recommend that all authorized judicial positions be filled without delay.

In our estimation, the best available candidate for the aforementioned vacancy is an esteemed attorney by the name of Jay A. Garcia-Gregory. This gentleman has been a distinguished member of the Bar for many years. His credentials, as summarized in the attached resume, are impressive. His integrity is beyond reproach. He has extensive experience in Federal jurisprudence and is held in high regard by all of the Judges of Puerto Rico's U.S. District Court for his ability, as well as for his knowledge of the law.

Given the constraints that the Congressional legislative calendar may impose on this and other appointments, we shall be most grateful if the Administration will expedite its consideration of Mr. Garcia-Gregory's prospective nomination to the bench. To that end, your assistance would be very much appreciated by us both.

Jay Garcia-Gregory has our full support and confidence for this important post. And, because Puerto Rico lacks representation in the U.S. Senate, we respectfully solicit that your Administration place a priority on judicial recommendations which, as in the present instance, are offered jointly by Puerto Rico's chief executive and by its sole elected representative in Congress. Thank you very much for your attention to this matter.

With our warm salutations and kindest best wishes.

Sincerely,

PEDRO ROSSELLÓ,  
*Governor of Puerto Rico.*  
CARLOS ROMERO-BARCELÓ,  
*Member, House of Representatives.*

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GOVERNMENT OF PUERTO RICO,  
HOUSE OF REPRESENTATIVES,  
*May 2, 2000.*

Hon. ORRIN G. HATCH,  
*Chairman, Committee on the Judiciary, U.S. Senate, Senate Russell Office Building,*  
*Washington, DC.*

DEAR MR. CHAIRMAN: I am writing to you today on an issue that is of the utmost importance to us in Puerto Rico. As we were able to discuss while on your visit to my office, there is a very pressing need to fill the four-year old vacancy in the U.S. District Court for the District of Puerto Rico. Nonetheless, I am perfectly clear that the process needs to be as rigorous and conscientious as possible, in order to make sure that you confirm the most appropriate nominee to fill a lifetime position in our federal judiciary.

Therefore, totally conscious of your grave responsibility, I want to utilize this opportunity to recommend, in the most respectful manner, the confirmation of Mr. Jay Garcia-Gregory as District Judge for the U.S. District Court for the District of Puerto Rico. I do so for all the possible reasons.

Ever since the beginning of this opening in our District Court, Mr. Garcia-Gregory has been the only candidate that has received consensus support from both Republicans and Democrats in the Island. That is why many people are pleased, that on the third try, President Clinton decided to heed the advice of his friends in Puerto Rico, as to why Mr. Garcia-Gregory was definitely the right person for the position.

As the Republican Speaker of the House of Representatives of Puerto Rico and highest ranking Republican elected official, I am totally pleased with the nomination and fully confident that Mr. Garcia-Gregory will turn out to be one of the better judges that our District Court has ever had. His qualifications speak for themselves.

Mr. Garcia-Gregory has been a highly respected attorney in our Island for many years. His professional experience, first in the academia, then as a law clerk in the U.S. District Court and finally for over 25 years as practicing attorney allow him to stand out from among his peers (as publicly expressed by Chief Judge Hector La-

fitted to our U.S. District Court for the District of Puerto Rico upon hearing of the nomination). Also, people, both within and outside the legal community, admire the quality of his work, his measured approach to issues and controversies, and the composure and politeness that distinguish his professional demeanor. That is why I am fully convinced that Mr. Garcia-Gregory has the judicial temperament to sit on the bench. More importantly though, I am relieved that Mr. Garcia-Gregory will have the opportunity to serve on our U.S. District Court, because I am certain that as a judge he will exercise the appropriate constraint that is required of our judiciary. He will definitely be a judge that deeply respects our Constitution and the Rule of Law, and not one who insists on viewing his position as one that allows him to create public policy.

Finally, I can attest that Mr. Garcia-Gregory also stands out because of his personal and moral qualifications. His compassion and respect for human life have earned the respect of even those who may not share in his beliefs.

I am totally convinced that Mr. Garcia-Gregory clearly surpasses all the standards that you may require for nominees to our Federal Judiciary. Therefore, I believe that he shall be allowed to serve as the next District Judge in the U.S. District Court for the District of Puerto Rico.

Sincerely,

EDISON MISLA-ALDARONDO.

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NATIONAL HISPANIC LEADERSHIP AGENDA,  
*Washington, DC, May 24, 2000.*

DEAR SENATOR HATCH: On behalf of the National Hispanic Leadership Agenda (NHLEA), I am writing to ask your support of Jay A Garcia-Gregory's nomination to the United States District Court for the District of Puerto Rico. Mr. Garcia-Gregory is a distinguished member of the Puerto Rico Federal Bar with over twenty-five years of experience in trial and appellate practice. He has received broad support from the Hispanic community, and from the Federal Bar Association and Puerto Rico Government. Furthermore, he is fully supported by the Hispanic National Bar Association-Puerto Rico Chapter, which is comprised of members from all political parties on the Island. Not only would Garcia-Gregory's nomination be an asset to the federal bench, it would also resolve a 6-year judicial vacancy in the U.S. District Court for the District of Puerto Rico.

Mr. Garcia-Gregory's impressive track record includes a number of distinguished and prestigious positions. He has voluntarily served on the Federal District Court Examination Committee and as an Instructor of the Federal Jurisdiction and Appellate Practice in the Bar Review Course sponsored by the Puerto Rico Federal Bar Association. Mr. Garcia-Gregory also serves as Chairman of the Federal District Court Admissions Committee and the Committee for the Review and Amendment of the District Court's Local Rules.

On April 5, 2000, President Clinton nominated Mr. Jay A. Garcia-Gregory, Esq. to fill the vacant judgeship in the U.S. District Court for the District of Puerto Rico, which has been classified as an "emergency vacancy" by the administrative Office of the United States Courts. With a judicial vacancy since June 1994, there has been an increasing civil and criminal docket congestion in the District of Puerto Rico. It is imperative that a nomination to this vacant judgeship proceed to relieve this judicial emergency.

In light of Garcia-Gregory's impeccable credentials and the judicial "vacancy emergency" in the District of Puerto Rico, we urge you to move Garcia-Gregory's nomination forward to the full Senate for a confirmation vote.

Sincerely,

MANUEL MIRABAL,  
*Chair.*

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RESPONSES OF BEVERLY B. MARTIN TO QUESTIONS FROM SENATOR THURMOND

*Question 1.* We frequently hear the argument that the courts act in response to various social problems because the legislature has failed to act on important issues. What is your view of courts acting in this manner?

*Answer 1.* It is not the proper role of courts to act to solve social problems. The United States Constitution establishes a system of separate powers, granting limited jurisdiction to federal courts to decide actual cases and controversies of parties with standing to bring the action. In our system of separation of powers, it is the province of the political branches of government to respond to social problems, and

in that regard a legislature may express policy not only by taking action, but also by taking no action.

*Question 2.* Do you have any personal objections to the death penalty that would cause you to be reluctant to impose or uphold a death sentence?

*Answer 2.* The Supreme Court of the United States has upheld the constitutionality of the death penalty, and I have no personal objections to the death penalty which would cause me to be reluctant to apply the precedent of the Supreme Court in that regard.

*Question 3.* What is your view of mandatory minimum criminal sentences, and would you have any reluctance to impose or uphold them as a Federal judge?

*Answer 3.* Mandatory minimum sentences have been held constitutional, and I would have no reluctance to impose or uphold mandatory minimum sentences if I were confirmed as a Federal District Court judge. During my tenure as a federal prosecutor, I have prosecuted under mandatory minimum criminal sentences.

*Question 4.* As you are well aware, the sentencing of criminal defendants in Federal court is conducted under the Federal Sentencing Guidelines. Some argue that the Guidelines do not provide enough flexibility for the sentencing judge, while others say the Guidelines provided needed consistency. What is your view of the Federal Sentencing Guidelines and their application?

*Answer 4.* During my entire tenure as a Federal prosecutor, the Federal Sentencing Guidelines have governed Federal sentencing, so it is the only method of sentencing which I have known. For that reason, I am accustomed to and comfortable with the application of the Federal Sentencing Guidelines. Further, the Supreme Court of the United States has upheld the constitutionality of the Federal Sentencing Guidelines, and Federal District Court judges are therefore bound to apply them.

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RESPONSES OF BEVERLY B. MARTIN TO QUESTIONS FROM SENATOR ASHCROFT

*Question 1.* In your view, to what extent, if any, do the rights protected by the Constitution grow or shrink with changing historical circumstances?

*Answer 1.* The rights protected by the Constitution do not grow or shrink with changing historical circumstances; they are reflected in the plain and unchanging language of the document. Over time, however, those rights will necessarily require application to new subject matter, such as technological advances.

*Question 2.* If a particular judge or court has a high rate of reversal on appeal, or by the Supreme Court, is that a problem? If it is, what can and should be done to remedy that problem?

*Answer 2.* Although any judge or court may be found to have erred from time to time, it would certainly not be desirable to have a high rate of reversal on appeal, or by the Supreme Court. If a Federal District Court judge found that he or she had a high rate of reversal, every attempt should be made to remedy the problem by redoubling efforts to be thoroughly familiar with all applicable Supreme Court and Circuit Court precedent, and taking great care to apply it properly. Further, it would be necessary to conduct a thorough review of the reversals to determine the nature of the underlying problem and how it could be corrected.

*Question 3.* Is "substantive due process" a legitimate constitutional doctrine?

*Answer 3.* "Substantive due process" is a term used by Constitutional scholars to describe the practice of Courts relying on the due process clause of the Fourteenth Amendment to the U.S. Constitution to review not only the methods or procedures of government action, but the substance of those actions. Although I do not consider myself a constitutional scholar, those who describe this doctrine as one that has enjoyed favor with courts from time to time during the history of this country. For example, the series of cases beginning with *Lochner v. New York*, 198 U.S. 45 (1905) demonstrate thinking on the part of the Supreme Court at that time, that the due process clause served as a protection for substantive and "fundamental" economic rights of citizens. In the recent case of *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court recognized substantive due process as a doctrine which continues to be legitimate.

If I were confirmed as a Federal District Court judge, it would be my duty to decide actual cases and controversies of parties with standing to bring a particular case before the court, rather than apply broad constitutional doctrines. further, it would be my duty to honor and apply the precedent of the United States Supreme Court and the Circuits Courts on any legal issue that came before me.

*Question 4.* Is it appropriate for federal judges to recognize new "substantive due process" rights? If yes, what should the guiding principles be?

Answer 4. If I were confirmed as a Federal District Court judge, it would be my duty to apply the precedent of the Supreme Court of the United States and the Circuit Court with regard to any “substantive due process” rights, recognizing binding precedent. It would not be appropriate for me to recognize new rights for which there was no basis in precedent.

*Question 5.* What is your understanding of the holding in *United States v. Lopez*, 514 U.S. 549 (1995)? What test would you apply to determine if a statute exceeded the power of Congress to enact under the Commerce Clause?

Answer 5. In *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court of the United States invalidated the Gun-Free School Zones Act, which made it a federal criminal offense for any individual to knowingly possess a firearm within a school zone. The Court based its decision on a finding that Congress had exceeded its authority under the Commerce Clause in enacting the Gun-Free School Zone because possession of a gun in a local school zone was not economic activity that substantially affected interstate commerce.

If confirmed as a Federal District Court Judge, I would be bound to apply the test outlined by the Supreme Court in *Lopez*, as recently elaborated on in *United States v. Morrison*, 120 S. Ct. 1740 (2000). That test looks to whether the activity being regulated by a statute “substantially affected interstate commerce.” For purposes of applying that test, it is only appropriate to aggregate intrastate incidences of any particular activity if it is economic in nature.

*Question 6.* Do you think that there is tension between the Supreme Court’s holdings in *Romer v. Evans*, 517 U.S. 620 (1996) and *Bowers v. Hardwick*, 478 U.S. 186 (1986)? If there is, how would you reconcile that tension? If there is not, how are they reconcilable?

Answer 6. In *Romer v. Evans*, 517 U.S. 620 (1996), the Supreme Court struck down an amendment to the Colorado Constitution that prohibited all legislative, executive or judicial action designed to protect homosexual persons from discrimination. The Supreme Court held that the amendment violated the Equal Protection Clause of the United States Constitution because it imposed a “broad and undifferentiated” disability on a single named group, and it imposed this disability without a rational relationship to legitimate state interests.

In *Bowers v. Hardwick*, 478 U.S. 186 (1986), the Supreme Court upheld the Georgia statute which prohibited sodomy, rejecting arguments that the U.S. Constitution confers a fundamental right upon homosexuals to engage in sodomy. In so holding, the Supreme Court upheld the legislative authority of the State of Georgia to criminalize activity based upon “notions of morality.”

While these cases both deal with the issue of homosexual rights, they deal with very different issues. Therefore, there is no tension between the Supreme Court’s holding in the two cases, and *Romer* does not change the fact that homosexuals are not a constitutionally protected class.

*Question 7.* Is there a legislative classification that would fail rational basis review?

Answer 7. Under a rational basis review, a classification in a statute bears a strong presumption of validity, and those attacking the rationality of a legislative classification have the burden to negate every conceivable basis which might support it. Question 6 raises the point that in *Romer v. Evans*, 517 U.S. 620 (1996), the Supreme Court invalidated the amendment to the Colorado Constitution on a rational relationship basis standard.

*Question 8.* Is a state program that gives parents a set sum of money to be used by the parent to pay for tuition at any school they choose, public, private, religious or non-sectarian, constitutional?

Answer 8. The Supreme Court of the United States has not ruled on the constitutionality of publicly funded tuition vouchers for parents to be used in a private, religious or non-sectarian school of their choice. However, the analysis of this question would look to the Establishment Clause in the First Amendment of the United States Constitution. Since 1971, the Court has evaluated these cases pursuant to the test it established in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Under this test, a court must consider (1) whether a law has a secular purpose, (2) whether it has the primary effect of advancing or inhibiting religion, and (3) whether it fosters an “excessive entanglement” of church and state.

If I were confirmed as a Federal District Court judge, I would be bound to follow this and other precedent established by the Supreme Court and the Circuit Court with regard to the Establishment Clause of the First Amendment.

*Question 9.* Please define judicial activism. Is *Lochner v. New York*, 198 U.S. 45 (1905) an example of judicial activism? Please identify three Supreme Court opinions that you believe are examples of judicial activism (not including *Lochner* if your

answer to the prior question was yes.) Is *Roe v. Wade*, 410 U.S. 113 (1973) an example of judicial activism?

Answer 9. Judicial activism has been defined as an approach on the part of a judge that falls into the realm of policy-making or intruding on the prerogative of the legislative or executive branches of government. This approach would contrast with a judge who confines his rulings to the actual case or controversy brought to the court by a party with standing to raise the issue.

If I were confirmed as a Federal District Court judge, I would be duty bound to follow the precedent of the Supreme Court whether I personally agree with the Court's analysis in any particular case or not. For that reason, I believe it would not be appropriate for me to characterize precedent of the Supreme Court as "activist".

*Question 10.* Do you believe that the view of the death penalty taken by Justices Brennan, Marshall and Blackman—that it is unconstitutional, despite clear constitutional text sanctioning it—is permissible view for a federal judge to hold?

Answer 10. In *Gregg v. Georgia*, 428 U.S. 153 (1973), the Supreme Court of the United States upheld the constitutionality of the death penalty. Therefore it is not permissible for lower courts to hold otherwise.

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#### RESPONSES OF BEVERLY B. MARTIN OF QUESTIONS FROM SENATOR SESSIONS

*Question 1.* Supreme Court precedents are binding on all lower federal court 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?

Answer 1. Yes, I am committed to following the precedents of higher courts faithfully and giving them full force and effect, even if I personally disagree with such precedents.

*Question 2.* How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision or your own best judgment of the merits? Take, for example, the Supreme Court's recent decision in the *City of Boerne v. Flores* where the Court struck down the Religious Freedom Restoration Act.

Answer 2. If I were confirmed as a Federal District Court judge I would be bound by Supreme Court and Circuit Court precedent. Even if I believed a court had erred in rendering a decision, and I would nevertheless apply that decision. If confirmed, I would be bound by the Supreme Court's decision in *City of Boerne v. Flores*, 521 U.S. 507 (1997), and would abide by that ruling.

*Question 3.* Regardless of your personal feelings on these issues, are you committed to following precedent of higher courts on equal protection issues?

Answer 3. Yes, regardless of my personal feelings on these issues, I am committed to following precedent of higher courts on equal protection issues.

*Question 4.* Do you have any legal or moral beliefs which would inhibit or prevent you from imposing or upholding a death sentence in any criminal case that might come before you as a federal judge?

Answer 4. The Supreme Court of the United States upheld the constitutionality of the death penalty in *Gregg v. Georgia*, 428 U.S. 153 (1973). I do not have any legal or moral beliefs which would prevent me from applying Supreme Court precedent with regard to the death penalty.

*Question 5.* Do you believe that 10, 15, or even 20-year delays between conviction of a capital offender and execution is too long? Do you believe that once Congress or a state legislature has made the policy decision that capital punishment is appropriate that the federal courts should focus their resources on resolving capital cases fairly and expeditiously?

Answer 5. As a federal prosecutor, I am generally familiar with the Antiterrorism and Effective Death Penalty Act of 1996, and Congress' attempts to cut down on delays between convictions of capital offenders and their executions. If I were confirmed as a Federal District Court judge, I would be bound to presume that statute constitutional (like any other Act passed by Congress), and apply it along with the applicable Supreme Court and Circuit Court authority on the subject. I believe that Federal Courts should dispose of capital cases, as all other cases, in a fair and expeditious manner.

*Question 6.* What authorities may a federal judge legitimately use in determining the legal effect of a statute or constitutional provision? Discuss how the use of each of these authorities is consistent with the exercise of the Article III judicial power.

Answer 6. In reviewing the legal effect of a statute or constitutional provision, the most compelling authority is the plain language of the statute or provision. Statutes are presumed to be constitutional. A Federal District Court judge may legitimately use legal precedent from the Supreme Court of the United States and the Circuit Court to determine the legal effect of a statute or constitutional provision. In the event of a real ambiguity or lack of clarity in a statute, a judge may look to legislative history, however committee reports and remarks of individual legislators may be relied upon only with some caution.

The United States Constitution establishes a system of separation of powers, with Article III bestowing limited jurisdiction to Federal Courts to decide actual cases and controversies brought before them. It is not the role of the judicial branch to entangle itself in policy issues, which are the domain of the political branches of our government.

*Question 7.* Please assess the legitimacy of the following three approaches to establishing a constitutional right not previously upheld by a court: (1) interpretation of the plain meaning of the text and the original intent of the Framers of the Constitution; (2) discernment of the “community’s Interpretation” of constitutional text, see William J. Brennan. The constitution of the United States: Contemporary Ratification, Text and Teaching Symposium, Georgetown University (October 12, 1985); and (3) ratification of an amendment under Article V of the Constitution. Assess the impact of each approach on the judicial power established by Article III of the Constitution.

Answer 7. Looking to the plain meaning of the text of the Constitution and the original intent of the Framers of the Constitution is a legitimate method of interpretation. Under the rules of construction, in interpreting the Constitution, one would first look to the plain language of the document. If confirmed as a Federal District Court judge, I would also be bound by any rulings from higher courts as to the existence or non-existence of particular constitutional rights.

The approach of Justice Brennan—how he “draw[s] meaning” from the text of the Constitution, stating that “\* \* \* when Justices interpret the Constitution they speak for their community, not for themselves alone”—appears to be an approach that is not appropriate for a Federal District Court judge. If confirmed as a Federal District Court judge, my role would necessarily be more limited. The Constitution establishes a system of separate powers, granting limited jurisdiction to federal courts to decide actual cases and controversies of parties with standing to bring them. Determining and addressing the needs or desire of communities are policy-making which falls into the province of the political branches of government.

The Constitution provides a method for amending the document in Article V. This method of amending the Constitution assigns the responsibility to Congress and State legislatures rather than to the judicial branch. Any right established by ratification of an Amendment under Article V would be a legitimate way to establish a new constitutional right.

*Question 8.* How would you, if confirmed, analyze a challenge to the constitutionality of a statute in a case that was not one of first impression? In a case of first impression?

Answer 8. If confirmed as a Federal District Court judge, it would be my duty to treat any statute subject to challenge with the presumption that it is constitutional. If the challenge was not one of first impression, I would be bound by the ruling of the higher court on the subject.

In a case of first impression, I would likewise begin with a presumption of constitutionality, and determines if the Supreme Court and the controlling Circuit Court had ruled on any analogous statutes. If so, I would apply the analysis used by the higher court in the analogous case. If not, I would examine the analysis of other Circuit Courts in dealing with the same or similar statutes for guidance in analyzing the statute.

*Question 9.* In your view, what are the sources of law and methods of interpretation used in reaching the Court’s judgment in the following cases? How does the use of these sources of law impact the scope of the judicial power and the federal government’s power under Article III?

A. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

B. *Alden v. Maine*, 119 S. Ct. 2240 (1999).

Answer 9. In *Griswold v. Connecticut*, 381 U.S. 479 (1965), the Supreme Court held that a Connecticut statute which outlawed the use of contraceptives unconstitutionally introduced upon the right of marital privacy. Justice Douglas, the author of the majority opinion, held that the guarantees of the Bill of Rights have penumbras, formed by the emanations from those guarantees that give them “life and substance.” The majority opined that guarantees in the First, Third, Fourth, Fifth and

Ninth Amendments to the Constitution, each created zones of privacy, which, taken together, created a right to privacy which was violated by the Connecticut statute.

In *Alden v. Maine*, 119 S. Ct. 2240 (1999), the Supreme court upheld the dismissal of a suit brought by state probation officers against the State of Maine alleging a violation of the overtime provisions of the Fair Labor Standards Act. In that decision, Justice Kennedy speaking for the majority, held that the Eleventh Amendment to the U.S. Constitution bars lawsuits against States in State court. The Court held that “sovereign immunity derives not from the Eleventh Amendment text but from the structure of the original Constitution itself.” With regard to the fidelity of these cases to the text and original intent of the Constitution, it can be said that both *Griswold* and *Alden* represent cases in which the Court found rights which were not in the text of the Constitution.

Although the Due Process Clause of the Fourteenth Amendment is largely used in evaluating State Procedures, the Supreme Court has recognized that the Amendment also has a component that precludes States from enacting laws that infringe on substantive rights. The *Griswold* and *Alden* cases demonstrate that the Court has extended these substantive protections in the areas such as procreation, marriage, and bodily integrity, but has not, in more recent years, extended those substantive protections to the area of economic regulations.

*Question 10.* Compare the following cases with respect to their fidelity to the text and original intent of the Constitution. Also assess their impact on the judicial power compared with the Congress’ power and on the federal government’s power compared with the power of state governments.

A. *Wickard v. Filburn*, 317 U.S. 111 (1942).

B. *United States v. Lopez*, 514 U.S. 549 (1995).

Answer 10. *Wickard v. Filburn*, 317 U.S. 111 (1942), the Supreme Court upheld a federal statute that prevented individual farmers from growing more than a predetermined amount of wheat. This legislation was upheld on the basis of Congress’ power to regulate commerce pursuant to Article I of the Constitution, the argument being that overproduction of wheat by individual farmers, in the aggregate, could affect the interstate wheat market.

In *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court struck down the federal Gun-Free School Zones Act, which made it a crime to knowingly carry a firearm within a “school zone.” The Court found that the statute had no jurisdictional requirement that the gun had traveled in interstate commerce, and there had been few or no findings by Congress about the interstate effects of the criminal act. For these reasons, the Court decided there was insufficient link to interstate commerce to justify the statute.

These cases demonstrate the range of views of the Supreme Court when considering legislation enacted pursuant to the Commerce Clause. The view expressed by the Court in *Lopez* is more restrictive of Congress’ power, the byproduct of which may be more autonomy on the part of the states when legislating in these areas.

*Question 11.* What role does the division of power between the national government and state governments play in our federal system? What impact does this division have on the liberty of the individual and the power of federal judges? Assess the impact of the following cases on the division of power between the national and state governments.

A. *United States v. Lopez*, 514 U.S. 549 (1995).

B. *Printz v. United States*, 521 U.S. 898 (1997).

C. *Alden v. Maine*, 119 S. Ct. 2240 (1999).

E. *Baker v. Carr*, 369 U.S. 186 (1962).

F. *Shaw v. Reno*, 509 U.S. 630 (1993).

Answer 11. In *United States v. Lopez*, 514 U.S. 549 (1995), The Supreme Court struck down the federal Gun-Free School Zones Act, which made it a crime to knowingly carry a firearm within a “school zone.” The Court found that the statute has no jurisdictional requirement that the gun had traveled in interstate commerce, and there had been little or no findings by Congress about the interstate effects of the criminal act. For these reasons, the Court decided there was insufficient link to interstate commerce to justify the statute.

In *Printz v. United States*, 521 U.S. 898 (1997), the Supreme Court reviewed the interim provisions of the Brady Handgun Violence Prevention Act, which required State law enforcement officers to run background checks on prospective gun buyers and perform other related duties. The Court held that even an interim requirement that state law enforcement officials implement federal regulatory programs by legislation and executive action placed an unconstitutional obligation on state officers to execute federal laws.

In *Alden v. Maine*, 119 S. Ct. 2240 (1999). The Supreme Court upheld the dismissal of a suit brought by state probation officers against the State of Maine alleging a violation of the overtime provisions of the Fair Labor Standards Act. In that decision, Justice Kennedy writing for the majority, held that the Eleventh Amendment to the U.S. Constitution bars lawsuits against States in state court. The Court held that this “sovereign immunity derives not from the Eleventh Amendment text but from the structure of the original Constitution itself.”

*Baker v. Carr*, 369 U.S. 186 (1962) involved a suit brought by certain Tennessee voters who alleged that a state statute diluted their right to vote, and therefore deprived them of equal protection under the Fourteenth Amendment to the United States Constitution. The lower federal courts had dismissed the claims of the voters, holding that they did not have jurisdiction of the matter. The Supreme Court reversed the lower court holding, stating that because the voters were alleging the deprivation of any right or privilege secured by the U.S. Constitution, the Federal District Court should have original jurisdiction of the matter.

In *Shaw v. Reno*, 509 U.S. 630 (1993), the Supreme Court faced another voting rights case, this one involving allegations that North Carolina’s redistricting legislation reflected a constitutionally improper effort to segregate voters into separate districts on the basis of race. The Supreme Court found the claims of the voters were sufficient to state a claim upon which relief could be granted under the equal protection clause, and remanded the case to the Federal District Court for consideration of those claims.

These cases demonstrate an increased emphasis by the Supreme Court of the United States on the autonomy and independence of the state systems as opposed to the federal government. Generally the Court has acted to curtail Congress’ Article I “commerce power”; relied more heavily on the tenth amendment as a limitation on Congress’ power to enact legislation affecting the States; and strengthened the concept of State sovereign immunity as established by the Eleventh Amendment.

*Question 12.* Do you believe that a federal district court has the institutional expertise to set rules for and oversee the administration of prisons, schools, or state agencies?

*Answer 12.* No, Federal District Courts do not have the institutional expertise to set rules for and oversee the administration of prisons, schools, or state agencies. Traditionally the responsibility for running of schools, prisons and state agencies is vested in the executive branch of government, and therefore it is that branch, rather than the judicial branch, that has been equipped with the expertise to set rules for and oversee the administration of these institutions.

*Question 13.* In ruling on the constitutionality of a statute, what weight should a court give to the fact that the challenged statute existed before and after the ratification of the constitutional provision at issue? Assume the court faces this issue as a matter of first impression.

*Answer 13.* Under ordinary rules of construction, constitutional provisions take precedent over particular statutory provisions. However, when a statute has preexisted a constitutional provision, some weight should be given to the fact that the constitutional provision was passed with knowledge of the existing statute, leading to consideration of the argument that drafters of the constitutional provision intended for the new constitutional provision and the existing statute to coexist.

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RESPONSES OF BEVERLY B. MARTIN TO QUESTIONS FROM SENATOR SMITH

*Question 1.* Article II, Section 2 of the Constitution states that the President shall have the power to appoint federal judges with “the advice and consent” of the Senate. If a nominee for any federal judgeship refuse to answer questions about a Constitutional issue, should that individual be confirmed?

*Answer 1.* Nominees for federal judgeships should be conversant with Constitutional issues and be prepared to respond to questions about Constitutional issues. However, it is a violation of judicial canons for judicial candidates to give advisory opinions or prejudge matters which they may be called upon to decide if confirmed. Therefore, there are certain questions that judicial candidates cannot appropriately answer, and confirmation should not be withheld if they abide by those canons.

*Question 2.* Article II, Section 2 of the Constitution states that the President shall have the power to appoint federal judges with “the advice and consent” of the senate. If you were a member of the United States Senate, would you agree that it is difficult to advise and consent to a nominee when a candidate refuses answer questions on Constitutional issues?



Answer 2. Members of the United States Senate have a solemn responsibility to advise and consent to nominees for federal judgeships. If a candidate were to refuse to answer any and all questions regarding Constitutional issues, that would make the job of advice and consent very difficult. However, because the judicial canons prohibit judicial candidates from prejudging cases, issues or statutes that they may later be called to rule upon, there may be some questions that are not properly answered by the candidate. Advise and consent should not be withheld if questions are not answered for these reasons.

*Question 3.* What is the purpose of the United States in holding hearings on nominees for the federal bench?

Answer 3. Hearings are held on judicial nominees in order to facilitate the Senate's responsibility to advise and consent on their nominations.

*Question 4.* Is it possible for a Senator to advise and consent to a nominee if the nominee simply refers to precedent without explaining his or her legal analysis?

Answer 4. Yes, where a judicial nominee demonstrates an understanding of and respect for the responsibilities of an Article III judge, as well as a dedication to the work the position entails, it is possible for a Senator to advise and consent to a nominee, even if the nominee refers to precedent without explaining his or her legal analysis. Indeed, where binding precedent exists, precedent and analysis in the controlling case[s] are applicable to the advice and consent process.

*Question 5.* How can I as a Senator advise and consent to a nominee if nominee simply refers to precedent without explaining his or her legal analysis?

Answer 5. A Senator can advise and consent to judicial nominees, by satisfying himself that any given judicial nominee is dedicated to properly carrying out the role of an Article III judge. Where binding precedent exists, precedent and analysis in the controlling case[s] are applicable to the advice and consent process.

*Question 6.* What questions are legitimate to ask a candidate without the candidate prejudicing himself or herself?

Answer 6. The Judicial Canons do not permit a judicial candidate to issue advisory opinions or prejudge issues or statutes that they may, in the future, be called upon to consider. However, questions designed to determine a candidate's background, work ethic, knowledge of the law, knowledge of existing precedent, temperament, fairness, and commitment to properly carrying out the role of an Article III judge are all legitimate and appropriate inquiries.

*Question 7.* Are there any questions that you feel are off limits for a Senator to ask?

Answer 7. No, a Senator has the solemn responsibility to advise and consent as to judicial nominees, and should ask any question he feels will assist him in carrying out that duty.

*Question 8.* If a U.S. District Court Judge or U.S. Court of Appeals judge concludes that a Supreme Court precedent is flatly contrary to the Constitution, are there any circumstances under which the Judge may refuse to apply that precedent to the case before him or her?

Answer 8. None that I am aware of.

*Question 9.* If you were a Supreme Court Justice in 1856, what would you have held in *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393?

Answer 9. At the time of the *Dred Scott* decision, I was not privy to the arguments made to the Court, the briefs submitted, the record in the case, nor the positions of those who would have been my colleagues on the Court. Therefore, I cannot speculate as to what I might have done at that time.

*Question 10.* In *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856), the court apparently held, as you well know there were eight separate opinions in the case, that black slaves were not citizens of the United States. How should that precedent be treated by the courts today?

Answer 10. The *Dred Scott* decision was superseded by the Thirteenth and Fourteenth Amendments to the Constitution, and therefore cannot be relied upon as precedent by courts today.

*Question 11.* If you were a judge in 1857, would you have been bound by your Oath and would you have been mandated to follow the binding precedent of *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856)?

Answer 11. Yes, as a judge in 1857, I would have been bound by my oath and mandated to follow the precedent of *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856).

*Question 12.* If you were a Supreme Court Justice in 1896, what would you have held in *Plessy v. Ferguson*, 163 U.S. 539 (1896)?

Answer 12. At the time of *Plessy v. Ferguson*, 163 U.S. 539 (1896), I was not privy to the arguments made to the Court, the briefs submitted, the record in the case, nor the positions of those who would have been my colleagues on the Court. Therefore, I cannot speculate as to what I might have done at that time.

*Question 13.* In *Plessy v. Ferguson*, 163 U.S. 539 (1896), a majority of the court held as not a violation of the Fourteenth Amendment to the Constitution a Louisiana statute which provided that all railway companies provide “equal but separate accommodations” for black and white passengers, imposing criminal penalties for violations by railway officials. How should that precedent be treated by the Courts?

Answer 13. *Plessy v. Ferguson*, 163 U.S. 539 (1896) was overruled by the Supreme Court ruling in *Brown v. Board of Education*, 347 U.S. 483 (1954), and therefore cannot be relied upon as precedent by lower courts.

*Question 14.* If you were a Supreme Court Justice in 1954, what would you have held in *Brown v. Board of Education*, 347 U.S. 483 (1954)?

Answer 14. At the time of the *Brown v. Board of Education*, 347 U.S. 483 (1954), I was not privy to the arguments made to the Court, the briefs submitted, the record in the case, nor the positions of those who would have been my colleagues on the Court. Therefore, I cannot speculate as to what I might have done at that time.

*Question 15.* In *Brown v. Board of Education*, 347 U.S. 483 (1954), the court held that the segregation of children in public schools solely on the basis of race, even though the physical facilities and other tangible factors may be equal, deprive the children of the minority group of equal educational opportunities contrary to the protections contained within the Fourteenth Amendment to the Constitution. How should that precedent be treated by the Courts?

Answer 15. *Brown v. Board of Education*, 347 U.S. 483 (1954) continues to be the law of the land, and therefore must be relied upon as precedent by lower courts.

*Question 16.* If you were a Supreme Court Justice in 1973, what would you have held in *Roe v. Wade*, 410 U.S. 113 (1973)?

Answer 16. At the time of *Roe v. Wade*, 410 U.S. 113 (1973), I was not privy to the arguments made to the Court, the briefs submitted, the record in the case, nor the positions of those who would have been my colleagues on the Court. Therefore, I cannot speculate as to what I would have done at that time.

*Question 17.* In *Roe v. Wade*, 410 U.S. 113 (1973), the court held that a Texas statute which proscribed an abortion except when necessary to save the life of the mother was a violation due process clause of the Fourteenth Amendment as an unjustified deprivation of liberty. Do you agree with the legal reasoning of the holding or of the Justice Renquist dissent in that case?

Answer 17. I am a nominee to be a Federal District Court judge, and if confirmed I would be bound by the Supreme Court’s ruling in *Roe v. Wade*, 410 U.S. 113 (1973) as modified by the Court’s more recent ruling in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

*Question 18.* We understand the Supreme Court precedent, but what is your personal view on the issue of abortion?

Answer 18. I have no personal view on the subject of abortion that would prohibit me from following Supreme Court rulings on the issue of abortion.

*Question 19.* We understand the Supreme Court precedent, but what is your personal view on the issue of the death penalty?

Answer 19. I have no personal view on the subject of the death penalty that would prohibit me from following Supreme Court rulings on the issue of the death penalty.

*Question 20.* We understand the Supreme Court precedent, but what is your personal view on the issue of the Second Amendment to the Constitution?

Answer 20. I have no personal view on the issue of the Second Amendment to the Constitution that would prohibit me from following the Supreme Court rulings on the issue on the Second Amendment.

*Question 21.* In *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) the Supreme Court held that the government interest in preserving life must be balanced against a mother’s right of privacy and access to abortion which may not be unduly burdened. Do you believe the “right to privacy” includes the right to take away the life of an unborn child?

Answer 21. I have no personal view regarding the right to privacy that would prohibit me from following the Supreme Court’s precedent in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), or other controlling precedent on the right to privacy.

*Question 22.* Again, I understand the state of the law on the Supreme Court's interpretation on the issue of abortion, but I am interested in your personal beliefs on the issue, do you personally believe that an unborn child is a human being?

*Answer 22.* I have no personal view regarding abortion that would prevent me from following Supreme Court precedent in that regard.

*Question 23.* Do you believe that the death penalty is Constitutional?

*Answer 23.* In *Gregg v. Georgia*, 428 U.S. 153 (1973), the Supreme Court of the United States upheld the constitutionality of the death penalty.

*Question 24.* If you were a Supreme Court Justice, under what circumstances would you vote to overrule a precedent of the Court?

*Answer 24.* In the Supreme Court decision of *Planned Parenthood v. Casey*, 505 U.S. 833, (1992), the Court set forth guidance for the approach to be used when overruling precedent. The Court stated that when reexamining a prior holding, they make a series of "prudential and pragmatic" considerations. One of the questions posed by the Court, for example, was whether a rule espoused in a previous case has proven to be "intolerable simply in defying practical workability." If I were a Supreme Court Justice, I would be bound by this precedent.

*Question 25.* Do you consider legislative intent and the testimony of elected officials in debates leading up to passage of an act? And what weight do you give legislative intent?

*Answer 25.* The interpretation of a statute requires looking first to the plain language of the statute as passed, as this is the greatest evidence of legislative intent. A Federal District Court judge must look to legal precedent from the Supreme Court of the United States and the Circuit Court for guidance in the application of statutes. In the event of a real ambiguity or lack of clarity in a statute, legislative intent can be considered. However, the remarks of individual legislators or the testimony of individual elected officials are not as reliable as committee reports, and both must be relied upon with some caution.

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RESPONSE OF LAURA TAYLOR SWAIN TO QUESTIONS FROM SENATOR HATCH

*Question 1.* In one of your writings, you state that there has been a "backlash" against affirmative action programs, and that affirmative action "program have opened doors for people of color and women, by permitting race and gender to be weighed in admission and hiring decisions in much the same way that factors such as family or social connections, geographical origin and sports talent (many of which, by reinforcing existing affinities, tend to preserve existing racial and cultural demographic patterns) have long been considered in 'merit-based' decision making. If 'merit' in the form of academic achievement is to be the paramount criterion, we will have to do more as a society to prepare and support members of minority communities on the road to achievement." Laura Taylor Swain, "Thoughts on the LSAC Bar Passage Study—Good News and Good News", 67 *The Bar Examiner* 4, 17 (Nov. 1998). In addition, you state that "the elimination of affirmative action criteria from admissions in certain public universities has already made a striking, negative difference in the diversity of their more selective campuses." What do you think we can do as a society to "support members of minority communities on the road to achievement"? In your view, does government have a compelling interest in promoting diversity?

*Answer 1.* The article identifies several of the types of actions that can be undertaken by private citizens to assist minority communities and individuals, including mentoring programs, financial support of quality educational programs for all members of our society, and participation in diverse educational communities. With respect to government action, the Supreme Court has made clear that government classifications based on race are subject to strict scrutiny. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 225–26 (1995). The United States Court of Appeals for the Second Circuit has indicated that *Adarand*, which involved a racially based set-aside in contracting, requires the application of strict scrutiny to all government classifications based on race, including classifications in the area of education. *Brewer v. West Irondequoit Central School Dist.*, No. 99–7186, 2000 WL 641052 (2d Cir. May 11, 2000). The United States Court of Appeals for the Fifth Circuit has held that the goal of promoting diversity does not constitute a compelling interest (see *Hopwood v. Texas*, 78 F.3d 932 (5th Cir.), cert. denied, 518 U.S. 1033 (1996)); the Second Circuit has not yet addressed that issue. Strict scrutiny is a very stringent test. The question of whether promoting diversity constitutes a "compelling" governmental interest is one that, should I be confirmed as a United States District Judge and the issue presented to me in the form of a justiciable case or controversy, I

would determine in accordance with the applicable precedents established by the Supreme Court of the United States and the United States Court of Appeals for the Second Circuit.

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RESPONSES OF LAURA TAYLOR SWAIN TO QUESTIONS FROM SENATOR THURMOND

*Question 1.* We frequently hear the argument that the courts act in response to various social problems because the legislature has failed to act on important issues. What is your view of courts acting in this manner?

Answer 1. Federal courts, as adjudicative bodies of limited jurisdiction, should not perform any policy-making functions, including when the legislature has not acted on a social problem. A legislature may engage in policymaking by acting, or by declining to act, on a matter.

*Question 2.* Do you have any personal objections to the death penalty that would cause you to be reluctant to impose or uphold a death sentence?

Answer 2. No, I have no personal objections to the death penalty that would cause me to be reluctant to impose or uphold a death sentence.

*Question 3.* What is your view of mandatory criminal sentences, and would you have any reluctance to impose or uphold them as a Federal judge?

Answer 3. Federal criminal law, as established by Congress, includes certain mandatory minimum sentencing provisions, I would sentence individuals in accordance with the requirements of law.

*Question 4.* As you are well aware, the sentencing of criminal defendants in Federal court is conducted under the Federal Sentencing Guidelines. Some argue that the Guidelines do not provide enough flexibility for the sentencing judge, while others say the Guidelines provided needed consistency. What is your view of the Federal Sentencing Guidelines and their application?

Answer 4. The Guidelines are part of the Congressionally-established Federal criminal justice system and reflect the balance struck by Congress between consistency and flexibility in sentencing. The Guidelines have been held Constitutional. I would sentence individuals in accordance with the Guidelines

*Question 5.* In reviewing a study showing that bar exam passage rates are lower for minorities than for whites, you wrote: "If 'merit' in the form of academic achievement is to be the paramount criterion, we will have to do more as a society to prepare and support members of minority communities on the road to achievement." What specific steps should society take in the regard?

Answer 5. The article identifies several of the types of actions that can be undertaken by private citizens to assist minority communities and individuals, including mentoring programs, financial support of quality educational programs for all members of our society, and participation in diverse educational communities. With respect to government action, the Supreme Court has made clear that government classifications based on race are subject to strict scrutiny, *Adarand Construction, Inc. v. Peña*, 515 U.S. 200, 225–26 (1995). The United States Court of Appeals for the Second Circuit has indicated that *Adarand* which involved a racially based set-aside in contracting, requires the application of strict scrutiny to all government classifications based on race, including classifications in the area of education, *Brewer v. West Inrondequiot Central School Dis.*, No. 99–7186, 2000 WL 641052 (2d Cir. May 11, 2000).

*Question 6.* In one speech, you stated: "The Supreme Court's recent states' rights decisions particularly in the sovereign immunity area, change radically settled assumptions regarding private civil litigation as a means of enforcing federally-recognized rights, including in the discrimination area." To which radically-settled assumptions were you referring, and how have they been changed?

Answer 6. The sentence was perhaps structured awkwardly—the word "radically" was intended to modify the word "change" rather than the term "settled assumptions." I was alluding in that passage to the change wrought by the decision in *Kimel v. Florida Board of Regents*. 120 S. Ct. 631 (2000), which struck down the private civil action provisions of the Age Discrimination in Employment Act insofar as they apply to States, holding that those provisions were not "appropriate [remedial] legislation" within the meaning of Section five of the Fourteenth Amendment to the Constitution and thus did not constitute a valid abrogation of the sovereign immunity of the State. Congress has chosen, in a number of areas, to provide for private civil litigation as a principal vehicle for vindication of rights provided for under Federal statutes, and *Kimel* may raise questions about the visibility of other private civil action provisions. That is what I meant by "change[d] radically settled

assumptions.” If I was so fortunate as to be confirmed, I would apply *Kimel* and any subsequent decisions to applicable cases without any hesitation.

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RESPONSES OF LAURA TAYLOR SWAIN TO QUESTIONS FROM SENATOR ASHCROFT

*Question 1.* In your view, to what extent, if any, do the rights protected by the Constitution grow or shrink with changing historical circumstances?

Answer 1. I do not believe that the rights protected by the Constitution grow or shrink with changing historical circumstances. During the course of our history, the Constitution has been amended to provide for rights in addition to those set forth in the Bill of Rights. Also, such historical developments as changes in technology (the invention of the telephone, for example) have required the Supreme Court to apply the language of the Constitution in new settings.

*Question 2.* If a particular judge or court has a high rate of reversal on appeal, or by the Supreme Court, is that a problem? If it is, what can and should be done to remedy that problem?

Answer 2. A high rate of reversal is not desirable. Judges should always do their best to determine accurately the relevant facts and apply governing precedent to the legal questions properly raised before them. Consistency among the levels of the judiciary makes for clarity in the law and helps to promote public confidence in the judiciary. If a judge were to have a high reversal rate, it would be appropriate for that judge to study carefully the reversals, discern any patterns, and seek to correct any factors leading to repeated errors.

*Question 3.* Is “substantive due process” a legitimate constitutional doctrine?

Answer 3. The Supreme Court has recognized that the notion of “substantive due process” has been narrowed over time. However, the doctrine has survived in some Supreme Court decisions. For example, in *Washington v. Glucksberg*, 521 U.S. 702 (1997), in an opinion by Chief Justice Rehnquist, the Supreme Court upheld a State ban on assisted suicide and noted that “substantive due process” has been applied in a “long line of cases” and continues to be part of the Supreme Court’s jurisprudence. The Chief Justice emphasized that the Court must take great care in applying this Constitutional doctrine so as not to intrude on the democratic process. Whatever the label, I would, if confirmed, apply the precedents established by the higher courts.

*Question 4.* Is it appropriate for federal judges to recognize new “substantive due process” rights? If yes, what should the guiding principles be?

Answer 4. No. It is not appropriate for lower federal court judges to create new “substantive due process” rights. If I were confirmed as a United States District Judge, I would apply the precedents established by the higher courts.

*Question 5.* What is your understanding of the holding in *United States v. Lopez*, 514 U.S. 549 (1995)? What test would you apply to determine if a statute exceeded the power of Congress to enact under the Commerce Clause?

Answer 5. In *Lopez*, the Court held that the Gun-Free School Zones Act of 1990 regulated conduct that did not substantially affect interstate commerce, and that the legislation thus exceeded Congressional authority to regulate commerce among the several states under Article I, Section 8 of the Constitution. The Court observed that the Commerce Clause permits Congress to regulate the use of the channels of commerce, instrumentalities of interstate commerce or persons or things in interstate commerce, and activities having a substantial relation to interstate commerce. Were I to be confirmed as a United States District Judge, I would apply the relevant tests as articulated by the Supreme Court or by the Second Circuit based on Supreme Court precedent.

*Question 6.* Do you think that there is tension between the Supreme Court’s holdings in *Romer v. Evans*, 517 U.S. 620 (1996) and *Bowers v. Hardwick*, 478 U.S. 186 (1986)? If there is, how would you reconcile that tension? If not, how are they reconcilable?

Answer 6. *Romer* and *Bowers* are reconcilable. In both cases, the Supreme Court held that the rational basis standard is the appropriate test for evaluating alleged sexual orientation-based discrimination. In the *Bowers* case, the issue of the scope of the States’ traditional police powers was presented to the Court in the context of the question of whether homosexuals have a fundamental Constitutional right to engage in a particular type of sexual conduct in a particular setting; *Romer* involved an equal-protection clause challenge to a broad State Constitutional provision that the Court read as imposing civil disabilities based on status. If, as a United States District Judge, I were called upon to construe or apply these decisions, I would do

so with careful attention to their holdings, any subsequent governing decisions, and to the circumstances presented in the case before me.

*Question 7.* Is there a legislative classification that would fail rational basis review?

Answer 7. That is a question that cannot be answered in the abstract. The Supreme Court's articulations of the rational basis standard admit of the possibility that classifications could fail the rational basis test. If I were confirmed as a United States District Judge and presented with a case in which application of the rational basis standard were appropriate, I would apply the standard in accordance with the deference required by the applicable precedents of the higher courts.

*Question 8.* Is a state program that gives parents a set sum of money to be used by the parent to pay for tuition at any school they choose, public, private, religious or non-sectarian, constitutional?

Answer 8. If, as a United States District Judge, I were presented with a case that raised such issues, I would follow the precedents established by the higher courts, with careful attention to the circumstances presented by the particular case or controversy. The Supreme Court has not yet decided the constitutionality of school voucher programs permitting parents to use the vouchers to pay for tuition at schools of their choice. However, the Supreme Court has indicated that in cases involving challenges under the Establishment Clause, the test set forth in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), is to be applied. Under that test, the court is to examine whether the law has a secular purpose, whether it has a primary effect of advancing religion, and whether it fosters excessive entanglement of church and state. The Supreme Court clarified that test in *Agostini v. Felton*, 521 U.S. 203 (1997). As a sitting judge, and as a candidate for appointment to the Federal District Court bench, it would be inappropriate for me further to address the constitutionality, under the First Amendment or any other constitutional provisions, of such a program.

*Question 9.* Please define judicial activism. Is *Lochner v. New York*, 198 U.S. 45 (1905), an example of judicial activism? Please identify three Supreme Court opinions that you believe are examples of judicial activism (not including *Lochner* if your answer to the prior question was yes). Is *Roe v. Wade*, 410 U.S. 113 (1973), an example of judicial activism?

Answer 9. "Judicial activism" has been defined as a tendency of judges to make decisions on issues that are not properly within the scope of their authority. I have not had occasion to analyze decisions of the Supreme Court as to whether they constitute "judicial activism." Rather, as a lawyer, as a Bankruptcy Judge and, if confirmed, as a United States District Judge, it has been and would remain my duty to ascertain the holdings of the Supreme Court and respect and apply the Supreme Court's decisions faithfully and fully.

*Question 10.* Do you believe that the view of the death penalty taken by Justices Brennan, Marshall and Blackmun—that it is unconstitutional, despite clear constitutional text sanctioning it—is a permissible view for a federal judge to hold?

Answer 10. The Supreme Court has clearly rejected the view in *Gregg v. Georgia*, 428 U.S. 153 (1976). I do not believe it would be permissible under governing precedent for a federal judge to hold that the death penalty is unconstitutional.

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#### RESPONSES OF LAURA TAYLOR SWAIN TO QUESTIONS FROM SENATOR SESSIONS

*Question 1.* 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?

Answer 1. Yes. I am committed to following the precedents of higher courts faithfully and giving them full force and effect, even if I were personally to disagree with such precedents.

*Question 2.* How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision or your own best judgment on the merits? Take, for example, the Supreme Court's recent decision in *City of Boerne v. Flores*, 521 U.S. 507 (1997), where the Court struck down the Religious Freedom Restoration Act.

Answer 2. Were I to be confirmed as a United States District Judge, I would be bound in all circumstances to rule in accordance with applicable Supreme Court and Second Circuit precedent, including *City of Boerne v. Flores*, regardless of any per-

sonal views about whether a higher court had seriously erred in rendering a decision. I have no personal views that would impede my ability to adhere to precedent.

*Question 3.* Regardless of your personal feelings on these issues, are you committed to following precedent of higher courts on equal protection issues?

Answer 3. Yes, I am committed to following precedent of higher courts on equal protection issues, regardless of any personal feelings I may have on such issues.

*Question 4.* Do you have any legal or moral beliefs which would inhibit or prevent you from imposing or upholding a death sentence in any criminal case that might come before you as a federal judge?

Answer 4. No. I have no legal or moral beliefs which would inhibit or prevent me from imposing or upholding a death sentence in any criminal case that might come before me as a federal judge.

*Question 5.* Do you believe that 10, 15, or even 20-year delays between conviction of a capital offender and execution is too long? Do you believe that once Congress or a state legislature has made the policy decision that capital punishment is appropriate that the federal courts should focus their resources on resolving capital cases fairly and expeditiously?

Answer 5. Yes. I believe that the federal courts should deal with all matters, including death penalty cases and collateral attacks on sentences, fairly and expeditiously, consistent with applicable law. To the extent delays arise from statutorily-mandated or administrative procedures put in place by the legislative or executive branches of government, courts should seek to discharge their duties as efficiently as possible within the bounds of the law.

*Question 6.* What authorities may a federal judge legitimately use in determining the legal effect of a statute or constitutional provision? Discuss how the use of each of these authorities is consistent with the exercise of Article III judicial power.

Answer 6. The authorities a judge may consider include the plain language of the statute or constitutional provision, judicial interpretations of higher courts whose authority is binding on the court, persuasive interpretations by other courts if there is no such binding authority, legislative history (particularly such history as reflects consensus views as to the intended effect of language actually adopted) if the statute or constitutional provision is ambiguous, and precedent concerning the construction of statutes and constitutional provisions. Use of all of the foregoing authorities in the context of the resolution of cases and controversies is consistent with the limited judicial power under Article III of the Constitution.

*Question 7.* Please assess the legitimacy of the following three approaches to establishing a constitutional right not previously upheld by a court: (1) interpretation of the plain meaning of the text and the original intent of the Framers of the Constitution; (2) discernment of the "community's interpretation" of constitutional text, see William J. Brennan, "The Constitution of the United States: Contemporary Ratification," Text and Teaching Symposium, Georgetown University (October 12, 1985); and (3) ratification of an amendment under Article V of the Constitution. Assess the impact of each approach on the judicial power established by Article III of the Constitution.

Answer 7. Interpretation of the plain meaning of existing Constitutional provisions, and discernment of the original intent of the Framers of the Constitution, have long been recognized by the Supreme Court as legitimate tools in the recognition of Constitutional rights. Proper ratification of an amendment to the Constitution is the authorized vehicle for changes in the Constitution; establishment of a new right through ratification is clearly a legitimate means of establishing such a right. Ratification of an amendment is also the surest sign of popular intent to be bound to the recognition of such a right. Discernment of the "community's interpretation" is a rubric that may have been unique to Justice Brennan and would not be legitimate as an approach for a lower federal court judge.

*Question 8.* How would you, if confirmed, analyze a challenge to the constitutionality of a statute in a case that was not one of first impression? In a case of first impression?

Answer 8. In all matters, I would examine the plain language of the statute and relevant constitutional provisions to ensure that, at a minimum, I am aware of the particulars of the language being interpreted and applied. Where a matter was not one of first impression, my analytical path would be defined by the analyses and conclusions reached by the higher courts. In those rare matters of first impression, the authorities I would consider would include, in addition to the presumption of constitutionality and the plain meaning of the statute, available judicial analyses in directly relevant or analogous areas, legislative history if the provision were am-

biguous, available evidence of original legislative intent, and analogous statutory provisions and any rulings as to their constitutionality.

*Question 9.* In your view, what are the sources of law and methods of interpretation used in reaching the Court's judgment in the following cases? How does the use of these sources of law impact the scope of the judicial power and the federal government's power under article III?

A. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

B. *Alden v. Maine*, 119 S. Ct. 2240 (1999).

Answer 9. In *Griswold v. Connecticut*, 381 U.S. 479 (1965), the Supreme Court held that a statute restricting the use of contraceptives violated what the Court called a "right of marital privacy" that the Court found "emanated" from the "penumbras" of rights expressly guaranteed by the Constitution. In *Griswold*, the Supreme Court exercised the judicial power to recognize a right that the Court considered to be implied by those specifically enumerated in the Constitution, and circumscribed state regulation in the area of contraception.

The opinion of the Court in *Alden v. Maine*, 119 S. Ct. 2240 (1999), focuses chiefly on historical concepts of sovereignty, the text of the Constitution, political theory, historical legal antecedents to the Constitution, the circumstances under which the Eleventh Amendment to the Constitution was adopted, the text of the Eleventh Amendment, evidence of original intent, and the history of the type of statutory provision being challenged. In *Alden*, the Supreme Court concluded that Congress could not, in the absence of state acquiescence, authorize private suits against state entities as a means of enforcing standards established by the federal government in employment relationships, a holding that restricted the powers of the federal government with respect to enforcement of some federal statutes.

*Question 10.* Compare the following cases with respect to their fidelity to the text and original intent of the Constitution. Also assess their impact on the judicial power compared with Congress' power and on the federal government's power compared with the power of state governments.

A. *Wickard v. Filburn*, 317 U.S. 111 (1942).

B. *United States v. Lopez*, 514 U.S. 549 (1995).

Answer 10. Both cases concerned the import of the grant of authority to Congress to regulate "Commerce \* \* \* among the several States" in Article I, Section 8 of the Constitution. The analysis articulated in the opinion of the Court in *Wickard* did not examine directly original intent focusing, rather, on prior Supreme Court jurisprudence in the Commerce Clause area both before and after Congress began to exercise affirmatively its powers under that Clause. Although the opinion does not parse the specific language of the Clause, its focus on the interstate implications of the regulation of consumption suggests that the text was the object of the Court's concern. The opinion of the Court in *Lopez* focused in large part on discernment of the interpretive standards established by prior Supreme Court cases, specifically on the issues of the type of effect on commerce required for Commerce Clause regulation. Again, the focus was clearly on whether the regulation at issue fit within the Constitutional grant of authority. Both cases demonstrate the Supreme Court's view that the interpretation of the scope of Constitutional grants of authority is, in the last instance, a matter for the Supreme Court. Each reflects the Supreme Court's ongoing effort to define in a manner consistent with the Federal structure of our government and the limited powers of the Federal government the boundary between Federal and State authority.

*Question 11.* What role does the division of power between the national government and state governments play in our federal system? What impact does this division have on the liberty of the individual and the power of federal judges? Assess the impact of the following cases on the division of power between the national and state governments.

A. *United States v. Lopez*, 514 U.S. 549 (1995).

B. *Printz v. United States*, 521 U.S. 898 (1997).

C. *Alden v. Maine*, 119 S. Ct. 2240 (1999).

D. *Baker v. Carr*, 369 U.S. 186 (1962).

*Shaw v. Reno*, 509 U.S. 630 (1993).

Answer 11. Recognition of the limitations on Federal government power and the powers reserved to the States ensures the preservation of our dual system of sovereignty. The Constitution guarantees certain rights and also limits the areas in which the Federal government (including Federal courts) can act, thus leaving the governance of many areas of life to the States.

In *United States v. Lopez*, the Supreme Court held that the Gun-Free School Zones Act of 1990 exceeded Congress' regulatory authority under the Commerce



Clause because the possession of handguns in Congressionally-defined school zones was not shown to have a substantial effect on interstate commerce.

*Printz v. United States* holds that the Congress lacks power to require non-consenting state officials to participate in the administration of federal regulatory functions. Thus, the Federal government could not, as part of an interim background check regime, require that state law enforcement officials perform certain functions.

*Baker v. Carr* recognizes the limited power of the Federal courts to review state political apportionment decisions for conformity with the Equal Protection guarantees of the Fourteenth Amendment to the Constitution, notwithstanding nonjusticiability of issues relating to the Constitutional guarantee of a republican form of government. *Shaw v. Reno* deals with apportionment as well, holding that an allegation of racial gerrymandering violative of the Fourteenth Amendment states a justiciable claim under the Equal Protection Clause and requires the application of the strict scrutiny standard.

In *Alden v. Maine*, the Supreme Court held that Congress lacked power under the Commerce Clause (Article I, Section 8 of the Constitution) to subject unconsenting states to private civil damages lawsuits alleging violations of Federal wage and hours laws.

*Question 12.* Do you believe that a federal district court has the institutional expertise to set rules for and oversee the administration of prisons, schools, or state agencies?

*Answer 12.* No Courts are not executive or administrative bodies, and lack substantive expertise in the management of executive branch functions.

*Question 13.* In ruling on the constitutionality of a statute, what weight should a court give to the fact that the challenged statute existed before and after the ratification of the constitutional provision at issue? Assume the court faces this issue as a matter of first impression.

*Answer 13.* If such a matter is not one of first impression, a court should follow applicable precedent. In a matter of first impression, the fact that a challenged statute predates ratification of the constitutional provision and was not explicitly repealed thereafter is a relevant factor in the analysis of whether the constitutional provision at issue was intended to abrogate or supersede the statute. The treatment of the statute after adoption of the constitutional provision (including whether it was amended to reflect the constitutional provision, and whether Congress and/or the states that ratified the amendment continued to apply it following ratification) should also be considered. Other important sources of authority in the determination of issues of first impression are the plain language of the statute and relevant constitutional provisions, the presumption of constitutionality, available judicial analyses in directly relevant or analogous areas, evidence of original legislative intent, and analogous statutory provisions and any rulings as to their constitutionality.

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#### RESPONSES OF LAURA TAYLOR SWAIN TO QUESTIONS FROM SENATOR SMITH

*Question 1.* Article II, Section 2 of the Constitution states that the President shall have the power to appoint federal judges with “the advice and consent” of the Senate. If a nominee for any federal judgeship refuses to answer questions about a Constitutional issue, should that individual be confirmed?

*Answer 1.* Among the limitations imposed by the Constitution on the exercise of the Federal judicial power is the Article III requirement that the judiciary act only in the context of particular cases and controversies. It is essential to the integrity of the system and to public confidence in the judiciary that those coming before the courts perceive that they will receive a fair hearing, and that the judge’s decision will be based on appropriate analysis of the legal and factual issues raised in the particular case rather than the judge’s preconceived notions or feelings as to what the law should be. Judicial candidates and sitting judges should therefore avoid the appearance, as well as the fact, of prejudging issues that may come before them. This Article III constraint, which affects exercise of the Article II appointment power by both the Executive and the Legislative branches, necessarily places the focus of the appointment process on a candidate’s analytical methods (including the recognition and use of precedents in interpreting the law), integrity and record rather than general personal views on particular issues of law or social policy. A nominee who demonstrates appropriate qualifications in these areas should, in my view, be confirmed notwithstanding the nominee’s inability to discuss personal views or likely outcomes on particular Constitutional issues. Of course, it is for a Senator to determine, as he or she sees fit, whether or not a nominee should be confirmed.

*Question 2.* Article II, Section 2 of the Constitution states that the President shall have the power to appoint federal judges with “the advice and consent” of the Senate. If you were a member of the United States Senate, would you agree that it is difficult to advise and consent to a nominee when a candidate refuses to answer questions on Constitutional issues?

Answer 2. I would certainly feel the weight of the tensions discussed in the preceding response were I called upon to participate in the appointment process. Respect for the Constitutional plan and the availability of other relevant information about nominees would, I think, enable me to overcome the difficulty and exercise meaningful the responsibility to “advise and consent” notwithstanding a nominee’s inability to discuss personal views or likely outcomes on particular Constitutional issues.

*Question 3.* What is the purpose of the United States Senate in holding hearings on nominees for the federal bench?

Answer 3. I have never had the honor of discussing with any Senator his or her view of the purpose of such hearings. My understanding and expectation, based on my own experience and public records concerning the process, is that it is an opportunity for the Senate to assess the qualifications of nominees, including the nature and quality of their thought processes, their personal presence and demeanor, their standing in the community, their understanding of the roles they would perform in the positions to which they have been nominated, their understanding that rulings must be based on law rather than personal views, and other factors deemed relevant by the Senate.

*Question 4.* Is it possible for a Senator to advise and consent to a nominee if a nominee simply refers to precedent without explaining his or her legal analysis?

Answer 4. Yes, recognition of the role of precedent is a fundamental element in the performance of the judicial function; the application of particular precedents is Constitutionally confined to the case and controversy context. A statement by a nominee of his or her commitment to adhere to a particular precedent confirms the nominee’s acceptance of the legal analysis incorporated in the precedent and commitment to follow that analysis. A nominee’s analytical method with respect to particular situations will likely be illustrated by his or her professional record and, in the case of those who have previously served as judges, opinions.

*Question 5.* How can I as a Senator advise and consent to a nominee without answers to Constitutional questions?

Answer 5. The Senate’s respect for and knowledge of the Constitutional framework, including the need to protect the public perception of the fairness and impartiality of the judiciary, and its careful attention to nominees’ records and personal and professional qualities will, I am certain continue to enable it to perform well this important Constitutional function.

*Question 6.* What questions are legitimate to ask a candidate without the candidate prejudicing himself or herself?

Answer 6. A Senator can, of course, ask any questions he or she deems appropriate. I do not think that a candidate would prejudice him or herself by responding to questions focusing on issues such as his or her qualifications, thought processes, understanding of the role he or she would perform in the position to which the candidate has been nominated, and the candidate’s understanding that rulings must be based on law rather than personal views.

*Question 7.* Are there any questions that you feel are off limits for a Senator to ask?

Answer 7. No. There are no questions that are off limits for a Senator to ask.

*Question 8.* If a U.S. District Court Judge or U.S. Court of Appeals Judge concludes that a Supreme Court precedent is flatly contrary to the Constitution, are there any circumstances under which the Judge may refuse to apply that precedent to the case before him or her?

Answer 8. No. Lower court judges are required to rule in accordance with applicable Supreme Court precedent.

*Question 9.* If you were a Supreme Court Justice in 1856, what would you have held in *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393?

Answer 9. It is impossible for me to state how I would have held had I been a Justice in 1856. I must presume that the decision of each Justice in that case was based on a careful and comprehensive review of the Constitutional provisions at issue and precedent as then in existence, the briefs and arguments submitted, detailed knowledge of the particular facts presented, and careful consultation among the members of the Court.

*Question 10.* In *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856), the court apparently held, as you well know there were eight separate opinions in the case, that black slaves were not citizens of the United States. How should that precedent be treated by the courts today?

Answer 10. It is no longer valid precedent, having effectively been overruled by the Thirteenth and Fourteenth Amendment to the Constitution.

*Question 11.* If you were a judge in 1857, would you have been bound by your Oath and would you have been mandated to follow the binding precedent of *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856)?

Answer 11. Yes. I would have been bound by my Oath and would have been mandated to follow the binding precedent of *Dred Scott v. Sandford*, if I had been a judge in 1857.

*Question 12.* If you were a Supreme Court Justice in 1896, what would you have held in *Plessy v. Ferguson*, 163 U.S. 539 (1896)?

Answer 12. It is impossible for me to state how I would have held had I been a Justice in 1896. I must presume that the decision of each Justice in that case was based on a careful and comprehensive review of the Constitutional provisions at issue and precedent as then in existence, the briefs and arguments submitted, detailed knowledge of the particular facts presented, and careful consultation among the members of the Court.

*Question 13.* In *Plessy v. Ferguson*, 163 U.S. 539 (1896), a majority of the court held not as a violation of the Fourteenth Amendment to the Constitution a Louisiana statute which provided that all railway companies provide "equal but separate" accommodations for black and white passengers, imposing criminal penalties for violations by railway officials. How should that precedent be treated by the Courts?

Answer 13. It is no longer valid precedent, having been overruled by *Brown v. Board of Education*, 347 U.S. 483 (1954).

*Question 14.* If you are a Supreme Court Justice in 1954, what would you have held in *Brown v. Board of Education*, 347 U.S. 483 (1954)?

Answer 14. It is impossible for me to state how I would have held had I been a Justice in 1954. I must presume that the decision of each Justice in that case was based on a careful and comprehensive review of the Constitutional provisions at issue and precedent as then in existence, the briefs and arguments submitted, detailed knowledge of the particular facts presented, and careful consultation among the members of the Court.

*Question 15.* In *Brown v. Board of Education*, 347 U.S. 483 (1954), the court held that the segregation of children in public schools solely on the basis of race, even though the physical facilities and other tangible factors may be equal, deprive the children of the minority group of equal educational opportunities contrary to the protections contained within the Fourteenth Amendment to the Constitution. How should that precedent be treated by the Courts?

Answer 15. *Brown v. Board of Education* should be followed, as it remains valid precedent.

*Question 16.* If you were a Supreme Court Justice in 1973, what would you have held in *Roe v. Wade*, 410 U.S. 113 (1973)?

Answer 16. It is impossible for me to state how I would have held had I been a Justice in 1973. I must presume that the decision of each Justice in that case was based on a careful and comprehensive review of the Constitutional provisions at issue and precedent as then in existence, the briefs and arguments submitted, detailed knowledge of the particular facts presented, and careful consultation among the members of the court.

*Question 17.* In *Roe v. Wade*, 410 U.S. 113 (1973), the court held that a Texas statute which proscribed an abortion except when necessary to save the life of the mother was a violation of the due process clause of the Fourteenth Amendment as an unjustified deprivation of liberty. Do you agree with the legal reasoning of the holding or of the Justice Rehnquist dissent in that case?

Answer 17. I do not analyze Supreme Court precedent from the perspective of evaluating whether I agree with the reasoning of the majority or the dissenting opinions. The job of a lower federal court judge is to follow the precedent of the higher courts. I have no personal issues that would prevent me from following the holding of *Roe v. Wade*, as modified by *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), and any other precedent in this area.

*Question 18.* We understand the Supreme Court precedent, but what is your personal view on the issue of abortion?

Answer 18. I have no personal views on the issue of abortion that would impede my ability to adhere to applicable law in making judicial determinations.

*Question 19.* We understand the Supreme Court precedent, but what is your personal view on the issue of the death penalty?

Answer 19. I have no personal views on the issue of the death penalty that would impede my ability to adhere to applicable law in making judicial determinations.

*Question 20.* We understand the Supreme Court precedent, but what is your personal view on the issue of the Second Amendment to the Constitution?

Answer 20. I have no personal views regarding the Second Amendment to the Constitution that would impede my ability to adhere to applicable law in making judicial determinations.

*Question 21.* In *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), the Supreme Court held that the government interest in preserving life must be balanced against a mother's right of privacy and access to abortion which may not be unduly burdened. Do you believe the "right to privacy" includes the right to take away the life of an unborn child?

Answer 21. I have no personal views regarding the rights and interests discussed in *Planned Parenthood v. Casey* that would prevent me from following that precedent and any subsequent precedent in this area.

*Question 22.* Again, I understand the state of the law on the Supreme Court's interpretation on the issue of abortion, but I am interested in your personal beliefs on the issue, do you personally believe that an unborn child is a human being?

Answer 22. I have no personal views on this issue that would impede my ability to adhere to applicable law in making judicial determinations.

*Question 23.* Do you believe that the death penalty is Constitutional?

Answer 23. Yes, the Supreme Court has held clearly in *Gregg v. Georgia*, 428 U.S. 153 (1976), that the death penalty is Constitutional. I have no views that would interfere with my ability to follow Supreme Court precedent in any area.

*Question 24.* If you were a Supreme Court Justice, under what circumstances would you vote to overrule a precedent of the Court?

Answer 24. If I were a Supreme Court Justice, I would approach such a question with careful attention to the precedents, analytical methods and criteria laid out in prior decisions of the Supreme Court with respect to overruling precedents, as well as to the facts and circumstances of the particular case or controversy before the Supreme Court. I would be obligated to follow the Supreme Court's precedents on the principle of *stare decisis* and the circumstances under which precedent of the Supreme Court may be overruled. The Supreme Court has enumerated the factors to be considered when the Supreme Court is asked to overrule a prior decision. The factors include whether the existing precedent has proven unworkable, whether the existing precedent could be modified or overruled without injuring seriously those who have relied on that precedent, whether legal principles have so changed that the prior precedent represents an abandoned doctrine, and whether the factual predicate for the existing precedent has so changed that the precedent has been rendered obsolete.

*Question 25.* Do you consider legislative intent and the testimony of elected officials in debates leading up to the passage of an act? And what weight do you give legislative intent?

Answer 25. If the plain language of a statute is ambiguous, legislative history can be an important interpretive tool, indicating legislative intent. Were I so fortunate as to be confirmed as a United States District Judge, I would look to any available committee reports relating to the language ultimately adopted and I would consider with caution the statements of individual legislators in debates, because those statements might not reflect consensus views of the legislation at issue.

**NOMINATIONS OF JOHNNIE B. RAWLINSON  
(U.S. CIRCUIT JUDGE); JOHN W. DARRAH,  
PAUL C. HUCK, JOAN HUMPHREY LEFKOW,  
AND GEORGE Z. SINGAL (U.S. DISTRICT  
JUDGES)**

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**THURSDAY, JUNE 15, 2000**

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

The committee met, pursuant to notice, at 4:27 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Charles E. Grassley, presiding.

Also present: Senator Leahy.

**OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S.  
SENATOR FROM THE STATE OF IOWA**

Senator GRASSLEY. It is a little bit early, but I would like to get the meeting started since we have a member here to participate and move things along, because the time to do everything we have to do is mighty short.

I am Senator Chuck Grassley. I am a member of the Judiciary Committee. Today the Judiciary Committee is holding its sixth nomination hearing of the second session of the 106th Congress. At this hearing we will consider the nomination of five individuals who have been nominated by the President to be Federal judges.

We will have two panels of witnesses this afternoon. The first panel will consist of the sponsors of the nominees, who will give brief statements on behalf of their nominees. The second panel will consist of Circuit Court Nominee Johnnie B. Rawlinson, of Nevada, who has been nominated for the seat on the U.S. Circuit Court of Appeals for the Ninth Circuit, and also consists of four district court nominees: John W. Darrah, to be U.S. District Judge for the Northern District of Illinois; Paul C. Huck, to be U.S. District Judge for the Southern District of Florida; Joan Humphrey Lefkow, to be U.S. District Judge for the Northern District of Illinois; and George Z. Singal, to be U.S. District Judge for the District of Maine.

Before we turn to the panels, I guess what I will normally do now, since there is not a ranking minority member here to make a statement, we will probably interrupt somewhere in the panel for anybody that comes along to make a statement. But I would suggest that, as I indicated in my opening remarks, the necessity of kind of expediting this process because there is a leadership meet-

ing on the bankruptcy bill at 5:30 p.m., and I have to be there because of my sponsorship of that and working with Senator Torricelli, another member of this committee, to get a bipartisan bill passed.

I would like to start with Senator Reid at this point.

**STATEMENT OF HON. HARRY REID, A U.S. SENATOR FROM THE STATE OF NEVADA**

Senator REID. Senator Grassley, thank you very much. I know how busy you are and I know how difficult it has been for Senator Lott to get this hearing convened. I extend my appreciation to Chairman Hatch, all members of this committee, particularly Senator Leahy, for holding this hearing so that we can report out some judges. I also have to attend that same meeting as you.

Mr. Chairman, it is really an honor and a privilege for me to introduce to this committee a woman by the name of Johnnie Rawlinson. She has been an outstanding judge in the United States District Court for the District of Nevada for the past 3 years, and has served with distinction.

I am proud to report to this committee she has the unwavering support of the chief judge, Judge Howard McKibben, who, by the way, is a Reagan appointee. She has the unqualified support of Phil Pro, also a Reagan appointee, Lloyd George, senior judge, also a Reagan appointee, as well as the other judges who sit on the Federal bench in Nevada. Furthermore, in addition to being an outstanding judge, Johnnie Rawlinson is an outstanding person.

On the way over here, Mr. Chairman, I saw John Ashcroft. He was speaking on the floor. I said to him, I am sorry you can't be here because, as excited as Johnnie is about this opportunity she has to be elevated to an appellate judge, she was more excited this week when she learned that her daughter had been accepted to the University of St. Louis Medical School. This is the kind of a woman that she is. She is family-oriented. She has three children: Monica, Tracy, and David. She also enjoys the total support of her husband, Dwight, who is retired from the United States military.

I have a full statement going into greater detail regarding her academic qualifications and her involvement in the community. I know, Mr. Chairman, that you are in a tremendous hurry, and so I want to be as quick and to the point as I can. I want you to know that in your experience as one of the ranking members of the Judiciary Committee and one of the senior members in the entire Senate, you have had many witnesses appear before you, hundreds and hundreds of witnesses in various settings. But you will never find anyone that is a better person than Johnnie Rawlinson. She is moderate in her views, she has a great academic background, and she would never do anything to disgrace the court. I think this committee would be well served to move this matter to the floor as quickly as possible.

Thank you.

[The prepared statement of Senator Reid follows:]

PREPARED STATEMENT OF SENATOR HARRY REID

Mr. REID: Mr. Chairman, it is a distinct honor and privilege to appear before this Committee in support of the nomination of Judge Johnnie Rawlinson to be a Circuit

Judge on the U.S. Court of Appeals for the Ninth Circuit, and I would like to thank you and Senator Leahy for holding this hearing.

For the past three years, Judge Johnnie Rawlinson has served the U.S. District Court for the District of Nevada with distinction. I am proud to report to this Committee that she has the unwavering support of Chief Judge Howard McKibben and the other six judges who serve the federal bench in Nevada. I have also spoken on numerous occasions with my friend and fellow Nevadan, Proctor Hug, Jr., who, as you all know, is the Chief Judge of the Ninth Circuit Court of Appeals. Chief Judge Hug fully supports Johnnie Rawlinson's nomination and is eagerly awaiting her investiture on his court.

In addition to the Judiciary, Judge Rawlinson enjoys widespread support from the U.S. Attorney's Office and the federal Bar Association in Nevada. Her tenure on the federal bench has also earned the respect and admiration of federal, state and local law enforcement.

This support and respect has been bi-partisan \* \* \* in fact, it has been non-partisan. As I noted earlier, Chief Judge Howard McKibben, appointed to the federal bench in 1984 by President Reagan, fully supports Judge Rawlinson's nomination. While she is a Clinton nominee (hopefully soon to be appointee), Sig Rogich, who is Governor Bush's assistant and advisor in the State of Nevada, also supports and endorses her nomination to the Ninth Circuit Court of Appeals. And I am sure that my colleagues recall that Johnnie Rawlinson sailed through this Committee with bipartisan support three years ago when I recommended her to be the first African-American woman ever to sit on the federal bench in Nevada.

In fact, the only negative thing I can think about regarding Johnnie Rawlinson's nomination to the Ninth Circuit is that the District Court in Nevada will be losing one of its greatest assets.

Prior to her service on the federal district court, Judge Rawlinson served the people of Nevada for eighteen years at the Office of the District Attorney in Clark County, Nevada. She received her Bachelor of Science degree, *summa cum laude*, from North Carolina A&T in 1974, and her Juris Doctor degree from the University of the Pacific School of Law in 1979.

Johnnie is the proud mother of three children, Monica, age 22, Traci, age 17, and David, age 10. Her husband, Dwight, joins her here today. I should also note that Monica has just been accepted to medical school at the University of St. Louis. Needless to say, the Rawlinson family has more than one reason to be proud today.

Again, Mr. Chairman, I would like to thank you and the committee for holding this hearing. I would like to thank President Clinton for following my recommendation to nominate Judge Rawlinson.

I look forward to her nomination coming before the full Senate in the very near future so that she may be able to assume her duties on the Ninth Circuit as quickly as possible.

Senator GRASSLEY. I think I would like to call on Senator Bryan so we stay with the same State at this particular point. So if it doesn't upset anybody, I would go to Senator Bryan.

**STATEMENT OF HON. RICHARD H. BRYAN, A U.S. SENATOR  
FROM THE STATE OF NEVADA**

Senator BRYAN. Mr. Chairman, the last thing I would want to occur with you presiding is for somebody to be upset because I was recognized next. Therefore, I will simply associate myself with the comments of my senior colleague.

Our nominee has a distinguished record prior to her appointment and confirmation to the district court bench. She has served with distinction in her new capacity. She would provide balance and, in my judgment, a superb choice to serve on the Ninth Circuit Court of Appeals.

I have known her for many years. She enjoys the respect of the bar, of the community, and litigants who have been privileged to appear before her. I would urge her confirmation, and in the interest of time, may I request unanimous consent that my statement be made a part of the record?

[The prepared statement of Senator Bryan follows:]

## PREPARED STATEMENT OF SENATOR RICHARD H. BRYAN

Mr. Chairman, I want to thank you for allowing me the opportunity to speak on behalf of Judge Johnnie Rawlinson regarding her nomination as a judge to the Ninth Circuit United States Court of Appeals.

Judge Johnnie B. Rawlinson has dutifully served the State of Nevada throughout her professional career. After graduating with distinction from the University of the Pacific's McGeorge School of Law in 1979, Judge Rawlinson relocated to Las Vegas to serve as a Deputy District Attorney from 1980 to 1989. For the following six years, Judge Rawlinson worked as the Chief Deputy District Attorney for Las Vegas, and finally as an Assistant District Attorney from 1995 through 1998.

Over the past three years, Judge Rawlinson has served as a United States District Judge for the District of Nevada. After being nominated by President Clinton in 1998, Judge Rawlinson was confirmed in only four months by the Senate, serving as a testament to her distinguished and credible career as both an attorney and a magistrate. With more than 20 years expertise in the field of law, combined with an outstanding record of service in Nevada, I am confident that Judge Rawlinson would be a welcome and laudable addition to the Ninth U.S. Circuit Court of Appeals.

I believe that the Senate Judiciary Committee, and ultimately the Senate as a whole, has the opportunity to create a positive effect in the federal court system immediately. Due to the fact that the Ninth Circuit's caseload is almost double the average number of cases handled by any of the other twelve circuits, it is imperative that we confirm competent and proven justices to the Ninth Circuit's bench in a timely manner. I believe that with the recommendation of this committee on the nomination of Judge Rawlinson, followed by the full Senate's confirmation, we have the ability to bring about this type of constructive result.

I am very pleased that the Senate Judiciary Committee has afforded this hearing to take place, and I would like to encourage the committee to approve Judge Rawlinson's nomination so that she can be allowed the opportunity to serve as a United States Circuit Judge for the Ninth Circuit in the near future.

Senator GRASSLEY. Thank you.

Senator Reid and Senator Bryan, I didn't respond when Senator Reid asked that the statement in its entirety be put in the record, so at this point, let me say to all the members that that will be just done automatically unless you indicate otherwise.

Normally, maybe I shouldn't consult with people at the panel, but I think it would be better if we go to Maine because the two Congressmen are here from Maine. We will do that ahead of Illinois. Is that OK?

OK; I am going to start with the senior Senator, Senator Snowe.

**STATEMENT OF HON. OLYMPIA J. SNOWE, A U.S. SENATOR  
FROM THE STATE OF MAINE**

Senator SNOWE. Thank you, Mr. Chairman, and I want to thank you and Chairman Hatch as well and members of the committee for considering Mr. Singal's nomination so promptly here today and for giving us an opportunity to appear before you. I am very pleased to be here with the rest of Maine's congressional delegation—my colleague Senator Collins, Congressman Baldacci, and Congressman Allen to express unequivocal support for George Singal for the U.S. District Court for the District of Maine.

Mr. Singal has a wide range of experience serving both as a prosecutor and as a defense attorney, and has the enormous respect of his colleagues, many of whom have expressed support for his nomination. And, finally, just as telling, he enjoys broad bipartisan support across the State of Maine.

Born in a refugee camp in Italy after his family fled before the German invasion of his native Poland, he arrived in Bangor, Maine, along with his sister and widowed mother, in 1949, and in



the decades since, he has truly become a living embodiment of the American dream.

After graduating summa cum laude from the University of Maine in 1967 and becoming only the second recipient of the highly prestigious award of the Tilden Scholarship—only the second recipient of the award in the history of the university, George briefly left our State to receive his law degree from Harvard University 3 years later, but we have since forgiven him for that minor transgression.

Indeed, not one to forget his roots, George immediately returned to Maine to begin his legal career in Bangor, serving as assistant county attorney for Penobscot County from 1971 to 1973, and then working his way into a partnership in a law firm, a firm where he has remained to this day.

I should say, Mr. Chairman, that he has served in a variety of professional committees, but his impeccable credentials and his reputation for impartiality led to his appointment in 1993 to the Governor's Judicial Selection Committee by my husband, Governor McKiernan, and today he chairs this prestigious committee that assists in the appointment of judges across the State under an Independent Governor, Angus King.

Throughout his career, Mr. Singal has displayed remarkable legal acumen, thanks in large part to his thorough, reflective, and balanced approach to his work, and this high degree of professionalism has earned him well-deserved accolades, including his selection to the American College of Trial Lawyers, an award given to less than 1 percent of trial lawyers nationwide, and his naming to the Best Lawyers in America, a designation that was made by his colleagues in the legal profession.

Let me just say in conclusion, Mr. Chairman, I am most proud to be able to come before this committee today to introduce to you a candidate of the caliber of Mr. George Singal. His qualifications, his perspective, his intellect, and his integrity will make him an outstanding judge, and I thank you and the committee for your very strongest consideration.

Senator GRASSLEY. Thank you, Senator Snowe.

Now, Senator Collins.

**STATEMENT OF HON. SUSAN COLLINS, A U.S. SENATOR FROM  
THE STATE OF MAINE**

Senator COLLINS. Thank you very much, Mr. Chairman. I am pleased to join in this bipartisan, bicameral show of support for George Singal to be a district court judge in the State of Maine. I want to thank the committee for the speed with which it has acted on this nomination.

We in Maine were shocked and saddened last March by the death of Judge Morton Brody, who had served both our State and our Nation with such distinction. Recognizing the burden that Judge Brody's death placed on the judicial system in Maine, the Judiciary Committee has moved with remarkable speed to hold this hearing today, and on behalf of the people of Maine, I want to thank the committee for its consideration. It took an extraordinary effort to bring this nomination to a hearing in such a short time frame, and we do appreciate it.

My senior colleague, Senator Snowe, has described very ably Mr. Singal's background, which, in addition to his excellent qualifications for service on the Federal bench, includes a life story that truly is the personification of the American dream.

In following up on her comments, I would offer the following observation: This committee sees nominees who arrive before it from a variety of backgrounds, some from the judiciary, some from the world of academia, and some from the political world. Mr. Singal comes to you today from what those in the profession often refer to as "the trenches." He is a courtroom lawyer, and has been his entire working life.

He comes to you today not with an agenda for reform or a political philosophy to implement. He comes here simply with an unwavering belief in the judicial system and the rule of law, a belief that no doubt has been shaped by the over 800 cases that he has tried to a verdict.

A great Maine lawyer described Mr. Singal as the consummate attorney, a practitioner universally recognized to be among the most competent trial lawyers in the State.

I would say, Mr. Chairman, that in all of my discussions with my constituents on this nomination, not a single person has mentioned anything negative about George Singal. Repeatedly, lawyer and layman alike have praised his honesty, his work ethic, and his citizenship. And for my part, I can tell you that not only is George an outstanding attorney, he is also a very good neighbor. He and I happen to live very close to one another in Bangor.

I urge the committee to support the nomination of George Singal to serve as Federal district judge, a position that he would execute with integrity and distinction.

Thank you, Mr. Chairman.

Senator GRASSLEY. Thank you, Senator Collins.

Now, Representative Baldacci, and then Representative Allen.

**STATEMENT OF HON. JOHN E. BALDACCI, A U.S.  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF MAINE**

Representative BALDACCI. Thank you very much, Mr. Chairman.

First, I appreciate you holding this hearing, and I will try to be as brief as possible. I want to thank my colleagues from Illinois for letting us go at this time; I have appreciated that very much.

I want to especially thank the two Senators, Senator Snowe and Senator Collins, without whose help, we would not have had the expeditious scheduling of this hearing. And I want to thank them.

It is very unusual circumstances that have occurred in Maine, and the delegation has reacted in a bipartisan, bicameral way, as Senator Collins has pointed out, to be able to move on this. While it is very unfortunate, the passing of Judge Brody, I do think it is in true Maine tradition that we do work together and try to advance this nomination.

You find in this individual, George Singal, unusual characteristics. I remember when I was campaigning door to door, knocking and visiting with his mother, and she sat down, and I wanted to gain her support. And she had told me that, by the way, even though, I didn't think so, her son was also Italian. And she explained to me, yes, he was born in an Italian refugee camp in Italy.

And she explained the family story. And every day at lunchtime he was there with his mother. Every day he was working on his cases in court and his community. And we are very, very fortunate to have an individual of this caliber and judgment and judicial temperament to serve in the District of Maine.

Again, I want to thank you for these hearings, and thank my colleagues, because it is very unusual to have a nomination move at this rate before this committee in the Congress. Thank you for hearing this nomination today.

Senator GRASSLEY. Thank you, Congressman.

Now, Congressman Allen.

**STATEMENT OF HON. THOMAS H. ALLEN, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF MAINE**

Representative ALLEN. Thank you, Mr. Chairman. I, too, want to thank you and the members of the committee for holding this hearing so promptly and repeat my friend John Baldacci's thanks to our two Senators for helping to assist us in this project of bringing George Singal's nomination before you so quickly.

Mr. Chairman, before I became a Member of Congress, I was a lawyer in Portland for 19 years, and I know the difference between those judges who grasp a complicated argument quickly, who are consistently thoughtful and balanced, and those who are not quite as quick. And it is a great pleasure to be here to recommend George Singal to the committee.

I have talked to members of the bench and bar in Maine about George Singal, and their verdict is unanimous. There is no better lawyer in the State of Maine. It is impossible to overstate the respect with which the bench and bar holds George Singal. He is always well prepared. He is consistently thoughtful. He is a man of absolute integrity and of consistently good judgment.

Other lawyers seek his advice when they need help, and they hire him when they need representation. As Senator Snowe mentioned, he was appointed to the Maine Judicial Selection Committee by a Republican Governor, reappointed by an Independent Governor, and the position of the Federal district court is really a perfect fit for George Singal given his experience. He has both a civil practice and a criminal practice, and he is really the best we have in Maine for this position.

I am completely confident that he will make an outstanding judge on the Federal District Court of Maine, and I thank you very much for his consideration.

Senator GRASSLEY. Thank you very much. I thank you, Tom, and I might suggest that we could make room now for Senator Graham and Congressman Hyde—not Senator Graham. Senator Graham will be here, but I meant Senator Mack.

Congressman Hyde, if you are here for Illinois, you may want to come up now.

I should start with the senior Senator from Illinois.

**STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS**

Senator DURBIN. Thank you very much, Chairman Grassley; I appreciate the fact you are having this hearing. You are witnessing

something which in the history of Illinois may be unique. Senator Fitzgerald and I reached an agreement a little over a year ago, when he was first elected, to cooperate in the selection of Federal judges; We have done that. Today you have before you two products of that cooperation.

I am happy to tell you that Judge John Darrah, who will be introduced in detail by Senator Fitzgerald, was Senator Fitzgerald's selection for the Federal district bench. I wholeheartedly support Senator Fitzgerald's selection and endorse it. Judge Darrah is a fine man and a fine jurist. I think Judge Darrah will be an excellent addition to the Federal bench.

I come today to also introduce Judge Joan Lefkow; Judge Lefkow has served for 15 years as a magistrate in Chicago and after that in 1997 was appointed as a bankruptcy judge. She might be of some help to you, Mr. Chairman, when it comes to that bankruptcy bill.

Senator GRASSLEY. We need a lot of help. [Laughter.]

Senator DURBIN. I know. She considered some 4,700 different cases in that capacity and took on some of the most complicated and challenging cases.

It was interesting when her name came up for nomination. A number of judges and lawyers came forward and said that she has an extraordinary grasp of the law and is very fair-minded on the bench. I was more than happy to endorse her nomination to the White House, and the President, I am sure, was very proud to send the name to the Senate Judiciary Committee.

Judge Lefkow has a rare combination of intelligence, professional experience, temperament, and devotion to public service. She is going to be an excellent Federal judge. Judge Lefkow has brought her husband with her, and I am sure there will be an introduction of her family. She is very proud of them.

I am happy to be here on behalf of and in wholehearted support of these two nominees for the Federal District Court in the Northern District of Illinois.

Senator GRASSLEY. Thank you, Senator Durbin.

Now, Senator Fitzgerald.

**STATEMENT OF HON. PETER G. FITZGERALD, A U.S. SENATOR  
FROM THE STATE OF ILLINOIS**

Senator FITZGERALD. Thank you, Mr. Chairman, and I, too, appreciate the speed with which this committee has acted and held this hearing. I want to second the nomination of Joan Lefkow, who was Senator Durbin's pick. I think she will make a tremendous addition to the bench.

I am very pleased to introduce today to the committee my selection from the State of Illinois, which was concurred in by Senator Durbin, and that is Judge John Darrah from DuPage County, IL. And we also have here Representative Henry Hyde, who represents most of DuPage County.

Let me tell you a little bit about Judge Darrah. I interviewed many applicants for this, my first pick to the Federal Courts. I reviewed their background and qualifications, I personally went through their decisions, and I personally interviewed a number of

them. After I met Judge Darrah, I was convinced that he was the one that I wanted to be my first pick.

I sensed right away he had a great judicial temperament. He has a wonderful scholarly bent. In addition to having served as a judge in DuPage County for the last 14 years, where he was the presiding judge for a number of years of the Chancery Division, he has also been an adjunct professor of law at Northern Illinois University. He was twice voted the best professor at NIU's law school. He has a background as well working as both a deputy public defender and an assistant State's attorney. He also has a wealth of experience in private practice.

We are very proud to have him with us today. He is also here with his lovely wife, Jeannine, and they both have a number of children and grandchildren, too. So he is a wonderful family man in addition.

So thank you very much, Mr. Chairman, and with that I will turn it over to my good friend and colleague, Henry Hyde. And I had the privilege of appearing before Henry over in the House yesterday, and thank you for that.

Mr. HYDE. We treated you right, didn't we, Senator? [Laughter.]

Senator GRASSLEY. We now turn to the chairman of the House Judiciary Committee, Congressman Hyde.

**STATEMENT OF HON. HENRY HYDE, A U.S. REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF ILLINOIS**

Mr. HYDE. Thank you, Senator Grassley. I deeply appreciate your holding this hearing. I don't have a prepared text, but I am here in support of my friend, Judge Darrah, whom I have known for many years. He brings a wealth of experience in all phases of the law. Judge Darrah brings 14 years of experience as a very successful, respected judge, and he brings a high degree of humanity to the job of being a judge. He understands people and their problems. He has a love affair with the law. He is an excellent lawyer. He is fair, he is honorable, and he is energetic. Judge Darrah is just the sort of person you would like to have your case tried before because you would get a real fair shake.

I think we are fortunate to have him, and I salute you and I salute Senator Fitzgerald and Senator Durbin for bringing this to this point. I hope you will decorate the bench in the U.S. District Court in Chicago with Judge Darrah.

Thank you.

Senator GRASSLEY. Thank you very much, Congressman Hyde.

Senator Leahy has come, and I had a statement to put in the record for Senator Leahy. He may want to make—

Senator LEAHY. Go ahead. Nobody can do it better than you, Mr. Chairman.

Senator GRASSLEY. I will put the statement in the record for Senator Leahy, then.

[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF HON. PATRICK LEAHY, A U.S. SENATOR FROM THE STATE  
OF VERMONT

I am glad to see the Committee holding a hearing for judicial nominees today. The Committee has reported only 19 nominees and held what amount to four previous hearings all year on judicial nominations. There is growing frustration around the

country with this partisan stall. So far this year there have been 99 judicial vacancies and the Senate has acted to fill only 23 of them.

Governor Bush of Texas recently noted: "The Constitution empowers the president to nominate officers of the United States, with the advice and consent of the Senate. That is clear-cut, straightforward language. It does not empower anyone to turn the process into a protracted ordeal of unreasonable delay and unrelenting investigation. Yet somewhere along the way, that is what Senate confirmations became—lengthy, partisan, and unpleasant. That has done enough harm, injured too many good people, and it must not happen again."

He proposed that presidential nominations be acted upon by the Senate within 60 days. Of the 42 judicial nominations currently pending, 26 have already been pending for more than 60 days without Senate action. Already this Congress 78 nominees, including 52 eventually confirmed, have had to wait longer than 60 days for Senate action. I urge the Senate to do better.

I am very glad to see that Judge Johnnie Rawlinson, nominated by the President to a vacancy on the Ninth Circuit Court of Appeals, is included in today's hearing. She currently serves as a distinguished District Court Judge in Nevada. I hope that we will move quickly on this nomination and on those of Barry Goode and James Duffy to fill some of the longstanding vacancies that have plagued the Ninth Court. Judge Rawlinson and these other nominees all enjoy the strong support of their home state Senators.

The Committee is also proceeding on four District Court nominees: Paul C. Huck, nominated to the District Court of Southern District of Florida; Judge John W. Darrah, nominated to the District Court in the Northern District of Illinois; Judge Joan Humphrey Lefkow, nominated to the District Court of the Northern District of Illinois; and George Z. Singal, nominated to the District Court in the District of Maine.

I am sorry more nominees were not included today, particularly Court of Appeals nominees. This is another abbreviated list of nominees and not the full complement of six to seven judicial nominees that we normally consider. In light of the vacancies that are being perpetuated and the number of highly qualified nominees pending before this Committee, that is most regrettable.

One of our most important constitutional responsibilities as United States Senators is to provide advice and consent on the scores of judicial nominations sent to us to fill the vacancies on the federal courts around the country. We recently made some progress as we confirmed 16 new judges on May 24th. For that I thank the Democratic Leader and the Majority Leader, my counterpart on this Committee, Senator Hatch, and all those who worked with us to achieve Senate action on those judicial nominees.

But before any Senator thinks that our work is done for the year, let us take stock: We are only one-third of the way to the number of judges confirmed by a Democratic majority in 1992 for President Bush during his last year in office, and only half way to the levels of confirmations achieved in 1984 and 1988. We have finally passed the level of 17 confirmations achieved in 1996, the year before I became the Ranking Member on the Judicial Committee. That low water mark is no measure of success, however.

Today we face more judicial vacancies than when the Senate adjourned in 1994. That means there are more vacancies across the country than when the Republican majority took controlling responsibility for the Senate in January 1995. Over the last six years we have gained no ground in our efforts to fill longstanding judicial vacancies that are plaguing the federal courts.

There remain 42 judicial nominations pending in the Judiciary Committee, plus new nominations that the President is sending us every week. I have challenged the Senate to regain the pace it met in 1998 when the Committee held 13 hearing and the Senate confirmed 65 judges. That would still be one less than the number of judges confirmed by a Democratic Senate majority in the last year of the Bush Administration in 1992. Indeed, in the last two years of the Bush Administration, a Democratic Senate majority confirmed 124 judges. It would take an additional 67 confirmations this for this Senate to equal that total—more confirmation than in any year since the Republican majority took control of the Senate.

Over the last five years the Republican-controlled Senate confirmed the following: 58 federal judges in the 1995 session; 17 in 1996; 36 in 1997; 65 in 1998; and 34 in 1999. By contrast, in one year, 1994, with a Democratic majority in the Senate, we confirmed 101 judges. With commitment and hard work many things are achievable.

Of the confirmations achieved this year, seven were nominations that were reported last year and should have been confirmed last year. That would have made

last year's total slightly more respectable. Instead, they were held over and inflate this year's numbers.

Moreover, the Republican Congress has refused to consider the authorization of the additional judges needed by the federal judiciary to deal with their ever increasing workload. In 1984, and again in 1990, Congress responded to requests by the Chief Justice and the Judiciary Conference for needed judicial resources. Indeed, in 1990, a Democratic majority in the Congress created scores of needed new judgeships during a Republican administration.

Three years ago the Judicial Conference of the United States requested that an additional 53 judgeships be authorized around the country. Last year the Judicial Conference renewed its request but increased it to 72 judgeships needed to be authorized in the omnibus appropriations bill at the end of last year.

If Congress had timely considered and passed the Federal Judgeship Act of 1999, S. 1145, as it should have, the federal judiciary would have nearly 130 vacancies today. That is the more accurate measure of the needs of the federal judiciary that have been ignored by the Congress over the past several years and would place the vacancy rate for the federal judiciary at 14 percent (128 out of 915). As it is, the vacancy rate is almost 10 percent (65 out of 852) and has remained too high throughout the five years that the Republican majority has controlled the Senate.

Especially troubling is the vacancy rate on the Courts of Appeals, which continues at over 11 percent (20 out of 179) without the creation of any of the additional judgeships that those courts need to handle their increased workloads.

Most troubling is the circuit emergency that had to be declared more than seven months ago by the Chief Judge for the Court of Appeals for the Fifth Circuit. I recall when the Second Circuit had such an emergency two years ago. Along with the other Senators representing States from the Circuit, I worked hard to fill the five vacancies then plaguing my circuit. The situation in the Fifth Circuit is not one that we should tolerate; it is a situation that I wished we had confronted by expediting consideration of the nominations of Alston Johnson and Enrique Moreno last year. I still hope that the Senate will consider both of them this year.

I deeply regret that the Senate adjourned last November and left the Fifth Circuit to deal with the crisis in the federal administration of Justice in Texas, Louisiana and Mississippi without the resources that it desperately needs. I look forward to our resolving this difficult situation. I will work with the Majority Leader and the Democratic Leader to resolve that emergency of the earliest possible time.

With 20 vacancies on the Federal appellate courts across the country and nearly half of the total judicial emergency vacancies in the Federal courts system in our appellate courts, our Courts of Appeals are being denied the resources that they need, and their ability to administer justice for the American people is being hurt. There continue to be multiple vacancies on the Ninth Circuit. I am likewise concerned that the Fourth, Sixth and District of Columbia Circuits are suffering from multiple vacancies.

I continue to urge the Senate to meet our responsibilities to all nominees, including women and minorities, and look forward to action on the nominations of Judge James Wynn, Jr. to the Fourth Circuit, Enrique Moreno to the Fifth Circuit, and Kathleed McCree Lewis to the Sixth Circuit. Working together the Senate can join with the President to confirm well-qualified, diverse and fair-minded judges to fulfill the needs to the federal courts around the country.

Having begun so slowly in the first five months of this year, we have much more to do before the Senate takes its final action on judicial nominees this year. We should be considering 20 to 40 more judges this year. Having begun so slowly, we cannot afford to follow the "Thurmond rule" and stop acting on these nominees at the end of the summer in anticipation of the presidential election. We must use all the time until adjournment to remedy the vacancies that have been perpetuated on the courts to the detriment of the American people and the administration of justice. I urge all Senators to make the federal administration of justice a top priority for the Senate for the rest of this year.

I look forward to prompt and favorable action by the Committee on the nominees included in today's hearing and look forward to the next hearing, which I hope will be scheduled before the Fourth of July Recess.

Senator GRASSLEY. There aren't any other Congressman from Illinois. We turn then to the State of Florida, and I invite the senior Senator, Senator Graham from Florida, to give his statement at this point.

**STATEMENT OF HON. BOB GRAHAM, A U. S. SENATOR FROM  
THE STATE OF FLORIDA**

Senator GRAHAM. Thank you, Mr. Chairman. And I have been made aware of your time constraints, so I would like to request to file my full introductory statement and I will summarize it.

Senator GRASSLEY. That will be done. Thank you.

Senator GRAHAM. Mr. Chairman, it is my pleasure to introduce to the committee today Mr. Paul C. Huck. Mr. Huck, a skilled veteran and respected practicing attorney, has been nominated to serve as a Federal district judge in the very active Southern District of Florida. He is joined today by his wife, Donna—if I might ask if you would please stand?—his son, Paul, Jr., daughter-in-law, Barbara Lagoa. Is Jim here? Yes, and his brother, Jim Huck.

I have had the pleasure of knowing Paul for most of my adult life. He is a graduate of the University of Florida. He indicated his potential while he was still a student, graduating second in his class at the University of Florida Law School, and then closing the gap by having the highest score on the Florida bar exam in the year he was admitted.

From that auspicious beginning, he has made many contributions to the law, to his community, including having served as an adjunct professor in litigation skills at the University of Miami School of Law, has distinguished himself in every aspect of his judicial, legal accomplishments. He was recommended highly by the non-political screening committee composed of a diverse group of Floridians, and then Senator Mack and I both interviewed their recommendations and strongly recommended to the President that he nominate Mr. Huck, which I am pleased that he has done. And, Mr. Chairman, I urge your expeditious and positive consideration of Paul Huck, who will bring great distinction to the Federal judiciary.

[The prepared statement of Senator Graham follows:]

PREPARED STATEMENT OF SENATOR GRAHAM

Mr. Chairman, thank you for scheduling this hearing and for the Committee's attention to the needs of Florida.

It is my pleasure to introduce Mr. Paul C. Huck. Mr. Huck, a skilled, veteran and respected practicing attorney, has been nominated to serve as a federal judge in the busy Southern District of Florida. If confirmed, he would fill a vacancy created when U.S. District Court Judge Kenneth Ryskamp took senior status.

Joining him today is Mr. Huck's wife, Donna, his son, Paul Jr. and daughter-in-law Barbara Lagoa. Both Paul and Barbara are also attorneys in Florida. Paul's daughter Caroline, a graduate student in education at Vanderbilt University, was not able to join us.

Mr. Chairman, Mr. Huck's solid qualifications make him an ideal candidate for service on the federal bench. Paul is a graduate of the University of Florida, my alma mater, and earned his law degree from that same institution in 1965. This impressive Gator was second in his class at the University of Florida School of Law, but made up for that second place finish by scoring higher than every other student who sat for the State of Florida Bar Exam in 1965.

At an early age, Mr. Huck made a commitment to education. He worked his way through his secondary, undergraduate and legal studies as a service-station attendant, busboy, roofer, gardener, stock clerk, and truck driver.

Recognizing the importance of a strong academic foundation, Paul volunteers as a mentor and speaks annually to incoming law students on the importance of ethics and professionalism. Since 1980, he has served as an adjunct professor in the Litigation Skills Program at the University of Miami School of Law.



As an attorney with a practice in commercial litigation, Mr. Huck has gained a wide spectrum of experience—from real estate and employment rights to intellectual property, maritime claims, and insurance matters.

In Florida, Mr. Huck submitted his application to a non-political screening committee comprised of a diverse group of Floridians, both lawyers and non-lawyers. Senator Connie Mack and I interviewed leading candidates, and jointly recommended Mr. Huck for nomination.

In summary, Mr. Huck is an intelligent, committed, well-respected, and eminently qualified candidate for the federal bench. I appreciate the Committee's consideration of Mr. Huck's nomination and look forward to working with you to fill this vacancy in Florida's southern district.

Senator GRASSLEY. Thank you, Senator Graham.  
Now, Senator Mack.

**STATEMENT OF HON. CONNIE MACK, A U.S. SENATOR FROM  
THE STATE OF FLORIDA**

Senator MACK. Thank you, Mr. Chairman. And, again, I appreciate the committee's efforts. I think each time that I come here I both thank you and remind you of the needs that we still have in the State of Florida, and I thank you greatly for having this hearing today and giving us an opportunity to introduce Paul Huck to the committee.

Again, because of time, I will keep my comments brief.

I have known Paul Huck since our college days. We have not had really contact over these last 35 years except that I was constantly aware of his involvement in the law and his background as a result of my brother, Dennis, and my brother, Michael, who also attended the University of Florida Law School, and who are very familiar with Paul and his distinguished career.

On a very personal note, I would say I have run into very few people, if any, who have the degree of intellect of Paul Huck, combined with tremendous humility. This is an individual who is highly skilled, well prepared, and I think everyone, both in the committee and in the Senate, can be comfortable in voting to confirm his nomination to be a Federal district court judge.

So, again, I highly recommend Paul Huck to this committee, and I thank the chairman.

Senator GRASSLEY. Thank you, Senator Mack.

Are there any Members of the House of Representatives from any of the States, including Florida, that we have heard from that want to be heard?

[No response.]

Senator GRASSLEY. Well, then, I would ask that the nominees come forth, all of you, and obviously, I thank all of our members and sponsors for their participation.

I will just, I guess, ask you to stand. Would you raise your hand and I would give the oath. Do you swear that the testimony you shall give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Judge RAWLINSON. I do.

Judge DARRAH. I do.

Mr. HUCK. I do.

Judge LEFKOW. I do.

Mr. SINGAL. I do.

Senator GRASSLEY. Thank you. Please be seated.

Senator LEAHY. Trust me, Mr. Chairman, they all know what it is like to give oaths.

Senator GRASSLEY. OK, yes. I also think it is a little ridiculous, as far as you folks have come, that we question your integrity, but I guess that is part of the process.

At this point, then, starting with each of you from left to right, before I ask you to give a statement, I would like to have each of you introduce to the committee any family or friends that you would like to have who are obviously here because they are proud of the promotion and advancement that you have been given in your profession.

Judge Rawlinson.

**TESTIMONY OF JOHNNIE B. RAWLINSON, OF NEVADA, TO BE  
U.S. CIRCUIT JUDGE FOR THE NINTH CIRCUIT**

Judge RAWLINSON. Thank you, Mr. Chairman. I would like to introduce my husband of 24 years, Dwight, who has come with me today.

Senator GRASSLEY. Thank you, Dwight.  
Now, Judge Darrah.

**TESTIMONY OF JOHN W. DARRAH, OF ILLINOIS, TO BE U.S.  
DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS**

Judge DARRAH. Thank you, Mr. Chairman. I would like to introduce my wife, Jeannine, who is right behind me, who has come here with us today. She and I have ten children, and in the interest of expediency, it is well that they could not attend today. [Laughter.]

Senator GRASSLEY. OK; thank you.  
Now, Mr. Huck.

**TESTIMONY OF PAUL C. HUCK, OF FLORIDA, TO BE U.S.  
DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA**

Mr. HUCK. Thank you, Mr. Chairman. I would like to introduce my wife, Donna, one more time.

Senator GRASSLEY. OK.

Mr. HUCK. Also, my son, Paul, Jr., is here, with his wife, Barbara Lagoa, who both are practicing trial lawyers in Miami.

Senator GRASSLEY. Welcome.

Mr. HUCK. And my younger brother, Jim, and a friend with him, Ms. Cassidy.

Senator GRASSLEY. Thank you very much.  
Now, Judge Lefkow.

**TESTIMONY OF JOAN HUMPHREY LEFKOW, OF ILLINOIS, TO  
BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF  
ILLINOIS**

Judge LEFKOW. Thank you, Mr. Chairman. I may have the largest attendance, so if I can look around and make sure I don't miss anyone.

Senator GRASSLEY. Yes.

Judge LEFKOW. My husband, Michael Lefkow; my brother, John Humphrey; my daughter, Margaret, one of four; my sister-in-law, Susan Pigott; and my assistant, Krys Juleen.

Senator GRASSLEY. Thank you, Judge.  
Now, Mr. Singal.

**TESTIMONY OF GEORGE Z. SINGAL, OF MAINE, TO BE U.S.  
DISTRICT JUDGE FOR THE DISTRICT OF MAINE**

Mr. SINGAL. Thank you, Mr. Chairman. I would like to introduce to the committee my wife, Ruthanne; my daughter, Jessica; her husband, Matthew, could not be here today; my son, Samuel. My sister and her family could not be here, but they are here in spirit.

Senator GRASSLEY. Sure.

Mr. SINGAL. Thank you, Mr. Chairman.

Senator GRASSLEY. Well, I know that everybody who is here not only supports you very much today but are very proud of what you are being appointed to and being considered for by the Senate.

I would like to now, in the same order, ask if you have any opening statements for the committee. You can give those in summary. We would put your full statement, if you have one you want to submit, in the record and ask you to be as concise as you can in your opening comments.

Judge RAWLINSON. Mr. Chairman, I would like to thank you and the committee for having this hearing today, and that is the sum and substance of my opening statement. Thank you.

Senator GRASSLEY. Thank you.

Judge DARRAH.

Judge DARRAH. Likewise, Mr. Chairman, I appreciate the committee's efforts in arranging this hearing, and I thank you.

Senator GRASSLEY. Mr. Huck.

Mr. HUCK. Mr. Chairman, I am deeply grateful for the privilege to be here to answer your questions.

Senator GRASSLEY. Now, Judge Lefkow.

Judge LEFKOW. Thank you, Mr. Chairman.

I also wish to thank you very much for considering my nomination, and thank you for your expeditious scheduling of my hearing.

Senator GRASSLEY. Mr. Singal.

Mr. SINGAL. I want to thank this committee, Mr. Chairman, for the time they have given us. I know how busy the Senate is, especially this week, and I appreciate the speed that this committee has used in bringing us here today.

**QUESTIONING BY SENATOR GRASSLEY**

Senator GRASSLEY. The first questions are going to be to all the nominees, and they will be the same questions, so I will ask it once—I will be glad to repeat it if it needs to be repeated—and ask you from left to right to give your response for the record.

The Supreme Court binds lower courts, and the precedents of circuit courts are binding on 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? For you, that is going to be the Supreme Court. For the rest, it will be the circuit court and the Supreme Court.

Judge Rawlinson.

Judge RAWLINSON. Mr. Chairman, as a district court judge, I have committed myself to following binding precedent, and I will

continue to do so if I am fortunate enough to be confirmed as an appellate court judge.

Senator GRASSLEY. Judge Darrah.

Judge DARRAH. I am absolutely committed to those principles, Senator.

Senator GRASSLEY. Mr. Huck.

Mr. HUCK. Mr. Chairman, you have my commitment I will follow those precedents.

Senator GRASSLEY. Judge Lefkow.

Judge LEFKOW. Mr. Chairman, you also have my commitment to those principles.

Senator GRASSLEY. Mr. Singal.

Mr. SINGAL. I will follow binding precedent without question.

Senator GRASSLEY. OK; again, to each of you, you have stated that, if confirmed, you would be bound by Supreme Court precedent and the precedent of your respective circuit court of appeals. There may be times, however, when you will be faced with cases of first impression. What principles will guide you or what methods will you employ in deciding cases of first impression? Judge Rawlinson?

Judge RAWLINSON. Mr. Chairman, if the case involves a statute and the language of the statute is clear, I will, of course, construe the statute in accordance with this language. If the language is ambiguous, I would look to legislative history in an effort to discern the intent of the legislators. If it is a case that does not involve statutory construction, I will look for analogous cases which could guide my decision.

Senator GRASSLEY. Judge Darrah.

Judge DARRAH. It sounds redundant. I would do the same thing, Senator, look to the framing of the statute, statutory history if the statute were ambiguous, and binding analogous-case precedent if it were a non-statutory case of first impression.

Senator GRASSLEY. Mr. Huck.

Mr. HUCK. I would concur in those opinions. If it were a non-statutory case, I would then look to the precedent that was most analogous to my situation and, as faithfully as I could, apply that existing precedent as an analogy.

Senator GRASSLEY. Judge Lefkow.

Judge LEFKOW. Mr. Chairman, in my 17 years as a judge, I find that there are few cases of first impression, at least in the district courts. But in the instance where that arises, I would do as others have well expressed, look to the plain meaning of the statute, be guided by the decisions, of course, of the Supreme Court, the appellate courts. And if that does not tell me where to go, then I would consider the well-reasoned decisions of other judges in Federal and State jurisdictions.

Senator GRASSLEY. Mr. Singal.

Mr. SINGAL. It is hard to improve on the prior answers. I do believe that that situation arises very rarely in district court. I would look to analogous decisions and to decisions of other judges in district court.

Senator GRASSLEY. Thank you.

Now, I am going to ask specific questions of some of you. Judge Rawlinson, if a particular judge or court has a high rate of reversal

on appeal, either on the court of appeals or to the Supreme Court, is that a problem? And if it is, what can and should be done to remedy the problem?

Judge RAWLINSON. There may be a number of reasons why there is a high rate of reversal. If I were fortunate enough to be confirmed as judge, I would make a commitment to make sure that I followed the precedents that were put down by the Supreme Court and adhere to the principles that have been time-honored.

Senator GRASSLEY. Thank you.

Again, to Judge Rawlinson, in your view, to what extent, if any, do the rights protected by the Constitution grow or shrink with changing historical circumstances?

Judge RAWLINSON. It is my view that the Constitution has weathered the test of time and that the principles that are embodied in the Constitution have been well interpreted in a body of law that has been put down by the Supreme Court. And I think that body of law should guide judges in their decisionmaking today.

Senator GRASSLEY. Under what circumstances do you believe it appropriate for a Federal court to declare a statute enacted by Congress unconstitutional? And are you aware of the recent Supreme Court decision in *United States v. Morrison* and its 1995 decision, *United States v. Lopez*? And let me continue, and I can repeat these, if necessary. Please explain to the committee your understanding of those decisions and their holdings regarding congressional power, because some commentators have accused the Supreme Court of judicial activism because of its decisions in those cases, and whether or not you would agree with those commentaries.

Judge RAWLINSON. My view of the law is that statutes are entitled to a presumption of constitutionality, and I would begin my review of a statute with that premise.

It would be difficult for me to say in a given circumstance how a ruler might think that the canons of ethics in effect would preclude me from doing that, but I do start with the premise that a statute is presumed to be constitutional, and it would be extraordinary circumstances that would persuade me to declare a statute unconstitutional. I think it is incumbent upon a judge to interpret a statute in such a way as to save it as constitutional to the extent that that is possible to do so. But each case depends on the facts of that case and the precedent that binds the court in that particular instance.

Senator GRASSLEY. If you think you have responded to this part of the question, repeat it for me, please. But I brought up the cases of *United States v. Morrison* and *United States v. Lopez* as maybe just some examples. But we would like to get some understanding of how you view those decisions and their holding regarding congressional power more specific than what you said about the presumption of congressional enactment being constitutional, and particularly in regard to those decisions that some have seen that as judicial activism and whether or not you agree with that commentary.

Judge RAWLINSON. Without having had the opportunity to review the briefs, having heard the arguments of the attorneys, and being intimately familiar with the facts of the case, I would be not in a

position to comment on whether or not the Supreme Court in my view had become activist in those cases. I don't feel that I have sufficient information regarding the briefs and the factual predicates of those cases to make that type of judgment at this point.

Senator GRASSLEY. Moving on to another question for you, Judge Rawlinson, in your view, is the use of race-, gender-, or national origin-based preferences in such areas as employment decisions, for instance, hiring, promotions or layoffs, college admission and scholarship awards, and the awarding of Government contracts, lawful under the Equal Protection Clause of the 14th Amendment?

Judge RAWLINSON. I think the Supreme Court has spoken definitively in the *Adarand* case that race-based classification and programs based thereon are subject to strict scrutiny and that there must be a compelling state interest in order to justify such programs and that any remedy that is based on race classifications must be very narrowly tailored to correct whatever remedy is being challenged, whatever remedy is being posited. And I have no personal beliefs which would prevent me from strictly adhering to the tenets set forth in the *Adarand* decision.

Senator GRASSLEY. In 1989, you authored an article about the Supreme Court decision, *City of Richmond v. Croson Company*. In that article, you analyzed the *Croson* case and concluded that "With detailed preparation and careful planning, remedial set-aside programs need not be considered a dying tradition."

Do you believe that that statement is accurate in light of the Supreme Court subsequent decision in *Adarand Construction v. Pena*? And I would like to have you explain your answer.

Judge RAWLINSON. All right. The *Adarand* case I think further elucidated the conditions under which a race-based program could be sanctioned under the law, and I think that the strict scrutiny that a program of that nature is subject to is clarified in the *Adarand* decision and that any program that has a race-based classification would have to meet those strict compelling-interest considerations that are set forth in *Adarand*. And if a case of that nature were brought to me for review, I would be committed to judging it by the standards that were set forth in *Adarand* and would apply the case as it has been decided.

Senator GRASSLEY. Before moving to Judge Darrah, I would like to make a comment about the Ninth Circuit, not about your nomination or not about anything you have said today, but just to leave with you a thought, assuming that you will be on that bench; that is, it bothers me as a member of this committee and as a Member of Congress when I compare the Ninth Circuit with other circuits around the country that we would have in a short period of time that circuit have 28 out of 29 decisions reversed by the Supreme Court. And that is why I have spent considerable time asking nominees for the Ninth Circuit about their views on precedents set by the Supreme Court.

Judge Darrah, in regard to the death penalty, do you believe that the view of the death penalty taken by Justices Brennan, Marshall, and Blackmun that the death penalty is unconstitutional, notwithstanding the clear constitutional text sanctioning it, is a permissible view of a Federal judge to hold?

Judge DARRAH. I believe the law of the land is well settled in those majority opinions pronounced by the Supreme Court, and I would follow them without hesitation, Senator.

Senator GRASSLEY. Thank you.

Again, Judge Darrah, do you personally have any legal or moral beliefs that would inhibit or prevent you from imposing a death sentence in any criminal case that might come before you as a Federal judge?

Judge DARRAH. No.

Senator GRASSLEY. Again, Judge Darrah, do you believe that 10-, 15-, or even 20-year delays between conviction of a capital offender and execution is too long? And then let me ask one other question associated. Do you believe that once Congress or a State legislature has made the policy decision that capital punishment is appropriate, then the Federal court should focus their resources on resolving capital cases fairly and expeditiously?

Judge DARRAH. Could I answer your questions in reverse order?

Senator GRASSLEY. Yes.

Judge DARRAH. As to the second part, the answer is yes, I do believe that.

As to the first part, rather than have my answer construed as any comment on any specific pending case or recent case where there has been that kind of delay, I would rather generally comment that justice delayed, I believe, is justice denied and that long, inordinate delays in the execution of any court order I think is something that should be avoided.

On the other hand, in specific circumstances, everyone is concerned with doing substantial justice between the parties, and in certain circumstances that inherently causes delays. So kind of an abstract answer to your question, I think it is in the interest of every judicial system, certainly ours in the United States, to quickly and efficiently enforce court orders.

Senator GRASSLEY. OK; now, Mr. Huck, in regard to Federal sentencing, as you know, the sentencing of criminal defendants in Federal court is conducted under the Federal Sentencing Guidelines. Some have argued that the guidelines do not provide enough flexibility for sentencing judges, while others have argued that the guidelines provide needed consistency in sentencing.

What is your view of the Federal Sentencing Guidelines and the application of those guidelines?

Mr. HUCK. Mr. Chairman, I have not been a judge, so obviously I have not sentenced, and I have not been involved in the criminal side of litigation. However, since my nomination has been brought over to the Senate, I have looked and read extensively on the Sentencing Guidelines issues.

It is my belief that they are a reasoned approach to uniformity and fairness in sentencing. I think it is understandable that people are concerned that in one instance one judge, because of his particular position, might give one sentence for the exact same crime where in another State another judge with a different view of things might give a different sentence. I think that seems patently unfair to the public. And, of course, I think it is important that the public has confidence in the system.

I have read the guidelines, and it is my view that the collective intelligence, the collective experience of those people who comprise the Commission is far greater than any single judge sitting anywhere in the United States. And I would advise you, commit to this committee that I would follow those guidelines.

Senator GRASSLEY. Again, Mr. Huck, what is your view of mandatory minimum criminal sentences? And would you have any reluctance to impose or uphold them as a Federal judge?

Mr. HUCK. I think my remarks would be pretty much the same with regard to the Sentencing Guidelines, and yes, I would impose those. I would follow the minimum standards.

Senator GRASSLEY. Okay. Now I will go to Judge Lefkow, and this would be in regard to adherence to precedent. What would you do if you believed the Supreme Court or the court of appeals had seriously erred in rendering a decision? Would you nevertheless apply the decision, or would you apply your own best judgment of the merits? And then I am going to ask you to take, for example, in answering the question the Supreme Court decision in *United States v. Playboy Entertainment Group, Inc.*, which was decided May 22 this year, where the Court struck down a provision of the 1996 Telecommunications Act that was designed to protect children from exposure to sexually explicit adult programming on cable television.

Before you answer, for myself I have been involved in trying to make sure that what speech the First Amendment doesn't protect, which obviously is child pornography and obscenity, that we have a statute that makes that carried out. For instance, one of the things that I got enacted in my early years in the Senate was the federalization of the *Ferber* case out of the New York court of appeals on some of these issues of—or on the issue of child pornography as opposed to obscenity.

Could you answer or do you want me to repeat that?

Judge LEFKOW. I think I understand your question, and please ask me again if I miss something.

As the mother of four daughters, I am very concerned about the issues that you describe with respect to sexually explicit material. As a district court judge, it is not committed to me to take a different approach to or a different result to a problem that would be within the decision of *Playboy Enterprises*, that is, *Playboy Enterprises* would control my decision if the facts were the same or analogous. So I cannot take upon myself to impose a different view from what the Supreme Court has stated.

Senator GRASSLEY. I want to ask one now of you on criminal procedure. Are you aware of the case recently argued before the Supreme Court, *Dickerson v. United States*, which asked whether a defendant's voluntary confession could be admitted into evidence in the Government's case-in-chief under 18 U.S.C. 3501, even if the confession was not preceded by the warning set forth in the *Miranda* case? And explain to the committee your understanding of *Miranda*, Section 3501, and the proper role of the Congress and the courts in establishing rules of evidence and procedures for Federal court. And also please state whether you believe the *Miranda* decision is an example of judicial activism.

Maybe start with the last part.



Judge LEFKOW. The *Miranda* decision has been with us from, I think, before I was even a lawyer, so it is sort of part of the fabric of criminal jurisprudence. Whether it was an example of judicial activism, I really don't think I am prepared to say.

Senator GRASSLEY. Well, that might be legitimate because, as I recall from reading the arguments before the Supreme Court on this very case when it was about the *Miranda* appeal that is up there now, the extent to which some judges or some of our Supreme Court Justices, even the more conservative ones, were asking since it has been law so long, should it be changed?

But I shouldn't have interrupted you. Proceed, please.

Judge LEFKOW. All right. The case that—

Senator GRASSLEY. I am not particularly trying to make it easy for you when I said that. [Laughter.]

Judge LEFKOW. If you would just bring me back to the first part of your question, I would certainly appreciate it, Mr. Chairman.

Senator GRASSLEY. OK; are you aware of the case recently argued before the Supreme Court entitled *Dickerson v. United States* which asked whether a defendant's voluntary confession could be admitted into evidence in the Government's case-in-chief under 18 U.S.C. 3501, even if the confession was not preceded by the warnings set forth in *Miranda v. Arizona*? And then we are also asking you to explain to the committee your understanding of *Miranda*, 3501, and the proper role of Congress and the courts in establishing the rules of evidence and procedure before the Federal court.

Judge LEFKOW. All right. Well, you are asking me about an exclusionary rule that was, I believe, initially judge-made, and I believe you are saying that is 3501 has enacted—

Senator GRASSLEY. Yes.

Judge LEFKOW. All right. Thank you. The rules of evidence and admissibility primarily are judge-made, though Congress has a role, of course, because it is involved in the enactment of rules. I think the proper role is that both the judiciary and the Congress have a role in establishing rules of evidence, including exclusionary rules.

In answer to your question about my familiarity with the case, I am only familiar with it to the extent it has been in the newspaper. I am sorry to say I haven't read the case.

Senator GRASSLEY. Let me suggest that we will move on, and there may be some follow-up to that that we would ask for you to do in writing.

Now, Mr. Singal, would you please define judicial activism? And in your view, is *Roe v. Wade* an example of judicial activism?

Mr. SINGAL. I think judicial activism may be defined as judges creating law. I am not sure whether *Roe v. Wade* is an example of judicial activism. As far as I am concerned, *Roe v. Wade* and its prodigy, the *Casey* decision, is binding upon me as a district court judge. And under my oath as a district court judge, assuming I can take it, I would be bound by that, and I have no principles that would prevent me from following that precedent as well as any other precedent binding upon a district court judge.

Senator GRASSLEY. The issue of guns, which is always a difficult one, the Supreme Court, through the process of so-called selective

incorporation, has applied most if not all the provisions of the Bill of Rights against the States. Thus, for instance, the First Amendment, which was originally intended to apply only to the Federal Government, has been applied to the States. The Second Amendment, however, which protects the rights of law-abiding citizens to own firearms in this country, has not.

Do you believe the Second Amendment ought to be applied to the States?

Mr. SINGAL. I think that is a very difficult question and one I think that many higher courts have grappled with and probably will grapple with. I have no personal opinion in that regard. I would have to do a great deal of research and hopefully be helped by the specifics of the case in terms of the statutory language, the briefing of the party, and the argument. I think that is an extraordinarily difficult case.

Senator GRASSLEY. If most of the other provisions of the Bill of Rights apply to the States, why shouldn't the Second Amendment? And on what principal basis would it be appropriate to apply almost all of the other provisions of the Bill of Rights against the States but not the Second Amendment?

Mr. SINGAL. Again, Mr. Chairman, I think that is a very difficult issue. One would hope that when that decision is made, it would be made based on a great deal of legal research and interpretation aided by a great deal of work done by the advocating attorneys. I think it would be very difficult for me to reach that decision here.

Senator GRASSLEY. Now, obviously, as is the tradition at most of these hearings, very few members come because we divide up the work of so many hearings. So what we will do is leave the record open until the close of business tomorrow for additional follow-up questions, not that they will give you any trouble, and most questions are not too numerous. Once in a while somebody might suppose that a member is asked 25 or 30 questions of one of you as an effort to stall your nomination. It seems to me that whatever questions are asked ought to be respected by the nominees of the work of this committee and do your best to get them done very quickly, because there has been some needless delay just because somehow some nominee to the bench has decided that maybe all those questions didn't have to be answered. And there is no need to have yours slowed up by the process of just not getting paperwork done. So I would advise you to very expeditiously give the best answers you can and get those back to us.

[The biographical information of Judge Rawlinson follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
Johnnie Blakeney Rawlinson  
Johnnie Mae Blakeney (Maiden Name)
2. Address: List current place of residence and office address(es).  
Residence  
Las Vegas, Nevada  
  
Office  
Foley Federal Building  
300 Las Vegas Boulevard South, Room 349  
Las Vegas, Nevada 89101
3. Date and place of birth.  
December 16, 1952  
Cabarrus Memorial Hospital  
Concord, North Carolina
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
Married-Dwight Steve Rawlinson  
Purchasing & Risk Manager  
City Of North Las Vegas  
2200 Civic Center Drive  
North Las Vegas, NV 89030
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
N.C. A&T State University-Greensboro, North Carolina  
Dates Attended: 8/70-12/73-Presidential Scholar  
Degree Received: B.S. Psychology (Summa Cum Laude)  
Date Degree Granted: May, 1974

University of the Pacific, McGeorge School Of Law-Sacramento, California  
 Dates Attended: 8/76-5/79-Full Scholarship  
 Degree Received: J.D. (With Distinction)-Top 10%  
 Date Degree Granted: May, 1979

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.
- 1973-Buy-Rite Grocery, Greensboro, North Carolina-Cashier
- 1974-United Day Care Center, Greensboro, North Carolina-Teacher
- 1974-1976-Army Corps of Engineers, Wilmington, North Carolina-Personnel Management Specialist
- 1977-Army Corps of Engineers, Sacramento, California-Law Clerk
- 1978-1979-McGeorge School of Law, Sacramento, California-Tutor
- 1979-1980-Nellis Air Force Base, Las Vegas, Nevada-Personnel Clerk
- 1980-Keefer, Clark & O'Reilly, Las Vegas, Nevada-Law Clerk
- 1980-Nevada Legal Services, Las Vegas, Nevada-Attorney
- 1980-1998-Office of the District Attorney, Las Vegas, Nevada-Deputy District Attorney, Chief Deputy District Attorney, Assistant District Attorney
- 1998-Present-U.S. District Court, District of Nevada, Las Vegas, Nevada-District Judge
7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.
- No
8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

High School

National Honor Society

Commencement Marshal (based on academic achievement)

Honors Graduate (number 4 in senior class)

I Dare You (to succeed) Award

Spanish Award (highest average in subject)

College

Presidential Scholarship (Four Year Academic Award)

Selected For N. C. Fellows Leadership Program

Alpha Kappa Mu Honor Society

Alpha Chi Honor Society

Dean's List

Outstanding Student Award

Summa Cum Laude Graduate

Law School

Full Scholarship

Dean's List

Traynor Honor Society

Book Scholarship (Based on 1st Year Academic Achievement)

American Jurisprudence Award (Highest Grade In Civil Procedure)

Graduated With Distinction (Top 10% of Class)

Post-Law School

Appreciation Award-Las Vegas Chapter, National Bar Association-1988

Woman of Distinction Award-Professional Black Women's Alliance-1989

President's Award-Las Vegas Chapter, National Bar Association-1991

Clark County Pro Bono Project-Distinguished Service Award-1996

NOBLE Award-1998

Kappa Community Service Award - 1998

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

National Bar Association

Las Vegas Chapter, National Bar Association  
Secretary-1981-1985  
Vice-President-1985-1988

State Bar of California

State Bar Of Nevada  
Member, Board of Governors-1990-1991  
Member, Board of Bar Examiners-1993-Present  
Chair, Lawyer Referral Committee-1989-1997

Nevada Legal Services Board-1981-1987

Southern Nevada Association Of Women Attorneys  
Member, Board of Directors-1994-1996

Clark County Bar Association  
Member, Board of Directors-1994-1996

Lawyer Representative, Ninth Circuit Judicial Conference-1988-1990

Liberty Bell Award Selection Committee-1993

Magistrate Judge Selection Committee-1995

Civil Justice Reform Act Advisory Committee-1995-1998

Federal Judges Association-1998-Present

Ninth Circuit District Judges Association-1998-Present

Lawyer Discipline Task Force of the Ninth Circuit-1999-Present

2000 District Conference Planning Committee-1999-Present

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

I am not a member of any organization which is active in lobbying.

Other Organizations

None

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

Supreme Court of the State of California-May, 1980

Supreme Court of the State of Nevada-September, 1980

U. S. District Court, District Of Nevada-January, 1984

U.S. Court of Appeals, Ninth Circuit-February, 1984

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

City of Richmond vs. Richmond: A Death Knell For Government Set-Aside Programs?  
Published in the May, 1989 issue of the National Association of Public Sector Equal Opportunity Officers newsletter-copy attached at Tab #1.

Book review of Guide To Background Investigations

Published in the May, 1997 issue of the National District Attorneys' Association magazine-copy attached at Tab #2

Speeches (No prepared text or notes)

July 27, 1998-Les Fummes Douze Debutantes-"When No Means No"-Avoiding date rape and other unpleasant encounters

August 17, 1998-UNLV Law School Students-Orientation Remarks

November 7, 1998-SNAWA New Admittees-"Preparing to Take the Bench"

November 14, 1998-State School Board Association-"Motivating Our Students"

February 10, 1999-Nevada Forum-A Christian Woman's Life

March 27, 1999-Jack & Jill Cluster Day-"You Too Can Excel"

October 9, 1999-Professional Black Women's Alliance-Glass Ceiling Symposium Panel Member

November 18, 1999-Western High School Government Class-"Differences Between Federal and State Judges"

January 18, 2000-Department of the Army, Wilmington District, Corps of Engineers-"Martin Luther King Day"

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

Excellent

August, 1999-Ob-gyn Physical

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

District Court Judge  
U.S. District Court  
Article III Federal Jurisdiction  
Appointed



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

See following list for ten most significant opinions (copies of unpublished opinions can be found at Tab #3). Asterisk denotes which opinions were appealed. Appeal documents are attached at Tab #4.

- a. Billy Raymond v. Albertson's Inc.  
(Published at Raymond v. Albertson's, Inc., 38 F.Supp.2d 866 (D. Nev. 1999))
  - b. \*Beauty Center, Inc. v. Matrix Essentials, Inc., et al.  
Case No. CV-S-96-1081-JBR (LRL)
  - c. Nevada Independent Service Contractors Association, et al. v. Pack Expo West  
Case No. CV-S-97-1492-JBR (RJJ)
  - d. \*Domingo Cambeiro Professional Corporation v. Mark Advent, et al.  
Case No. CV-S-98-00779
- \*\*Copy of Notice of Appeal presently unavailable.
- e. Sherion D. Phillips v. City of Henderson  
Case No. CV-S-97-1826-JBR (RLH)
  - f. Paula Penny v. Desert Palace, Inc. dba Caesars Palace  
Case No. CV-S-96-00644
  - g. \*United States of America v. Cliven Bundy  
Case No. CV-S-98-531-JBR (RJJ)
  - h. \*Federal Trade Commission v. Equinox International Corp.  
Case No. CV-S-99-0969-JBR (RLH)
  - i. \*Club Exotica, et al. v. City of Las Vegas, et al.  
Case No. CV-S-98-1014-JBR (RJJ)
  - j. Little Darlings of Las Vegas v. City of Las Vegas  
Case No. CV-S-98-0614-JBR (RJJ)

(2) In the case of Phillips v. Buehler, et al., District Court Case No. CV-S-98-253, the Ninth Circuit reversed my ruling in part because my order dismissing the case was entered after the Notice of Appeal was filed, depriving the district court of jurisdiction. A copy of the appellate court's decision is attached at Tab #5.

(3) a) Nevada Press Association v. Attorney General, Case No. CV-S-98-0991-the plaintiff sued the State of Nevada challenging the constitutionality of the criminal libel law, which did not allow truth as a defense. The parties stipulated that the law violated the First Amendment, and I signed the stipulated judgment. A copy of the stipulated final judgment is attached at Tab #6.

b) United States v. Cliven Bundy, Case No. CV-S-98-531-JBR (RJJ)-the government filed a complaint seeking to enjoin defendant's unauthorized grazing of his livestock on federal property. Defendant asserted that the Bureau of Land Management ("BLM") had no constitutional authority to regulate use of the land in question because it is located "inside an admitted state." Defendant contended that the federal court had no jurisdiction over the action because the lands were located inside a state. I ruled that federal lands located inside a state are federal territories, and the BLM had authority through the Property Clause of the Constitution to enforce its regulations. This ruling was affirmed on appeal (See Tabs #3 and #4).

c) Club Exotica, et al. v. City of Las Vegas, et al., Case No. CV-S-98-1014-JBR (RJJ)- Club Exotica offers nude and semi-nude dancing. Its owners were cited and fined by the city for allowing liquor in the club without having obtained a liquor license. The owners filed an action against the city alleging that the city's action violated the First (freedom of expression), Eighth (excessive fines) and Fourteenth (procedural due process) Amendments to the Constitution. In the context of a preliminary injunction ruling, I determined that the ordinance did not regulate the activity of dancing but the manner in which the dancing could occur. I also ruled that the fine was not disproportionate and that an administrative (as opposed to judicial) hearing on the citation satisfied due process. My ruling was affirmed on appeal (See Tabs #3 and #4).

d) Little Darlings v. City of Las Vegas, Case No. CV-S-98-614-JBR (RJJ)-This case is similar to the Club Exotica case discussed above. However, Little Darlings challenged the facial validity of the ordinance used to process disciplinary actions against businesses licensed by the city. I ruled that rather than regulating the erotic dancing, the ordinance set out the procedures used to conduct disciplinary proceedings for businesses licensed by the City. Consequently, the First Amendment was not implicated and Little Darlings had no standing to challenge the statute since it had suffered no actual injury. (See Tab #3).

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

None

17. Legal Career:

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

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

I never served as a law clerk.

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

I never practiced alone.

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

November, 1979-June, 1980-Keefer, Clark & O'Reilly, 325 S. Maryland Parkway, #1, Las Vegas, Nevada 89101-Part Time Law Clerk

June, 1980-October, 1980-Nevada Legal Services, 701 E. Bridger #101, Las Vegas, Nevada 89101-Staff Attorney

October, 1980 to 1998-District Attorney, Clark County, Nevada, 200 S. Third Street, Las Vegas, Nevada 89101-Hired As Deputy District Attorney; Promoted To Chief Deputy District Attorney in 1989; Promoted To Assistant District Attorney in 1995

May, 1998 to Present-U.S. District Judge, 300 Las Vegas Boulevard

South, Las Vegas, Nevada 89101

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

The general character of my law practice has been public service.

During my tenure with Nevada Legal Services from June-October, 1980, I primarily represented individuals who were trying to obtain unemployment or Social Security benefits.

From October, 1980- January, 1981, I observed county commission meetings, did legal research for senior deputies and made court appearances on behalf of the county.

From February, 1981-September, 1981, I was assigned to the Criminal Division, where I covered arraignments, preliminary hearings, and pleas. I second chaired a driving under the influence trial, and tried a sexual assault case.

Upon my return to the Civil Division in October, 1981-1984, I was assigned to assist the senior deputy who represented the county in personnel matters. For the next three years, I represented the county in administrative hearings where employees were challenging discipline, and at workers' compensation administration hearings. I also advised the Las Vegas Metropolitan Civil Service Board, which presides over appeals from police officers who had been disciplined. Additionally, I researched and issued legal opinions to various county agencies and officials. I appeared in court as necessary to represent the county's interest, usually when an administrative decision was challenged.

From November, 1984-1987, approximately 70% of my time was spent on a pattern or practice discrimination lawsuit filed against the Las Vegas Metropolitan Police Department by the United States Department of Justice. The Black Police Officers' Association intervened in the litigation. The case was extremely complex, with hundreds of potential victims, and required expert testimony on test development and statistics. The balance of my time was spent advising the county hospital board of trustees, administration and medical staff. I addressed various legal issues

involving: patients' rights, medical staff privileges, medical records, public records and the open meeting law.

In November, 1987-1992, I became the full-time legal counsel for the county hospital. In addition to the responsibilities delineated above, I assumed responsibility for reviewing the contracts, leases and bids prior to approval by the Board of Trustees. Also, in 1989, I began working with the hospital business office to develop and implement an aggressive collection program for delinquent accounts. As a result of our efforts in probate court and regular court proceedings, over \$2,000,000.00 in collections were realized. The following innovative legal proceedings were pursued: forfeiture of statutory medical liens, setting aside conveyance of real property, initiating proceedings against law firms and insurance companies who disregarded medical liens, and removing probate administrators who failed to pay claims expeditiously.

In September, 1989, I was promoted to chief deputy, and assumed supervisory responsibility for five deputies. My areas of supervision included labor and employment law, local government purchasing and contracts, public safety, workers compensation, affirmative action, public records and the open meeting law. As a chief deputy, I became one of two backup attorneys for the County Counsel. When the County Counsel and other chief deputy were unavailable, it was my responsibility to attend county commission meetings and advise the commissioners on any legal issues that arose before or during the meeting.

In November 1990, I volunteered to take on the additional responsibility of advising the Clark County School District Board of Trustees, addressing many of the same legal issues discussed above, as well as those unique to the public school environment. These issues included dress codes for students and teachers, student discipline, religion in the schools, and student entitlement to participate in extracurricular activities.

In 1992, my primary assignment changed from the county hospital to the comprehensive planning department. I became the advisor to the county planning commissioners and the county commissioners, who make the final decision on most land use matters. I also was responsible for defending the county in litigation resulting from its zoning decisions. Moreover, I continued to advise the school district board and supervise other deputies.

Beginning in January, 1995, I became one of two Assistant District Attorneys. I supervised the Civil, Family Support and Administration

Divisions of the office. I chaired the office's hiring committee, sat on the death penalty assessment committee and presented evidence at the coroner's inquests, which are convened whenever a police involved shooting results in death. I supervised 30 attorneys and 200 support staff. I also continued to advise the school district board.

I became a United States District Judge in May, 1998.

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

My clients when I was employed with the District Attorney's Office were county employees and officials. I developed expertise in the following areas: Municipal Law, Local Government Purchasing, Labor & Employment Law, Administrative Law, The Open Meeting Law, The Public Records Law, Contracts & Leases, Hospital Law, Probate, Collections Law, Education Law & Civil Procedure.

At Nevada Legal Services, my typical clients were individuals who could not afford to hire an attorney, but needed assistance to secure benefits.

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

1980-1984-Frequent

1985-1998-Occasional

2. What percentage of these appearances was in:

(a) federal courts;

1980-1984-20%

1985-1987-25%

1988-1998-10%

(b) state court of record;

1980-1984-80%

1985-1987-75%

1988-1998-90%

(c) other courts.

Not applicable

3. What percentage of litigation was:

(a) civil;

1980-1984-80%

1985-1987-100%

1988-1998-70%

(b) criminal;

1980-1984-20%

1985-1987-0%

1988-1998-30%\*

\*NOTE: I included within criminal litigation the Coroner's Inquest Proceedings, which are held whenever a police shooting results in death. Although not adversial in nature, these proceedings are presented to a jury, and may result in a verdict of death by criminal means.

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

13-Associate Counsel

4-Sole Counsel

5. What percentage of these trials was:

(a) jury;

88%

(b) non-jury.

12%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each

case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

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

1. Gene Fehrer v. Clark County, et. al., Case No. CV-83-0000322

I represented two administrators who were named individually in a civil rights case. The plaintiff had written a letter to the newspaper which was critical of the administration, and had signed someone else's name to the letter. He also wrote a complimentary letter, to which he signed his name. The letters caused extreme disruption in the agency, and the plaintiff was disciplined for fomenting discontent within the organization. He filed a lawsuit, alleging violation of his First Amendment right to free speech. Following a two-day bench trial, a defense verdict was rendered. I took the lead on questioning the witnesses and preparing briefs to be filed with the court. The plaintiff appealed to the Ninth Circuit Court of Appeals. The Ninth Circuit affirmed the district court decision, and awarded attorney's fees and costs to defendants.

- a. Dates of Representation-1983-1986
- b. Court-U.S. District Court, District of Nevada-Judge McKibben
- c. Counsel For Other Defendant: Michael Koning, 1640 W. Alta Drive, Ste. 4, Las Vegas, NV 89106 (702) 385-1482

Counsel For Plaintiff: Robert Massi, 3202 W. Charleston Blvd, Las Vegas, NV 89102 (702) 870-1100.

2. Lewis Knox v. John Solomon, Case No. CV-81-0000371

I represented an administrator who was sued for racial discrimination after he terminated a supervisor for sexually harassing his subordinates. I was sole defense counsel. Following a two-day bench trial, a defense verdict was rendered, on the basis that sexual harassment constituted a sufficient basis for terminating



the plaintiff's employment.

- a. Dates of Representation-1981-1984
- b. Court-U.S. District Court, District of Nevada-Judge McKibben
- c. Counsel For Plaintiff: John Fadgen, 616 S. Third St., Las Vegas, NV 89101 (702) 384-7286

3. Southern Nevada Memorial Hospital v. State Department of Human Resources, 705 P. 2d 139 (1985)

I represented the county hospital in a case involving the certificate of need process. At the time this case was at issue, a certificate of need was required in Nevada before a medical facility could add new services or increase its size. The Department of Human Resources was the agency designated to issue the certificates of need. Although the department had awarded a certificate of need to the county hospital, and the county had acted in reliance on the certificate, the state attempted to deny the hospital the right to expand its facility. For the first time, the Nevada Supreme Court ruled that the doctrine of estoppel is applicable to a government agency.

- a. Dates of Representation-1984-1985
- b. Courts-Eighth Judicial District Court-Judge Paul Goldman (Deceased) & Nevada Supreme Court
- c. Counsel For Appellant Spring Valley Hospital: I. R. Ashleman, 550 E. Charleston Blvd. #B, Las Vegas, NV 89104 (702) 387-6156

Counsel For Appellant Humana: Dennis Kennedy, 300 S. Fourth St., #1700, Las Vegas, NV 89101 (702) 383-8888

Counsel For Respondent State Of Nevada: Bryan Nelson, 555 E. Washington, #3900, Las Vegas, NV (702) 486-3420

4. Hudson v. Las Vegas Metropolitan Police Department, Case No. CV-LV-83-640-HEC

I represented the state on a federal writ of habeas corpus challenging Nevada's extradition proceedings. I prepared all the pleadings on behalf of the state. The petition was denied at the district court level, affirmed on appeal and certiorari denied by the United States Supreme Court.

- a. Dates of Representation-1983-1985
- b. Courts-U.S. District Court, District Of Nevada-Judge Claiborne  
Ninth Circuit Court of Appeal  
U.S. Supreme Court
- c. Counsel For Petitioner: Cal Potter, 1125 Shadow Lane, Las Vegas, Nevada  
89102 (702) 385-1954

5. Conboy v. Las Vegas Metropolitan Police Department, Case No. A226938  
(District Court) and 16898 (S. Ct.)

I represented the police department on this workers' compensation case, which was appealed from an administrative hearing. I took the lead at the administrative hearings and the court proceedings. The police officer who filed the appeal had been injured in a motorcycle accident on his way home from a bar. He contended that because he had stopped at the bar to discuss a case with another police officer, he was on a special errand for the department, and the accident was a work related injury. The administrative appeals officer and the district court ruled against the police officer. In a case of first impression, the Supreme Court, in an unpublished decision, declined to adopt the special errand rule. No copy of the order was immediately available.

- a. Dates of Representation: 1983-1986
- b. Courts: Eighth Judicial District Court-Judge Earle White & Nevada  
Supreme Court
- c. Counsel For Appellant: Marvin Gross, 3017 W. Charleston #50, Las  
Vegas, NV 89102 (702) 870-3555
- d. Counsel For State Industrial Insurance System: Pam Bugge, 1700 W.  
Charleston Blvd., Las Vegas, Nevada 89102 (702) 388-3120

6. United States v. Las Vegas Metropolitan Police Department, Case No. CV-LV-  
84-809-RDF (LRL)

I was lead counsel on this pattern or practice discrimination case filed by the United States Department of Justice against the police department. This case involved thousands of documents and required extensive knowledge of testing methodologies and statistical theories generally applied to discrimination cases. Following extensive, protracted and extremely technical discovery, the case was settled through entry of a consent decree. Three years after the consent decree

was entered, a three-day evidentiary hearing was held before a magistrate judge to determine if the test developed by the consultant met the terms of the consent decree. After considering the evidence and the posthearing briefs, submitted on behalf of the parties, the magistrate judge ruled that the test met the requirements of the consent decree, and must be utilized by the police department.

- a. Dates of Representation-1984-1991
- b. Court-U.S. District Court, District of Nevada-Judge Foley, Magistrate Judge Leavitt
- c. Co-Counsel-Mary-Anne Miller, P.O. Box 225512, Las Vegas, NV 89155 (702) 455- 4761  
  
Counsel For Plaintiff United States: John Gadzichowski, P.O. Box 65968, Washington, DC 20035-5968 (202) 514-3834  
  
Counsel For Plaintiff In Intervention The Black Police Association Of Nevada: Tom Davis, 701 E. Bridger Ave. #600, Las Vegas, NV 89101 (702) 388-7171

7. Hayes v. Womens Hospital. Case No. A270137

I filed this case on behalf of the county hospital, utilizing a new state law which prohibited transferring patients based on their inability to pay. The case received considerable publicity.

Following discovery, the case was settled for the amount of the county hospital's demand.

- a. Dates of Representation-1988-1990
- b. Court-Eighth Judicial District Court-Judge Mosley
- c. Counsel For Defendant-Sherman Mayor, 2820 W. Charleston Blvd. #33, Las Vegas, NV 89102 (702) 878-7100

8. In The Matter Of The Estate Of Adeline Richter, Case No. P27016

I filed this case on behalf of the county hospital, in an effort to collect a \$33,000.00 hospital bill. The creditor's claim was denied because the county hospital had failed to file a creditor's claim. I advanced the argument that the hospital was a known creditor, because the deceased was hospitalized just prior to

her death. I contended that, as a known creditor, the hospital was entitled to individual notice, rather than the general notice to creditors which is published in the newspaper. The case was settled for \$16,500.00.

- a. Dates of Representation-1990-1992
- b. Court-Eighth Judicial District Court-Judge Foley
- c. Counsel For The Estate-Thomas Christensen, 1000 S. Valley View Blvd., Las Vegas, NV 89107 (702) 870-1000

9. Funway Rentals, Inc. v. Clark County, Case No. CV-S-94-00652-PMP (RLH)

This case was filed on behalf of a company which rented mopeds for use on the Las Vegas Strip. The company's application to renew its use permit to operate the business was denied after safety concerns were raised. I contended that the county had the authority to weigh the evidence and determine whether continued operation of this business was in the best interest of the public at large. After the plaintiff's request for a temporary restraining order and preliminary injunction were denied, a stipulation to dismiss the case was entered.

- a. Dates of Representation-July-September, 1994
- b. Court-U.S. District Court-District Of Nevada-Judge Pro
- c. Counsel For Plaintiff: Ken Cory, 626 S. Third St., Las Vegas, NV 89101 (702) 384-0111

10. Goldsmith v. County of Clark, Case No. A312017

This case was filed on behalf of property owners who challenged the county's decision to deny their request for a zone change. The requested zone change was from rural open land to residential. The neighboring property owners objected on the basis that the property in question was in a unique rural environment, which they wanted to preserve. I successfully argued on behalf of the county that preservation of open space is within the police power of the county commissioners.

- a. Dates of Representation-9/92-5/98
- b. Court-Eighth Judicial District Court-Judge Lehman
- c. Counsel For Petitioner-Stan Parry, 601 S. Rancho Dr., #C-3, Las Vegas,

NV 89106 (702) 471-7000

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

Much of my legal experience was gained through representation of clients at administrative proceedings. For example, when I advised the Las Vegas Metropolitan Police Department Civil Service Board, it was my responsibility to assist the Board in ruling on objections, and to prepare the Board's decisions, including findings of fact and conclusions of law.

I also did a substantial amount of work representing various county agencies in administrative personnel hearings before arbitrators, hearing officers and grievance panels. I prepared prehearing and posthearing briefs, interviewed witnesses and presented evidence.

Similarly, I advanced the county's position at numerous workers' compensation hearings before appeals officers for the state industrial insurance system.

Additionally, I have profited from my bar related activities. From 1988-1990, I served as a Lawyer Representative to the Ninth Circuit Judicial Conference. I became familiar with the issues facing the federal court, and some of the suggestions for resolving those issues. From 1995 to 1998, I was a member of the Civil Justice Reform Act Advisory Group. Our primary objective was to develop recommendations for reducing the delay in resolving civil cases in federal court. The advisory group recommended to the court the adoption of an early neutral evaluation program for employment cases. This alternative dispute resolution mechanism has resulted in earlier resolution of cases, or narrowing the issues sufficiently to expedite resolution.

I was confirmed as a United States District Judge on April 2, 1998.

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

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

Public Employees' Retirement System Benefits - approximately \$22,000.00 annually

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

There are no financial arrangements that are likely to present potential conflicts of interest. However, a potential conflict will arise if cases I ( or attorneys I supervised) have worked on come before the court. I will identify those cases by looking at the parties and recusing myself as appropriate. Currently, the practice at the court is to distribute the Certificate of Interested Parties (CIP) filed in each case assigned to a particular judge. The judge reviews the CIP to determine if a potential conflict exists. I follow that practice. In general, I will continue to comply with the Code of Judicial Conduct with respect to potential conflict of interest issues.

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

No.

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

See attached Financial Disclosure Report (Tab #7)

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

See attached Net Worth Statement (Tab #8).

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

No.

## III. GENERAL (PUBLIC)

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

From 1988-1997, I served as chair of the State Bar Lawyer Referral Committee. One of our major accomplishments was the development of a reduced fee panel of attorneys to serve as a referral source for those who cannot afford to pay the full attorney's fee.

From 1994-1996, I served as the National Bar Association liaison to Fitzgerald Elementary School. The school is located in a low income neighborhood. I coordinated the donation and purchase of stuffed animals, toys, books, computer equipment and supplies for presentation to the school.

In 1997, I participated in the Clark County's Habitat For Humanity homebuilding effort.

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

No.

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

There is no selection commission. I had a personal interview with Senator Reid, individuals from the White House, and from the United States Department of Justice. I was subsequently interviewed by representatives of the American Bar Association and the Federal Bureau of Investigation.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that



could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No

5. Please discuss your views on the following criticism involving “judicial activism.”

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

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

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I view the role of a federal circuit judge to be that of interpreting the law in accordance with precedent cases that have been decided by the United States Supreme Court, with the goal of resolving only the particular matter at issue before the court.

Federal courts are courts of limited jurisdiction and may only decide matters when there is an actual case or controversy before the court involving real parties with standing to litigate the issues pending for review.

In my view, it is incumbent upon a federal circuit judge to resolve only the case before him or her, and not stray into the realm of becoming an administrator or assignor of duties upon other institutions. A circuit judge has an important role to fulfill in interpreting the law of the land. That role should be performed with the traditional notions of standing, ripeness and *stare decisis* ever in mind.

AO-10 (r)  
Rev. 1/98

**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**

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

<b>1. Person Reporting</b> (Last name, first, middle initial) Rawlinson, Johnnie B.		<b>2. Court or Organization</b> US District Court of Nevada	<b>3. Date of Report</b> 02/27/2000
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Article III Judge - Active		<b>5. Report Type (check type)</b> X Nomination, Date 02/22/2000 Initial _____ Annual _____ Final _____	<b>6. Reporting Period</b> 01/01/1999 to 02/15/2000
<b>7. Chambers or Office Address</b> 300 Las Vegas Blvd S Em 349 Las Vegas, Nevada 89101		<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	
<i>IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.</i>			

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

POSITION	NAME OF ORGANIZATION / ENTITY
<input checked="" type="checkbox"/> NONE (No reportable positions.)	
1 _____	
2 _____	
3 _____	

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

DATE	PARTIES AND TERMS
<input checked="" type="checkbox"/> NONE (No reportable agreements.)	
1 _____	
2 _____	
3 _____	

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

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1999	FERS of Nevada - Pension	\$ 23,154.00
2 1999	City of North Las Vegas (S) - Wages	\$ 74,204.00
3 2000	FERS of Nevada - Pension	\$ 3,859.00
4 2000	City of North Las Vegas (S) - Wages	\$ 13,973.00

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Rawlinson, Johnnie B.	02/27/2000

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

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

	SOURCE	DESCRIPTION
<input type="checkbox"/>	NONE (No such reportable reimbursements.)	
1	Department of the Army, Wilmington District, Corps of Engineers	January 17-18, 2000--Wilmington, NC--Speech for Martin Luther King Breakfast (Transportation, Meals, and Lodging)
2		
3		
4		
5		
6		
7		

**V. GIFTS**

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

	SOURCE	DESCRIPTION	VALUE
<input checked="" type="checkbox"/>	NONE (No such reportable gift.)		
1			
2			
3			

**VI. LIABILITIES**

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

	CREDITOR	DESCRIPTION	VALUE CODE*
<input checked="" type="checkbox"/>	NONE (No reportable liabilities.)		
1			
2			
3			
4			
5			
6			

\* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 0=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Rawlinson, Johnnie B.	Date of Report 02/27/2000
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**VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions** (Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets  <i>Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.</i>  <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure				
						(2) Date: Month- Day	(3) Value (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)	
NONE (No reportable income, assets, or transactions)										
1 Nevada Federal Credit Union Accounts (J)	C	Interest	L	T						
2 Wells Fargo IRA (CD) - Cash Equivalent (see 12 below)	A	Interest	J	T	*Sell (rollover)	10-19 1999	J	A		
3 Wells Fargo IRA (S) - Cash Equivalent (see 13 below)	A	Interest	J	T	**Sell (rollover)	10-14 1999	J	A		
4 Clark County Deferred Compensation	C	Interest	L	T						
5 N. Las Vegas Deferred (S) Compensation	D	Dividend	K	T						
6 Maryland Bank IRA (CD) - Cash Equivalent	A	Interest	J	T						
7 Maryland Bank IRA (S) - Cash Equivalent	A	Interest	J	T						
8 Nevada Federal Credit Union CD (J)	A	Interest	K	T	Buy	10-23 1998	K	B		
9 Nevada Federal Credit Union CD (J)	A	Interest	J	T	Buy	2-22 1999	J	A		
10 Nevada Federal Credit Union CD (J)	A	Interest	J	T	Buy	3-23 1999	J	A		
11 Vanguard Mutual Fund (Stock Fund) (J)	B	Dividend	J	T	Buy	1-14 1999	J	A		
12 *Maryland Bank IRA	A	Interest	J	T	*Buy	12-7 1999	J	A		
13 **Vanguard IRA (S)	A	Dividend	J	T	**Buy	12-06 1999	J	A		
14										
15										
16										
17										
<b>1 Inc/Gain Codes:</b> A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 <b>2 Val Codes:</b> J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more <b>3 Val Mth Codes:</b> Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market										

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Rawinson, Johnnie B.	Date of Report 02/27/2000
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**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.**

*(Indicate part of report.)*

Part VII:

Items 2 and 3 are roll-overs.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Rawlinson, Johnnie B.	02/27/2000

## IX. CERTIFICATION

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

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

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Johnnie B. Rawlinson Date 2/28/00

Note: Any individual who knowingly and willfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

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

## FINANCIAL STATEMENT

## NET WORTH

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

ASSETS		LIABILITIES	
Cash on hand and in banks	\$48,780.20	Notes payable to banks--secured	-----
U.S. Government securities--add schedule	-----	Notes payable to banks--unsecured	-----
Listed securities--add schedule	\$ 239.06	Notes payable to relatives	-----
Unlisted securities--add schedule	-----	Notes payable to others	-----
Accounts and notes receivable:	-----	Accounts and bills due	-----
Due from relatives and friends	-----	Unpaid income tax	-----
Due from others	-----	Other unpaid tax and interest	-----
Doubtful	-----	Real estate mortgages payable--add schedule	\$136,439.09
Real estate owned--add schedule	\$200,000.00	Chattel mortgages and other liens payable	-----
Real estate mortgages receivable	-----	Other debts--itemize:	
Autos and other personal property	\$ 51,275.00	Car Loan	\$ 14,757.80
Cash value--life insurance	-----		
Other assets--itemize:			
Deferred Compensation Accounts	\$119,489.00		
IRA Accounts	\$ 12,392.00		
Mutual Fund Account	\$ 12,481.61	Total liabilities	\$133,376.89
Certificates of Deposit	\$ 62,521.14	Net Worth	\$353,801.12
Total Assets	\$507,178.01	Total liabilities and net worth	\$507,178.01
<b>CONTINGENT LIABILITIES</b>		<b>GENERAL INFORMATION</b>	
As endorser, cosigner or guarantor	-----	Are any assets pledged? (Add schedule.)	
		No	
On leases or contracts (auto lease)	\$ 2,180.00	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	-----		



[The biographical information of Judge Darrah follows:]

UNITED STATES SENATE  
QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

John W. Darrah; Jack Darrah.

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

Office: 505 North County Farm Road, Courtroom 2005, Wheaton, Illinois, 60187;  
Residence: Naperville, Illinois.

3. **Date and place of birth.**

December 11, 1938; Chicago, Illinois.

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

I am married to Jeannine Renee Burton. My wife is a manager at Horizon Management Group, Inc. d/b/a Ogden Manor, 395 West Ogden Avenue, Naperville, Illinois, 60563.

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

1957 to 1958: Loyola University, Chicago, Illinois, Major in Liberal Arts  
1959 to 1960: Northern Illinois University, DeKalb, Illinois, Major in Fine Arts  
1962 to 1965: Loyola University, Chicago, Illinois, Major in Philosophy, Bachelor of Science Degree Awarded 1965  
1965 to 1969: Loyola University School of Law, Chicago, Illinois, Juris Doctor Degree Awarded 1969

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

1958 - 1960:  
Laborer  
Solo Cup Company  
Chicago, Illinois

1960 - 1969:

Laborer  
City of Chicago  
Water Distribution Division  
Chicago, Illinois

1969 - 1971:

Attorney Advisor  
Federal Trade Commission  
Chicago Regional Office  
Chicago, Illinois

1971 - 1973 (part-time):

Deputy Public Defender  
DuPage County, Illinois  
Wheaton, Illinois

1971 - 1973:

Partner at Cox, Lyle & Darrah  
Attorneys at Law  
Glen Ellyn, Illinois

1972 - Present (part-time):

Adjunct Professor  
Northern Illinois University College of Law  
DeKalb, Illinois

1973 - 1976:

Assistant State's Attorney  
Supervisor of Misdemeanor/Juvenile Divisions  
DuPage County, Illinois

1976 - 1981:

Partner at Ryan & Darrah  
Addison, Illinois

1976 - 1978

Special Assistant Attorney General for condemnation

1981 - 1984:

Partner at Ryan, Darrah & Stringini  
Attorneys at Law  
Addison, Illinois

1984 - 1986:  
John W. Darrah, Attorney at Law  
Sole Practitioner  
Addison, Illinois

1985 - 1986  
Public Administrator  
DuPage County, Illinois

1985 - 1986  
Public Guardian  
DuPage County, Illinois

December 1986 to Present:  
Circuit Court Judge of the 18th Judicial Circuit  
DuPage County, Illinois  
Chancery Division  
Wheaton, Illinois

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

No.

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

1994-1995: Recipient of Board of Directors Award, DuPage County Bar Association  
1992 and 1995: Recipient of the Professor of the Year Award, Northern Illinois University College of Law  
1969: Recipient of Loyola Law School Alumni Scholarship Award, Loyola Law School

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

Illinois State Bar Association, 1969-1993  
Member of the Assembly, 1983-1984

DuPage County Bar Association, 1972-Present  
1983-1984, President of DuPage County Bar Association  
1982: First Vice-President of DuPage County Bar Association  
1981: Second Vice-President of DuPage County Bar Association  
1980: Third Vice-President of DuPage County Bar Association  
1980, 1976: Member of Board of Directors of DuPage Bar Association

I was co-founder and chairman of the Trial Advocacy Seminar conducted at the DuPage County Courthouse in connection with the DuPage County Bar Association in 1995, 1996, 1998, and 2000.

American Bar Association, Panelist, Workshop for Law School Adjunct Faculty  
American Judicature Society  
DuPage County Legal Aid Society, Past President

National Institute for Trial Advocacy, Faculty Member, 1991 to the Present

DuPage Chapter of American Inns of Court, 1994 to Present  
President, 1994

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

I do not belong to any organizations that are active in lobbying before public bodies. I do not belong to any other organizations.

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

I was admitted to the Bar of the State of Illinois on November 17, 1969.  
I was also admitted to the United States District Court, Northern District of Illinois, on November 17, 1969.

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

"Original Action in the Circuit Court Without Prior Recourse to Administration Remedies: How to Avoid Exhaustion", DuPage County Bar Association Brief, September, 1991 Issue

"Judicial Practice Tips: Appearance and Motion Practice", DuPage County Bar Association Brief, February, 1996 Issue

"A Review of N.I.T.A.'s New Book *Illinois Evidence With Objections*", DuPage County Bar Association Brief, June, 1999 Issue

I have lectured on various topics related to the practice of law before Chancery courts at various seminars for the DuPage County Bar Association for the past 13 years.

I have lectured on the topics of jury trials and evidence at previous Illinois Judicial Conferences.

There are no copies or press reports of speeches. I have spoken at several seminars but only on topics involving substantive law.

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

I am in good health. My last physical examination was March 9, 2000.

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

I was elected Circuit Court Judge, Eighteenth Judicial Circuit, DuPage County, Wheaton, Illinois, December, 1986 to Present. From that time until the present, my judicial assignment has been to the Chancery Division. I was approved for judicial retention by the electorate in December, 1992 and December, 1998. The Circuit Court is a trial court of general jurisdiction in the State of Illinois. Duties include bench and jury trials and motion practice on all Chancery and Miscellaneous Remedy cases, including temporary restraining orders, preliminary and permanent injunctions, mechanic lien foreclosures, name changes, adoptions, declaratory judgments, tax objections, petitions for tax deeds.

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

**(1) citations for the ten most significant opinions you have written.**

1. Ochwat v. Didier, 96 CH 183
2. Koloseike v. Naperville Park Dist., 95 MR 764
3. Drymiller v. Luedi, 97 CH 599
4. Tracy v. Henderson, 95 MR 174
5. Carr v. Fenton High School Dist. No. 100, 92 CH 1005

6. Beghr Willowbrook Venture v. Village of Willowbrook, 89 CH 170
7. Brd. of Education of West Chicago v. Regional Brd. of School Trustees of DuPage County, Illinois, 90 CH 064
8. Constantine v. Village of Glen Ellyn, 87 MR 106  
217 Ill.App.3d 4 (1991)
9. Hamilton v. Williams, 87 CH 171
10. Village of Lisle v. Action Outdoor Adver. Co., 88 CH 024  
188 Ill.App.3d 751 (1989).

Opinions are attached.

**(2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings.**

I have served as a trial court judge for the past 14 years. During that time, I have resolved thousands of cases and heard hundreds of trials. Affirmance/reversal records for each trial court judge are not kept by the Appellate Court in the Second District where I hear cases. However, recent statistics indicate that the rate of civil cases affirmed in whole or in part by the Second District Illinois Appellate Court last year was 68 percent. My career average is 72 percent. The following is a brief summary of cases and the official citations thereto where my trial rulings were reversed in whole or in part on appeal. Only reported opinions are available.

1. First Baptist Church of Lombard v. Illinois Toll Highway Auth.,  
301 Ill.App.3d 533 (1998)  
Affirmed in part; vacated in part; remanded with directions.  
I found that the defendant, Illinois Toll Highway Authority, was responsible for flooding the plaintiff's property and that the plaintiff's lawsuit was not barred by the statute of limitations. The Appellate Court affirmed the ruling, holding that the defendant was responsible. The Appellate Court affirmed the ruling but held that the court applied an incorrect measure of damages regarding a continuing trespass and remanded the matter for hearing on that issue.
2. In re: Estate of Lena Castro, 289 Ill.App.3d 1071 (1997)  
I ruled that the Illinois Department of Public Aid was barred from maintaining a claim against the assets of the estate of a former public aid recipient. The Appellate Court affirmed my decision that proceeds paid to the estate of the deceased in connection with an injury sustained at a nursing home were exempt under Section 3-605 of the Illinois Nursing Home Care Act. The Appellate Court however reversed my judgment in part and

found the department was entitled to maintain a claim against any other assets of the estate.

3. In re: Application of the DuPage County Collector for the Year 1993 v. 1212 Associates, 288 Ill.App.3d 480 (1997)

I determined that the attempted tax increase by the Glenside Public Library District must be submitted to a referendum pursuant to Section 200/18-190(a) of the Illinois Tax Cap Act. The Appellate Court reversed, based on a contrary interpretation of the statute.

4. Schorsch v. Fireside Chrysler, 286 Ill.App.3d 1028 (1997)

I awarded attorney's fees to the prevailing party in a claim against an automobile dealership. The Appellate Court reversed the award and remanded the matter with directions as to which items in the plaintiff's fee petition were the proper subject of an award of attorney's fees. The matter was resolved consistent with these directions.

5. Meyer v. First Am. Title Ins. Agency of Mohave, 285 Ill.App.3d 330 (1996)

I held that an Arizona judgment had been satisfied and that an action thereon could not be maintained in DuPage County under the Registration of Foreign Judgments Act. The Appellate Court reversed the holding and remanded the matter for determination as to whether or not the Illinois petitioners were proper successors in interest of the Arizona judgment. The trial was held pursuant to the Appellate Court remand.

6. Villegas v. Brd. of Fire & Police Comm'rs of the Village of Downers Grove, 167 Ill.2d 108 (1995)

The plaintiff was discharged for cause from the Downers Grove Police and Fire Department by the City's Police and Fire Commission. I reversed the decision of the Commission because the plaintiff was not afforded an adequate pre-termination hearing under the Downers Grove Municipal Code as required by Cleveland Brd. of Educ. v. Loudermill, 470 U.S. 532 (1985). The Appellate Court affirmed this decision (266 Ill.App.3d 202). The Illinois Supreme Court ruled that a proceeding before the fire chief was a hearing for the purposes of due process and that the absence of express language providing for such hearing was not controlling in light of the history of its application in the facts of this case.

7. Teerling Landscaping v. Chicago Title & Trust Co., 271 Ill.App.3d 858 (1995)

I dismissed Count I of plaintiff's complaint to foreclose a mechanic's lien. The Appellate Court affirmed this dismissal but remanded the matter based on a holding that the plaintiff was entitled to damages on another count pursuant to the applicable statute.

8. Rehabilitation Consultants for Industry, Inc. v. Nowak, 259 Ill.App.3d 725 (1994)

I awarded sanctions against the plaintiff and plaintiff's attorney. The Appellate Court reversed this order on the grounds that the motion for sanctions was filed 31 days after the plaintiff's voluntary dismissal of the complaint and was therefore not timely filed.



9. A. W. Wendell & Sons v. Qazi, 254 Ill.App.3d 97 (1993)  
I entered judgment in favor of the plaintiff on a construction contract. The Appellate Court affirmed the judgment in part but held that the finding regarding an agreement to pay certain engineering fees was contrary to the weight of the evidence.
10. Passon v. TCR, Inc., 242 Ill.App.3d 259 (1993)  
I entered an order granting temporary injunctive relief based on verified pleadings presented by the plaintiff. The Appellate Court ruled that the matter required an evidentiary hearing thereon.
11. LSBZ, Inc. v. Brokis, 237 Ill.App.3d 415 (1992)  
I entered a preliminary injunction in favor of the plaintiff based on the covenant not to compete. The Appellate Court reversed and remanded the matter, holding that the plaintiff had not made a proper showing of injury to a legitimate business interest. The matter was resolved pursuant to the Appellate Court's decision.
12. Grischow v. Industrial Commission, 228 Ill.App.3d 551 (1992)  
I found that the decision of the Illinois Industrial Commission denying petitioner's claim of permanent disability pursuant to the Illinois Workers' Compensation Act was contrary to the manifest weight of the evidence. The Appellate Court held that the Commission's ruling was not contrary to the manifest weight of the evidence.
13. State Farm Fire & Casualty Co. v. Yapejian, 152 Ill.2d 533 (1992)  
I dismissed the plaintiff's complaint on the grounds that the interpretation of an insurance contract regarding an uninsured motorist must be submitted to arbitration, based on the amendment to the applicable section of the Illinois Insurance Code. The Appellate Court affirmed this ruling (217 Ill.App.3d 516). The Illinois Supreme Court reversed, holding that the legislature did not intend such a result.
14. Evangelical Hosp. Corp. v. Department of Rev., 223 Ill.App.3d 225 (1991)  
I affirmed a ruling of the Illinois Department of Revenue, which denied a real estate tax exemption. The Appellate Court affirmed my decision in part but found that the Department of Revenue failed to exempt a certain part of the real estate by virtue of its use as a charitable purpose.
15. Beghr Willowbrook Venture v. Village of Willowbrook,  
217 Ill.App.3d 614 (1991)  
I construed the Illinois statute to permit persons who signed a petition to create a special service area to withdraw their names after the petition had been filed. The Appellate Court reversed my decision based on their interpretation of the statute.

16. Hamilton v. Williams, 214 Ill.App.3d 230 (1991)  
I reversed the decision of an arbitrator based on the objection of one of the parties. The Appellate Court reversed my ruling and held that the objecting party had waived its right to contest the arbitration decision. The matter was remanded to the trial court, and judgment was entered consistent with the remand.
17. Stone v. Department of Employment Security Brd. of Review, 213 Ill.App.3d 739 (1991)  
I ruled that the Circuit Court had jurisdiction to review a decision of the Department of Employment Security Board of Review. I also held that the referee had conducted a hearing which denied due process. The Appellate Court affirmed my holding regarding jurisdiction and that the Board's procedure resulted in a denial of the right to a fair hearing but reversed my ruling that the Board's appeal was not timely filed. The matter was remanded for a new hearing.
18. The People ex. rel. James E. Ryan v. Village of Villa Park, 212 Ill.App.3d 187 (1991)  
I held that the defendant, Village Board of Villa Park, in meeting in closed session to discuss the acquisition of real estate was acting under an exemption of the Illinois Open Meetings Act. The Appellate Court reversed, holding that the Board acted in violation of the Act and that the exemption did not apply.
19. Hartford Ins. Co. v. Jackson, 206 Ill.App.3d 465 (1990)  
I interpreted the language in an insurance policy to mean that the insurer had no duty to defend or indemnify the defendant for injuries arising out of an automobile accident. The Appellate Court reversed based on a contrary interpretation of the policy language.
20. Annemarie Hatch v. Golden Rule Ins., 204 Ill.App.3d 790 (1990)  
I ruled that a witness's testimony was not barred by Illinois Supreme Court Rule 220, which regulates pre-trial discovery of expert witnesses. The Appellate Court held the witness in question was barred by application of the rule and remanded the matter for a new trial. A new trial was had pursuant to the Appellate Court remand.
21. Placko v. Jackson, 197 Ill.App.3d 138 (1990)  
I ruled that the decision of the Department of Employment Security, which denied plaintiff's claim for unemployment benefits, was not contrary to the manifest weight of the evidence. The Appellate Court reversed my ruling and remanded the matter to the trial court with directions to allow the plaintiff to present in evidence the question of whether the plaintiff had received adequate notice. The matter was resolved as directed by the Appellate Court.
22. Davane, Inc. v. Mongreig, 193 Ill.App.3d 636 (1990)  
I awarded specific performance on a contract for the sale of real estate. The Appellate Court reversed this ruling, holding that the contracts between the parties had been renounced and were therefore not enforceable.

23. Parrish v. Glen Ellyn Savings & Loan, 193 Ill.App.3d 629 (1990)  
I entered summary judgment in favor of the plaintiffs for a deficiency judgment pursuant to a complaint for foreclosure of a real estate mortgage. The Appellate Court reversed and held that because the complaint failed to specify the defendant as a party against whom a deficiency judgment could be entered that summary judgment was not proper in the context of the default judgment.
24. Crowley v. The Department of Employment Security Board of Review, et. al., 190 Ill.App.3d 900 (1989)  
I affirmed the decision of the Illinois Department of Employment Security's denial of employment benefits to the plaintiff. The Appellate Court reversed, holding that although the plaintiff may have disobeyed his employer's orders, he did so with a good faith belief that the employer was violating the Illinois Labor Act, and therefore the plaintiff was not disqualified from receiving unemployment benefits.
25. The Delcon Group, Inc. v. Northern Trust, et. al., 187 Ill.App.3d 635 (1989)  
This case was tried before a jury. I entered judgment on the six jury verdicts awarding actual and punitive damages based on a jury finding of a breach of contract, intentional interference with contract, and fraud. The Appellate Court reversed, holding that the jury verdicts were contrary to the weight of the evidence.
26. Weissinger v. Edgar, 180 Ill.App.3d 806 (1989)  
I held that the 35-day limit in which a complaint must be filed seeking final administrative review of the Secretary of State's decision to revoke a driver's license was jurisdictional and therefore reversed the ruling of the Secretary of State. The Appellate Court vacated my ruling based on its interpretation of the statute and reversed with directions to reinstate the Secretary of State's final order.
27. Perkins v. Collette, 179 Ill.App.3d 852 (1989)  
I granted the defendant's motion to dismiss the complaint and found that the plaintiff's allegations the defendant fraudulently represented a lot could be improved by a residence was a representation of a matter of law and could not be the basis of a fraud. The Appellate Court held to the contrary and found that a material issue of fact existed as to the reasonable reliance by the plaintiff on the alleged misrepresentation. The matter was disposed of pursuant to the Appellate Court's remand.
28. Baley v. Tonti, 174 Ill.App.3d 828 (1988)  
I granted the defendant's motion to dismiss with prejudice based on a finding that the abandonment of a previously filed complaint by the plaintiff was a voluntary dismissal pursuant to Section 13-217 of the Illinois Code of Civil Procedure. The Appellate Court reversed and held that the abandonment did not constitute a dismissal and that the statutory section permitting one refile of an action following a voluntary dismissal did not preclude the filing of a third action.

29. Martin v. Eggert, 174 Ill.App.3d 71 (1988)  
 I issued a mandatory preliminary injunction directing the defendants to take certain steps to prevent the reoccurrence of flooding the plaintiff's property. The Appellate Court reversed and held that the injunction did not maintain and preserve the status quo because the draining system ordered to be installed pursuant to the injunction was not in existence prior thereto.

**(3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court ruling on such opinions.**

1. Wright v. County of DuPage, 98 CH 572
2. Rollin Foods v. Village of Glendale Heights, 94 CH 560
3. People v. Forest Preserve Dist. of DuPage County, 90 MR 549
4. People v. Kerr-McGee Chem. Corp., 90 CH 220  
 210 Ill.App.3d 115 (1991)

Unpublished opinions are attached.

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

I was a candidate for Justice of the Second District Appellate Court for the State of Illinois. I was defeated in the primary election in March of 1994.

1985 - 1986: I was appointed Public Administrator by the Governor of the State of Illinois. The Public Administrator is authorized by statute to represent the estates of person dying within Illinois where there is no person eligible to serve as administrator.

1985 - 1986: I was appointed Public Guardian by the Governor of the State of Illinois to represent wards in need of guardianship services where no one is eligible and willing to serve as guardian.

1976 - 1978: I was appointed Special Assistant Attorney General for condemnation.

**17. Legal Career:**

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

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

I never served as a clerk to a judge.

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

From 1984 to 1986, I practiced alone at 240 East Lake Street, Addison, Illinois, 60101.

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

1969 - 1971:

Attorney Advisor  
Federal Trade Commission  
Chicago Regional Office  
219 South Dearborn Street  
Chicago, Illinois

1971 - 1973 (part-time):

Deputy Public Defender  
DuPage County, Illinois  
505 North County Farm Road  
Wheaton, Illinois

1971 - 1973:

Partner at Cox, Lyle & Darrah  
Attorneys at Law  
526 Crescent Boulevard  
Glen Ellyn, Illinois

1972 - Present (part-time):

Adjunct Professor  
Northern Illinois University College of Law  
DeKalb, Illinois

1973 - 1976:

Assistant State's Attorney  
Supervisor of Misdemeanor/Juvenile Divisions  
505 North County Farm Road  
DuPage County, Illinois

1976 - 1981:

Partner at Ryan & Darrah  
240 East Lake Street  
Addison, Illinois

1981 - 1984:

Partner at Ryan, Darrah & Stringini  
Attorneys at Law  
240 East Lake Street  
Addison, Illinois

1984 - 1986:

John W. Darrah, Attorney at Law  
Sole Practitioner  
240 East Lake Street  
Addison, Illinois

December 1986 to Present:

Circuit Court Judge of the 18th Judicial Circuit  
DuPage County, Illinois  
505 North County Farm Road  
Chancery Division  
Courtroom 2005  
Wheaton, Illinois

- b. **1. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**
- 2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

From 1969 to 1971, while employed with the Federal Trade Commission, I practiced law involving commerce and trade regulations, including consumer protection and antitrust law.

From 1971 to 1973, I was engaged in the general practice of law in Glen Ellyn, Illinois, including criminal and civil litigation matters and non-litigation cases including real estate, corporate and family law. The individual clients were generally all local residents, and the business clients were small family or closely held partnerships or corporations.

I was a Deputy Public Defender from 1971 to 1973.

From 1973 to 1976, I was employed as a prosecutor in the Criminal Division of the DuPage County State's Attorney's Office and was supervisor of the misdemeanor and juvenile divisions.

From 1976 to 1986, I was engaged in the private practice of law with an emphasis in criminal defense litigation. The individual clients were generally all local residents, and the business clients were small family or closely held partnerships or corporations.

I was appointed Public Administrator for the period 1985 to 1986 by the Governor of the State of Illinois. The Public Administrator is authorized by statute to represent the estates of person dying within Illinois if there is no person eligible to serve as administrator.

I was also appointed Public Guardian from 1985 to 1986 by the Governor of the State of Illinois to represent wards in need of guardianship services in cases where no one is eligible and willing to serve as guardian.

In addition, I was appointed Special Assistant Attorney General for condemnation from 1976 to 1978.

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

From 1971 until the time of my election to the Circuit Court Bench, I was in court on a daily basis.

- 2. What percentage of these appearances was in:**

- (a) federal courts:** 1%
- (b) state courts of record:** 95%
- (c) other courts:** 4% (Administrative agencies, including police and fire commissions and zoning boards).

- 3. What percentage of your litigation was:**

- (a) civil:** 33%
- (b) criminal:** 67%

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

I tried approximately 300 cases (including criminal, felony and misdemeanor and traffic courts, and civil, including general law and small claims) to verdict in courts of record, generally as sole counsel. On a few occasions, less than 25 times, I had co-counsel.

- 5. What percentage of these trials was:**

- (a) jury:** 10%
- (b) non-jury:** 90%

**18. Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each. 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.

While there are no files in my possession regarding clients that I represented while engaged in the private practice of law before becoming a judge more than 13 years ago, the following has been reconstructed from the records of the Clerk of the Circuit Court of the 18th Judicial Circuit, my own recollection, and conversations with others who were involved in these cases.

1. People v. Mosier, 18th Judicial Circuit, DuPage County, Illinois  
Case Number 77 CF 978. Judge John Bowman presided.

I represented the defendant, who was charged with sexual assault. This case was significant in that the defense cross-examination of the complaining witness by use of telephone records and other evidence disclosed that she had invited the defendant to the apartment where she was staying and where the conduct in question occurred. This materially impeached her direct-examination in this regard. Also, the defense produced evidence through expert testimony that a latent fingerprint lifted from a light bulb which had been loosened to darken the apartment did not match the fingerprint of the defendant and was not excluded as the fingerprint of the complaining witness. This also materially contradicted the complaining witness's testimony. The defendant testified that the sexual contact between him and the complaining witness had been consensual. The jury found the defendant not guilty. The jury trial ended on January 12, 1978.

The State's Attorney was James E. Raymond, presently practicing law at 45 North Addison Road, Addison, Illinois, 630-617-5959.

2. People v. Walsh, 18th Judicial Circuit, DuPage County, Illinois  
Case Numbers 79 CF 1281, 79 CF 1276, 79 CF 1266, and 79 CF 1271.  
Judge Bruce R. Fawell (retired) presided.

I represented a man charged with twelve criminal counts arising out of a riot in the DuPage County Jail. I represented the defendant through all stages of the proceedings and tried the case before a jury. The defendant was found not guilty on all 12 felony counts.



The jury trial ended on December 4, 1979.

The Assistant State's Attorney was James Moroni, presently practicing law at Moroni & Handley, 373 South Schmale Road, Carol Stream, Illinois, 630-462-1800.

3. People v. Andrew Last Name Unknown, 18th Judicial Circuit, DuPage County, Illinois, Case Number unknown, 1979 or 1980. Judge Bruce R. Fawell (retired) presided.

I am unable to recall the last name of the defendant, whom I represented in a rape case. The defendant asserted that the sexual contact between the parties was consensual, and the case was tried before a jury. The case involved the application of the then, recently enacted, Illinois Rape Shield Statute. The defendant was found not guilty.

The prosecuting attorney was Assistant State's Attorney Robert J. Anderson, presently Circuit Court Judge, 505 North County Farm Road, Wheaton, Illinois, 630-682-6862. My co-counsel was Dorothy Korstadt, 1250 Humboldt, Unit 603, Denver, Colorado, 80218, 303-860-7484. I have spoken to both of them, who, likewise, cannot recall the defendant's last name but corroborate the details of the case as I recall them.

4. People v. Cooney, 18th Judicial Circuit, DuPage County, Illinois, Case Number 80 CF 1651. Judge Charles A. Norgle presided.

I represented the defendant, who was charged with reckless homicide, leaving the scene of an accident involving death or personal injury, disobeying a traffic control device, and speeding. The case involved the use of testimony by the defendant of an expert from Northwestern Traffic Institute who testified to the improper placement of the traffic signal located beyond a "cone of vision" which, in his opinion, did not permit the defendant ample time to bring his automobile to a stop. The defendant's vehicle struck a young girl who had stepped off of the sidewalk after she had apparently pushed a button on the traffic signal to activate the stoplight. The case also involved a motion for the production of information based on a newspaper article, and it included a hearing regarding the Illinois newspaper reporter privilege statute. I tried the case before a jury. The defendant was convicted on all counts. The jury trial ended on May 22, 1981. The conviction was affirmed by the Appellate Court. There is no citation of any appeal to this case.

The prosecutor was Assistant State's Attorney Thomas Knight, presently practicing law at Walsh, Knippen, Knight & Diamond, Chtd., 601 West Liberty Drive, Wheaton, Illinois, 630-462-1980.

5. People v. Kevin, 18th Judicial Circuit, DuPage County, Illinois, Case Number 81 CF 1640-06. Judge John Bowman presided.

I represented the defendant, who was charged with two counts of attempted murder, four counts of home invasion, and two counts of aggravated battery. The case involved the alleged attempt by my client on the life of his estranged wife and her boyfriend. The defendant raised several defenses. It was asserted that, because he was a co-owner of an

interest of the home where the incident took place, he could not be guilty of home invasion under the Illinois statute. The law required conduct to have occurred in "the home of another." The prosecution argued this was satisfied by the fact that his estranged wife also was "another owner of the home." The defense also denied the material allegations involving murder and aggravated battery and also asserted the defense of justifiable use of force or self-defense. The case was tried before a jury. The defendant was found not guilty on all eight charges. The jury trial ended on March 17, 1983.

The Assistant State's Attorney was Peter Dockery, presently an Associate Judge, 18th Judicial Circuit, 505 North County Farm Road, Wheaton, Illinois, 630-682-7498.

6. People v. Aspel, 18th Judicial Circuit, DuPage County, Illinois, Case Number 81 CF 404. Judge Charles A. Norgle presided. It was reassigned from Judge Carl J. Henninger.

I represented the defendant on appeal. The defendant had been found guilty of armed robbery and had been represented by Deputy Public Defender Thomas J. Laz, presently practicing law at 600 South Washington, Naperville, Illinois, 630-717-1200.

The State was represented by Assistant State's Attorney Peter Dockery, presently an Associate Judge, 18th Judicial Circuit, 505 North County Farm Road, Wheaton, Illinois, 630-682-7498.

The case was tried by Mr. Laz before a jury, who returned a verdict of guilty, which required the imposition of a mandatory minimum term of four years in the penitentiary. I was retained for post-trial proceedings and appeal. A review of the jury trial transcript disclosed testimony by a Westmont Police Officer which corroborated a material element of the description of the victim of the armed robbery. The victim testified that the defendant's hair was lighter in color than it actually was. The police officer testified that he had been in the gas station, which was the scene of the armed robbery, one week later at generally the same time of day and the sunlight caused hair colors to appear lighter than they were. Material I obtained from the United States Weather Bureau for the day in question contradicted the testimony of the police officer and proved that the weather conditions were cloudy and overcast. I further learned that the victim, and only eyewitness, had been permitted to view the defendant without a lineup before her formal identification of him as the perpetrator. This had not been previously disclosed to the defendant or defendant's counsel nor raised at trial. In fact, the complaining witness had testified to the contrary during the trial. I filed a motion for post-trial discovery; and the trial court Judge Carl J. Henninger, now deceased, vacated the jury trial verdict and granted a new trial. The case was reassigned to Judge Charles A. Norgle. I then filed a motion to suppress the confession obtained from the defendant upon determining that he was of diminished mental capacity. The motion to suppress the confession was granted on November 10, 1982; and the State appealed. The appeal was denied by the Illinois Appellate Court, Second District, pursuant to Supreme Court Rule 23 on December 7, 1983.

The matter was remanded to the trial court, where the charge was later dismissed upon motion of the State. The charge was never refiled against the defendant, and he was released from bond.

7. People v. Shimkus, 18th Judicial Circuit, DuPage County, Illinois, Case Number 83 CF 345-01, 02. Judge John J. Nelligan presided.

I represented the defendant, who was charged with calculated drug conspiracy, delivery of a controlled substance in excess of 30 grams, and delivery of a controlled substance. The defense raised the issue of the identity of the perpetrator who was not apprehended during the drug transaction with undercover narcotics agents. The defendant was apprehended three days later and had confessed to the crime. Previous counsel for the defense was unsuccessful in suppressing the confession. I represented the defendant during trial. I argued that the confession was involuntary and therefore untrustworthy. The defendant was convicted on all three counts. The jury trial ended on November 18, 1983. The case was reaffirmed on appeal. (135 Ill.App.3d 981).

The prosecutor was Scott M. Day, presently practicing law as Day & Robert, P.C., 300 East Fifth Avenue, Naperville, Illinois, 630-637-9811.

8. People v. Huska, 18th Judicial Circuit, DuPage County, Illinois, case number and trial date unknown. Former Circuit Court Judge Edward Kowal presided.

The State was represented by Assistant State's Attorney Nancy Wolfe, 505 North County Farm Road, Wheaton, Illinois, 630-682-7598. I represented the defendant and was assisted by John Lundquist, co-counsel, now deceased.

The defendant was charged with the offense of sexual assault, and he asserted that the contact was consensual. The defense involved the production of witnesses who lived next-door and photographs of these witnesses' bedroom window and their view of the defendant's driveway, which was the subject of their testimony. The witnesses testified that both the defendant and the complaining witness were apparently extremely intoxicated, that they had kissed and embraced while lying on the driveway prior to entering the defendant's home. The defense also produced detailed testimony and a map of the area depicting the route the parties took to the defendant's house, including stoplights and stop signs and the general residential and commercial nature of the neighborhood. The matter was tried before a jury. The defendant was found not guilty of the charge.

The records of the Circuit Court of DuPage County contain no reference to this lawsuit, apparently, because these records have been expunged. Expungement, under Illinois law, removes evidence of the criminal proceeding but does not cause the file to be regarded as sealed. However, an arrest record and police report regarding the incident is on file with the Villa Park Police Department as Number 210300244.

9. People v. Ross, 18th Judicial Circuit, DuPage County, Illinois, case number and trial date unknown, 1985. Judge John Bowman presided.

The defendant was charged with the offense of murder. The defendant asserted self-defense. The victim was the defendant's brother, who had been released recently from the penitentiary. The defense disclosed that the victim was heavily dependent on drugs and alcohol and was significantly impaired on the night of the occurrence. The defendant testified that he was attacked by his brother for failing to give his brother money and that he shot his brother in self-defense. The location and angle of entry of the gunshot wounds were not inconsistent with the defendant's testimony.

I represented him with co-counsel Sherman Magidson, presently practicing law as Magidson & Sullivan, 321 South Plymouth, Chicago, Illinois, 312-782-5534. The State was represented by Assistant Attorney General Richard Schwind, Illinois Attorney General, 100 West Randolph, Chicago, Illinois, 312-814-5357.

I participated at all stages of the trial. The case was tried before Judge John Bowman without a jury. The defendant was found not guilty. The records of the Circuit Court Clerk of DuPage County contain no reference to this lawsuit, apparently, because the records have been expunged. However, phone conversations with the prosecutor Rick Schwind and co-counsel Sherman Magidson confirm the above information.

10. People v. Janik, 18th Judicial Circuit, DuPage County, Illinois, Case Numbers 85 TR 2656, 85 TR 2657, 85 TR 2658, and 85 TR 2659. Judge Thomas E. Callum presided.

I represented the defendant, who was charged with the offense of driving under the influence of alcohol, driving under the influence of alcohol while blood concentration was in excess of .10, and leaving the scene of an accident involving death. I represented the defendant through all stages of the trial court proceedings. The case was tried before a jury. The case involved the presentation of the defense as necessity and a challenge to the procedures used in performing blood alcohol tests. The defendant was convicted of driving under the influence of alcohol and leaving the scene of an accident involving death but found not guilty of driving under the influence of alcohol while blood concentration was .10 or more.

The approximate date of trial was September of 1986. The case was reversed by the Illinois Appellate Court, Second District at 165 Ill.App.3d 453 based on the failure of the trial court judge to give an instruction regarding the defense of necessity. The Illinois Supreme Court reversed the Illinois Appellate Court and affirmed the conviction at 127 Ill.2d 390.

The prosecutor was Charles Rea, presently practicing law at 115 East South Street, Plano, Illinois, 630-552-1050.

Some of the above cases are older than five years, and the following are 10 members of the legal community who have had recent contact with me:

William R. Quinlan  
Attorney at Law  
Quinlan and Grisham, Ltd.  
30 North LaSalle Street  
Chicago, Illinois 60602  
312-917-8450

Keith E. Roberts, Sr.  
Donovan & Roberts, P.C.  
104 East Roosevelt Road, Suite 202  
Wheaton, Illinois 60187  
630-668-4211

James E. Ryan  
Illinois Attorney General  
100 West Randolph, 12th Floor  
Chicago, Illinois 60601  
312-814-2503

James R. Schirott  
Schirott & Luetkehans, P.C.  
105 East Irving Park Road  
Itasca, Illinois 60143  
630-773-8500

Warren D. Wolfson  
Justice of Illinois Appellate Court  
First District, Fourth Division  
160 North LaSalle Street, Suite S-1505  
Chicago, Illinois 60601  
312-793-5408

James J. Alfini  
Professor of Law  
Northern Illinois University College of Law  
DeKalb, Illinois 60115  
815-753-1680

Samuel Oddi  
Professor of Law  
Northern Illinois University College of Law  
DeKalb, Illinois 60115  
815-753-1980

Harold Field  
 Attorney at Law  
 Schiller, DuCanto & Fleck  
 300 South County Farm Road, Suite A  
 Wheaton, Illinois 60187  
 630-665-5800

Joseph M. Laraia  
 Attorney at Law  
 Laraia & Hubbard, P.C.  
 1761 Naperville Road, Suite 203  
 Wheaton, Illinois 60187  
 630-690-6800

Gordon Shneider  
 Professor of Law  
 Northern Illinois University College of Law  
 DeKalb, Illinois 60115  
 815-753-0660

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

As an Adjunct Professor of Law at Northern Illinois University College of Law since 1972, I have taught courses in the following areas of law:

Administrative Law	Consumer Protection	Future Interest
Agency/Partnership	Criminal Law	Evidence
Civil Procedure	Advanced Criminal Procedure	Property
Constitutional Law	Real Estate Transactions	Trial Advocacy
	Unfair Trade Practice	

I was awarded the honor of Law School Professor of the Year in 1992 and again in 1995.

Since 1991, I have also been a member of the faculty of the National Institute for Trial Advocacy, which is conducted at Northwestern University School of Law under the direction of James Carey, NITA Program Director, and Thomas Geraghty, Former NITA Program Director. I have also lectured on the topics of jury trials and evidence at previous

Illinois Judicial Conferences, and I have lectured on the practice of law before Chancery courts at various seminars for the DuPage County Bar Association for the past thirteen years. Additionally, I was co-founder and chairman of the trial advocacy seminar conducted at the DuPage County Courthouse in connection with the DuPage County Bar Association in 1995, 1996 and 1998.

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

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

I will be eligible for payments from the Illinois Judicial Pension Fund immediately upon retirement as Illinois Circuit Court Judge.

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

My lack of ownership or other interest in any other corporations, partnerships, trusts, or like entities make such a conflict of interest unlikely. If I were appointed to the District Court, I would, as I do now, carefully review all cases to determine the presence of a conflict of interest before deciding any issues therein. If a conflict arises, I will follow the Code of Judicial Conduct in resolving it.

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

I have no commitment to continue as a Professor of Law after the semester ending in May of 2000. However, if I am appointed to the Federal Judiciary and time permits, I would consider continuing such activity; and, if so, I would seek permission from the Chief Judge.

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

See attached Financial Disclosure Report (AO-10).

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

See attached Financial Net Worth Statement.



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

Yes. In 1984, I assisted my then-law partner James E. Ryan in his successful nomination and election to the office of State's Attorney for DuPage County before he became the Illinois Attorney General. He won the Primary Election in March of 1984 and was unopposed in the General Election in November of that year and took office in December. I do not recall having a formal title; although, because of our close professional and personal association, I was involved in the planning and execution of all aspects of his campaign.

**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			Notes payable to banks—secured		
U.S. Government securities—add schedule			Notes payable to banks—unsecured		
Listed securities—add schedule			Notes payable to relatives		
Unlisted securities—add schedule			Notes payable to others		
Accounts and notes receivable:	27	000 00	Accounts and bills due		
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid tax and interest		
Doubtful			Real estate mortgages payable—add schedule (LaSalle Mortgage)	266	665 51
Real estate owned—add schedule (Residence)	350	000 00	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts—itemize:		
Automobiles and other personal property	1	000 00	West Suburban Bank	2	655 59
Cash value—life insurance			MBNA America	5	686 50
Other assets—itemize:			Centurion Bank	3	777 11
Personal Property					
Home Furnishings, Clothing					
etc.	10	000 00	<b>Total Liabilities</b>	281	684 71
<b>Total Assets</b>	388	000 00	<b>Net Worth</b>	106	315 29
			<b>Total Liabilities and net worth</b>	388	000 00
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, comaker or guarantor		0	Are any assets pledged? (Add schedule.)	No	
On leases or contracts \$685.00 per Automobile Lease month			Are you defendant in any suits or legal actions?	No	
Legal Claims (Attorney's Fees)	3	500 00	Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax					
Other special debt					

AO-10 Rev. 1/2000		<b>FINANCIAL DISCLOSURE REPORT FOR NOMINATION FILING</b>		<i>Report Required by the Ethics in Government Act of 1978, (5 U.S.C. App. 4, §§101-111)</i>	
1. Person Reporting (Last name, first, middle initial) DARRAH, JOHN W.		2. Court or Organization District Court Northern District of Illinois		3. Date of Report May 15, 2000	
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Court Judge Nominee		5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 5/11/00 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final		6. Reporting Period January 1, 1999 - April 30, 2000	
7. Chambers or Office Address 505 North County Farm Road Courtroom 2005 Wheaton, IL 60187		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____			
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.					

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

	POSITION	NAME OF ORGANIZATION/ENTITY
<input checked="" type="checkbox"/>	NONE (No reportable positions.)	
1		
2		
3		

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

	DATE	PARTIES AND TERMS
<input type="checkbox"/>	NONE (No reportable agreements.)	
1	Illinois State Retirement Systems/Judges' Retirement System of Illinois	However our judicial plan is set up.
2		
3		

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/>	NONE (No reportable non-investment income.)		
1			
2	2000	Circuit Court Judge, State of Illinois	\$ 52,699.15
3	1999	Circuit Court Judge, State of Illinois	\$121,955.96
4	2000	Manager, Horizon Management Group, Inc. d/b/a Ogden Manor (Spouse)	\$
5	1999	Manager, Horizon Management Group, Inc. d/b/a Ogden Manor (Spouse)	\$
6			\$

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	DARRAH, JOHN W.	May 15, 2000

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

	<u>SOURCE</u>	<u>DESCRIPTION</u>
<input type="checkbox"/>	NONE (No such reportable reimbursements.)	
1		
2	EXEMPT	
3		
4		
5		
6		
7		

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

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
<input type="checkbox"/>	NONE (No such reportable gifts.)		
1	EXEMPT		\$
2			\$
3			\$
4			\$

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

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE*</u>
<input checked="" type="checkbox"/>	NONE (No reportable liabilities.)		
1			
2			
3			
4			
5			
6			

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting DARRAH, JOHN W.	Date of Report May 15, 2000
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**VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions** (Includes those of spouse and dependent children. See pp. 35-55 of Instructions.)

A Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure</i>	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1)	(2)	(1)	(2)	If not exempt from disclosure				
	Am't. Code (A-H)	Type (e.g. div. int.)	Value Code (J-P)	Value Method Code (Q-W)	Type (e.g. buy, sell, merger, redemption)	(2) Date: Month, Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
1 Illinois State Retirement Systems		Pension	M	V	EXEMPT				
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3									
4									
5									
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7									
8									
9									
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12									
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15									
16									
17									
18									

1 Income/Gain Codes: A=\$1,000 or less; B=\$1,001-\$2,500; C=\$2,501-\$5,000; D=\$5,001-\$15,000; E=\$15,001-\$50,000; F=\$50,001-\$100,000; G=\$100,001-\$1,000,000; H=\$1,000,001-\$5,000,000; I=\$5,000,001-\$10,000,000; J=\$10,000,001-\$50,000,000; K=\$50,001-\$100,000; L=\$100,001-\$250,000; M=\$250,001-\$500,000; N=\$500,001-\$1,000,000; O=\$1,000,001-\$1,000,000; P=\$1,000,001-\$5,000,000; Q=\$5,000,001-\$25,000,000; R=\$25,000,001-\$50,000,000; P4=More than \$50,000,000

2 Value Codes: J=\$15,000 or less; K=\$15,001-\$50,000; L=\$50,001-\$100,000; M=\$100,001-\$250,000; N=\$250,001-\$500,000; O=\$500,001-\$1,000,000; P=\$1,000,001-\$5,000,000; P2=\$5,000,001-\$25,000,000; P4=More than \$50,000,000

3 Value Method Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market; U=Book value; V=Other; W=Estimated

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	DARRAH, JOHN W.	May 15, 2000

**VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions** (Includes those of spouse and dependent children. See pp. 35-35 of Instructions)

A Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure</i>	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1)	(2)	(1)	(2)	If not exempt from disclosure				
	Amt. Code1 (A-11)	Type (e.g. div., rent or int.)	Value Code2 (1-7)	Value Method Code (Q-W)	Type (e.g. buy, sell, merger, redemption)	(2) Date: Month/Day	(3) Value Code2 (0-9)	(4) Gain Code1 (8-11)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> <b>NONE</b> (No reportable income, assets, or transactions)									
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1. Income/Gain Codes: A=\$1,000 or less (See Col. B1, D4); F=\$50,001-\$100,000	B=\$1,001-\$2,500; G=\$100,001-\$1,000,000	C=\$2,501-\$5,000; H=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000; H2=More than \$5,000,000	E=\$15,001-\$50,000
2. Value Codes: (See Col. C1, D3) F=\$15,000 or less; N=\$250,001-\$500,000; P3=\$25,000,001-\$50,000,000	K=\$15,001-\$50,000; O=\$500,001-\$1,000,000	L=\$50,001-\$100,000; P1=\$1,000,001-\$5,000,000; P4=More than \$50,000,000	M=\$100,001-\$250,000; P2=\$2,000,001-\$25,000,000	
3. Value Method Codes: (See Col. C2) Q=Appraisal; I=Book value	R=Cost (real estate only); V=Other	S=Assessment; W=Estimated	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	DARRAH, JOHN W.	May 15, 2000

**VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions** (Includes those of spouse and dependent children. See pp. 35-55 of Instructions.)

A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	If not exempt from disclosure				
	Am't Code1 (A-F)	Type (e.g., div., rent or int.)	Value Code2 (G-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, mover, redemption)	(2) Date: Month Day	(3) Value Code2 (A-F)	(4) Gain Code1 (A-F)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
37									
38									
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52									
53									
54									

1 Income/Gain Codes: A=\$1,000 or less (See Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=More than \$5,000,000 E=\$15,001-\$50,000

2 Value Codes: I=\$15,000 or less (See Col. C1, D3) N=\$250,001-\$500,000 K=\$15,001-\$50,000 O=\$500,001-\$1,000,000 L=\$50,001-\$100,000 P1=\$1,000,001-\$5,000,000 M=\$100,001-\$250,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$30,000,000 P4=More than \$30,000,000

3 Value Method Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (See Col. C2) U=Book value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	DARRAH, JOHN W.	May 15, 2000

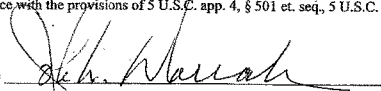
**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS** (Indicate part of Report.)

**IX. CERTIFICATION.**

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

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature



Date May 15, 2000

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App. 4, § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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



### III. GENERAL (PUBLIC)

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

I was Past Chairman of the Legal Aid Committee of the DuPage County Bar Association in approximately 1973.

I was a *pro bono* attorney for various clients appointed through the DuPage Bar Association from 1972 to 1986.

I was Past Officer of the Legal Aid Foundation of the DuPage County Bar Association in approximately 1982. The foundation provided legal assistance in civil matters to persons living in DuPage County that were indigent and unable to afford private legal representation.

I have been the coach of the Northern Illinois University College of Law Mock Trial Team from 1989 to the present and have been the Chairman of the 1998, 1999, and Year 2000 Regional National Trial Competition held in the DuPage County Courthouse, Wheaton, Illinois.

I served as a Public Defender and later was active in the Bar Association *pro bono* of legal aid activities. I chaired the Legal Aid Committee and was body liaison to the Prairie State, a non-for-profit corporation providing legal services for the poor and indigent. I continued to take *pro bono* cases throughout my career as a private practitioner and was court appointed on criminal cases for which I never sought reimbursement from the County.

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

I do not belong, and have never belonged, to any such associations.

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

I submitted an application to Senator Peter Fitzgerald on November 12, 1999, upon learning that the position for Federal District Court Judge was to be available. I was then contacted by the Senator's office and later interviewed by two of his staff attorneys. I then was interviewed by the Judicial Evaluation Committee of the Federal Bar Association on January 5, 2000. Thereafter, I met with Senator Peter Fitzgerald on January 13, 2000. I submitted my responses to the ABA and FBI questionnaires and subsequently met with representatives from the ABA, FBI, and Department of Justice.

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

No.

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

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

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

- a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**
- b. **A tendency of the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**
- c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**
- d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**

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

"Judicial activism" is a judicial philosophy contrary to the basic framework of our constitutional form of government. The standing doctrine, which requires the litigants to have a "personal stake" in the outcome of an actual controversy between them, inherently limits the application of the judicial authority and sharpens the presentation of issues because of a true adversary relationship. Our constitution requires separation of powers which further limits the reach of the judiciary. The related principle of checks and balances properly limits the concentration of power in any one of the three branches of government and preserves individual freedoms while still providing these governmental institutions with the flexibility and efficiency necessary to insure an orderly society. It is the general role of the judiciary to protect and enforce the rights and responsibilities of litigants before the Court as defined by legislative enactment, precedent, and the Constitution.

Judicial authority is further limited by the doctrine of stare decisis, which requires the judicial determinations be limited to and based upon previously developed case law. Also, because federal courts are courts of limited jurisdiction, federal judges are further restrained in the exercise of their authority. Judicial restraint, as a result of the observance of these important principles, is absolutely necessary to preserve the proper balance in the operation among the three branches of government.

[The biographical information of Mr. Huck follows:]

United States Senate  
Committee on the Judiciary  
Washington, D.C. 20510-6275

**QUESTIONNAIRE FOR JUDICIAL NOMINEES**

**I. BIOGRAPHICAL INFORMATION (PUBLIC)**

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

Paul Courtney Huck

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

Residence: Coral Gables, Florida

Office address: Kozyak, Tropin & Throckmorton, P.A.  
2800 First Union Financial Center  
200 So. Biscayne Boulevard  
Miami, Florida 33131

**3. Date and place of birth.**

July 22, 1940. Covington, Kentucky.

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

Married on April 9, 1994 to Donna Hatcher Huck.

My wife is self-employed as an independent contractor for two businesses: Clothes Unlimited, 1350 Blue Road, Coral Gables, Florida, 33146, which sells women's clothing; and H. Hertner Associates, 6600 Cowpen Road, Suite 220, Miami, Florida, 33314, which is a legal search consultant.

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

University of Cincinnati  
September 1958-December 1958

I left the University of Cincinnati because I was personally financing one hundred percent of my college education by working part-time while at the University and utilizing savings from my summer job. However, I ran out of money so I had to leave school. In January, 1959, I went to work as a truck driver until I saved enough money to finance my first year at the University of Florida, beginning the following September.

University of Florida  
September 1959-December 1962, Bachelor of Arts,

University of Florida School of Law  
April 1963-August 1965, Juris Doctorate, with honors, August 14, 1965.

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

January 1963 to April 1963  
Florida Farm Bureau, employee  
Gainesville, Florida

August 1965 to January 1969\*  
Frates, Fay, Floyd & Pearson (now Richman, Greer, Weil Brumbaugh Mirabito & Christensen, P.A.) Associate/attorney  
Miami, FL

\*During this period I was on active duty with the United States Army Reserve from February, 1966 to July, 1966.

July 1969 to April 1973  
Quinton, Lieb, Parks and Aurell, P.A., (no longer in existence) Shareholder/attorney  
Miami, Florida

April 1973 to April 1975  
Aurell & Huck (no longer in existence)  
Partner/attorney  
Miami, Florida

April 1975 to August 1981  
Mahoney, Hadlow & Adams, P.A. (now McGuire, Woods, Battle & Boothe)  
Shareholder/attorney  
Jacksonville, Florida

August 1981 to February 1986  
Fleming & Huck (Paul C. Huck, P.A.) (now Ford & Harrison, LLP)  
Shareholder/attorney  
Miami, Florida

February 1986 to December 1993  
Proenza, White, Huck & Roberts, P.A., (now Proenza, Roberts & Hurst, P.A.)  
Shareholder/attorney  
Miami, Florida

January 1994 to present  
Kozyak, Tropin & Throckmorton, P.A., Shareholder/attorney.  
Miami, Florida

September 1984 to present  
University of Miami, adjunct professor  
School of Law  
Coral Gables, Florida

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

United States Army Reserve

- a) January 1969 - December 1972, Captain, JAGC  
Social Security Number [REDACTED], honorable discharge
- b) December 1965-January 1969, Specialist Five, General Hospital,  
Serial Number [REDACTED], honorable discharge.

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

Florida Blue Key, University of Florida Leadership Society  
 Highest grade on 1965 Florida Bar Examination.  
 Ranked second in graduating class  
 Order of Coif  
 Graduated with academic honors  
 Awarded eight book awards for highest grades in law courses  
 University of Florida, Law Review, 1963-65;  
     Executive Editor, 1964-65; Editorial Board, 1964-65;  
     Associate Editor and Student Instructor, 1963-64  
 Attorney General, University of Florida Honor Court  
 Honor Court Bar Association, Charter member  
 Selected by Florida Supreme Court Chief Justice Campbell Thomas to represent  
     and respond on behalf of new Florida Bar admittees at swearing in  
     ceremonies.  
 Phi Delta Phi legal fraternity - President, Treasurer, 1963-1965  
 John Marshall Bar Association, 1963-1965, Service award  
 Phi Eta Sigma scholarship society  
 Phi Kappa Phi scholarship society  
 Ford Foundation Fellowship awarded for graduate work  
 The Eugene P. Spellman American Inn of Court  
 "AV" rating by Martindale-Hubbell since 1979.

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

Federal Magistrate Judge Merit Selection Panel, United States District Court for the  
     Southern District of Florida  
 American Bar Association  
 The Florida Bar Association  
     Board of Governors, Young Lawyers Section, 1970 - 1977  
     Grievance Committee (1980s)  
     Rules of Civil Procedure Committee (late 1980s)  
     Rules of Evidence Committee (mid 1980s)  
     Professionalism Committee (current)  
 Dade County Bar Association  
     Board of Directors, Young Lawyer Section 1968-1974  
     Professionalism Committee (current)  
     Civil Litigation Committee (current)



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

I belong to the following organizations which I believe are active in lobbying before public bodies:

American Bar Association  
 Florida Bar Association  
 Academy of Florida Trial Lawyers

Other organizations to which I belong are:

The Eugene P. Spellman American Inn of court  
 Riviera Country Club  
 American Bar Endowment  
 Miami City Club

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

United States Circuit Court of Appeals, Eleventh Circuit, October 1, 1981  
 United States Circuit Court of Appeals, Fifth Circuit, 1966-1981 (Eleventh Circuit Court was created.)  
 United States District Court, Southern District of Florida, 1966.  
 Florida Supreme Court, 1965.

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

Chapter 22, Declaratory Relief, Florida Bar Continuing Legal Education Publication, Florida Civil Practice Before Trial, current and prior editions. A copy of the current edition is included here.

Student Note for University of Florida Law Review, Winter, 1965, Vol. XVII, pp. 390-410, "Harbor Pilots and Pilotage in Florida". A copy is included here.

"Current Cases" in Florida Land Title Newsletter.  
Comments on recent Florida cases, September and  
November 1964. I am unable to locate copies.

The only speeches or talks which I have given involving constitutional law or legal policy were given over twenty years ago in connection with the Florida Bar and Dade County Bar's high school law programs. I do not believe there were any written or prepared speeches. As I recall the speeches, which were more like informal talks, were about basic legal concepts, including constitutional law.

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

Excellent. February 24, 2000

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

None.

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

Not applicable.

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

None.

17. **Legal Career:**

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

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

I have not served as clerk to a judge.

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

I have never practiced alone.

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

August 1965 to January 1969\*  
Frates, Fay, Floyd & Pearson (now Richman, Greer, Weil Brumbaugh  
Mirabito & Christensen, P.A.) Associate/attorney  
201 S. Biscayne Boulevard  
Miami, Florida 33131

\*During this period I was on active duty with the United States Army  
Reserve from February, 1966 to July, 1966.

July 1969 to April 1973  
Quinton, Lieb, Parks and Aurell, P.A., (no longer in existence)  
Shareholder/attorney  
186 S.W. 13th Street  
Miami, Florida 33130

April 1973 to April 1975  
Aurell & Huck (no longer in existence)  
One Southeast Third Avenue, Suite 2660  
Miami, Florida 33131  
Partner/attorney

April 1975 to August 1981  
Mahoney, Hadlow & Adams, P.A. (now McGuire, Woods, Battle & Boothe)  
Shareholder/attorney  
50 N. Laura Street  
Jacksonville, Florida 32201

August 1981 to February 1986  
Fleming & Huck (Paul C. Huck, P.A.) (now Ford & Harrison, LLP)  
Shareholder/attorney  
25 S.E. 2nd Avenue  
Miami, Florida 33131

February 1986 to December 1993  
Proenza, White, Huck & Roberts, P.A., (now Proenza, Roberts & Hurst, P.A.)  
Shareholder/attorney  
2900 S.W. 28th Terrace  
Miami, Florida 33133

January 1994 to present  
Kozyak, Tropin & Throckmorton, P.A.,  
Shareholder/attorney  
2800 First Union Financial Center  
200 South Biscayne Boulevard  
Miami, Florida 33131

In addition to my full-time practice of law, I have been a adjunct professor in the Litigation Skills Program at the University of Miami School of Law. I have participated in that program each fall and winter semester, except for one, since September 1984.

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

Throughout my career, my law practice has been almost exclusively in civil litigation. Since approximately 1969, my law practice has been general commercial litigation. Areas in which I have had litigation experience include securities, contracts, anti-trust, unfair trade practices, real estate, intellectual property, bankruptcy, business torts, partnership and shareholders' disputes, employment benefits claims, employment rights, professional malpractice, maritime claims and insurance.

Prior to 1975, I also had experience in personal injury litigation, both plaintiff and defendant.

Between 1973 and 1981, my law firm was outside general counsel to the Florida International University, a major state university. I represented F.I.U. in various litigation matters during that period.

I believe that throughout my legal career I have generally represented plaintiffs and defendants on an approximately equal percentage.

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

Due to my varied and general litigation practice over the years, I don't believe that I have had what would generally be considered typical clients. My clients generally come as referrals from other attorneys. My clients generally are individuals, small businesses and large corporations requiring legal representation on a one time basis. I also have represented large corporations and other business entities with complex and on-going legal needs; court appointed trustees and receivers; real estate investment trusts; retirees under an ERISA plan; computer companies; a former savings and loan association officer sued by the Resolution Trust Corporation for securities fraud; an underwriter in a securities fraud case; law firms in professional malpractice cases and other civil matters; plaintiffs and defendants in class actions; real estate developers; real estate lenders; real estate brokers; patent, trademark and service mark holders in intellectual property cases; insurance companies; title insurance companies; carriers and shippers; personal injury plaintiffs and defendants; banks, savings and loan associations and real estate investment trusts; pharmaceutical manufacturers and wholesalers; retailers and manufacturers.

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

Regularly

- 2. What percentage of these appearances was in:**
- (a) federal courts; 40%
  - (b) state courts of record; 60%
  - (c) other courts.

**3. What percentage of your litigation was:**

- (a) civil; 100%
- (b) criminal.

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

I have tried over eighty cases, or at least an average of two trials per year. Since 1973 I have generally been either sole counsel or chief counsel. On a number of occasions, particularly where specialized knowledge was required, such as patent law, I acted as either co-counsel or associate counsel. Prior to 1973, I more often acted as associate counsel, meaning I assisted more experienced attorneys. However, during that earlier period, I also tried at least eight cases as sole or chief counsel.

**5. What percentage of these trials was:**

- (a) jury; 66 2/3
- (b) non-jury. 33 1/3

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

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

i. **National Bancard Corporation (NaBanco) v. Visa U.S.A., Inc.**, United States District Court Case No. 79-6355, 596 F.Supp. 1231 (Fla. S.D. 1984).

In this antitrust case brought by NaBanco in 1979, co-counsel and I represented the defendant, Visa USA, Inc. NaBanco was a credit card processing agent which

processed Visa transactions for several Visa merchant banks. The merchant bank "sells" its Visa card transaction at a discount to the card issuing bank through Visa's sophisticated interchange system. If the merchant bank utilizes Visa's interchange system, it pays the issuing bank a system wide uniform "issuer's reimbursement fee" ("interchange fee"). NaBanco challenged Visa's credit card interchange rules claiming, among other things, that the interchange fee set by Visa's operating rules for each credit card transaction processed through Visa's interchange system was price fixing and an unlawful restraint of competition. NaBanco sought injunctive relief and damages under Section 1 of the Sherman Act. NaBanco's attack struck at the very heart of Visa's credit card system. If successful, NaBanco would have ended or at the very least materially and adversely affected the way in which Visa's and, by extension, other bank-credit card interchange systems functioned.

As co-counsel to Visa's regular and lead anti-trust counsel, Heller, Ehrman, White & McAuliffe of San Francisco, California, I fully participated in all pretrial planning and discovery as well as trial counsel. I also worked closely with Visa's in-house counsel in developing evidence related to Visa's defenses, including Visa's contention that without a prescribed, uniform interchange fee applicable to all banks processing credit card transactions, Visa's bank credit card system could not reasonably function.

After a seven week non-jury trial spread over a year and one-half period, on September 20, 1984, the District Court upheld Visa's interchange system in its entirety. The District Court determined that Visa's interchange system could not reasonably function without the prescribed interchange fee. Thus, the District Court concluded that the fee was not a naked restraint of competition and not per se price fixing. Under the "rule of reason" the District Court found that the interchange fee, on balance, was pro-competitive.

NaBanco also claimed prejudice because the non-jury trial was held in several segments over the one and one-half years as an accommodation to the District Court's need to comply with the Speedy Trial Act. The District Court rejected this claim. The Eleventh Circuit Court of Appeal affirmed in National Bancard Corporation Corp. (NaBanco) v. Visa, U.S.A., Inc., 779 F.2d 592 (11th Cir. 1986).

Co-counsel: Stephen V. Bomse, Esq. and M. Laurence Popofsky,  
Esq.  
Heller, Ehrman White & McAuliffe  
333 Bush Street  
San Francisco, California 94104-2878  
415-772-6000

Counsel for NaBanco: Christopher L. Griffin, Esq.  
1 Tampa City Centre  
Tampa, Florida 33601  
813-229-3321

and

James M. Landis, Esq.  
Foley & Lardner  
100 N. Tampa  
Tampa, Florida 33601  
813-229-2300

Presiding Judge: The Honorable William M. Hoeveler

2. **Barnett Bank of Jacksonville, N.A. vs. Deloitte & Touche, LLP**, Dade County Circuit Court Case No. 95-08116 (04).

In this case my client, Barnett Bank, had relied on its borrower's audited financial statements in extending \$18 million dollars in unsecured loans. Barnett Bank sued the borrowers' auditors contending that the auditors misrepresented that the audited financial statements accurately represented the borrower's financial condition in all material respects. The accounting basis for Barnett's claim was that the borrower had for four years overcapitalized its operating expenses causing its cash flows and assets to be materially overstated. The accounting issues were very complex and the documentary evidence was voluminous. The auditors asserted numerous defenses and filed two very extensive motions for summary judgment. It was a major challenge to simplify the accounting issues and present the documentary evidence to the jury. While this case did not go to verdict, we tried the case for two weeks in September and October 1999 before we reached a settlement. I was primary counsel in this trial and was responsible for, among other aspects of the trial, all accounting issues.

This case is also noteworthy in that both sides utilized the latest state-of-the-art courtroom computer technology, which allowed us to present to the jury in an organized and user-friendly method, the volumes of important accounting documents and to help simplify the complex accounting issues. The multi-media system included a database that contained scanned images of both sides' documents, over 40,000 pages. We were able to present the key documents, through the use of bar code system, on the projection screen in lieu of passing out exhibits to the jurors. The use of computer technology during the trial was an interesting and useful tool in presenting this complicated story to the jury.



Co-counsel: Janet Humphreys, Esq.  
Kozyak, Tropin & Throckmorton, P.A.  
2800 First Union Financial Center  
200 S. Biscayne Blvd.  
Miami, FL 33131  
305-358-2600

Opposing counsel: Richard E. Brodsky, Esq.  
25 S.E. 2nd Avenue  
Miami, FL 33131  
305-755-9470

Sidney Davis, Esq.  
Davis, Weber & Edwards  
One Biscayne Tower, Suite 1500  
2 So. Biscayne Boulevard  
Miami, FL 33131  
305-375-8400

Presiding Judge: The Honorable Herbert Stettin, Senior Judge

The judge presiding in all pretrial matters was the Honorable Steve Levine

3. **AeroThrust Corporation vs. Aerolineas Centrales de Columbia, S.A. a/k/a A.C.E.S.**, Dade County Circuit Court Case No. 92-00443(20).

In this case, I was primary trial counsel for AeroThrust Corporation, a commercial jet engine repair facility. AeroThrust sought approximately one million dollars in damages for repairs done on A.C.E.S.' jet engine, rental on a second jet engine leased to A.C.E.S. and attorney fees. A.C.E.S. counter-claimed for fraud, unjust enrichment and replevin seeking damages in excess of two hundred thousand dollars and return of one jet engine.

This case not only involved substantial disputes about the underlying business arrangements between the parties, but also extensive repair and testing of a large complex jet engine. We utilized a large model of the engine, several critical component parts and several experts to demonstrate to the jury the extent of repairs required to bring the engine into compliance with federal regulations. Thus, the case was extremely technical in nature. I formulated our trial strategy and handled all aspects of the trial, including examining all witnesses except one. After a week trial in August 1993 the jury returned a verdict in favor of AeroThrust for almost the exact amount of its requested damages and denied A.C.E.S. any relief on its

counterclaim. The final judgment, including attorneys fees on the lease claim, was for approximately \$975,000.00.

Co-counsel: Rex B. Guthrie, Esq.  
4950 First Union Financial Center  
200 S. Biscayne Boulevard  
Miami, FL 33131  
305-358-4962

Opposing counsel: Miguel Martin  
848 Brickell Avenue  
Miami, Florida 33131  
305-374-4422

Presiding Judge: The Honorable Harold Solomon

4. **Donald S. Zuckerman, P.A. v. Alex Hofrichter, P.A.**, Dade County Circuit Court Case No. 86-16785 CA 01.

These were consolidated cases involving the dissolution of and an accounting for a law partnership. I represented and was primary counsel for one of the two contending former law partners, Donald S. Zuckerman, P.A. ("Zuckerman"). The other former partner was Alex Hofrichter, P.A., formerly Hofrichter & Quiat, P.A. ("Hofrichter"). The former partners operated under an informal, oral partnership agreement. When the partners decided to go their separate ways, they disagreed on the terms of their oral agreement and specifically how to divide the partnership's assets, mainly legal fees. The former partners disagreed as to the respective percentage of fees to which each was entitled. Zuckerman claimed that the agreement was fifty percent to each. Hofrichter claimed that the agreement was one-third to Zuckerman and two-thirds to it because it had two shareholders compared to Zuckerman's one. Hofrichter also claimed that each partner was entitled to its respective partnership share of not only all fees earned prior to dissolution of the partnership but also to those fees earned by the former partners post-dissolution on cases existing during the partnership.

Due to the nature of the dispute and the acrimonious relationship between Mr. Zuckerman and Mr. Hofrichter this litigation was particularly difficult. There was one trial to determine the partnership terms only, another trial on the accounting issues, numerous evidentiary hearings, several lasting more than a day each, numerous interlocutory appeals, appeals and post judgment proceedings over ten years. The "partnership terms" trial alone lasted approximately five weeks spread out over six months in 1987. At the conclusion of that trial, the trial court agreed with

Hofrichter's version of the partnership percentages but denied it a partnership share in fees earned by Zuckerman on files which it took and worked on after the dissolution. This later ruling was a departure from the then established law which held that each law partner was entitled to its respective partnership share of fees earned and collected post-dissolution regardless of which former partner did the work. The trial court's decision was affirmed on appeal without a published opinion. Donald S. Zuckerman, P.A. v. Hofrichter & Quiat, P.A., 519 So.2d 995 (Fla. 3d DCA 1988).

This litigation and resulting appeals also involved issues relating to various partnership and accounting principles, entitlement to and reasonableness of attorneys fees, statutory exemption from attachment of proceeds received in settlement of a disability claim, effect of invocation of one's right against self-incrimination in civil litigation, right to a stay and guideline for the supercedas bond, garnishment, fraudulent transfers and other contested issues. In short, this litigation was a complete course on law firm partnership dissolution and accounting law.

I was primary trial counsel and handled several of the appeals. Appellate attorney Sharon Wolfe was primary counsel on most of the appeals. Stephen Cody, a former associate of Zuckerman's, assisted at trial. Two of the appeals which I handled are: Donald S. Zuckerman v. Hofrichter & Quiat, P.A., 622 So.2d 1 (Fla. 3d DCA 1993) and Donald S. Zuckerman v. Hofrichter & Quiat, P.A., 646 So.2d 187 (Fla. 1994).

Co-counsel: Stephen M. Cody, Esq.  
16610 SW 82 Court  
Miami, Florida 33157  
305-232-7553

Sharon Wolfe (deceased)  
Barbara A. Silverman, Esq.  
Cooper & Wolfe  
200 So. Biscayne Blvd.  
Miami, FL 33131  
305-371-1597

Opposing counsel: Ronald P. Ponzoli, Esq.  
Ponzoli, Wassenberg & Sperkacz  
3250 Mary Street  
Miami, Florida 33133  
305-442-1654

and

Alex Hofrichter, Esq.  
1500 National Bank Building  
9350 So. Dixie Highway  
Miami, Florida 33156  
305-670-4888

Presiding Judge through the trial: The Honorable Leonard Rivkind  
Presiding Judge post-trial: The Honorable Ursula Ungaro-Benages (now United States District Court Judge)

5. **Estate of Jerome Bain v. Gateway Group, Inc.**, Dade County Circuit Court Case No. 89-26390 CA 10.

This suit was brought by a real estate broker against my clients, Gateway Group, Inc., and its principle, Pete Garcia, purchasers of eighteen acres of real estate for industrial development. The broker sought approximately three hundred thousand dollars in damages, claiming that my client had conspired with the sellers to defraud him out of his commission.

The trial court initially granted summary judgment in my clients' favor. That judgment was reversed in Estate of Bain v. Gateway Group, Inc., 605 So.2d 167 (Fla. 3d DCA 1992).

On remand the case was tried before a jury in 1995. I was sole trial counsel for my clients. After a week of trial, and before the case was submitted to the jury, the plaintiff agreed to dismiss my client in exchange for a nuisance settlement of four thousand dollars. Plaintiff completed the trial against the other defendants and obtained a verdict in plaintiff's favor.

Counsel for the  
co-defendants: Katherine W. Ezell, Esq.  
Podhurst, Orseck, Josefsberg,  
Eaton, Meadow, Olin & Perwin, P.A.  
25 West Flagler Street, Suite 800  
Miami, FL 33130  
305-358-2800

Robert P. Lithman, Esq.  
1230 N.W. 7th Avenue  
Miami, FL 33125  
305-324-1100

Opposing counsel: Robert L. Parks, Esq.  
Haggard, Parks & Stone, P.A.  
330 Alhambra Circle  
Coral Gables, FL 33134  
305-446-5700

Robert T. Mann, Esq.  
1326 Riverside Avenue  
Tarpon Springs, FL 34689  
727-938-2626

Presiding Judge: The Honorable Margarita Esquiroz

6. **In re: The Sly Fox**, United States District Court, Southern District of Florida.  
(Case No. is unknown at this time, search for case number is continuing.)

I represented the Whittaker Corporation, manufacturer of a 54' Bertram yacht, the "Sly Fox". I was sole counsel for Whittaker in this limitation of liability action brought in admiralty. This case was tried in approximately 1984. A number of luxury yacht owners brought claims against Whittaker claiming that the electrical panel in the Sly Fox was defective and caused a fire aboard the yacht which eventually spread destroying several million dollars worth of yachts. A Florida assistant fire marshal investigated the cause of the fire and concluded that the fire started in the Sly Fox's electrical panel which was, in his opinion, defective. Prior to trial I extensively studied maritime electrical systems, principles of fire investigation, and drawings of Bertram's 54' yacht. At trial, I was able to demonstrate by basic scientific and fire investigation principles that the fire did not start at the electrical panel, but rather, was probably caused by arson. In fact, on cross-examination, the claimants' expert witness candidly admitted in open court that his conclusions were simply wrong and it appeared that the fire was caused by something other than the Sly Fox's electrical panel. After a non-jury trial, the court found that Whittaker was not responsible for the losses.

Opposing counsel: R. Layton Mank, Esq.  
Wilson, Elser, Moskowitz, et al.  
100 S.E. 2nd Street  
Miami, Florida 33131  
305-374-4400

John F. Romano, Esq.  
Romano, Eriksen & Cronlin  
1005 Lake Avenue  
Lake Worth, FL 33460  
561-533-6700

I know that there were additional opposing counsel in this case. However, I do not recall their names at this time and do not have any record to help me determine their names.

Presiding Judge: The Honorable James C. Paine

7. **PRN of Denver, Inc. v. Arthur J. Gallagher & Co.**, Dade County Circuit Court.  
(Case number is unknown a this time, search for case number is continuing.)

I was sole counsel for PRN of Denver, Inc. in a suit against Arthur J. Gallagher & Co. for tortuously interfering with PRN's business relationship with its customer, a general hospital. PRN's business was providing temporary nurses to hospitals under terms by which the hospitals could terminate using PRN's nurses at will. Gallagher was PRN's insurance agent and responsible for maintaining the nurses' malpractice insurance required by PRN's hospitals. PRN demonstrated that Gallagher had wrongfully advised PRN's main hospital-customer that PRN's insurance had been canceled causing the hospital to immediately terminate all of PRN's nurses. Even though PRN subsequently verified the existence of its insurance, the hospital refused to do business with PRN because of the prior disruption of critical nursing services and because the hospital didn't want to get involved in PRN's insurance problems. PRN, a newly formed business, claimed past and future lost profits as a result of the hospital's refusal to do business with it. At the conclusion of PRN's case which was tried in 1987, the trial court granted Gallagher's motion for directed verdict concluding, as a matter of law, that PRN had no viable claim because the hospital had the right to terminate PRN's temporary nursing services at any time and because PRN, being a newly formed business, could not establish lost profit damages. I represented PRN on appeal as well. The appellate court rejected both of the trial court's conclusions. The Third District Court of Appeal reversed in PRN of Denver, Inc. v. Arthur J. Gallagher & Co., 531 So.2d 1001 (Fla. 3d DCA 1988). That decision is significant in that the appellate court rejected the trial court's determination that PRN's damages were too speculative because it was a new business without a track record of profits. The appellate court held that PRN could prove lost profits based on the profits earned by a predecessor business which business was reasonably similar to PRN's. Thus, that court agreed with PRN and expanded the exceptions to the then general rule that only an entity with a track record of profits could recover lost profits. After remand the case was settled on terms favorable to PRN.

Opposing counsel: James Eckhart, Esq.  
Carey, Dwyer, Cole Eckhart, Mason & Spring.  
(now at Kubicki Draper)  
25 West Flagler Street  
Miami, Florida 33130  
305-374-1212

Presiding Judge: The Honorable John A. Tanksley

8. **Perry v. Light**, Palm Beach County Circuit Court. (Case number is not available because the court's file has been destroyed.)

My partner, John Aurell, and I represented the plaintiff, the defendant's natural daughter, the sole heir to the family's substantial trust. We brought this equitable action to set aside the adoption by the defendant of the adult daughter of his second wife. The result of the adoption was to qualify the adopted daughter as a beneficiary under those family trusts. Plaintiff sought to set aside the adoption due to fraud on the adoption court and lack of jurisdiction. Our theory was that the defendant and his longtime legal counsel and advisor had devised the adult adoption solely as a means to divert family trust assets from defendant's natural daughter, a result, we contended, not intended by the original trust settlors. This intention was not disclosed to the adoption court as required by the adoption statute. We also asserted that the adoption court lacked jurisdiction because the defendant was not a Florida resident. The factual evidence relating to the defendant's true residence was extensive, complex and conflicting.

After a two week trial in approximately 1972, the Court announced that it appeared that a fraud had been perpetrated on the adoption court and that there was a substantial doubt that the Florida court had jurisdiction. The defendant then settled on terms very favorable to plaintiff, resulting in an approximately \$10 million dollar benefit to our client.

Co-counsel: John K. Aurell  
Ausley & McMullen  
227 S. Calhoun  
Tallahassee, Florida 32302  
850-224-9115

Defendant's counsel:  
C. Robert Burns (deceased)  
Eugene Roth (address unknown).

Presiding Judge: The Honorable Timothy Poulton

9. **Porter v. Eckert**, United States District Court, Southern District of Florida, (Case Number is unknown at this time, search for case number is continuing.)

I tried this Jones Act case in 1972 on behalf of the widow and representative of the estate of a seaman electrocuted while working on a defective air conditioning unit installed aboard a vessel. The suit was against the boat owner, the installer of the air conditioning unit and the manufacturer, for unseaworthiness, negligence and breach of warranty. This case was unusual in that the deceased had abandoned

his wife and had failed to provide any support for many years. Obviously, establishing damages was a serious problem. The jury agreed that in spite of the abandonment and lack of financial support, seaman's estate had suffered a compensable loss. In addition, this case involved somewhat technical issues relating to the defective air conditioning unit, when it became defective, and other liability issues. This case is reported in Porter v. Eckert, 465 F.2d 1307 (5<sup>th</sup> Cir. 1972).

Opposing counsel: Robert D. McIntosh, Esq.  
Adorno & Zeder, P.A.  
888 S.E. 3rd Avenue  
Ft. Lauderdale, Florida 33316  
954-832-0050

Gerald M. Walsh, Esq.  
(current whereabouts unknown)  
Fred C. Davant, Esq.  
(current whereabouts unknown)

Presiding Judge: The Honorable Peter T. Fay

10. Caplan v. Johnson, United States District Court Southern District of Florida and Caplan v. Town of Medley, Dade County Circuit Court. (Case numbers are not available because the courts' files have been destroyed.)

These cases were brought against the Town of Medley and its administration for 42 U.S.C. 1983 and 1985 civil rights violations and for common law false arrest and malicious prosecution respectively in federal and state courts. Medley was a very sparsely populated but large area located in rural west Dade County, Florida. Its mayor, Clinton Johnson, singlehandedly controlled Medley, including its police and building-zoning departments, which did Johnson's bidding. Johnson's administration was corrupt, seemingly untouchable and customarily extorted payments as a price to do business in his town. Our clients, a family which owned a small business in Medley, were constantly harassed, threatened with physical violence, falsely arrested and prosecuted by town officials and the police solely because they refused to pay-off the mayor. A sole practitioner, Malcolm H. Friedman, had filed and prosecuted these lawsuits for two years. However, he was unable to try them without the help of experienced trial lawyers willing to take on two very difficult, likely unprofitable cases. My firm, Frates, Fay, Floyd and Pearson, P.A., was willing to do so because its senior partners, William S. Frates and Peter T. Fay, knew it was the right thing to do and because that is what lawyers should do. The jury found for our clients in both cases. As result of these cases, tried in



1968 and 1969, Medley's corrupt administration was exposed and ultimately thrown out of office.

While I was only associate counsel, and my role in these cases was limited to legal research, pretrial preparation, interviewing witnesses and assisting Mr. Frates during the trials, these cases are particularly significant in my legal career. They demonstrated to me, still an impressionable young lawyer, how dedicated advocates, in the best sense, were able to use their legal skills and our legal system to protect seemingly helpless citizens from the powerful and corrupt. These cases and my mentors, Messrs. Frates and Fay, taught me more about being a properly dedicated and motivated advocate than any other case I have ever worked on. Thirty years later, I still vividly recall the federal trial which took place in the old Central Courtroom where the Honorable Ted Cabot presided.

A description of the federal case is found in Caplan v. Johnson, 414 F.2d 615 (5th Cir. 1969), an appeal from the post judgment garnishment action to recover insurance proceeds from the town's false arrest liability policy for the compensatory damages part of the final judgment. I was the primary attorney on this garnishment action. The state case appeal was dismissed without opinion in Town of Medley v. Caplan, 201 So.2d 301 (Fla. 3d DCA 1968).

Co-counsel: William S. Frates (deceased)

Malcolm H. Friedman, Esq.  
100 N. Biscayne Boulevard  
Miami, FL 33132  
305-373-9091

Opposing counsel (among others not presently known): Frank E. Solomon, Esq.  
Current whereabouts unknown

Presiding Judge in the federal case: The Honorable Ted Cabot  
(deceased)

Presiding Judge in the state case: The Honorable Henry Balaban  
(deceased)

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

Adjunct Professor in University of Miami Law School and other Teaching Experiences

Since 1984 I have been an adjunct professor at the University of Miami School of Law in its Litigation Skills Program. This program is generally patterned after the National Institute of Trial Advocacy programs and utilizes simulated courtroom settings. It is a comprehensive and rigorous trial training program for the students to develop fundamental pretrial and trial skills. This teaching experience has given me the opportunity to carefully study every aspect of litigation, both civil and criminal, from a non-litigant's perspective. As an adjunct professor, I demonstrate trial techniques and analyze litigation skills for my students as part of my critique of their "courtroom" work. I have also assumed the role of trial judge in weekly classes and in approximately seventy mock trials, both jury and non-jury. As a result I have made literally thousands of evidentiary rulings in simulated trial proceedings over the past sixteen years.

In addition to teaching litigation procedures and skills, the Litigation Skills Program is designed to instill in the students an understanding of and appreciation for their professional responsibilities. In fact, the non-jury mock trial centers exclusively on professional responsibility and ethics issues.

I was a faculty member of the Florida Bar sponsored week long Advance Trial Advocacy Program held at the University of Florida Law School in May 1992. My participation involved analyzing overall trial strategy, demonstrating certain trial techniques and procedures as well as observing and critiquing the participants' performances. Participants are generally experienced trial attorneys with at least several years of experience.

Between approximately 1984 and 1991, I have also been a faculty member of two National Institute of Trial Advocacy multi-day trial programs and three deposition and discovery programs.

Florida International University

In addition, my former law firms, Aurell & Huck, P.A., and its successor, Mahoney, Hadlow & Adams, P.A., were outside general counsel to Florida International University, a major state university, from its inception in 1973 through 1981. During

that period of time, I had the opportunity to help guide F.I.U. through its formative years. I provided legal assistance, counseling and litigation support on a great variety of matters including employment issues, discrimination claims, faculty tenure, administrative proceedings, arbitration, general business and academic issues.

In re: Premium Sales Corporation

In January 1994, I joined my present firm Kozyak, Tropin & Throckmorton, P.A. in large part to assist and mentor some of the firm's less experienced lawyers with certain major, complex cases. Included among these cases was Premium Sales. Six months earlier my now partner, Harley Tropin, was appointed equity receiver by the Honorable Frederico Moreno, U.S. District Court Judge for the Southern District of Florida, in an SEC enforcement action against Premium Sales Corporation and its affiliates. Premium involved one of the largest Ponzi schemes in United States history, involving over 1500 defrauded investors with losses in excess of \$250 million. I helped the receiver and court appointed plaintiff's committee, consisting of several other law firms, formulate overall litigation strategy, identify potential tortfeasors and claims and develop viable, legal theories for recovery against those parties which assisted in the fraud or whose actions otherwise caused harm to the investors. While I did not personally handle the majority of those claims once they were filed, I continued in an advisory capacity. I was also responsible for certain specific claims which were settled. Although none of the individual Premium Sales cases was tried, they were quite complex and resulted in over \$160 million being recovered over four years of litigation. The Premium Sales case occupied a relatively large part of my time between 1994 and 1998.

The cases were styled: In re: Premium Sales Corporation, U.S. District Court Case No. 93-12253-BKC-AJD; Harley S. Tropin vs. Kenneth Thenen, U.S. District Court Case No. 93-2502-CIV-Moreno; Walco Investments, Inc. vs. Kenneth Thenen, U.S. District Court Case No. 93-2534-CIV-Moreno. Some of the co-counsel with whom I worked were: Joseph M. Matthews, Esq., 305-373-5400; David P. Millian, Esq., 305-372-1800; Aaron Podhurst, Esq., 305-358-2800; and Thomas Tew, Esq., 305-536-1112. Some of the opposing counsel were: John K. Aurell, Esq., 850-224-9115; Hugo Black, Jr., Esq., 305-358-5700; Francis Carter, Esq. 305-371-8585; and Michael Nachwalter, Esq., 305-373-1000.

In re: The Celotex Corporation

Another large, complex case to which I devoted substantial time during the past five years, but which did not involve a trial to verdict or judgment was In re: The Celotex Corporation. My firm represented the Property Damage Claimants Committee ("PD

Committee") in this bankruptcy case, which was filed in October 1990 in United States Bankruptcy Court, Middle District of Florida, Case No. 90-10016-8B1. Celotex and an affiliate, Carey Canada, had mined, manufactured and sold asbestos products. As a result, they were subject to an enormous amount of asbestos related claims. They sought the protection of the Bankruptcy Court to resolve these asbestos claims and insurance coverage issues and to preserve the company's home building product business. The PD Committee was appointed to represent the property owners, including university systems, state governments, airports and a national class of all secondary public schools, whose buildings contained asbestos products. The total amount of the property damages claims was estimated to be \$1-2 billion. Celotex trade creditors and the lawyers who represented people suffering from asbestos-related diseases contended that the property damage claims were substantially less and that our constituency was not entitled to a significant portion of Celotex's value.

This complicated bankruptcy reorganization involved sophisticated insurance, indemnification, mass tort, corporate waste and mismanage issues.

My partner, John Kozyak, was the lead bankruptcy lawyer for the PD Committee. I served as the lead litigator for the PD Committee when Celotex and the PD Committee were jointly proposing a plan of reorganization. That plan was opposed by the Asbestos Health Claimants Committee, the Legal Representative for Unknown Asbestos Bodily Injury Claimants, and by the Trade Creditors Committee. In addition, the PD Committee filed a complex adversary complaint against Celotex's equity holder claiming that it misappropriated and wasted Celotex's assets and engaged in self-dealing to the detriment of the Celotex estate. The numerous legal battles were intense and complex. The various creditor groups and equity holders fought to advance or preserve their respective positions. Finally, a joint plan was developed by all the major parties and approved by the court on December 6, 1996. This plan provided for the establishment of claims resolution procedures and the transfer of Celotex assets to a settlement trust. It was anticipated that approximately \$1.5 billion dollars of trust assets will be eventually distributed to creditors, including future personal injury claimants.

Following the confirmation of a plan of reorganization, I was appointed to represent the Property Damage Advisory Committee. This committee oversees the claims administration process and represents the collective interests of the property damage claimants who are beneficiaries under the Trust. This representation involves advising the Property Damage Advisory Committee with regard to its rights and responsibilities under the Settlement Trust, its relationship in respect of the Settlement Trust's trustees and negotiating with the other beneficiary constituents which had interests adverse to the property damage claimants.

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

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

I presently have approximately \$154,531 in a 401(k) account with my law firm, Kozyak Tropin & Throckmorton, P.A. I will terminate that account and roll the proceeds into my personal individual retirement account.

I own two shares of Kozyak Tropin & Throckmorton, P.A. I will return those shares to the firm in exchange for its then reasonable value which will be determined prior to my resignation from the firm.

I have a \$600,000 loan to my law firm, Kozyak Tropin & Throckmorton, P.A. I will make arrangements to have the loan paid off within the next two year.

I have two private mortgages on real estate properties in Dade County, Florida in the principle amounts of \$101,800 and \$109,000.

I have \$30,000 and \$60,000, or 50% and 16.1290% beneficial interests in two mortgages on real estate properties in Dade County, Florida, which are held by Earl Oman, Trustee. I receive my respective share of mortgage payments, less management fees, as they are secured by Earl Oman, Trustee.

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

I believe my relationship with Kozyak Tropin & Throckmorton, P.A. presents a potential conflict. Therefore I would recuse myself from any matter in which Kozyak Tropin & Throckmorton, P.A. is a party or counsel for the foreseeable future.

My son, Paul C. Huck, Jr., is a shareholder in the law firm of Kenny, Nachwalter, Seymour, Arnold, Critchlow & Spector, P.A. I believe that presents a potential conflict with that law firm. I would recuse myself from any matter in which Kenny, Nachwalter, Seymour, Arnold, Critchlow & Spector, P.A. is a party or counsel.

I would also recuse myself from any matter in which Earl Oman, Lakehouse I, Ltd., or either of the mortgagors on my mortgages was a party and from any other matter in which a former client of mine is directly or indirectly involved.

With regard to the above described relationships as well as shares of stock, mutual funds and bonds which I own and are disclosed in my financial statement accompanying this response, I will provide a list of them to the Clerk's Office, to my judicial assistant, my law clerks and my courtroom deputy. In that way, together we would make sure that any case involving those relationships, companies, funds or entities would be immediately identified so that I can, and will, take the action which is required by the Code of Judicial Conduct and statutes governing recusal of federal judges.

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

No. However, I am presently, and have been since 1984, an adjunct professor in the University of Miami Law School Litigation Skills Program. I am committed to teaching through April, 2000. I have no further commitment. I would not anticipate teaching in the near future. If my schedule and work load permitted, and only then, I would like to teach in that program sometime in the future on a limited, as available, as needed basis. This might be teaching as a substitute two or three times a semester without compensation.

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

Please see my attached financial disclosure report form A0-10.

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

Please see attached net worth statement.

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

Yes. In 1998 I was one of approximately thirty members of State Circuit Court Judge Paul Siegel's reelection committee. I had no title. I contributed \$250.00 to Judge Siegel's campaign, and wrote a number of endorsement letters.

AO-10 (w)  
Rev. 1/2000

**FINANCIAL DISCLOSURE REPORT**  
Nomination Report

Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial) Huck, Paul C.		2. Court or Organization U.S. District Court - Florida	3. Date of Report 05/10/2000
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge (Nominee)		5. Report Type (check type) X Nomination, Date 05/09/2000 Initial Annual Final	6. Reporting Period 01/01/1999 to 04/30/2000
7. Chambers or Office Address 2800 First Union Financial Ctr 200 So. Biscayne Boulevard Miami, FL 33131		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

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

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

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Shareholder	Kozyak, Tropin & Throckmorton, P.A., Law Firm
2	
3	

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

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 1994	Kozyak, Tropin & Throckmorton, P.A. 401K Plan (will be rolled into an IRA)
2 1998	Kozyak, Tropin & Throckmorton, P.A. Severance/Retirement Plan
3	

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

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1998	Kozyak, Tropin & Throckmorton, P.A.	413,820.
2 1999	Kozyak, Tropin & Throckmorton, P.A.	138,094.
3 2000	Kozyak, Tropin & Throckmorton, P.A.	74,384.
4 1998	University of Miami	6,000.



FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Huck, Paul C.	05/10/2000

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE	DESCRIPTION
<input type="checkbox"/>	NONE (No such reportable reimbursements.)	
1	Exempt	
2		
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
<input type="checkbox"/>	NONE (No such reportable gifts.)		
1	Exempt		
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp 33-35 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
<input type="checkbox"/>	NONE (No reportable liabilities.)		
1	Betty C. Huck	Annual Alimony	K
2			
3			
4			
5			
6			

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

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Huck, Paul C.	Date of Report 05/10/2000
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**VII Page 1 INVESTMENTS and TRUSTS – income, value, transactions** *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-F)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-F)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
1 Mortgage Note - Eisenberg	D	Interest	M	T	EXEMPT				
2 Mortgage Note - Garcia	C	Interest	M	T					
3 Beneficial Interest - Mortgage No. 1 - Earl K. Oman, Trustee	D	Interest	L	T					
4 Beneficial Interest - Mortgage No. 2 - Earl K. Oman, Trustee	C	Interest	K	T					
5 Beneficial Interest - Mortgage No. 3 - Earl K. Oman, Trustee	A	Interest	K	T					
6 Promissory Note - Kozyak, Tropin & Throckmorton, P.A.	F	Interest	O	T					
7 Limited Partnership - Lakehouse I, Ltd.	A	Distribution	J	U					
8 Northern Trust Bank of Florida Money Market Account #1	A	Interest	J	T					
9 Northern Trust Bank of Florida Checking Account #1			J	T					
10 Northern Trust Bank of Florida Money Market Account #2	A	Interest	J	T					
11 Northern Trust Bank of Florida Checking Account #2			J	T					
12 Bank of America - Checking Account	A	Interest	J	T					
13 Salomon Smith Barney - money funds #1	B	Interest	K	T					
14 Salomon Smith Barney - money funds #2	D	Interest	L	T					
15 New York Life Ins. Company - Insurance Policy	B	Interest	J	T					
16 Salomon Smith Barney Municipal Money Fund #3	B	Interest	K	T					
17 AIM - Charter Fund			L	T					
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more D=\$5,001-\$15,000 E=\$15,001-\$50,000									
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more									
3 Val Meth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Huck, Paul C.	Date of Report 05/10/2000
	<i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>	

**VII. Page 2 INVESTMENTS and TRUSTS – income, value, transactions**

A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
18 AIM - Weingarten Fund			M	T					
19 AIM Blue Chip Fund			M	T					
20 AIM Value Fund			L	T					
21 AIM Value Fund CL B			M	T					
22 Salomon Smith Barney S&P 500			M	T					
23 Dade County Solid Waste System Bonds	B	Dividend	K	T					
24 South Miami, Florida Hlt. Fac. Bonds	C	Dividend	K	T					
25 Florida St. Board Ed. Cap Outlay Bonds	C	Dividend	L	T					
26 Florida Ports Ping Comm Rev. Bonds	C	Dividend	K	T					
27 Pinellas County, Florida HFA M/Fam Housing Bonds	C	Dividend	L	T					
28 Palm Beach Co. Fl m/Fam. Hsg.	C	Dividend	K	T					
29 Miami-Dade County, Florida Pub. Svc. Tax Bonds	C	Dividend	K	T					
30 Village Ctr. Comnty. Deve. Dist. Florida Bonds	C	Dividend	L	T					
31 Osceola County, Florida West 192 Redv. Bonds	C	Dividend	K	T					
32 Orange County Florida Tourist Dv. Tax Bonds	C	Dividend	K	T					
33 AT&T Stock			K	T					
34 America Online Stock			K	T					
1 Ino/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000									
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Ruck, Paul C.	Date of Report 05/10/2000
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**VII. Page 3 INVESTMENTS and TRUSTS-- income, value, transactions** *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
					If not exempt from disclosure				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
35 Amgen, Inc. Stock			L	T					
36 BankUnited Financial Corp. Stock			J	T					
37 Bellsouth Corp. Stock	A	Dividend	K	T					
38 Cisco Sys. Inc. Stock			M	T					
39 Citigroup, Inc. Stock	B	Dividend	M	T					
40 EMC Corp. Stock			M	T					
41 Ford Motor Co.	C	Dividend	K	T					
42 General Electric Stock	B	Dividend	M	T					
43 Heico Corp. Stock			K	T					
44 Microsoft Stock			M	T					
45 International Business Machines	A	Dividend	L	T					
46 Northern Trust Corp. Stock	A	Dividend	K	T					
47 Oracle Corp. Stock			K	T					
48 Tyco International Ltd. Stock	A	Dividend	L	T					
49 Salomon Smith Barney Money Funds (IRA)	B	Dividend	K	T					
50 AIM Blue Chip Fund (IRA)			L	T					
51 AIM Value Fund (IRA)			M	T					
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 I2=\$5,000,001 or more E=\$15,001-\$50,000 2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more 3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Ruck, Paul C.	Date of Report 05/10/2000
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**VII. Page 4 INVESTMENTS and TRUSTS – income, value, transactions** (Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets (including trust assets)  <small>Place "(X)" after each asset exempt from prior disclosure.</small>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
52 AIM Value Fund CL B (IRA)			M	T					
53 Davis New York Venture Fund Class A (IRA)			L	T					
54 Davis New York Venture Fund Class B (IRA)			K	T					
55 UTS Kemper Gov't. SECS TR #39M GNMA (IRA)			J	T					
56 Putnam Diversified Income Tr. Cl. B (IRA)			L	T					
57 Putnam High Yield Advantage Trust (IRA)			L	T					
58 Salomon Smith Barney S&P 500 (IRA)			L	T					
59 Strips - TINT - U.S. Treasury (IRA)			J	T					
60 Profit Sharing Funds (401K)			L	T					
61 Merrill Lynch Growth Fund (401K)			J	T					
62 Merrill Lynch Fundamental Growth Fund (401K)			K	T					
63 Merrill Lynch S&P 500 (401K)			J	T					
64 Lord Abbott Developing Growth Fund (401K)			J	T					
65 Putnam International Growth Fund (401K)			K	T					
66									
67									
68									

1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000

2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Huck, Paul C.	Date of Report 05/10/2000
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**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.**  
*(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting	Date of Report
		Huck, Paul C.	05/10/2000

SECTION HEADING. (Indicate part of report.)  
Information continued from Parts I through VI, inclusive.  
PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	1999	University of Miami	3,000.
6	2000	University of Miami	3,000.
7	'98-'00	H. Hertner & Associates (Donna Huck)	-
8	'98-'00	Clothes Unlimited (Donna Huck)	-

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Huck, Paul C.	05/10/2000

## IX. CERTIFICATION

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

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

May 10, 2000

Note: Any individual who knowingly and willfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

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



FINANCIAL STATEMENT  
Paul C. Huck  
4/30/2000

ASSETS		LIABILITIES	
Cash on hand and in banks	80,000	Notes payable to banks - secured	0
U.S. Government securities - add schedule		Notes payable to banks - unsecured	0
Listed securities - add schedule	2,696,411	Notes payable to relatives	0
Unlisted securities - add schedule		Notes payable to others	0
Accounts and notes receivable:		Accounts and bills due	0
Due from relatives and friends	0	Unpaid income tax	0
Due from others	600,000	Other unpaid tax and interest	0
Doubtful		Real estate mortgages payable - add schedule	0
Real estate owned - add schedule (Residence)	250,000	Chattel mortgages and other liens payable	0
Real estate mortgages receivable	300,800	Other debts - itemize:	0
Autos and other personal property	50,000		
Cash value - life insurance	15,000		
Other Assets - itemize:			
401(k)	159,635		
IRA Account	865,932	Total liabilities	0
		Net worth	
Total assets	5,017,778	Total liabilities and net worth	5,017,778
<b>CONTINGENT LIABILITIES</b>		<b>GENERAL INFORMATION</b>	
As endorser, co-maker or guarantor	0	Are any assets pledged? (Add schedule) No.	
On leases or contracts	0	Are you defendant in any suits or legal actions? Yes. Fully Insured.	
Legal Claims	0	Have you ever taken bankruptcy? No.	
Provision for Federal Income Tax	0		
Other special debt	0		

**Listed Securities Schedule**

Smith Barney Municipal Money	\$ 47,405.77
Smith Barney Money Funds Cash Port	156,637.04
AIM - Charter Fund	78,153.12
AIM - Weingarten Fund	116,628.07
AIM Blue Chip Fund	191,592.36
AIM Value Fund	56,064.33
AIM Value Fund CL B	161,442.87
BankUnited Financial Corp.	12,250.00
Smith Barney S&P 500	114,930.08
Dade County Solid Waste System Bonds	49,940.00
South Miami Fla. Hlt Fac Bonds	49,865.00
Florida St Brd Ed Cap Outlay	50,307.00
Florida Ports Fing Comm Rev	49,530.00
Pinellas Cnty. Fla. Res. Recovery	50,216.50
Palm Beach Co. Fla. HFA M/Fam Hsg.	48,353.50
Miami-Dade Co. Fla. Pub Svc. Tax	47,280.50
Village Ctr. Cmnty. Dev. Dist Fla.	50,190.50
Osceola Co. Fla. West 192 Redv.	46,881.00
Orange Cnty Fla. Tourist Dv. Tax	46,433.00
Global Crossing Ltd.	30,625.00
AT&T	48,063.00
America Online	48,800.00
Amgen, Inc.	54,313.00
BellSouth Corp.	26,094.00
Cisco Sys. Inc.	231,000.00

Citigroup, Inc.	145,125.00
Ford Motor Co.	27,500.00
EMC Corp.	134,250.00
General Electric	166,000.00
Heico Corp.	26,658.72
Int'l Business Machines Corp.	56,375.00
Microsoft Corp.	104,062.50
Northern Trust Corp.	39,412.80
Oracle Corp.	37,781.50
Tyco International Ltd.	96,250.00
TOTAL:	\$2,696,411.16

**Securities Schedule - IRA Account**

Smith Barney Money Funds	\$20,907.65
AIM Blue Chip Fund	68,134.08
Aim Value Fund	373,716.68
Aim Value Fund CL B	103,535.50
Davis New York Venture Fund Class A	57,104.64
Davis New York Venture Fund Class B	43,430.34
UTS Kemper Gov't. SECS TR #39M GNMA Port	6,701.87
Putnam Diversified Income Tr. Cl. B	61,335.19
Putnam High Yield Advantage Trust	53,521.84
S&P 500	64,295.20
Strips-TINT-U.S. Treasury	12,787.45
Cash Account	461.64
Total:	\$865,932.08



### III. GENERAL (PUBLIC)

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

I am a mentor in the Professional Opportunities Program, a mentor-mentee program for African-American law students at the University of Miami. I have been involved in the program for approximately six years. This mentoring program pairs an experienced practicing attorney with an incoming law student. As a mentor, I meet with my mentees throughout their law school careers to discuss matters concerning law school, professionalism, career planning and similar subjects and to assist them in meeting other attorneys in the community who may offer career or other professional opportunities. In one instance, I have continued to mentor a former mentee who recently moved back to Miami, and who is now developing his legal career here.

I participate in the Put Something Back Program, an established pro bono program in Dade County, Florida. Under the auspices of the Legal Aid Society, I work specifically on representing the interests of victims of domestic violence. Generally, the work entails counseling victims and assisting them in obtaining emergency temporary restraining orders. Unfortunately, I have found that because I have been asked to appear in court on very short notice - usually a few hours - that I have had schedule conflicts which precluded me from taking on the representations which required a court appearance. As a result my participation has been limited to counseling and advising. Because of these inevitable conflicts, which I assume other volunteers have as well, I developed the concept of creating a program whereby law students who are interested in providing legal assistance to domestic violence victims could be enlisted to help in the victims' representation on a regular, scheduled basis. As a result of my participation in the Legal Aid Society's domestic violence victims program and in the University of Miami's Litigation Skills Program, it occurred to me that those programs would be best suited to and should jointly develop a clinical law program for those students. I made this suggestion to Sharon Langer, Director of the Legal Aid Society, and Professor Laurence Rose, Director of the Litigation Skills Program. In the Fall of 1999, we met to explore the possibility of establishing the clinical law program. Both the Legal Aid Society and the law school expressed support for the program and we set about working to establish it. I have assisted in setting up and continue to help this much needed program. As of January, 2000, the domestic violence clinical program was established and has its first student legal assistants.

In each of the past four years my partners and I sponsor a luncheon for and speak to entering minority students at the University of Miami School of Law in conjunction with the James Weldon Johnson Foundation. Several of our senior attorneys, including myself, discuss various aspects of a career in law. My topic has been ethics and professionalism.

My partners and I have established a tuition award scholarship at the University of Miami Law School which is awarded annually to the African American student showing the most promise in the area of commercial litigation.

I consider my teaching at the University of Miami Law School to be a pro bono service to the legal community. This is because, even though I receive a small honorarium, my primary goal in the Litigation Skills Program, as I believe it is with the other adjunct professors, is to mentor law students both in litigation skills and in ethical conduct in the hope that they will begin their careers properly trained and motivated. My participation includes two or three hour weekly classes and four mock trials each year.

From approximately 1967 through 1977, through the Dade County Bar Association's Young Lawyers' Section, I represented a number of indigent clients on a pro bono basis, an average of one a year. These representations consisted of misdemeanor criminal offenses and some civil cases, typically landlord-tenant cases. I no longer have the files or any specifics with regard to these representations.

In the past, I have also served on Florida Bar and Dade County Bar committees and programs designed to promote an awareness of the role of law and the legal profession in our community, including the Young Lawyers' Mock Trial Program for high school students, Lawyers' Speakers Bureau program for law students, and The Florida Bar Young Lawyers' Scholarship program. I have also judged moot court and mock trial competitions at the University of Miami Law School.

I assist my wife, with legal advice and other support, in the establishment and promotion of Radio Lollipop, U.S.A., Inc., an in-hospital volunteer run radio station at Miami Children's Hospital. Radio Lollipop, U.S.A., Inc. is associated with Radio Lollipop International which has established radio stations in children's hospitals throughout the United Kingdom. In 1997, Miami Children's Hospital was the first hospital outside the United Kingdom selected to have such a program. Radio Lollipop, U.S.A. recently opened the second radio station at the Houston Children's Hospital and is presently seeking to expand the program to other children's hospitals in the United States.

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

I have been a member of the Riviera Country Club since 1972. It has, to my knowledge, never had any formal membership requirement which discriminated. However, it is my understanding that the Riviera Country Club had in the past, but no longer has, informal membership practices which inhibited diversity of membership. Over at least the past twenty years the Riviera Country Club has made a concerted effort to eliminate such informal practices. In addition, it has affirmatively sought to broadly diversify its membership. In fact, the club has consulted with and enlisted the assistance of the Regional Director of the Anti-Defamation League to assist it in this effort. While I have never been a member of the Riviera's board of directors, which decides on all membership applications, I have publicly promoted and supported changes in the membership policies. I have actively supported those changes by affirmatively supporting several Jewish and African American candidates for membership, all of whom gained membership. I have also periodically consulted with the club's leadership in an attempt to encourage continued efforts by the board of directors to diversify its membership. Today, the Riviera Country Club has a completely open membership policy and a diverse membership. Its by-laws specifically provide that "The club does not discriminate on the basis of race, color, creed, sex or national origin." In addition, approximately fifteen years ago when I became chair of the tennis committee, the only position I've held, I eliminated the then existing tennis rule which reserved the courts for men only on Saturday mornings.

I had been a member of the University Club from Approximately 1978 to 1987. It had refused to admit women as members. A number of us attempted to change this policy. When we were unsuccessful and it was obvious that the club had no intention of changing its policy, I quit. The University Club eventually closed.



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

Yes. The United States District Court for the Southern District of Florida has a judicial nominating commission consisting of fifteen members which recommends judicial candidates to Senator Bob Graham. This commission is chaired by Thomas G. Schultz, who formerly was Senator Connie Mack's statewide chair for all three districts' judicial nominating committees.

In December of 1999 I applied to the commission for the district court vacancy created when the Honorable Kenneth L. Ryskamp took senior status.

The first step of the selection process was that all applicants' written applications were submitted to the 39 members of the Southern, Middle and Northern districts' commission, including the statewide chair, Ben Hill. Those members reviewed the applications and selected eight of the applicants to be interviewed by the Southern District's commission. I was one of the eight.

I was interviewed by the commission on February 7, 2000, and was one of the three candidates recommended by it. On February 14, 2000, I was interviewed by both Senator Graham and Senator Mack. Two weeks after that interview, Senator Graham recommended me to the President for the district court vacancy. In addition, on March 17, 2000, I was interviewed by attorneys for the Department of Justice. On April 4, 2000, I was interviewed by a representative of the American Bar Association and on the following day by an agent of the Federal Bureau of Investigation.

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

No.

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

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

**Some of the characteristics of this “judicial service” have been said to include:**

- a) A tendency by the judiciary toward problem-solution rather than grievance-resolution;**
- b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**
- c) A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**
- d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**
- e) A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

Our founding fathers understood the importance of limiting the power of government and carefully crafted checks and balances among its three branches. In their wisdom, they established an independent judiciary under Article III of the Constitution, which both grants and circumscribes its authority. They made it clear that the federal courts are charged with the responsibility of assuring due process and equal protection of the law to all who appear before them. However, in doing so, the courts may neither legislate nor arbitrarily usurp the prerogatives of the other branches of government.

Our government is predicated on the notion that the will of the people who are subject to government is expressed through the laws enacted by their representatives. Federal district court judges play a crucial role in government in (i) interpreting and applying the laws enacted by Congress and (ii) upholding the basic constitutional rights of each individual. The manner in which a district court judge

should discharge these awesome responsibilities, however, is limited. In applying federal statutes, a trial judge should attempt to implement Congressional intent by referring first to the plain language of the statute, and where necessary and appropriate, to other aids to construction such as legislative history. A trial judge must also follow applicable, controlling precedent in its rulings. In the absence of specific, controlling precedent, he or she must rule in a manner most consistent with existing law. The goal is always the objective, narrow and even-handed resolution of specific disputes.

Moreover, the constitutionality and statutorily mandated goal of the federal courts is to resolve only those legal disputes which are brought before them and ripe for resolution. In doing so, the courts have the responsibility of deciding specific legal issues, as narrowly presented by the litigants, on a neutral basis under established precedent to ensure a fair, reasonable and consistent resolution. Thus, judges may not allow their personal views, bias and agenda to dictate their decisions.

Nor should a court use a specific case as a platform to advance its political philosophy or to attempt to impose on others, including the legislative and executive branches, judicial oversight which is not specifically provided for by the Constitution or statute. In resolving specific cases, courts should craft case specific remedies rather than use the case as a vehicle for broadly imposing policy on non-litigants who were neither before nor heard by the courts.

In my view, adherence to these guidelines ensures that legal disputes will be appropriately resolved in a manner consistent with the vision of the framers of our legal system, and gives the public comfort that our federal judiciary is neutral and even-handed, and that our judicial system works.

[The biographical information of Judge Lefkow follows:]

**UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY**

**QUESTIONNAIRE FOR JUDICIAL NOMINEES**

**I. BIOGRAPHICAL INFORMATION (PUBLIC)**

1. Full name (include any former names used.)  
**Joan Humphrey Lefkow. Former name: Joan Marilyn Humphrey.**
2. Address. List current place of residence and office address(es):  
**Residence: Chicago, Illinois**  
**Office address: United States Bankruptcy Court  
219 South Dearborn Street, Suite 662  
Chicago, Illinois 60604**
3. Date and place of birth.  
**January 9, 1944. Rural Nemaha County, Kansas**
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
**Spouse: Michael Francis Lefkow  
Attorney, Private Practice  
Office address: 53 West Jackson Boulevard, Suite 918  
Chicago, Illinois 60604**
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  

<b>Wheaton College Wheaton, Illinois</b>	<b>Attended 1961-1965 Awarded A.B. in Social Sciences, June 1965</b>
<b>Northwestern University Law School Chicago, Illinois</b>	<b>Attended 1968-1971 Awarded J.D., June 12, 1971</b>

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

Places of Employment:

1965 (summer)	American Oil Company, Credit Card Division, Chicago--clerk-typist
1965-68	Urban Planning Consultants, Chicago--researcher
1969 (summer)	District Attorney of City and County of Denver, Colorado--law student extern
1970 (summer)	Business and Professional People for the Public Interest, Chicago--law student extern
1971-72	United States Court of Appeals for the Seventh Circuit--law clerk to Hon. Thomas E. Fairchild
1972-75	Legal Assistance Foundation of Chicago, Inc.--staff attorney
1975-79	Illinois Fair Employment Practices Commission (now known as Illinois Human Rights Commission), Chicago--administrative law judge, chief ALJ
1979-80	(At home with children, July 1979 - September 1980.)
1980-81	University of Miami Law School, Coral Gables, Florida--Instructor
1981-82	Cook County Legal Assistance Foundation, Inc., Oak Park, Illinois--Executive Director
1982-97	United States District Court for the Northern District of Illinois, Chicago--United States Magistrate Judge
1997-present	United States Bankruptcy Court for the Northern District of Illinois--United States Bankruptcy Judge

Organizational positions:

Chicago Council of Lawyers, board member 1975-77  
 St. Luke's Episcopal Church, Evanston, Illinois, vestry member 1999-present

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

I have never had any military service.

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

While at Northwestern University, I served on the Law Review editorial board; was a fellow, Joint Center for Urban Affairs, Evanston campus; and a fellow, Russell Sage Foundation in Law and Social Sciences (which included full tuition scholarship plus living stipend for two years). While attending Wheaton College, I was a member of the Pi Gamma Mu Honor Society.

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

December 1981 - Present, Chicago Bar Association  
 Alliance for Women Committee 1992-present  
 Current member, Executive Committee 1999-2000;  
 Co-Chair, Alliance for Women Committee 1998-99;  
 Co-Vice Chair, 1997-98;  
 Co-Chair, Subcommittee on Women in Legal Education, 1995-97

December 1994 - Present, Women's Bar Association of Illinois  
 Boards and Commissions Committee, 1998-2000;  
 Membership Committee, 1997-1998

January 1998 - Present, Federal Bar Association (honorary)

June 1996 - Present, Legal Club of Chicago (honorary)

1972-1977, Chicago Council of Lawyers  
 Board of Directors 1975-1977;  
 Co-chair, Women's Rights Committee, 1974-1975

1999 - Member, National Conference of Bankruptcy Judges

Approx. 1984-1997 - Member, Federal Magistrate Judges Association

1976-1977, Federation of Women Lawyers Judicial Screening Panel,  
 Seventh Circuit Representative (loosely organized committee  
 concerned with the demonstrated fairness to women of nominees to  
 the federal bench)

1996-1999, Dean's Advisory Committee on Community and Diversity,  
 Northwestern University Law School

1999- present, Advisory Committee, Center for International Human Rights,  
 Northwestern University Law School

1996-1997, Administrative Office Ad Hoc Committee on the Revision of the  
 CVB Violation Notice

1996-1997, Seventh Circuit Senior Judges Staffing and Facilities Committee

1990-1996, Seventh Circuit Court Security Committee

1996, Seventh Circuit Judicial Council Committee re Judicial Misconduct or Disability Allegations  
 1990-1996, District Court Advisory Committee on Local Rules  
 1996-1997, District Court Rules Committee  
 1999-present, Bankruptcy Court Rules Committee  
 1999-present, Bankruptcy Court Long Range Planning Committee  
 1999-present, Bankruptcy Court Liaison With Chapter 13 Standing Trustee's Committee (Chair)

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

**Organizations that lobby:**

Chicago Public Schools, Parent-Teacher Association (member since 1984)  
 Amnesty International (member for approximately four years)  
 Illinois Public Interest Research Group (member approximately 12 years)

**Other organizations:**

Union League Club (private club, honorary member since 1989)<sup>1</sup>  
 WBEZ, Chicago (public radio station, member intermittently since 1988)  
 Edgewater Historical Society (member since approximately 1997)  
 Lakewood-Balmoral Residents Council (member since approximately 1984)  
 St. Luke's Episcopal Church, Evanston, Illinois (member since 1988)

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

Supreme Court of Illinois, November 15, 1971  
 United States District Court for the Northern District of Illinois, Nov. 22, 1972  
 United States Court of Appeals for the Seventh Circuit, March 23, 1972  
 United States Court of Appeals for the Fifth Circuit, April 22, 1980<sup>2</sup>

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<sup>1</sup>A copy of the by-laws of the Union League Club are attached.

<sup>2</sup>When inquiring as to the exact date of my admission to the Fifth Circuit, I was told by a member of the Clerk's Office that she could not find a record of my admission. She related that the Court underwent a reorganization in 1981, and anyone admitted to the court before that time would have had to apply for readmission to be considered an active member of the Fifth Circuit Bar. I have never reapplied.



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

**Case notes prepared under editorial supervision of NORTHWESTERN UNIVERSITY LAW REVIEW:**

1. *"An Expansion of the Stevedoring Contractor's Remedies Against a Shipowner in Admiralty,"* 65 Nw.U.L.Rev. 506;
2. *Workmen's Compensation: Equal Protection and Protective Legislation for Women,"* 65 Nw.U.L.Rev. 1024 (1971)

**Other published articles:**

1. *"An Invitation to Trial Before a United States Magistrate,"* CHICAGO BAR RECORD, June, 1990;
2. *"Magistrate Judge Practice,"* chapter in FEDERAL CIVIL PRACTICE, Illinois Institute of Continuing Legal Education, 1987; 1989 (Supplement); 1992; 1996 (Supplement); 1996 Supplement co-authored with Jane Zimmerman Bohrer.

**Reports of which I have participated in the preparation:**

1. *"Women Students' Experiences of Gender Bias in Chicago Area Law Schools: A Step Toward a Gender Bias Free Jurisprudence,"* 1995; prepared by the Law School Outreach Project of the Gender Bias Free Jurisprudence Committee of the Chicago Bar Association Alliance for Women.
2. *"'Double Jeopardy': Experiences of Women Students of Color at Illinois Law Schools,"* 1998; prepared by the Women of Color Project of the Women in Legal Education Subcommittee of the Chicago Bar Association Alliance for Women.

Copies of each of the above publications are attached.

I was also a member of the editorial board of the Northwestern University Law Review during the academic years 1970-71. Volume 65, Nw.U.L.Rev.

I believe I have never given a speech on constitutional law or legal policy.

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

**My health is excellent. My last physical examination was on September 2, 1999.**

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

**I currently sit as a United States Bankruptcy Judge for the Northern District of Illinois, having been appointed to a 14-year term on October 23, 1997. My duties consist of hearing contested matters in cases and trial of adversary actions pending in the Bankruptcy Court. I currently have approximately 4,700 cases assigned to me. The call consists of daily motions in matters arising under Chapter 7 of the Bankruptcy Code (liquidation); Chapter 13 (individual adjustment of debt); and Chapter 11 (usually business reorganization). Trials range from issues of dischargeability of debts under the Code to common law and statutory claims that would be tried in courts of general jurisdiction but for the existence of the bankruptcy case. In addition, I am responsible for case management, settlement, and other typical judicial duties.**

**I was appointed a United States Magistrate Judge, November 9, 1982. I was reappointed on November 9, 1990 and served until October 23, 1997. I served as Executive Magistrate Judge 1990-1996 (three consecutive two-year terms). My duties included presiding over civil and non-jury civil trials, evidentiary hearings and any other civil litigation matters, including dispositive motions, discovery motions, settlement conferences, pre-trial supervision, post-judgment matters, and preliminary proceedings in felony cases, misdemeanor and petty offense trials.**

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

(1) Ten Most Significant Opinions:

1. In re Simmons, 237 B.R. 672 (Bankr. N.D. Ill. 1999).
2. In re Spears, 223 B.R. 159 (Bankr. N.D. Ill. 1998).
3. E.E.O.C. v. Chicago Club, 92 C 6910, Jan. 30, 1995, *adopted*, 881 F. Supp. 350 (N.D. Ill. 1995), *aff'd*, 86 F.3d 1423 (7<sup>th</sup> Cir 1996) [Copy provided].
4. Federal Trade Com'n v. Febre, No. 94 C 3625, 1996 WL 396117 (N.D. Ill., July 03, 1996), *adopted*, 1996 WL 556957, 1996-2 Trade Cases P 71,580 (N.D. Ill. Sept. 27,1996), *aff'd*, 128 F.3d 530, 1997-2 Trade Cases P 71,950 (7th Cir., Oct 17, 1997).
5. In re: Search of Eyecare Physicians of America, 910 F. Supp. 414, 417 (N.D. Ill., Jan. 04, 1996), *adopted*, 910 F. Supp. 414, *aff'd*, 100 F.3d 514 (7<sup>th</sup> Cir. 1996).
6. E.E.O.C. v. Ilona of Hungary, Inc., 885 F. Supp. 1111,1874 (N.D. Ill., 1995), *aff'd in part, rev'd in part, and remanded*, 97 F.3d 204 (1996), *opinion vacated, opinion entered as modified on rehearing, and petition for rehearing en banc denied*,108 F.3d 1569 (7th Cir. 1997).
7. CMC Heartland Partners v. General Motors Corp., No. 92 C 4449, 1994 WL 498357 (N.D. Ill. Aug. 30, 1994), *adopted in part, overruled in part*, 1995 WL 228946 (N.D. Ill. Apr. 14, 1995).
8. Barnett v. Daley, 1995 WL 59229 (N.D. Ill. 1995), (district judge's trial decision is at 969 F. Supp. 1359 (1997)).
9. Central States, S.E. & S.W. Areas Pension Fund v. Miller, 868 F. Supp. 995 (N.D. Ill. 1994).
10. Harris Trust & Savings Bank v. Salomon Brothers, Inc., 1996 WL 341365 (N.D. Ill. 1996), *rev'd*, 184 F.3d 646, No. 98-1812 (7<sup>th</sup> Cir. 1999), *cert. granted*, 120 S.Ct. 784, 68 USLW 3252 (Jan. 7, 2000) (No. 99-579).

- (2) Appellate Opinions on Reversals, etc. (Having been a sitting judge for 17-and-a-half years, I have heard thousands of motions and entered hundreds of judgments. Over the years, I have been reversed by the Court of Appeals for the Seventh Circuit on eight cases. In all but two of those cases, as the summaries below indicate, the reversal was partial.)

(a) Seventh Circuit cases:

1. Harris Trust & Savings Bank v. Salomon Brothers, Inc., 1996 WL 341365 (N.D. Ill. 1996), *rev'd*, 184 F.3d 646 (7<sup>th</sup> Cir. 1999), *cert. granted*, 120 S.Ct. 784 (Jan. 7, 2000).

The trustee for Bank's pension trust sued its broker under the Employee Retirement Income Security Act (ERISA), seeking to recover losses on an investment and alleging that the broker had participated as a non-fiduciary party in interest in a prohibited transaction. I held that ERISA § 1106 provides a private cause of action against non-fiduciaries who participate in a prohibited transaction and denied summary judgment. The broker appealed. The Court of Appeals reversed, holding that, assuming the broker was a "party-in-interest" under ERISA, the trustee could not sue the broker under § 1106 of ERISA. Certiorari has been granted.

2. Hains v. Washington, 131 F.3d 1248 (7<sup>th</sup> Cir. 1997), *aff'd in part, rev'd and remanded in part*.

Having denied plaintiff *in forma pauperis* status in district court, I granted leave to appeal *in forma pauperis*. The prisoner appealed. The Court of Appeals affirmed my dismissal of all claims but reversed the grant of IFP status on the ground that the appeal was frivolous.

3. Van Stan v. Fancy Colours & Co., 125 F.3d 563 (7<sup>th</sup> Cir. 1997), *aff'd in part, rev'd in part*.

Van Stan sued his former employer, contending that he was fired in violation of the Americans with Disabilities Act (ADA) and that the employer's conduct in firing him amounted to intentional infliction of emotional distress. I directed entry of judgment on the jury verdict in favor of the employer on the ADA claim and in favor of the employee on the emotional distress claim, and denied the motion for judgment as a matter of law. The employer appealed and Van Stan cross appealed.

The Court of Appeals set aside the verdict on intentional infliction claim, but affirmed in all other respects.

4. TMT North America, Inc. v. Magic Touch GmbH, 1997 WL 136315 (1997), *injunction vacated*, 124 F.3d 876 (7<sup>th</sup> Cir. 1997).

American and German distributors of a German paper product disputed ownership of trademarks. On a motion for preliminary injunction, I held that the American distributor had a likelihood of success on its claim that the German distributor had forfeited its trademark ownership through inequitable conduct during its purchase of the assets of the American distributor's predecessor. I entered a preliminary injunction in favor of the American distributor; the German distributor appealed. The Court of Appeals held that although I was correct that the American distributor was likely to succeed on its claim that manufacturer acquiesced in its use of the German distributor's marks, such acquiescence did not mean that the German distributor transferred all of its trademark rights and did not permit the American distributor to enjoy the German distributor's use of the marks. The case was remanded to permit the German distributor to show that "inevitable confusion" would result from dual use of marks. The case settled after appeal.

5. Equal Employment Opportunity Commission (EEOC) v. Ilona of Hungary, Inc., 885 F. Supp. 1111 (N.D. Ill. 1995), *aff'd in part, rev'd in part, and remanded*, 97 F.3d 204 (1996), *limited rehearing en banc granted, opinion vacated, entered as modified on rehearing*, 108 F.3d 1569 (7<sup>th</sup> Cir. 1997).

The EEOC sued Ilona of Hungary, a skin care salon, alleging that it violated Title VII when it terminated two Jewish employees who took the day off for Yom Kippur after initially denying them permission to do so. After a bench trial, I entered judgment for employees, awarding back pay for both, reinstatement of one of employees, and an injunction against discrimination on the basis of religion. The employer appealed. The Court of Appeals affirmed in all respects save one: It overruled my finding of fact that the reinstated employee would have continued working for the employer had she not been discriminated against, and reversed my award of back pay. Judge Rovner noted her dissent from the reversed portion of the judgment. See 108 F.2d at 1580.

6. D'Ambrosio v. Chicago Truck Drivers, Helpers, And Warehouse Workers Union, 983 F.2d 1072, 1992 WL 389940 (Table), 1992 WL 389940 (Text) (7th Cir. 1992).

I imposed Rule 11 sanctions against an attorney for wrongful removal of state court case. The Court of Appeals reversed sanctions based on the conclusion that the case had been properly removed. [Copy attached.]

7. City of Chicago v. Matchmaker Real Estate Sales Center, Inc., 982 F.2d 1086 (7<sup>th</sup> Cir. 1992), *aff'd in part, rev'd in part, and remanded*.

The City, a non-profit fair housing corporation, and individual testers sued a realty corporation, its sole shareholder, and its sales agents for "racial steering" in violation of § 1982 and the 1968 Fair Housing Act. After a bench trial, I found defendants liable and awarded the plaintiffs compensatory damages, punitive damages, and attorneys' fees. The Court of Appeals affirmed my rulings and findings in all respects but two: It held that the portion of compensatory damages awarded to a non-profit corporation for frustration of purpose was error; and although I had correctly found individual agents liable for punitive damages, punitive damages could not be assessed against realty corporation and its sole shareholder. [Copy unavailable.]

8. Rascon v. Hardiman, 803 F.2d 269 (7<sup>th</sup> Cir. 1986), *aff'd in part, rev'd in part, and remanded for further proceedings*.

(This was my first jury trial). A widow brought this action on behalf of her deceased husband for injuries sustained during a beating by correctional officers at a county correctional facility. I entered judgment on the verdict against all defendants. I granted defendants' motions for judgment notwithstanding the verdict to the sheriff of Cook County but denied it as to other defendants. The following portions of the judgment were reversed on appeal: (1) the jury verdict against executive director of county department of corrections was vacated and a new trial ordered; (2) circumstances of liability of correctional officer, who was not alleged to have personally inflicted any injury upon inmate, was not fairly presented to jury. This case settled on remand and a new trial was not required.

(b) *District court cases*<sup>3</sup> (District judges review objections to a magistrate judge's decisions and "report and recommendations", of which I have entered many hundreds I am sure. In most of the cases cited below, where my rulings or recommendations have been overruled, they have been on a single point within a larger decision which adopted the report and recommendation in most respects.)

1. Lynchval Systems, Inc. v. Chicago Consulting Actuaries, Inc., No. 95 C 1490, 1998 WL 151814 (N.D. Ill.).

The plaintiffs-counterdefendants moved for summary judgment on counterclaims for unfair competition and intentional interference with a prospective business relationship. The district court adopted my findings of fact but overruled my recommendation that summary judgment be granted in favor of the counter-defendants on the unfair competition claim and denied on interference claim based on conclusion that issue of material fact existed concerning either party's intent.

2. Avery Dennison Corp. v. UCB SA and UCB Films PLC, No. 95 C 6351, 1997 WL 441313 (N.D. Ill.).

In my report and recommendation, I concluded that the motion of a foreign parent corporation to dismiss for lack of personal jurisdiction should be denied without prejudice. The district court overruled, concluding that relevant factors weighed in the opposite direction and dismissed the party from the case.

3. Great Lakes Dredge & Dock Co. v. Commerical Union Assurance Co., No. 94 C 2579, 1996 WL 745368 (N.D. Ill.).

This was an action for declaratory judgment against various insurance carriers for coverage resulting from the Chicago flood of April 13, 1992. Defendants asserted counterclaims for declaration that the policies did not cover the event at issue. My report and recommendation concluded that summary judgment for the insurers was appropriate. The district court overruled my conclusion that no issue of fact existed and set the case for trial. After the case was reassigned to a different

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<sup>3</sup>I cannot be sure that the information is complete because I do not have a complete record of many decisions. This list includes those I was able to find on Westlaw (more than 550 references to "magistrate w/5 Lefkow"), in my file, and the court's archives.

district judge, the second district judge upheld the decision that case should go to trial.

4. CMC Heartland Partners v. General Motors Corp., No. 92 C 4449, 1995 WL 228946 (N.D. Ill.).

This involved a five-count complaint for declaratory judgment with several counterclaims, where a landowner alleged that General Motors was liable for the landowner's costs incurred arising from environmental contamination at a waste disposal site. The district court adopted my report and recommendation which treated many issues in all respects save one: considering an argument that had not been presented to me, the district court judge denied summary judgment on a claim for unjust enrichment.

5. National Metal Finishings Corp. v. LaSalle National Bank, No. 94 C 1211, 1995 WL 609312 (N.D. Ill.).

The plaintiff moved for summary judgment on a claim to proceeds of a letter of credit. My report and recommendation found that (1) defendant was a bailee with notice, (2) plaintiff's interests were perfected, (3) there was no evidence suggesting that plaintiffs agreed to be paid according to a priority different from that set by the UCC, but that (4) motion should be denied because a triable issue of fact existed concerned the affirmative defense of laches. The district court adopted (1)-(3) but concluded that the defense of laches was not available in an action at law, which led to entry of summary judgment for the plaintiff. (Review of the report and recommendation suggests that the issue of the availability of the defense of laches was not raised before me).

6. FOFI Hotel Co. v. Davfra Corp., No. 92 C 2778, *denied in part, aff'd in part*, 846 F. Supp. 1345 (N.D. Ill. 1994).

This was a diversity case in which defendants moved for a stay, citing existence of a pending case in an Ohio court between the same parties for the same cause. After determining that the court had personal jurisdiction over the defendants, I addressed the issue, about which district courts in the circuit had disagreed, whether an Illinois statute allowing a court to stay the case pending the outcome in Ohio or, alternatively, the federal abstention doctrine authorized a stay. I concluded that the stay should be granted under the state



statute but that the federal abstention doctrine did not apply. The district court concluded that the test for the state statute was the same as for the federal abstention doctrine, and that the action should not be stayed. The Seventh Circuit has not yet resolved this issue.

7. Holder v. Welborn, No. 91 C 7670, 1994 WL 130772 (N.D. Ill.).

This petition for a writ of habeas corpus was referred to me for a “Batson hearing” on the question of whether race was the reason for exclusion of certain members of the petit jury. After an evidentiary hearing, I found that the prosecutor had not established a non-racial reason for exclusion of one juror. The district court overruled and denied the petition. The Court of Appeals *affirmed*, 60 F.3d 383 (7<sup>th</sup> Cir. 1995), although Judge Cudahy dissented in part, stating that the case should be remanded for further proceedings with respect to the juror identified in my report and recommendation.

8. Alliance to End Repression v. Chicago, No. 74 C 3268, 1994 WL 86690 (N.D. Ill.).

The district court adopted with minor modification my recommended disposition of a petition for attorney’s fees under 42 U.S.C. § 1988. The modification reduced the amount of the award pertaining to research on the enforceability of consent decree.

9. Transcontinental Freight Systems, Inc. v. Air France, No. 92 C 8161, 1994 WL 736026 (N.D. Ill.).

In this suit seeking recovery of freight undercharges under the Interstate Commerce Act, I recommended that defendant’s motion for summary judgment be granted and that plaintiff’s counsel be admonished under Rule 11 because its lawsuit was frivolous. The district court adopted my recommendation of summary judgment but overruled the recommendation of sanctions on the basis that “paucity of case law” on the issue indicated the complaint was not frivolous.

10. In re Extradition of Rouvier, No. 93 CR 410, 839 F. Supp. 337 (N.D. Ill. 1993).

I ruled (orally) that an American charged with a crime in Sweden could be admitted to bail. The district court overruled, holding that there were no extraordinary circumstances warranting bail.

11. Grun v. Pneumo Abex Corp., No. 90 C 5273, 808 F. Supp 632 (N.D. Ill. 1992).

A former employee of a corporation claimed ERISA violations and state law claims for interference with contractual relations and breach of contract. I recommended (a) summary judgment for plaintiff on the issue whether plaintiff was entitled to recover severance compensation under the employment contract, (b) ruling that interference claim was pre-empted by ERISA and (c) denial of summary judgment on the breach of contract claim. The district court overruled (a) finding an issue of fact regarding intent of parties to the contract; adopted (b) modifying reasoning; and adopted (c) in its entirety.

12. Crissman v. Healthco International, Inc., No. 89 C 8298, 1992 WL 223820 (N.D. Ill.).

This case was before me on a motion for summary judgment on a complaint alleging employment discrimination under federal law, intentional infliction of emotional distress and battery under state law. I concluded that the Illinois Workers' Compensation Act pre-empted the common law claims. The district court concluded that there was a triable issue of fact whether the torts were "intentional" so as to except them from the preemption doctrine.

13. Adler & Drobny, Ltd. v. U.S. Commissioner of Internal Revenue, No. 88 C 10051, 792 F. Supp. 579 (N.D. Ill. 1992).

In this taxpayer refund suit, I found that the accountants who had prepared the tax schedule allocating partnership profits and losses were "preparers" liable for understating income on personal income tax returns of 17 investors. The district court rejected my conclusion and held the accountants had not prepared a "substantial" portion of the returns and were not within the statutory definition of preparer.

14. Zambrano v. Ass'n of Machinists & Aerospace Workers, Local 1202, No. 89 C 6109, 1992 WL 44403 (N.D. Ill.).

I recommended Rule 11 sanctions in the amount of the costs (excluding attorney's fee) incurred by the defense from an improvident filing of a complaint without reasonable basis in fact and law. The district court overruled me, finding no "clear" violation of Rule 11.

15. Martin v. Local 152, United Automobile Aerospace and Agricultural Implement Workers of America, No. 86 C 9509, 1991 WL 496963 (N.D. Ill.).

The Secretary of Labor challenged a local union election. I recommended that the union's motion to dismiss be denied and that certain conclusions of fact be reached on partial summary judgment. The district court dismissed the complaint with leave to replead.

16. Kelly v. Mercoid Corporation, No. 86 C 9689, 776 F. Supp. 1246 (N.D. Ill. 1991).

An employee who was discharged for refusing to submit to a urinalysis test sued her employer in state court, asserting federal and state constitutional claims and common law defamation. The employer removed the case, asserting jurisdiction through section 301 of the federal Labor Management Relations Act of 1947. I recommended dismissal of the federal constitutional claims as not involving state action and concluded that there was no federal jurisdiction under section 301 because the employer had failed to sustain its burden to establish the existence of a collective bargaining agreement; therefore, the state law claims should be remanded to the state court. The district court concluded that a collective bargaining agreement existed, that plaintiff's state law claims were preempted, and that she had failed to state a claim under section 301.

17. Orion Industries, Inc. v. Antenna Co., No. 87 C 6788, 1991 WL 70862 (N.D. Ill.).

A patent holder accused infringer of violating the court's injunction restraining the infringement. I concluded there was basis for a rule to show cause and recommended that the district court so order. The district court later referred the

question of whether an evidentiary hearing was required, and I concluded that it was not and that defendant should be found in contempt. (A copy of this second report and recommendation is not available). The district court then ruled that the defendant had not violated the injunction and therefore was not in contempt of court, and dismissed the action.

18. Chicago v. Reliable Truck Parts Co., No. 88 C 1458, 768 F. Supp. 642 (N.D. Ill. 1991).

I ordered a corporate defendant to designate a co-defendant corporate officer or employee who had asserted the privilege against self-incrimination to provide additional deposition testimony as to information that could only be obtained from an individual who had asserted the privilege. The district court reversed on the basis that their testimony could not be compelled.

19. Garbelmann v. Creditcard Keys Co., No. 89 C 6020, 1991 WL 211648 (N.D. Ill.).

On motions for summary judgment on a six-count complaint, an objection to my report and recommendation was sustained concerning disposition of one count. I recommended denial of summary judgment on the basis that issues of fact existed concerning whether a contract had been breached and the damages. The district court determined that the plaintiff had not met its initial burden to demonstrate evidentiary support for a breach, thus the inquiry was at an end, and summary judgment on that count was appropriate.

20. Badger v. Boulevard Bank, No. 91 C 1573, 768 F. Supp. 226 (N.D. Ill. 1991).

This was a securities fraud action, in which the district court referred to a previous ruling in which it had rejected my (oral) recommendation that plaintiffs' motion for preliminary injunction be denied because the claims were time-barred. In the cited opinion, the court explained, "The court did not conclude that the magistrate judge's conclusion was wrong, but noted that the effect of the magistrate judge's recommendation was to grant permanent relief to a preliminary injunction opponent," *id.* at 227-28, and the motion should be treated as one for summary judgment, which he granted because the claims were time-barred.

21. Central States, Southeast & Southwest Areas Pension Fund v. Cullum Cos., No. 88 C 10368, 1991 WL 213805 (N.D. Ill.).

I recommended vacating an arbitration award for the purpose of reviewing an issue on the merits. The district court rejected my report and recommendation and enforced the arbitration award.

22. Tragarz v. Keene Corporation, No. 88 C 6376, 734 F. Supp. 834 (N.D. Ill. 1990).

Various manufacturers in an asbestosis class action moved for reconsideration of earlier rulings concerning whether summary judgment should be granted based on the presence of manufacturer's product at plaintiffs' job site. The district court rejected one of my conclusions that there was no triable issue of fact as to the probability of the presence of the Fibreboard Company's product and denied summary judgment in favor of the manufacturer.

23. United States v. Davis, No. 90 CR 550, 1990 WL 269401 (N.D. Ill.).

In this criminal case, two defendants who had been arrested by DEA agents who had received an anonymous tip moved to quash their arrest and suppress evidence. I recommended that the motion be denied as to one defendant and granted as to the other. The district court adopted my recommendation to deny and overruled my recommendation to grant the motions.

24. Ranquist v. Donahue, No. 87 C 876, 710 F. Supp. 1180 (N.D. Ill. 1989).

In this diversity case, the plaintiff sought restitution in the form of an equitable lien for construction of permanent improvements on the property of the defendants. I recommended dismissal on basis that Illinois law permitted an equitable lien under circumstances of unjust enrichment presented by the facts. The district judge overruled, holding that the defendant had not been unjustly enriched and dismissed with leave to plead a claim for contribution.

25. Data Evaluation v. Harris Corporation, No. 85 C 10799, 1989 WL 152358 (N.D. Ill.).

In this suit for fraud, I recommended (a) that summary judgment based on plaintiff's lack of standing to sue be denied, but (b) that plaintiff's claim for damages be stricken as not established under the requirements of Rule 56. The district court adopted (a) but allowed plaintiff opportunity to prove damages.

26. Hudson v. Chicago Teachers Union, Local No. 1, No. 83 C 2619, 117 F.R.D. 413 (N.D. Ill. 1987).

I recommended certification of a class for the purpose of receiving notice that certain information was available to union members. The district court disagreed and denied the motion to certify a class.

27. United States v. Williams, Nos. 87 CR 411-1, 87 CR 411-2, 1987 WL 12669 (N.D. Ill.).

The district court affirmed my decision to grant bail on conditions to one defendant but overruled my decision to grant bail on conditions to another defendant, finding that the government had met its burden of proving by clear and convincing evidence that the defendant was a danger to the community and should be detained.

28. Unity Ventures v. County of Lake, No. 81 C 2745, 1983 WL 1957 (N.D. Ill.). The district court adopted my report and recommendation on all issues but one: failure to name particular developers who were willing to annex to a village was not fatal to the plaintiff's claim. (The district judge did not explain the nature of the objection, so I am not sure which issue in my report it addressed).

Copies of my Reports and Recommendations or Memorandum Decisions in the above-cited cases are attached, except in the instances when my ruling was oral.

(c) Constitutional Issues

The following are cases I could find using WESTLAW, or in one instance, had in my personal files.

1. Levon v. O'Rourke, No. 96 C 7304 (N.D. Ill.) (A copy is attached.)
  2. Baker v. DeTella, 1997 WL 80934 (N.D. Ill.)
  3. Williams v. Illinois Dept. of Corrections, 1997 WL 106174 (N.D. Ill.)
  4. Harp Advertising of Illinois, Inc. v. Village of Chicago Ridge, 1992 WL 386481 (N.D. Ill.)
  5. Cadwallader v. Glynn, 1990 WL 43489 (N.D. Ill.)
  6. Williams v. Reed, 1985 WL 1330 (N.D. Ill.)
  7. Jones v. Watson, 1996 WL 137648 (N.D. Ill.)
  8. Linane v. Anderson, 1985 WL 2502 (N.D. Ill.)
  9. Schroeder v. Ryan, 1995 WL 548756 (N.D. Ill.)
  10. Holmes v. Keating, 1995 WL 275579 (N.D. Ill.)
16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

**I have never held any public office other than judicial office, nor have I been a candidate for elective public office.**

17. Legal Career:

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

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

**I served as a law clerk to the Honorable Thomas E. Fairchild, United States Court of Appeals for the Seventh Circuit, from 1971-1972.**

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

**I have never practiced alone.**

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

**From 1972-1975, I worked at the Legal Assistance Foundation of Chicago, 111 West Jackson Boulevard, Chicago, Illinois 60604. I was a staff attorney.**

**From 1975 to 1979, I worked at the Illinois Fair Employment Practices Commission (now known as the Illinois Human Rights Commission), 100 West Randolph, Suite 10-100, Chicago, Illinois 60601. I was hired as an Administrative Law Judge. I was promoted to Chief Administrative Law Judge and assumed administrative responsibility for statewide hearing system.**

**During the academic year 1980-81, I was an Instructor at University of Miami Law School, 1311 Miller Drive, Coral Gables, Florida 33146.**

**From 1981 to 1982, I served as Executive Director of Cook County Legal Assistance Foundation, Inc., 1146 Westgate, Suite 200, Oak Park, Illinois 60301.**

**From 1982 to 1997, I served as United States Magistrate Judge, with the U.S. District Court for the Northern District of Illinois, 219 S. Dearborn Street, Chicago, Illinois 60604. From 1990-1996, I was Executive Magistrate Judge.**



From 1997-Present, I have been serving as United States Bankruptcy Judge, with the U.S. District Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois 60604.

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

(A) Litigation

From 1972 to 1975, I was a litigator providing legal representation to qualified poor people in a federally funded legal assistance program. I interviewed and counseled clients, represented clients in state and federal courts and before state administrative agencies.

(B) Administration

From 1977 to 1979, as Chief Administrative Law Judge, I had administrative responsibility for the Commission's statewide hearing system and was supervisor of other administrative law judges.

From 1981 to 1982, as Executive Director of Cook County Legal Assistance Foundation, I directed all programs, administrative and fiscal matters, and was responsible for a staff of 32 in four office locations. I also handled "downsizing" reorganization, litigation support, and the development of a plan for private bar involvement in the delivery of legal services to the poor.

From 1990 to 1996, as Executive Magistrate Judge, I was responsible for administrative tasks and communication within the court concerning magistrate judges.

(C) Teaching

For the academic year 1980-1981, I taught first year contracts, sales, legal writing, and moot court at a law school in a one-year non-tenure track position.

(D) Judicial

From 1975 to 1979, at the Illinois Fair Employment Practices Commission, my duties included presiding at evidentiary hearings (under state court rules of evidence), making findings of fact, and preparing recommended decisions on complaints of discrimination on the basis of race, sex, religion or natural origin.

From 1982 to 1997, I served in the federal judiciary as U.S. Magistrate Judge and from 1997 to the present as a U.S. Bankruptcy Judge. My responsibilities as a magistrate judge included presiding over civil jury and non-jury trials, evidentiary hearings and any other civil litigation matters, including case-dispositive motions, discovery motions, settlement conferences, pretrial supervision, post-judgment matters, preliminary proceedings in felony cases, and misdemeanor and petty offense trials.

As a bankruptcy judge, my responsibilities include hearing and determining all cases and core proceedings arising under title 11 United States Code, including contested claims, motions to modify the automatic stay and any other contested matter in bankruptcy cases, and trial of adversary actions pending in the bankruptcy court. Cases include matters arising under Chapter 7 of the Bankruptcy Code (liquidation); Chapter 13 (individual adjustment of debt); and Chapter 11 (usually business reorganization). Trials range from issues of dischargeability of debts under the Code to common law and statutory claims that would be tried in courts of general jurisdiction but for the existence of the bankruptcy case.

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

As a lawyer, my typical former clients were poor people who needed legal assistance in order to avoid eviction, obtain or maintain public aid, food stamps, Social Security benefits, or meet basic consumer needs.

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

From 1972 to 1975, I appeared in court frequently.

2. What percentage of these appearances was in:
- (a) Federal courts: **estimated 50-60 %**
  - (b) State courts of record: **estimated 35% - 40 %**
  - (c) Other courts (admin. agencies): **estimated 5 % - 10%**

3. What percentage of your litigation was:
  - (a) civil: 100%
  - (b) criminal: 0%
4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel or associate counsel.

**Although I had an active caseload, most cases were resolved on motion or in non-evidentiary hearings. I tried a number of small cases to judgment, as I can recall. A few of them were landlord-tenant cases in brief trials which I handled alone in court; likewise, I had a few contract cases, but I simply do not recall names, nor would they be retrievable after 25 years.**

5. What percentage of these trials was:
  - (a) jury: 0%
  - (b) non-jury: 100%

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

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

**(As it was nearly 25 years ago, I have few records and incomplete memory of the ten most significant litigated matters that I personally handled.)**

1. **Mandley v. Edelman, Case No. 73 C 2453 (N.D. Ill.); *sub nom.* Mandley v. Trainor, 523 F.2d 425 (7<sup>th</sup> Cir. 1975) ("Mandley I"), and 545 F.2d 1062 (1976) ("Mandley II"); *sub nom.* Quern v. Mandley, 436 U.S. 725 (1978).**

**The plaintiff class, my clients, alleged that the Illinois Department of Public Aid's decision to eliminate (later, reduce) its emergency assistance program to families with needy children in conjunction**

with conversion to a “flat grant” payment system (payment based on family size as opposed to itemized needs) for Aid to Families With Dependent Children (AFDC) violated requirements of Title IV-A of the Social Security Act. The trial court held that the state’s program was not inconsistent with federal law and dismissed the complaint. The court of appeals reversed.

I drafted the complaint, prepared and responded to discovery requests, took depositions, drafted a 60-page pre-trial order, and wrote memoranda of law on various issues as the case proceeded. I was centrally involved (but not lead counsel) in the bench trial. I briefed and argued the first appeal in the Seventh Circuit.<sup>4</sup>

The trial occurred in 1973 combined with a hearing on plaintiffs’ motion for preliminary injunction. I was active on the case from 1973 to 1975.

The case was filed in the United States District Court for the Northern District of Illinois and was assigned to Judge Thomas R. McMillen (retired). I also briefed and argued an appeal in the U.S. Court of Appeals for the Seventh Circuit before Circuit Judges Walter J. Cummings (deceased), William J. Bauer, Leonard Page Moore of the Second Circuit (no longer listed in judicial directory). See 523 F.2d 425 (7<sup>th</sup> Cir. 1975).

Co-counsel were Michael F. Lefkow, 53 W. Jackson Blvd., Chicago, Illinois 60604 (312-435-0014), and Stephen G. Seliger, 120 N. LaSalle St., Chicago, Illinois 60602 (312-782-4688).

Opposing counsel were William J. Scott (deceased), Attorney General of Illinois, and George L. Grumley, Rudnick & Wolfe, 203 N. LaSalle St. Chicago, Illinois 60601 (312-368-2111).

2. Valentino v. Howlett, Case No. 72 C 2941 (N.D. Ill.), *affirmed dismissal as moot*, 528 F.2d 975 (7<sup>th</sup> Cir. 1975).

Plaintiff, individually and on behalf of a class, asserted that the Illinois Secretary of State’s refusal to issue a restricted driving permit to him and others because of their failure to meet Illinois’ financial

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<sup>4</sup>Another appeal (on which I did not enter an appearance) again reversed the district court’s order on injunctive relief, 545 F.2d 1062 (1976), and certiorari was granted. I did not participate in the Supreme Court proceeding. The Supreme Court ruled in favor of the State.

responsibility requirements after their involvement in an accident, while granting such restricted permits to persons whose licenses had been revoked for other violations of the Motor Vehicle Code, such as reckless driving or driving while intoxicated, was an invidious discrimination in violation of the Equal Protection Clause. The district court initially granted a temporary restraining order but later vacated the order. My petition to convene a three-judge court was denied and the case was dismissed. I filed a petition for a writ of mandamus in the Court of Appeals and was successful. A three-judge United States District Court was convened. The three-judge court determined that the case was moot because the named plaintiff's license had been restored. I appealed the dismissal of the class claim. The Court of Appeals held that a class could not be certified because of failure to show that joinder of class members was impracticable; and that motorist's action was rendered moot by the return of his driver's license.

I did essentially all the work on this case, appearing with the client at the administrative agency, drafting the complaint, presenting motions to district court, briefing and arguing before the three-judge court, taking the appeal and arguing the appeal.

I represented the plaintiff from the filing of the case in 1972 to the disposition of the appeal in 1975.

The case was filed in the United States District Court for the Northern District of Illinois and was assigned to Judge William J. Lynch (deceased); the appeal was heard by Circuit Judges Walter J. Cummings (deceased), Robert A. Sprecher (deceased) and Arlin M. Adams of the Third Circuit (no longer listed in judicial directory). See 528 F.2d 975 (7<sup>th</sup> Cir. 1975).

Co-counsel was James O. Lattuner, Edelman Combs & Lattuner, 135 S. LaSalle St., Chicago, Illinois 60603 (312-739-4200)

Opposing counsel were the Attorney General of Illinois, William J. Scott (deceased) and Assistant Attorney General Ann Plunkett (Sheldon), 2204 Chestnut, Wilmette, Illinois 60091 (847-256-4521).

3. Townsend v. Edelman, No 68 C 2134 (N.D. Ill.). This appeal arose after the remand to the district court in Townsend v. Swank, 404 U.S. 282 (1971).

The appeal presented the issues whether a monetary award in the form of public aid benefits withheld from the plaintiff class by

defendant state officials was barred by the Eleventh Amendment, and whether attorney's fees could be assessed against the defendants for defending the Illinois statute and policy challenged by the action. The Court of Appeals reversed in part and affirmed in part, holding that even though United States Supreme Court had determined that state's welfare policy violated the Fourteenth Amendment, the Eleventh Amendment operated to preclude any monetary award that included retroactive payment of improperly withheld AFDC benefits for a period prior to entry of the injunctive order; that defense of state officials against retroactive relief under Eleventh Amendment was not waived; and that the decision of state officials to defend Illinois' statute and regulation and to oppose a retroactive award did not constitute such bad faith as to justify an award of attorneys' fees.

I was one of counsel on an appeal litigated in 1974 to 1975. I helped write the brief for appellants.

This case was filed in the United States District Court for the Northern District of Illinois, assigned to Judge Abraham Lincoln Marovitz.

Circuit Judges were Wilbur F. Pell, 219 South Dearborn Street, Chicago, Illinois 60604, (312) 435-5816, Robert A. Sprecher (deceased), and William J. Jameson of the District of Montana is sitting by designation (not listed in U.S. Court Directory).

Co-counsel were James O. Lattuner, Combs & Lattuner, 135 S. LaSalle St., Chicago, Illinois 60603 (312-739-4200), Edward B. Beis (deceased), and Michael F. Lefkow, 53 W. Jackson Blvd., Chicago, Illinois 60604 (312-435-0014).

Opposing counsel were William J. Scott, Attorney General (deceased), Donald S. Carnow, 778 Frontage Road, Suite 101, Northfield, Illinois 60093 (847) 501-4622.

4. Goldenson v. Edelman, No. 72 C 2838 (N.D. Ill.)

Mrs. Goldenson was an elderly widow whose application for food stamps had been denied after a lengthy period of time. On June 5, 1972, I obtained judgment on Counts I and II of the complaint establishing my client's eligibility and obtaining the benefits. Other counts presented issues concerning delays in the eligibility determination by the Illinois Department of Public Aid.

The case was filed in the United States District Court for the Northern District of Illinois and assigned to Judge Bernard M. Decker (deceased).

I represented the plaintiffs from 1972 until mid-1975.

Co-counsel were Sheldon H. Roodman, 111 W. Jackson Blvd., Chicago, Illinois 60604 (312)347-8330, and Barbara Samuels (212-431-7200, ext. 129).

Opposing Counsel was George L. Grumley, Rudnick & Wolfe, 203 N. LaSalle St., Chicago, Illinois 60601 (312-368-2111).

5. City of Chicago v. Damrau: Case number unknown.

Mrs. Damrau had been cited for housing code violations because her home was filled with debris. It appeared that she was incapable of throwing anything away, and she had accumulated, for example, years of newspapers and magazines, to the point a person could not walk through the hallways. Her neighbors were extremely upset and came to court to testify against her. The court ordered Mrs. Damrau to vacate the building. (I recall finding her temporary housing in a residential hotel.)

The case was filed in the Circuit Court of Cook County, Municipal Department, assigned to housing court, Judge Benjamin E. Novoselsky presiding.

I represented the defendant during 1974.

I handled this case alone.

I do not recall the name of opposing counsel from the Corporation Counsel's office.

6. North Park Towers v. Mandley, No 73 M1 84922.

My client lived in a subsidized high rise building designed for low and middle-income mixed use. She was sued for forcible entry and detainer based on breach of lease. It was alleged that she and her family engaged in conduct which disturbed the peace of other tenants. After preparing for a jury trial, we settled just before trial.

The case was filed in the Circuit Court of Cook County, Municipal Department, assigned to eviction court, Judge John Berc presiding.

I represented the defendant during 1973.

Charles Wolfinger, 5959 Waverly Avenue, La Jolla, California 92037 (858-454-0593), was co-counsel.

I do not recall the name of opposing counsel.

7. Mitoff v. Danecker, case number unknown.

My clients, the Daneckers, lived next door to George and Marie Mitoff. The Mitoffs sued the Daneckers for injunctive relief and \$12,000 damages for nuisance and aggravation. This case went to trial in the Chancery Division. After hearing the plaintiff's testimony and my cross-examination, the judge called counsel into chambers and helped us settle for what amounted to a peace bond on both parties, no damages.

The case was filed in the Circuit Court of Cook County, Chancery Division.

I believe Presiding Judge Donald P. O'Brien heard the case.

I represented the defendants during 1974.

I handled this case alone.

I do not recall the name of opposing counsel.

8. Plaintiff unknown v. Josefina Rodrigues. Case number unknown.

My client was sued for forcible entry and detainer. I defended her in court and, through negotiation with the landlord's counsel and public aid, was able to have the suit dismissed. I also represented Ms. Rodrigues in a hearing before the Illinois Department of Public Aid to rearrange her aid payments so she could pay her rent on time.

The case was filed in the Circuit Court of Cook County, Municipal Department, eviction court, Judge John Berc presiding.

I represented the defendant during 1974.

I handled this case alone.

I do not recall the name of opposing counsel.



9. Case name and number unknown.

My client was a woman who filed for divorce after realizing that her foreign born husband had married her in order to establish grounds for citizenship. I drafted the pleadings and proved up the uncontested prima facie showing in court, and obtained the decree.

I represented the plaintiff in 1975.

The case was filed in the Circuit Court of Cook County, Divorce Division. I do not recall the name of the judge.

I handled this case alone.

I do not remember any details such as whether the husband was represented by counsel. There were no contested issues.

10. Yoelin v. Sherrod, No. 72 M1 262517

My client was sued for forcible entry and detainer and for rent. Case was tried to the court, and I was able to establish that the defendant did not owe rent. The court declared the prior judgment satisfied and ordered my client to move within a certain period of time.

I performed all tasks on behalf of my client, including drafting the answer, preparing for trial, and presenting of the evidence.

I represented the defendant during 1972.

The case was filed in the Circuit Court of Cook County, Municipal Department. Judge Berc was the judge.

I tried this case alone.

I do not recall the name of opposing counsel.

The following members of the legal community are currently familiar with my work based on experience during the past five years:

1. Paul Bradley (criminal defense, general litigation)  
53 W. Jackson Boulevard, Suite 918, Chicago, Illinois 60604  
(312) 427-6050

2. **Matthew C. Crowl (Assistant United States Attorney)**  
219 South Dearborn Street, Suite 500, Chicago, Illinois 60604  
(312) 353-5354
  3. **Kenneth L. Cunniff (general litigation)**  
30 N. LaSalle Street, Suite 2900, Chicago, Illinois 60601  
(312) 917-8850
  4. **Malcolm Gaynor (bankruptcy and reorganization)**  
180 North LaSalle Street, Suite 2700, Chicago, Illinois 60601  
(312) 845-5100
  5. **Edward M. Genson (criminal defense)**  
53 W. Jackson Boulevard., Suite 1420, Chicago, Illinois 60604  
(312) 726-9015
  6. **Jean Powers Kamp (federal government)**  
500 W. Madison Street., Suite 2800, Chicago, Illinois 60661  
(312) 353-7582
  7. **Kenneth Lodge (commercial litigation)**  
115 South LaSalle Street, 30<sup>th</sup> Floor, Chicago, Illinois 60603  
(312) 443-0478
  8. **Judson H. Miner (general litigation)**  
14 West Erie Street, Chicago, Illinois 60610  
(312) 751-1170
  9. **Joan Safford (Deputy United States Attorney)**  
219 South Dearborn Street, Suite 500, Chicago, Illinois 60604  
(312) 353-5310
  10. **Hon. John D. Schwartz (United States Bankruptcy Judge)**  
219 South Dearborn Street, Suite 756, Chicago, Illinois 60604  
(312) 435-5652
19. Legal Activities. Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question. Please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

**During the 1998-99 bar year, I co-chaired the Alliance for Women of the Chicago Bar Association and worked actively with the committee for several years previous to my chairmanship. The Alliance is one of the two largest**

committees of the Association. It endeavors through vision, leadership and mutual support to expand opportunities for women within the legal profession and to advocate concerning issues of particular concern to women within the larger community.

I have also contributed as often as possible to educational programs sponsored by bar associations and not-for-profit groups by making presentations at training seminars on topics such as pretrial preparation, practice before magistrate judges, tips on practice in federal court in social security law, patent law, bankruptcy law, and petty offenses.

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

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

**I anticipate no receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits from a previous business relationship or other source identified in the question.**

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

**I presently recuse myself from any case in which my lawyer-husband, Michael F. Lefkow, or my lawyer-brother-in-law, David M. Lefkow, are associated, as well as any close personal friend of mine where an appearance of impropriety would exist. All of our stock investments are in mutual funds and so far I have had no conflicts concerning those funds. I will follow the Code of Conduct for United States Judges, 28 U.S.C. § 455.**

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

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

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

**My sources of income for the year 2000 will be essentially the same as those described in my financial disclosure reports of 1998 and 1999, namely, my spouse's income from private law practice, rents, small amounts of interest and dividends, and my own salary. See attached copies of Financial Disclosure Reports for the years 1998 and 1999.**

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

**See attached financial net worth statement.**

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

**I have not been involved in a political campaign since passing out a few flyers for Eugene McCarthy in 1968.**

AO-18  
Rev. 1/88

**FINANCIAL DISCLOSURE REPORT  
FOR CALENDAR YEAR 1998**

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

1. Person Reporting (Last name, first, middle initial) Lefkow, Joan H.	2. Court or Organization U.S. Bankruptcy Court Northern District of Illinois	3. Date of Report 5/11/99
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Full-time bankruptcy judge	5. Report Type (check appropriate type) Nomination, Date _____ Initial <input checked="" type="checkbox"/> Annual _____ Final _____	6. Reporting Period 1/1/98 - 12/31/98
7. Chambers or Office Address 219 S. Dearborn Street, Suite 662 Chicago, IL 60604	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
<p><b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.</p>		

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

POSITION	NAME OF ORGANIZATION/ENTITY
<input checked="" type="checkbox"/> NONE (No reportable positions.)	
1	
2	
3	

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

DATE	PARTIES AND TERMS
<input checked="" type="checkbox"/> NONE (No reportable agreements.)	
1	
2	
3	

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

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1		
1/1/98-12/31/98	Spouse's income from self-employment (attorney)(S)	\$
2		\$
3		\$
4		\$
5		\$

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Joan H. Lefkow	5/11/99

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

	<u>SOURCE</u>	<u>DESCRIPTION</u>
<input checked="" type="checkbox"/>	NONE (No such reportable reimbursements.)	
1		
2		
3		
4		
5		
6		
7		

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

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
<input type="checkbox"/>	NONE (No such reportable gifts.)		
1	Union League Club of Chicago	Honorary membership privileges	\$ 1,800.00
2			\$
3			\$
4			\$

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

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE*</u>
<input type="checkbox"/>	NONE (No reportable liabilities.)		
1	Chase Home Mortgage Ass'n (J)	Mortgage on rental property	J
2	Tulane University	College expenses for DC	J
3	Federal Thrift Savings Board	College loan	J
4	Northwestern University	College loan	K
5			
6			

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Joan H. Lefkow; Date of Report: 5/11/99

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 36-34 of Instructions.)

Table with columns A: Description of Assets, B: Income during reporting period, C: Gross value at end of reporting period, D: Transactions during reporting period. Includes rows for Single-family residence, Vanguard Group, and various mutual funds.

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



FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Joan H. Lefkowitz	5/11/99

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

IX. CERTIFICATION.

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

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

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature Joan H. Lefkowitz

Date May 11, 1999

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App. 4, § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

AG-10 (a)  
Rev. 1/2000

**FINANCIAL DISCLOSURE REPORT**  
Calendar Year 1999

Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial) Row, Joan R.		2. Court or Organization N. District Ill., E. Div.	3. Date of Report 05/15/2000
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. Bankruptcy Judge (Full-time)		5. Report Type (check type) Nomination, Date / / Initial <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Final <input type="checkbox"/>	6. Reporting Period 01/01/1999 to 12/31/1999
7. Chambers or Office Address 219 South Dearborn Street Suite 622 Chicago, IL 60604		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.  Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.			

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

POSITION	NAME OF ORGANIZATION / ENTITY
<input checked="" type="checkbox"/> NONE (No reportable positions.)	
1	_____
2	_____
3	_____

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

DATE	PARTIES AND TERMS
<input checked="" type="checkbox"/> NONE (No reportable agreements.)	
1	_____
2	_____
3	_____

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

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1	Income from self-employment(s)	
2	_____	
3	_____	
4	_____	

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Lefkow, Joan H.	05/15/2000

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

*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

<input type="checkbox"/> NONE (No such reportable reimbursements.)	SOURCE	DESCRIPTION
1	American Bankruptcy Institute	Transportation on April 16, 1999 to Annual Meeting when I was a panelist on education program
2		
3		
4		
5		
6		
7		

**V. GIFTS**

*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

<input checked="" type="checkbox"/> NONE (No such reportable gifts.)	SOURCE	DESCRIPTION	VALUE
2			
3			

**VI. LIABILITIES**

*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

<input type="checkbox"/> NONE (No reportable liabilities.)	CREDITOR	DESCRIPTION	VALUE CODE*
1	Chase Home Mortgage Assn	Mortgage on Rental Property	J
2	Northern Trust Bank	Home equity line	J
3	Northwestern University	Parent-student loan	K
4			
5			

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

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Lefkow, Joan H.	Date of Report 05/15/2000
	<i>(Includes those of spouse and dependent children. See pp. 36-34 of Instructions.)</i>	

**VII. Page 1 INVESTMENTS and TRUSTS-- income, value, transactions** *(Includes those of spouse and dependent children. See pp. 36-34 of Instructions.)*

A. Description of Assets (including trust assets)  <i>Place "(1)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period																			
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure																		
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)															
NONE (No reportable income, assets, or transactions.)																								
1 Single family residence purchased 1983, DuPage Co., IL	D	Rent	L	W																				
2 Vanguard Grp, Windsor Fund. IRA Accts, self & (S). Ea.acct	A	Dividend Dist. cap gains	J	T	early distrib	1/6	K	A																
IRA accounts. Self and spouse. Each account					early distrib	01/27	J	A																
3 Templeton Growth Funds 401(k) acct-Smith Barney/money market account (CDs)	A	Dividend	L	T																				
4 Smith Barney money/mutual funds 401(k)(S)-Smith Barney money market account (CDs)	A	Dividend	L	T																				
5 Fed.Cntr. Emp.Credit Union, 5 jointly held accts w(S) & (DC)	A	Interest Div.	J	T																				
<table border="0"> <tr> <td>1 Inc/Gain Codes: A=\$1,000 or less B1, D4) F=\$50,001-\$100,000</td> <td>B=\$1,001-\$2,500 G=\$100,001-\$1,000,000</td> <td>C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000</td> <td>D=\$5,001-\$15,000 H2=\$5,000,001 or more</td> <td>E=\$15,001-\$50,000</td> </tr> <tr> <td>2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000</td> <td>K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000</td> <td>L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000</td> <td>M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000</td> <td>N=\$250,001-\$500,000 P4=\$50,000,001 or more</td> </tr> <tr> <td>3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value</td> <td>R=Cost (real estate only) V=Other</td> <td>S=Assessment W=Estimated</td> <td>T=Cash/Market</td> <td></td> </tr> </table>										1 Inc/Gain Codes: A=\$1,000 or less B1, D4) F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000	2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more	3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	
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FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Lefkow, Joan H.	Date of Report 05/15/2000
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

*(Indicate part of report.)*

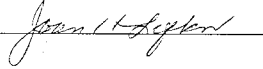
FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Lefkow, Joan H.	05/15/2000

## IX. CERTIFICATION

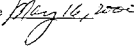
I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions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

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date



Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

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

**Joan H. Lefkow and Michael F. Lefkow**  
**STATEMENT OF NET WORTH**  
**March 22, 2000**

*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	VALUE	LIABILITIES	AMOUNT
Cash on hand and in banks	\$ 8,933	Notes payable to banks - secured	\$ 0
U.S. Govt securities--add schedule - See schedule	173	Notes payable to banks - unsecured	7,485
Listed securities - See schedule	251,064	Notes payable to relatives	0
Unlisted securities	0	Notes payable to others	0
Accounts and notes receivable	286,524	Accounts and bills due--schedule	0
Due from relatives & friends	0	Unpaid income tax (due 4/15/00)	4,795
Due from others	58,256	Other unpaid tax and interest state tax due 4/15/2000	446
Doubtful	232,756	Real estate mortgages payable-- see schedule	304,145
Real estate owned--see schedule	510,000	Chattel mortgages & other liens	0
Real estate mortgages receivable	0	Other debts: itemized on schedule	54,992
Autos & other personal property (est.)	40,000		
Cash value life insurance	0		
Other assets: itemize	0		
		Total liabilities	\$ 373,063
		Net worth	\$ 723,631
<b>Total assets</b>	<b>\$ 1,096,694</b>	<b>Total liabilities and net worth</b>	<b>\$1,096,694</b>
<b>CONTINGENT LIABILITIES</b>		<b>GENERAL INFORMATION</b>	
As endorser, co-maker or guarantor	0	Are any assets pledged?	Only home mortgages
On leases or contracts	1,200	Are you defendant in any suit or legal action?	No
Legal claims	0	Have you ever taken bankruptcy?	No
Other special debt	0		

SCHEDULE

## ASSETS

Government securities

Federal Thrift Savings Board	\$ 173	\$ 173
------------------------------	--------	--------

Listed securities

Salomon Smith Barney money funds		
Santa Barbara Bank & Trust (CDs)	\$ 80,201	
Smith Barney money funds cash portfolio	248	
Vanguard - Windsor Group Funds	5,570	
Federal Thrift Savings Board-Common stock index investment fund	<u>165,045</u>	
		\$ 251,064

Real estate owned

Family residence	\$ 445,000	
Income property -single family home	<u>65,000</u>	
		\$ 510,000

## LIABILITIES

Real estate mortgages payable (Principal balance)

Family residence	\$ 286,776	
(Principal Residential Mortgage Company)		
Home equity line of credit	10,545	
Income property	<u>6,824</u>	
		\$304,145

Other debts - itemized

Northern Trust Bank	\$ 10,545	
Northwestern Univ.	27,550	
Fed Thrift Svgs Bd	3,139	
Federal Center Visa	3,795	
Bank One Visa	1,350	
OD line of credit	1,713	
Pine Dental Care	850	
Brooks Bros	800	
Federal Stafford Loans (dependent child) (Principal)		
- Citibank	2,625	
- USA Group Loan Services, Inc.	2,625	
		\$ 54,992



## III. GENERAL (PUBLIC)

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

I served as a member, Dean's Advisory Committee on Community and Diversity, Northwestern University Law School from 1996-1999. This group, selected by the law school dean, David Van Zandt, composed of alumni, faculty and students, met about once a month for two-to-three hours during two school years and less frequently during a third year to advise the dean concerning issues relating to minority and women students.

Additionally, during my years of membership on the Women in Legal Education subcommittee of the Chicago Bar Association Alliance for Women, I participated in preparation of two reports on the experiences of women in law school. The Committee's reports, which contained both findings and constructive recommendations, were adopted by the Chicago Bar Association. Overall, I estimate that I devoted 35-50 hours to these reports.

I have also been a "mentor" for young lawyers and law students for a number of years through bar association and Wheaton College alumni activity. Presently, I am mentoring a Hispanic law student and a Korean law student. This entails periodic meetings for lunch and phone or e-mail conversations, approximately 10 hours a year for each student.

I currently serve as a member of the Advisory Committee, Center for International Human Rights, at Northwestern University Law School. This group, composed of academics, business executives, and lawyers, studies concerns relating to human rights abroad. The group meets semi-annually for educational purposes, and for occasional other events. I have spent a total of 10-15 hours with this committee.

I have been a Vestry Member, St. Luke's Episcopal Church, Evanston, Illinois, since January 1999. I have volunteered in "Moveable Feast" (preparing food for homeless people of Evanston), one Saturday morning per month, approximately two years. I have also assisted refugees from Bosnia and Kosovo, a mission of members of St. Luke's providing clothing, friendship and assistance as needed. During 1999-present I have spent approximately 200 hours on these activities.

Additionally, in 1988 I led a project to establish an infant care center in the Dirksen Court House. This was, I believe, one of the first infant care centers in a federal facility, and the first downtown child care center in Chicago. After months of hard

work by a number of us in clearing licensing and safety regulations, and obtaining funding commitments from resident federal center agencies, GSA provided space and contracted with a private vendor for the 12-infant nursery, which has been operating at capacity since February 1988. I spent 50-100 hours on this project.

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

**I have never belonged, nor do I currently belong, to an organization that discriminates on the basis of race, sex or religion.**

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

**Yes, the United States Senators Nominations Commission for the State of Illinois recommended my nomination for the position of district court judge. On December 30, 1999, I submitted an application on a form provided by the senators. The commissioners conducted an investigation and notified me that I would be interviewed on January 29, 2000. Within a couple of weeks thereafter, I was notified that I was among those the Commission would recommend to Senator Richard Durbin for appointment to the court. The Chicago Bar Association and various other smaller bar associations evaluated my qualifications and reported to Senator Durbin. On March 8, 2000 Senator Durbin notified me that he had recommended my appointment to President Clinton. Thereafter, I was interviewed by the Federal Bureau of Investigation and the Department of Justice.**

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

**No.**

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

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

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

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

**Federal district courts are courts of limited jurisdiction and bound by decisions of the court of appeals and the Supreme Court. Within their jurisdiction, judges should rule on the narrowest grounds necessary to resolve a particular case, in accordance with precedent. I simply try to honor my oath, to consider carefully the positions of the parties, to apply the Constitution, statutes and case law to the facts before me, and to be fair and impartial in all instances.**

[The biographical information of Mr. Singal follows:]

George Z. Singal  
Page 1 of 30

Senate Judiciary Committee Questionnaire

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

My full name is George Zvi-Arjie Singal. I was naturalized under the name of Zvi-Arjie Singal on November 8, 1956 in Bangor, Maine.

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

Home: Bangor, Maine 04401

XXXXXXXXXX

Work: Gross, Minsky, Mogul and Singal, P.A.  
23 Water Street Suite 400  
Bangor, Maine 04401  
207-942-4644

3. Date and place of birth.

I was born in Florence, Italy on October 27, 1945. I was naturalized on November 8, 1956 in Bangor, Maine and became a United States citizen.

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

Married to: Ruthanne (Striar) Singal, MSW  
Spouse's occupation: Social Worker  
Position: Program Development Coordinator  
Employer: Community Health and Counseling Services  
Bangor, ME 04402-0425

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

College: University of Maine, September 1963 - May 1967. B.A., summa cum laude. May 1967.

Law School: Harvard Law School, September 1967 - June 1970. J.D., cum laude. June 1970.

**George Z. Singal**  
Page 2 of 30

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

- a. Year: Summer 1967  
Address: Congressman William D. Hathaway (D-ME)  
Bangor, ME 04401  
Position: Summer intern
- b. Years: Summers 1968 - 1970  
1970 - 1973  
Address: Gross, Minsky, and Mogul  
Bangor, ME 04401  
Position: Summer clerk 1968 - 1970  
Associate 1970 - 1973
- c. Years: 1971 - 1973  
Address: Office of the County Attorney  
Penobscot County  
Bangor, ME 04401  
Position: Part-time Assistant County Attorney (Prosecutor)
- d. Year: 1974  
Address: Complaint Justice  
Bangor, ME 04401  
Position: Part-time Complaint Justice
- e. Years: 1973 - present  
Address: Gross, Minsky, Mogul and Singal, P.A. Attorneys at Law  
Bangor, ME 04401  
Position: Partner
- f. Other: Maine Trial Lawyers Association 1971 - present  
Member Board of Governors 1980 - 1992  
President 1988 - 1990  
Advisory Committee 1993 - present  
  
Governor's Judicial Selection Committee 1993 - present  
Chair 1996 - present. Appointed by Governors John McKernan, Jr. and Angus King, Jr.

George Z. Singal  
Page 3 of 30

Citizens for Justice in Maine, Inc.  
Chair 1992 - 1996  
Board of Directors 1996 - 1998

7. Military Service: Have you had any military service?

No, I have not had any military service.

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

University of Maine, B.A., summa cum laude, 1967  
Phi Beta Kappa  
Phi Kappa Phi  
Pi Sigma Alpha (Political Science National Honorary Society)  
Sigma Delta Pi (Spanish National Honorary Society)  
Selected as recipient of Root-Tilden Scholarship, New York University  
Law School (one of two recipients in the First Circuit of the United  
States Court of Appeals)  
Harvard Law School, J.D., cum laude, 1970  
Recipient of the Felix Frankfurter Scholarship  
American College of Trial Lawyers  
Fellow 1987 - present  
National Criminal Rules Committee 1998 - present  
State Committee 1999 - present  
State Chair 1993 - 1995  
Best Lawyers in America  
Criminal Defense 1989 - present  
Personal Injury Litigation 1989 - present  
Business Litigation 1998 - present  
American Board of Trial Advocates 1987 - present  
Charter Member, State of Maine  
State President 1997 - 1999  
State Treasurer 1993 - 1997  
United States District Court for the District of Maine  
Delegate to attend the National Institute for Dispute Resolution  
Conference. Baltimore, Maryland. December 1993

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

**George Z. Singal**  
Page 4 of 30

Bar Associations:

Maine Bar Association  
Medical-Legal Committee 1982 - 1983  
Massachusetts Bar Association  
Penobscot County Bar Association  
American Bar Association

Other Legal Associations:

American College of Trial Lawyers Fellow 1987 - present  
National Criminal Rules Committee 1998 - present  
State Committee 1999  
State Chair 1993 - 1995  
American Board of Trial Advocates 1987 - present  
Charter Member, State of Maine  
State President 1997 - 1999  
State Treasurer 1993 - 1997  
The John Waldo Ballou Inn of Court  
Master 1993 - 1999  
Treasurer 1993  
The Association of Trial Lawyers of America 1971 - present  
Maine Trial Lawyers Association 1971 - present  
Member Board of Governors 1980 - 1992  
President 1988 - 1990  
Advisory Committee 1993 - present  
Maine Medical Legal Society 1971 - present  
American Bar Association 1986 - present  
Defense Research Institute 1995 - present  
American Academy of Healthcare Attorneys 1996 - present

Appointed Committees:

United States District Court for the District of Maine  
Merit Selection Committee for United States Magistrate Judge  
Committee Chair 1999  
Local Rules Advisory Committee 1994 - present  
Civil Justice Reform Act Advisory Committee 1992 - 1998  
Alternative Dispute Resolution Advisory Subcommittee  
Chair 1993 - 1998  
Federal Bench - Bar Liaison Committee 1992 - 1993  
Merit Selection Committee for United States Magistrate Judge  
Committee member 1988



George Z. Singal  
Page 5 of 30

State of Maine

Commission on the State Ceiling on Tax-Exempt Bonds  
Appointed by the President of the Maine Senate 1999 -  
present  
Governor's Judicial Selection Committee 1993 - present  
Chair 1996 - present. Appointed by Governors John  
McKernan, Jr. and Angus King, Jr.  
Bar Counsel Betterment Committee 1996 - present  
Maine Supreme Judicial Court Advisory Committee on Maine  
Civil Rules Chair 1980 - 1991  
Maine Criminal Justice Planning and Assistance Agency 1977  
Under the Auspices of the United States Department of  
Justice Law Enforcement Assistance Administration  
Citizens for Justice in Maine, Inc.  
Chair 1992 - 1996  
Board of Directors 1996 - 1998

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

- a. American Bar Association  
Maine Trial Lawyers Association  
American Israel Public Affairs Committee  
American Trial Lawyers Association  
b. Jewish Community Endowment Associates  
Jewish Community Council of Bangor  
Jewish Federation of Bangor  
Beth Abraham Synagogue  
Lucerne Beach Club

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

Admitted to practice:

Maine before Maine Supreme Judicial Court in 1970  
Massachusetts before Massachusetts Supreme Judicial Court in 1970  
United States District Court for the District of Maine in 1970  
United States Court of Appeals for the First Circuit in 1985

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

Over the past twelve years, I have given a number of speeches to groups in order to further legal and medical education. None of the speeches were published, nor did they involve issues of constitutional law or legal policy. There were no press reports regarding any of the speeches.

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

Excellent. My last physical examination was April 18, 2000.

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

I was a part-time Complaint Justice in 1974. I was appointed to this position by the Governor. The function of the Complaint Justice is to issue search warrants.

15. Citations:

I have never been a judge. Since a Complaint Justice only issues search warrants, I issued no opinions.

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

- a. I have held the following appointed positions:

Assistant County Attorney for Penobscot County 1971 - 1973 Appointed.

Governor's Judicial Selection Committee 1993 - 1995

Chair 1996 - present. Appointed by Governors John McKernan, Jr. and Angus King, Jr.

- b. I have never been a candidate for elective public office.

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17. Legal Career:

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

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

I have never been a clerk to a judge.

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

I have never been engaged in the solo practice of law.

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

a. Years: Clerk: Summers 1968 - 1970  
Associate: 1970 - 1973  
Gross, Minsky, and Mogul  
Address: Bangor ME 04401  
Position: Summer clerk  
Associate

b. Years: 1971 - 1973  
Office of the County Attorney  
Address: Penobscot County  
Bangor ME 04401  
Position: Part-time Assistant County Attorney  
(Prosecutor)

c. Year: 1974  
Complaint Justice  
Address: Bangor ME 04401  
Position: Complaint Justice

d. Years: 1973 - present  
Gross, Minsky, Mogul and Singal, P.A.  
Attorneys at Law  
Address: Bangor ME 04401  
Position: Partner

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

My practice is almost entirely devoted to litigation in Federal and State Courts. My trial work has encompassed cases involving product defects (both commercial and personal injury issues), professional negligence and malpractice, commercial contract disputes, and criminal defense issues. From 1971 through 1973, I was a prosecutor representing the State of Maine in all criminal trials in Penobscot County. I also maintained my private practice at the same time.

As some of my clients are involved in multi-state ventures, I have also been admitted to practice *pro hac vice* in Federal and State Courts outside Maine. As a corollary to my trial practice, I have briefed and argued appeals in Federal and State appellate courts.

More recently, I have devoted an increasing amount of time to alternative dispute resolution. When hired by parties, I continue to act as a mediator and arbitrator in an effort to resolve controversies short of trial.

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

My typical former clients include insurance companies, physicians, hospitals and other healthcare organizations. I also represent large and small industrial corporations as well as many commercial ventures. A large part of my practice consists of representation and counseling on behalf of individuals and small businesses. My areas of specialization include: healthcare law (including defense of medical negligence), professional negligence of attorneys, accountants, psychologists, dentists and others, products liability, criminal defense, personal injury and commercial (contract) litigation.

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

Throughout my practice I have frequently appeared in court. During the last five years the quantity of my trials has probably

George Z. Singal  
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decreased when compared to earlier years. However, the complexity of the litigation has increased.

2. What percentage of these appearances was in:
- |                             |     |
|-----------------------------|-----|
| (a) federal courts;         | 20% |
| (b) state courts of record; | 70% |
| (c) other courts.           | 10% |

3. What percentage of your litigation was:
- |               |     |
|---------------|-----|
| (a) civil;    | 85% |
| (b) criminal. | 15% |

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

Over my career I have tried over 800 cases to verdict. On most occasions I was sole counsel.

5. What percentage of these trials was:
- |               |     |
|---------------|-----|
| (a) jury;     | 30% |
| (b) non-jury. | 70% |

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

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

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- (1) **Sandy River Nursing Care v. Aetna Cas.**, 985 F.2d 1138 (1st Cir. (Me.), Feb 25, 1993) (NO. 92-1856)

Summary

This case involved allegations of an antitrust conspiracy among insurance companies underwriting workers compensation in the state of Maine. This matter was initially filed as class action requesting multi-million dollar damages for illegal price fixing. In this action, the plaintiffs alleged that the insurance companies underwriting workers compensation insurance coverage in Maine illegally inflated rates to defraud rate employers. The matter involved complex issues of antitrust law and insurance accounting issues.

Representation

I was co-counsel for one of the lead defendants, Aetna Casualty Company.

Final Disposition

This case was dismissed on the merits before trial.

Dates of Trial Period

1992 (approximate)

Court and Judge

United States District Court District of Maine  
Judge Morton A. Brody, deceased

Other Counsel

James E. Kaplan: Counsel for other defendant  
Jensen, Baird, Gardiner & Henry  
10 Free Street Box 4510  
Portland, ME 04112-4510  
Tel: 207-775-7271

Co-Counsel

Joseph Coughlin  
Lord, Bissell and Brook  
Suites 2600-3600 Harris Bank Building  
115 South LaSalle Street  
Chicago, IL 60603

- (2) **Broussard v. Caci, Inc. - Federal**, 780 F.2d 162 (1st Cir. (Me.), Jan 02, 1986) (NO. 85-1648)

Summary

This case involved allegations statutes by an employee of a federal contractor at Bath Iron Works of employment discrimination and violations of federal anti-discrimination. A Washington, DC consulting firm to the Department of Defense, employed the plaintiff. His job was to assist the

**George Z. Singal**  
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United States Navy in supervising the construction of naval vessels at Bath Iron Works in Maine. His employer fired him after he criticized naval personnel.

Representation

I represented the defendant in this matter.

Final Disposition

Judgment for the defendant prior to trial.

Dates of Trial Period

1985 (approximate)

Court and Judge

United States District Court District of Maine  
Judge Gene Carter

Other Counsel

Michael Feldman: Opposing Counsel  
14 Lincoln Street  
Brunswick, ME 04011-1912  
Tel: 207-729-2660

(3) **Plante v. Hobart Corp.**, 771 F.2d 617 (1stCir. (Me.), Sep 04, 1985) (NO.84-1908)

Summary

Applying Maine law the Court of Appeals of the First Circuit set forth an interpretation regarding proximate causation in a case involving a product design defect. I represented a young man who lost an arm in a defectively designed potato grinder. The case involved extensive scientific testimony regarding product design and human factors.

Representation

I represented the plaintiff.

Final Disposition

Jury verdict for the plaintiff.

Dates of Trial Period

1 week 1984

Court and Judge

United States District Court  
Judge Conrad K. Cyr

Other Counsel

David W. Kee: Co-counsel (retired)  
Harts Road  
Orland, ME 04472  
Tel: 207-469-3507

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Arnold Veague: Defense Counsel (retired)  
Eaton, Peabody, Bradford and Veague  
Fleet Center  
Bangor, ME 04401  
Tel: 207-947-0111

**(4) Hegarty v. Somerset County**, 848 F. Supp. 257 (D.Me.) (NO. CIV. 93-0004B)

Summary

In this highly publicized case, plaintiff alleged violations of federal and state civil rights laws. The matter involved search and seizure issues and excessive use of force allegations.

Representation

I represented a cabinet officer in the administration of Governor John McKernan Jr. and the chief of the Maine State Police.

Final Disposition

This matter was dismissed in Federal District Court before trial and the dismissal of my clients was not appealed.

Dates of Trial Period

1993 - 1994

Court and Judge

United States District Court District of Maine  
Judge Morton A. Brody, deceased

Other Counsel

William R. Fisher: Counsel for other defendant  
Monaghan, Leahy, Hochadel & Libby  
95 Exchange Street P.O. Box 7046  
Portland ME 04112-7046  
Tel: 207-774-5200

Julian L. Sweet: Counsel for the plaintiff  
Berman and Simmons, P.A.  
129 Lisbon Street P.O. Box 961  
Lewiston ME 04243-0961  
Tel: 207-784-3576

Steven Mogul: Co-counsel  
Gross, Minsky, Mogul and Singal, P.A.  
P.O. Box 917  
23 Water Street  
Bangor, ME 04401  
Tel: 207-942-4645



George Z. Singal  
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(5) **Application of Hughes**, 608 A.2d 1220 (Me., Jun 10, 1992) (NO. KEN-91-546, 6209)

Summary

In this case the Supreme Judicial Court of Maine set forth standards for readmission of attorneys in the state of Maine. Ms. Hughes had been convicted of bank fraud many years before. She served her sentence and eventually went to law school. This matter was tried twice and appealed twice by the Board of Overseers of the Maine Bar.

Representation

I was sole counsel for the attorney involved.

Final Disposition

Judgment in favor of the attorney. Readmission granted.

Dates of Trial Period

1991 - 1992 (approximate)

Court and Judge

Supreme Judicial Court  
The Honorable Daniel E. Wathen  
Chief Justice, Maine Supreme Judicial Court  
Maine Judicial Center  
65 Stone Street  
Augusta, ME 04330-5222  
Tel: 207-287-6950

Other Counsel

Karen G. Kingsley and J. Scott Davis: Opposing Counsel  
Bar Counsel to the Board of Overseers of the Bar  
97 Winthrop Street P.O. Box 1820  
Augusta ME 04332-1820  
Tel: 207-623-1121

(6) **District Attorney for the Fifth Prosecutorial Dist. of Maine v. City of Brewer**, 543 A.2d 837 (Me., Jul 13, 1988) (NO. 4818, PEN-87-546)

Summary

I represented the city of Brewer and several city counselors sued for violation of the Maine "Sunshine Laws". City officials were accused of conducting city business secretly in violation of state statutes requiring public proceedings.

Representation

I represented the City of Brewer.

Final Disposition

Judgment for the defendant

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Dates of Trial Period

1986 - 1987 (approximate)

Court and Judge

Penobscot Superior Court  
Penobscot County Court House  
97 Hammond Street  
Bangor, ME 04401  
Tel: 207-947-8606

Counsel

R. Christopher Almy: Attorney for the plaintiff  
District Attorney District Five  
Penobscot County Court House  
97 Hammond Street  
Bangor, ME 04401-4922  
Tel: 207-942-8552

(7) **Cobb v. Winkelbauer**, Cumberland County Superior Court (1995) Cum CV-89-460

Summary

This case involved allegations of medical malpractice. The plaintiff alleged that the obstetrician and others failed to accurately diagnose fetal distress that led to the demise of her infant. The plaintiff further alleged that inadequate steps were taken to resuscitate the infant her birth.

Representation

I represented Rudulf Winkelbauer M.D., the obstetrician.

Final Disposition

Verdict for the defendant.

Dates of Trial Period

December, 1995

Court and Judge

Cumberland Superior Court  
Justice Leigh Saufley  
Currently serving on the:  
Supreme Judicial Court  
P.O. Box 269  
Portland, ME 04112-0269  
Tel: 207-822-4146

Other Counsel

Christopher D. Nyhan: Counsel co-defendant  
Preti, Flaherty, Beliveau & Pachios  
443 Congress Street P.O. Box 11410

**George Z. Singal**  
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Portland, ME 04104-7410  
Tel: 207-791-3000

Robert F. Hanson: Counsel for co-defendant  
Norman, Hanson & DeTroy  
415 Congress Street P.O. Box 4600  
Portland, ME 04112-4600  
Tel: 207-774-7000

Daniel G. Lilley: Counsel for plaintiff  
39 Portland Pier  
Portland, ME 04101  
Tel: 207-774-2606

(8) **Shaw v. Bolduc**, 658 A.2d 229 (Me., May 15, 1995)(NO. 7247, KEN-93-757)

Summary

This was a medical malpractice action alleging that neurological injury occurred to an infant during the course of delivery. The plaintiff alleged that the obstetrician negligently dipped the infant in cold water immediately after his birth. The plaintiff argued that the infant thereby suffered severe hypothermia resulting in brain damage. The plaintiff alleged that the nurses failed to prevent the physician's conduct.

Representation

I represented the defendant hospital.

Final Disposition

Judgment for the defendant.

Dates of Trial Period

Autumn, 1994.

Court and Judge

Kennebec Superior Court  
Justice Bruce Chandler, Retired

Other Counsel

Sumner H. Lipman: Counsel for the plaintiff  
Lipman & Katz, P.A.  
227 Water Street P.O. Box 1051  
Augusta, ME 04332-1051  
Tel: 207-622-3711

David C. Norman: Counsel for co-defendant  
Norman, Hanson & DeTroy  
415 Congress Street P.O. Box 4600

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Portland, ME 04112-4600  
Tel: 207-774-7000

(9) **Knight v. Radomski**, 414 A.2d 1211 (Me., May 30, 1980)

Summary

This involved a very interesting factual background leading to a court interpretation of a mentally impaired individual's capacity to marry. A treating psychiatrist divorced her husband to marry her brain-damaged patient in the corridor of the hospital. The parents of the patient sued to annul the marriage.

Representation

I represented the parents of the mentally impaired individual at trial and on appeal.

Final Disposition

The trial court found that the individual had a capacity to marry. This finding was reversed on appeal.

Dates of Trial Period

1979 - 1980 (approximate)

Court and Judge

Kennebec Superior Court  
Justice David G. Roberts, deceased  
Maine Supreme Judicial Court  
Chief Justice Vincent McKusick (retired)  
Justice Sidney Wernick (deceased)  
Justice Edward Godfrey (retired)  
Justice Harry Glassman (deceased)

Other Counsel

Douglas B. Chapman: Co-counsel  
Fenton, Chapman, Fenton, Smith & Kane, P.A.  
109 Main Street P.O. Box B  
Bar Harbor, ME 04609-0020  
Tel: 202-288-3331

William Robitzek: Opposing Counsel (oral argument)  
Jack Simmons: Opposing Counsel  
Berman and Simmons, P.A.  
129 Lisbon Street P.O. Box 961  
Lewiston ME 04243-0961  
Tel: 207-784-3576

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(10) **State v. Henderson**, Penobscot County Superior Court (1993) Pen CR-91-902

Summary

This case involved the defense of a woman accused of killing her husband. We presented extensive evidence that her husband had physically abused her for many years and suffered from battered wife syndrome. This is one of the few cases in the United States where this defense resulted in a jury verdict of not guilty.

Representation

I represented the defendant.

Final Disposition

Jury verdict of not guilty.

Dates of Trial Period

Winter, 1993

Court and Judge

Penobscot Superior Court  
Justice Margaret J. Kravchuk  
Currently serving as:  
United States Magistrate Judge  
United States Court House  
202 Harlow Street  
Bangor, ME 04401  
Tel: 207-945-0315

Other Counsel

Thomas L. Goodwin: Opposing Counsel  
Assistant Attorney General  
Criminal Prosecution Division  
6 State House Station  
Augusta, ME 04333-0006  
Tel: 207-626-8800

I have frequent contact in the course of my legal practice with the following twelve members of the Maine legal community.

Charles H. Abbott Skelton, Taintor & Abbott  
95 Main Street P.O. Box 3200 Auburn ME 04212  
207-784-3200

Douglas B. Chapman Fenton, Chapman, Fenton, Smith & Kane, P.A.  
109 Main Street P.O. Box B Bar Harbor ME 04609  
207-288-3331

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Terrance D. Garney Smith, Elliott, Smith & Garney, P.A.  
100 Commercial Street Suite 308 Portland ME 04101-4723  
207-774-3199

Robert F. Hanson Norman, Hanson & DeTroy  
415 Congress Street P.O. Box 4600 Portland ME 04112  
207-774-7000

Susan R. Kominsky 23 Water Street P.O. Box 919 Bangor ME 04401  
207-947-6915

Malcolm L. Lyons Pierce Atwood  
77 Winthrop Street Augusta ME 04330-5507  
207-622-6311

Jay McCloskey United States Attorney  
99 Franklin Street Second Floor P.O. Box 2360  
Bangor ME 04402-2460  
207-945-0373

Harrison Richardson Richardson, Whitman, Large & Badger  
465 Congress Street P.O. 9545 Portland ME 04112-9545  
207-774-7474

Peter J. Rubin Bernstein, Shur, Sawyer & Nelson  
100 Middle Street P.O. Box 9729 Portland ME 04104-5029  
207-774-1200

Jack H. Simmons Berman & Simmons, P.A.  
129 Lisbon Street P.O. Box 961 Lewiston ME 04243-0961  
207-784-3576

Lewis Vafiades Vafiades, Brontas and Kominsky  
23 Water Street P.O. Box 919 Bangor ME 04401  
207-947-6915

John A. Woodcock, Jr. Weatherbee, Woodcock, Burlock & Woodcock, P.A.  
136 Broadway P.O. Box 1127 Bangor ME 04402-1127  
207-942-9900

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

As a member of the Civil Justice Reform Advisory Committee in Maine, I worked to make the practice in Federal Court more efficient and less costly for litigants. I chaired the Alternative Dispute Resolution Advisory Subcommittee which prepared and implemented a proposal for an alternate dispute mechanism in the District of Maine.

As defense counsel for physicians and hospitals, I have been involved in numerous proceedings before Medical Screening Panels. These panels, consisting of a lawyer, healthcare provider and a judge, take evidence involving issues of medical care. The purpose of the hearings is to screen out cases without merit.

I have an extensive practice as a mediator and arbitrator. I regularly hear cases dealing with tort, contract and governmental affairs.

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II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

When I leave Gross, Minsky, Mogul and Singal, P.A., I will receive \$250,000 as a severance package payable over five years. My portion of the firm's pension plan, totaling \$1,000,000, will be transferred into my IRA.

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

First, with regard to my former law firm, I will not hear any cases involving the firm or its members. I will also not hear cases in which a former client is a party or has an interest. I will look closely at medical negligence litigation, since I have represented many of the medical negligence insurance carriers active in this area. In addition I will, of course, not hear cases in which my own personal financial holdings may cause me any conflict. I will, in every case, comply with the Code of Conduct for United States Judges.

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

No, I have no such plans.

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

See attached Financial Disclosure Report AO-10.



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

Please see attached net worth statement.

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

Yes.

Patricia Stevens for State Representative	Treasurer	late 1980's- early 1990's
Sean Faircloth for United States Senate	Campaign Chair	1996

AO-10 (a)  
Rev. 1/2000

**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**

Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

<b>1. Person Reporting</b> (Last name, first, middle initial) Gal, George Z.		<b>2. Court or Organization</b> U.S. District Court - Maine	<b>3. Date of Report</b> 05/14/2000
<b>4. Title</b> (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge (nominee)		<b>5. Report Type (check type)</b> X Nomination, Date / / Initial Annual Final	<b>6. Reporting Period</b> 01/01/1999 to 05/14/2000
<b>7. Chambers or Office Address</b> 23 Water Street-Suite 400 Bangor Maine 04401		<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	
<i>IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.</i>			

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

<input type="checkbox"/> NONE (No reportable positions.)	POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/>	1. Hartner	Gross, Minsky, Mogul and Singal, P.A.
<input type="checkbox"/>	2.	
<input type="checkbox"/>	3.	

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

<input type="checkbox"/> NONE (No reportable agreements.)	DATE	PARTIES AND TERMS
<input type="checkbox"/>	1. 04/01/00	Gross, Minsky, Mogul and Singal P.A. severance agreement payable over five years, if confirmed.
<input type="checkbox"/>	2.	
<input type="checkbox"/>	3.	

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

<input type="checkbox"/> NONE (No reportable non-investment income.)	DATE	SOURCE AND TYPE	GROSS INCOME (years, not spouse's)
<input type="checkbox"/>	1. 1998	Gross, Minsky, Mogul and Singal P.A.	\$ 242,869
<input type="checkbox"/>	2. 1999	Gross, Minsky, Mogul and Singal P.A.	\$ 282,212
<input type="checkbox"/>	3. 1998	Community Health and Counseling Services	
<input type="checkbox"/>	4. 1999	Community Health and Counseling Services	

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Singal, George Z.	05/14/2000

**IV. REIMBURSEMENTS — transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 23-28 of Instructions.)*

<input type="checkbox"/> NONE (No such reportable reimbursements.)	SOURCE	DESCRIPTION
1	EXEMPT	
2		
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

<input type="checkbox"/> NONE (No such reportable gifts.)	SOURCE	DESCRIPTION	VALUE
1	EXEMPT		
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

<input type="checkbox"/> NONE (No reportable liabilities.)	CREDITOR	DESCRIPTION	VALUE CODE*
1	None		
2			
3			
4			
5			
6			

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

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Singal, George Z.	Date of Report 05/14/2000
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**VII. Page 1 INVESTMENTS and TRUSTS— income, value, transactions** (Includes those of spouse and dependent children. See pp. 36-54 of instructions.)

A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-F)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, margin, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-F)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<b>NONE</b> (No reportable income, assets, or transactions.)									
1 Angen Inc. Common Stock	A	Dividend	L	T	EXEMPT				
2 Cisco Systems Common Stock	A	Dividend	L	T					
3 Coca Cola Company Common Stock	A	Dividend	K	T					
4 Exxon Mobil Corp. Common Stock	A	Dividend	K	T					
5 Imunex Corp. Common Stock	A	Dividend	L	T					
6 Intel Corp. Common Stock	A	Dividend	K	T					
7 Nextel Corp. Common Stock	A	Dividend	K	T					
8 Oracle Corp. Common Stock	A	Dividend	K	T					
9 American Funds Small Cap Fund	A	Dividend	K	T					
10 Franklin Small Cap Fund	A	Dividend	K	T					
11 Templeton Foreign Fund	A	Dividend	K	T					
12 U.S. Treasury Note	A	Interest	K	T					
13 American Express Common Stock	A	Dividend	K	T					
14 American International Group Common Stock	A	Dividend	K	T					
15 AOL Common Stock	A	Dividend	K	T					
16 Applied Materials Common Stock	A	Dividend	K	T					
17 AT & T Common Stock	A	Dividend	K	T					
<b>1 Inc/Gain Codes:</b> A=\$1,000 or less    B=\$1,001-\$2,500    C=\$2,501-\$5,000    D=\$5,001-\$15,000    E=\$15,001-\$50,000 (Col. B1, D4)    F=\$50,001-\$100,000    G=\$100,001-\$1,000,000    H=\$1,000,001-\$5,000,000    I=\$5,000,001 or more									
<b>1 Codes:</b> J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001-\$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000 (A, C1, D3)    O=\$500,001-\$1,000,000    P=\$1,000,001-\$5,000,000    Q=\$5,000,001-\$25,000,000    R=\$25,000,001-\$50,000,000    S=\$50,000,001 or more									
<b>3 Val Meth Codes:</b> Q=Appraisal    R=Cost (real estate only)    S=Assessment    T=Cash/Market (Col. C2)    U=Book Value    V=Other    W=Estimated									

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(Includes those of spouse and dependent children. See pp. 36-54 of instructions.)

**VII. Page 2 INVESTMENTS and TRUSTS— income, value, transactions**

A Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period					
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure				
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)	
NONE (No reportable income, assets, or transactions.)										
18 Boeing Co. Common Stock	A	Dividend	K	T	EXEMPT					
19 Bristol Myers Squibb Common Stock	A	Dividend	K	T						
20 Elan Corp. Common Stock	A	Dividend	K	T						
21 Fleet Boston Corp. Common Stock	A	Dividend	J	T						
22 General Electric Co. Common Stock	A	Dividend	L	T						
23 Gillette Co. Common Stock	A	Dividend	K	T						
24 Hershey Foods Corp. Common Stock	A	Dividend	J	T						
25 IBM Common Stock	A	Dividend	K	T						
26 IRIS Common Stock	A	Dividend	J	T						
27 Lucent Corp. Common Stock	A	Dividend	L	T						
28 Merck Corp. Common Stock	A	Dividend	K	T						
29 Microsoft Corp. Common Stock	A	Dividend	K	T						
30 Monsanto Corp. Common Stock	A	Dividend	K	T						
31 Pepsico Inc. Common Stock	A	Dividend	K	T						
32 Procter and Gamble Co. Common Stock	A	Dividend	K	T						
33 Solutia Inc. Common Stock	A	Dividend	J	T						
34 Sun Microsystems Inc. Common Stock	A	Dividend	J	T						
1 Ino/Gain Codes: A=\$1,000 or less    B=\$1,001-\$2,500    C=\$2,501-\$5,000    D=\$5,001-\$15,000    E=\$15,001-\$50,000 (Col. B1, D4)    F=\$50,001-\$100,000    G=\$100,001-\$1,000,000    H=\$1,000,001-\$5,000,000    I2=\$5,000,001 or more										
2 Codes: J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001-\$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000 L, C1, D3)    O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more										
3 Val Mth Codes: Q=Appraisal    R=Cost (real estate only)    S=Assessment    T=Cash/Market (Col. C2)    U=Book Value    V=Other    W=Estimated										

**FINANCIAL DISCLOSURE REPORT** Name of Person Reporting: Singal, George Z. Date of Report: 05/14/2000

**VII. Page 3 INVESTMENTS and TRUSTS— income, value, transactions** (includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A Description of Assets (including trust assets)  <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amount Code (A-F)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-F)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
35 Time Warner Inc. Common Stock	A	Dividend	K	T	EXEMPT				
36 Vodafone ADR Common Stock	A	Dividend	K	T					
37 Walmart Inc.	A	Dividend	E	T					
38 Walt Disney Co. Common Stock	A	Dividend	K	T					
39 Warner Lambert Co. Common Stock	A	Dividend	K	T					
40 RMA Tax Free Fund	A	Interest	J	T					
41 Maine State Housing Bond	A	Interest	K	T					
42 Auburn Maine Bond	A	Interest	K	T					
43 Maine Health Bond	A	Interest	K	T					
44 Maine Health Bond	A	Interest	J	T					
45 Euro Pacific Growth Fund	A	Dividend	K	T					
46 Faine Webber Tax Free Fund	A	Interest	J	U					
47 E-Globe Inc. Common Stock	A	Dividend	J	T					
48 Qualcomm Inc. Common Stock	A	Dividend	J	T					
49 Vanguard Whole Market Fund IRA	B	Dividend	K	T					
50 Vanguard S & P Fund	A	Dividend	J	T					
51 Magellan Fund	A	Dividend	K	T					
1 Inc/Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more									
2 Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 .1, C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more									
3 Val Meth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated									

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Singal, George Z.	Date of Report 05/14/2000
	<i>(Includes those of spouses and dependent children. See pp. 36-34 of Instructions.)</i>	

**VII. Page 4 INVESTMENTS and TRUSTS— income, value, transactions**

A. Description of Assets (Indicate trust assets)  <i>Place "(Q)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-F)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date Month- Day	(3) Value Code (J-F)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
52 Dreyfus Premier Third Century Fund	A	Dividend	L	T	EXEMPT				
53 Janus Fund	A	Dividend	K	T					
54 Gross, Minsky, Mogul and Singal F.A. Pension Plan	D	Dividend	O	T					
55 GSN and S Office Equipment Partnership	A	Dividend	J	W					
56 Blue Hill Terrace Real Estate Partnership	A	Dividend	J	W					
57 Woodland Manor	A	Dividend	J	W					
58 Club Milyn Investment Club	A	Dividend	K	T					
59									
60									
61									
62									
63									
64									
65									
66									
67									
68									
<b>1</b> Inco/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000									
<b>2</b> Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 J, C1, D3 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more									
<b>3</b> Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market U=Book Value V=Other W=Estimated									

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Singal, George Z.	Date of Report 05/14/2000
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**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.**  
*(Indicate part of report.)*



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**SECTION HEADING.** (Indicate part of report)  
Information continued from Parts I through VI, inclusive.  
PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	2000	Gross, Minsky, Mogul and Singal, P.A. to date	\$ 121,000
6	2000	Community Health and Counseling Services	

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**IX. CERTIFICATION**

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

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature George Singal Date 5/14/00

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

**FILING INSTRUCTIONS**

Mail original and three additional copies to:

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

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**FINANCIAL STATEMENT: NET WORTH**

ASSETS		LIABILITIES	
Cash on hand and in banks	59,000	Notes payable to banks - secured	none
U.S. Government securities-add schedule	50,000	Notes payable to banks - unsecured	none
Listed securities - add schedule	1,475,103	Notes payable to relatives	none
Unlisted securities - add schedule	9,400	Notes payable to others	none
Accounts and notes receivable	none	Accounts and bills due	2,000
Due from relatives and friends		Unpaid income tax	none
Due from others		Other unpaid tax and interest	none
Doubtful		Real estate mortgages payable - add schedule	11,000
Real Estate Owned - add schedule	260,000	Chattel mortgages and other liens payable	none
Real Estate Mortgages receivable	none	Other debts - itemize	none
Autos and other personal property			
Cash value - Life Insurance	none		
Other assets - itemize			
Money Funds	127,000		
Mutual Funds	138,999		
Municipal Bonds and notes	69,281	Total liabilities	13,000
Unit Investment Trusts	none	Net Worth	3,635,214
Pension, IRA and 401(k) Plans	1,459,531		
Total Assets	3,648,214	Total liabilities and net worth	3,648,214
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	none	Are any assets pledged? (Add schedule)	yes
On leases or contracts	none	Are you a defendant in any suits or legal actions?	no
Legal Claims	none	Have you ever taken bankruptcy?	no
Provision for Federal Income Tax	none		
Other Special Debt	none		

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## ATTACHMENT TO NET WORTH STATEMENT

Type of Security	Description	Value
United States Government Securities	U.S. Treasury Note due 10/15/2006	\$50,000.00
Listed Securities	Merrill Merchants Bank	\$6,100.00
	Whitman Corporation	\$300.00
	Magellan Fund	\$62,000.00
	Amgen Inc.	\$62,200.00
	Cisco Systems Inc.	\$124,790.00
	Coca Cola Company	\$18,900.00
	Exxon Mobil Corporation	\$21,441.00
	Oracle Corporation	\$47,975.00
	American Funds Small Capital Fund	\$21,280.00
	Franklin Small Cap Growth Fund	\$21,580.00
	Franklin Templeton Foreign Fund	\$39,300.00
	RMA Tax Free Fund	\$15,500.00
	America Online Inc.	\$48,000.00
	American Express Company	\$29,900.00
	Applied Materials	\$61,000.00
	American International Group	\$27,400.00
	AT & T Corporation	\$29,500.00
	Boeing	\$24,000.00
	Bristol Myers Squibb Company	\$21,000.00
	E-globe Inc.	\$525.00
	Elan Corporation	\$17,400.00
	Fleet Financial Group	\$12,660.00
	General Electric Company	\$64,600.00
	Gillette Company	\$26,085.00
	Hersey Foods Corporation	\$9,100.00
	Immunex Corporation	\$47,250.00
	Intel Corporation	\$50,725.00
	International Remote Imaging Systems Inc.	\$162.00
	International Business Machines	\$22,300.00
	Lucent Technologies Inc.	\$68,100.00
	Pharmacia Corp.	\$24,900.00
	Motorola Inc	\$23,800.00
	Merck and Co.	\$27,900.00
	Microsoft	\$56,000.00
	Nextel Communications	\$32,830.00
	Pepsico Inc.	\$22,600.00

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Type of Security	Description	Value
	Proctor and Gamble Co.	\$23,900.00
	Qualcomm Corporation	\$10,800.00
	Solutia Corporation	\$1,400.00
	Sun Microsystems	\$18,400.00
	Time Warner Inc.	\$36,000.00
	Vodafone Group Plc.	\$47,000.00
	Walmart Stores Inc.	\$33,200.00
	Walt Disney Co.	\$32,700.00
	Warner Lambert	\$22,900.00
	Euro Pacific Growth Fund	\$45,900.00
	Paine Webber National Tax Free Fund	\$11,800.00
Unlisted Securities	Union Bankshares	\$6,000.00
	Gross, Minsky, Mogul and Singal P.A.	\$3,400.00
Real Estate Owned	Residence: 186 Nowell Road Bangor ME 04401	\$250,000.00
	house lot: Levant ME	\$10,000.00
Pledged Assets	Mortgage due residence	

Note: This list does not include the holdings in my bank administered pension fund, my wife's 401(k), or the holdings in the mutual funds in which we have an interest.

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### III. GENERAL (PUBLIC)

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

Pro bono work is every lawyer's obligation. My firm is a member of the state Volunteer Lawyers Project which provides pro bono civil services to indigents throughout the State of Maine. Each lawyer in my office, including me, is expected to assist in the provision of these services. In the area of complex civil litigation, the late Secretary of State Edmund Muskie helped to create a group of lawyers who have agreed to handle these cases on a pro bono basis. I am a member of that group. Throughout my career I have performed civil and criminal pro bono work.

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

I do not belong, nor have I ever belonged, to any organization which discriminates on the basis of race, sex or religion.

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

In early December, 1996 United States Representative John Baldacci announced that he had formed a Judicial Selection Advisory Committee, in consultation with Representative-Elect Thomas Allen, to review candidates for appointment to the United States Court of Appeals for the First Circuit. Both of Maine's Congressional Districts were represented.

I submitted a resume to the Committee feeling that my education, experience and unique background caused me to be well suited to this position. I was interviewed by the Committee on January 4, 1997. I was subsequently advised that I was one

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of the three finalists. On January 3rd I was interviewed by Congressman Baldacci and on January 10th I was interviewed by Congressman Allen. On January 17, 1997 Representative Baldacci announced that he was recommending me to the President for nomination to the Court of Appeals. Concurrently Congressman Thomas Allen recommended Maine Supreme Court Justice Kermit Lipez. I was interviewed by the Department of Justice. Justice Lipez was later nominated and confirmed for this position.

When the current vacancy arose on the District Court due to the death of Judge Morton Brody, the entire Maine Congressional Delegation, consisting of Senator Olympia Snowe, Senator Susan Collins, Congressman John Baldacci and Congressman Thomas Allen, jointly recommended my nomination. I have since met with and been interviewed by representatives of the Federal Bureau of Investigation and the American Bar Association.

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

No, they have not.

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

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

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

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements

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such as standing and ripeness; and

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

I view a judge's role in deciding a case as an obligation to provide a decision grounded in the law and in precedent. As a member of the trial bar for 30 years, I realize that law is developed one case at a time. As counsel, I did not seek, nor did I desire, decisions that encompassed factual areas outside the matters in issue. The value of the judicial process is not the breadth of the decision, but its impartiality, sound reasoning and clear analysis.

Every federal judge should make decisions grounded in precedent and in the rule of *stare decisis*. Cases should not be decided until there is a finding of proper jurisdiction, proper standing and a determination that the dispute is ripe for decision.

I am fully sensitive to the importance of the separation of powers under our Constitution. I recognize that this separation is one of the safeguards to prevent the tyranny of one branch over another. The ultimate beneficiaries of this separation are the citizens of this country.



Senator GRASSLEY. I thank you very much, and the meeting is adjourned.  
[Whereupon, at 5:24 p.m., the committee was adjourned.]



## QUESTIONS AND ANSWERS

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### RESPONSES OF JOHNNIE B. RAWLINSON TO QUESTIONS FROM SENATOR SMITH

*Question 1.* Article II, Section 2 of the Constitution states that the President shall have the power to appoint federal judges with the “advice and consent” of the Senate. If a nominee for any federal judgeship refuses to answer questions about a Constitutional issue, should that individual be confirmed?

Answer 1. It is imperative that judicial nominees preserve the integrity and impartiality of the judicial system by refraining from expressing opinions on matters which may come before the court for decision. Consideration of a nominee’s analytical ability, career experience, academic background, temperament and integrity may be helpful to a Senator in determining the nominee’s fitness to serve as a federal judge. Of course, it is left to the reasoned determination of each Senator whether to “advise and consent” to a particular nomination.

*Question 2.* Article II, Section 2 of the Constitution states that the President shall have the power to appoint federal judges with “the advice and consent” of the Senate. If you were a member of the United States Senate, would you agree that it is difficult to advise and consent to a nominee when a candidate refuses to answer questions on Constitutional issues?

Answer 2. Yes, it may be difficult, nevertheless the availability of other information regarding the nominee’s qualifications may enable the Senate to exercise its responsibility under the advise and consent clause of the Constitution.

*Question 3.* What is the purpose of the United States Senate in holding hearings on nominees for the federal bench?

Answer 3. My understanding and experience of the purpose of these hearings is to allow Senators an opportunity to delve into the qualifications of nominees to the federal bench by exploring the nominee’s analytical ability, demeanor, prospective judicial temperament and any other factors deemed relevant to the process.

*Question 4.* Is it possible for a Senator to advise and consent to a nominee if the nominee simply refers to precedent without explaining his or her legal analysis?

Answer 4. Yes, by referring to precedent, the nominee is incorporating the legal analysis expressed in that precedent and demonstrating a commitment to follow that legal analysis when faced with analogous cases as a judge. This commitment, along with a nominee’s qualifications and understanding of the judicial function, may help inform the decision to advise and consent to a nominee.

*Question 5.* How can I as a Senator advise and consent to a nominee without answers to Constitutional questions?

Answer 5. The answers to Constitutional questions must be guided by the Article III restraints on judges rendering advisory opinions and the Code of Conduct requirement that a judge appear, and be impartial. I am confident that the other information available to Senators will enable the Senate to perform its constitutional obligation under Article II.

*Question 6.* What questions are legitimate to ask a candidate without the candidate prejudicing himself or herself?

Answer 6. A Senator should ask any question he or she deems appropriate to gather information regarding a judicial nominee’s fitness for office. I do not think that questions focusing on the nominee’s career record, academic background, legal writings, and understanding of the judicial function are areas that would serve to prejudice the nominee.

*Question 7.* Are there any questions that you feel are off limits for a Senator to ask?

Answer 7. No, there are not questions that are off limits for a Senator to ask.

*Question 8.* If a U.S. District Judge or U.S. Court of Appeals judge concludes that a Supreme Court precedent is flatly contrary to the Constitution, are there any cir-

cumstances under which the Judge may refuse to apply that precedent to the case before him or her?

Answer 8. No, even if a district judge or court of appeals judge concluded that a Supreme Court case was in error, he or she would still be bound by the oath of office to follow the Supreme Court precedent.

*Question 9.* If you were a Supreme Court Justice in 1856, what would you have held in *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393?

Answer 9. As I sit here today, it is impossible for me to state how I would have ruled in the *Dred Scott* case in 1856. As a Supreme Court Justice, my ruling would be based on a careful review of the briefs filed in the case, the arguments of counsel, the precedent which existed and the deliberations of the other justices.

*Question 10.* In *Dred Scott v. Sandford*, 60 U.S. (19 How.) (1856), the court apparently held, as you well know there were eight separate opinions in the case, that black slaves were not citizens of the United States. How should that precedent be treated by the courts today?

Answer 10. The *Dred Scott* case is no longer valid precedent, having been overruled by the Thirteenth and Fourteenth Amendments to the Constitution.

*Question 11.* If you were a judge in 1957, would you have been bound by your Oath and would you have been mandated to follow the binding precedent of *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856)?

Answer 11. If I were a judge in 1857, I would have been bound by my oath and mandated to follow the binding precedent of *Dred Scott v. Sandford*.

*Question 12.* If you were a Supreme Court Justice in 1896, what would you have held in *Plessy v. Ferguson*, 163 U.S. 539 (1896)?

Answer 12. It is impossible for me to state how I would have ruled in 1896 in *Plessy v. Ferguson* without the benefit of reviewing the briefs, participating in oral argument, analyzing existing precedents and deliberating with the other judges.

*Question 13.* In *Plessy v. Ferguson*, 163 U.S. 539 (1896), a majority of the court held as not a violation of the Fourteenth Amendment to the Constitution a Louisiana statute which provided that all railway companies provide "equal but separate accommodations" for black and white passengers, imposing criminal penalties for violations by railway officials. How should that precedent be treated by the Courts?

Answer 13. *Plessy v. Ferguson* is no longer valid precedent, having been overruled by the Supreme Court in *Brown v. Board of Education*, 347 U.S. 483 (1954).

*Question 14.* If you were a Supreme Court Justice in 1954, what would have held in *Brown v. Board of Education*, 347 U.S. 483 (1954)?

Answer 14. It is impossible for me to state how I would have ruled in the *Brown v. Board of Education* case without the benefit of reviewing the briefs filed by counsel, participating in oral argument, analyzing existing precedent and deliberating with the other judges.

*Question 15.* In *Brown v. Board of Education*, 347 U.S. 483 (1954) the court held that the segregation of children in public schools solely on the basis of race, even though the physical facilities and other tangible factors may be equal, deprive the children of the minority group of equal educational opportunities contrary to the protections contained within the Fourteenth Amendment to the Constitution. How should that precedent be treated by the Courts?

Answer 15. *Brown v. Board of Education* remains valid precedent and should be followed by the courts.

*Question 16.* If you were a Supreme Court Justice in 1973, what would you have held in *Roe v. Wade*, 410 U.S. 113 (1973)?

Answer 16. It is impossible for me to state how I would have ruled in 1973 in *Roe* without the benefit of reading the briefs, participating in oral argument, analyzing existing precedent and deliberating with the other judges.

*Question 17.* In *Roe v. Wade*, 410 U.S. 113 (1973), the court held that a Texas statute which proscribed an abortion except when necessary to save the life of the mother was a violation of the due process clause of the Fourteenth Amendment as an unjustified deprivation of liberty. Do you agree with the legal reasoning of the holding or of the Justice Rehnquist dissent in that case?

Answer 17. In considering Supreme Court precedent, I do not approach the rulings from the standpoint of whether I agree with them or not. Rather, I review the cases to determine whether they apply to the case before me, and if so, I must follow the precedent. As a federal district court judge, I would be obligated to follow the ruling in *Roe*, as modified by *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). If I were confirmed as a circuit judge, I would continue to be obligated to follow Supreme Court precedent.

*Question 18.* We understand the Supreme Court precedent, but what is your personal view on the issue of abortion?

Answer 18. I have no personal view which would prevent me from following the Supreme Court precedent established in *Roe v. Wade*, as modified by *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

*Question 19.* We understand the Supreme Court precedent, but what is your personal view on the issue of the death penalty?

Answer 19. I have no personal views which would prevent me from following Supreme Court precedents regarding the death penalty.

*Question 20.* We understand the Supreme Court precedent, but what is your personal view on the issue of the Second Amendment to the Constitution?

Answer 20. I have no personal views which would prevent me from following Supreme Court precedents regarding the Second Amendment.

*Question 21.* In *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), the Supreme Court held that the government interest in preserving life must be balanced against a mother's right of privacy and access to abortion which may not be unduly burdened. Do you believe the "right to privacy" includes the right to take away the life of an unborn child?

Answer 21. I have no personal views regarding the issues decided in *Planned Parenthood v. Casey* which would prevent me from following the precedent established in that case and any subsequent precedent which may be established by the Supreme Court.

*Question 22.* Again, I understand the state of the law on the Supreme Court's interpretation on the issue of abortion, but I am interested in your personal beliefs on the issue, do you personally believe that an unborn child is a human being?

Answer 22. I have no personal views on this issue that would prevent me from following established Supreme Court precedents.

*Question 23.* Do you believe that the death penalty is constitutional?

Answer 23. I have no personal views that would prevent me from following the Supreme Court precedent of *Gregg v. Georgia*, 428 U.S. 153 (1976) and subsequent precedent regarding the constitutionality of the death penalty.

*Question 24.* If you were a Supreme Court Justice, under what circumstances would you vote to overrule a precedent of the Court?

Answer 24. If I were a Supreme Court Justice, I would overrule a precedent of the Court only after considered review and reflection upon the applicable precedents and the particular facts before the court. The Supreme Court has set forth the following factors which should be weighed when the Supreme Court is asked to overrule a precedent: whether the existing precedent has proven unworkable, whether the existing precedent could be modified without serious injury to those who have relied on the precedent, whether a change in legal principles has resulted in the precedent being an abandoned doctrine, and whether the factual underpinnings of the precedent have changed to the degree that the precedent has been rendered obsolete. If I were a Supreme Court Justice, I would weigh those factors carefully in reaching a decision.

*Question 25.* Do you consider legislative intent and the testimony of elected officials in debates leading up to passage of an act? And what weight do you give legislative intent?

Answer 25. If a statute which is the subject of a case before me is ambiguous, I will review the legislative history in an effort to ascertain the legislative intent surrounding the passage of the statute. Although I would consider the testimony of elected officials, care must be taken to insure that statutes by individual legislators represents the will of the majority of the elected officials.

*Question 26.* The 9th Circuit Court of Appeals has been described as a rogue circuit by myself and other Senators. Do you believe that the 9th Circuit is an activist circuit or do you have another opinion of the 9th Circuit? A related question, would you bring the 9th Circuit into the mainstream of legal thought?

Answer 26. As a district court judge, I do not read the Ninth Circuit opinions with a view toward characterizing them as activist opinions, and I am bound to follow the precedent of the Ninth Circuit and Supreme Court whether I agree with them or not. If I were fortunate enough to be confirmed as a circuit judge, I would decide cases in accordance with the precedent of the Supreme Court and thus presumably within the mainstream of legal thought. I would also carefully read Supreme Court precedent with particular attention to those cases where the Supreme Court has reviewed Ninth Circuit decisions and otherwise resolved divisions among the circuits. I would also carefully consider petitions for rehearing en banc in those cases where there is a difference of opinion among Ninth Circuit panels. I would faithfully apply

the Supreme Court jurisprudence regarding the deference applicable to statutes, referenda and initiatives and construe them to be constitutional to the maximum extent possible. I would also continue to view the role of a judge as being limited to deciding only the case that is before the court and, addressing constitutional issues only if absolutely necessary. Additionally, I would continue to carefully examine the jurisdiction of the court and not reach out to decide issues that are not properly before the court. On those issues properly before the court, I would resolve them on the narrowest possible basis and in accordance with the precedent of the Supreme Court. In addition, I sat by designation on a Ninth circuit panel with Judges Kozinski and Thomas and we were able to resolve fifteen cases relying on established case law. None of those cases have been considered en banc, reversed or the subject of certiorari to the Supreme Court.

*Question 27.* In April of 1998, you accepted your appointment to the U.S. District Court for the District of Nevada. Do you believe that just over two years on the federal bench is sufficient training to be elevated to the 9th Circuit Court of Appeals?

*Answer 27.* Yes, I think that my experience as a district judge, together with my academic background and career experiences have prepared me sufficiently to perform the role of a circuit judge. I sat by designation on the Ninth Circuit and experienced no difficulty in preparing for or participating in the resolution of cases on appeal. Throughout this country, there are many able circuit judges who never served as district judges or on any bench prior to their appointment as circuit judges.

*Question 28.* What is your current legal opinion on the constitutionality of state affirmative action programs?

*Answer 28.* The United States Supreme Court in the case of *Adarand v. Peña*, 515 U.S. 200 (1995), has definitively ruled that race-based classifications in state affirmative action programs or any state action are subject to strict scrutiny, must address a compelling state interest and must be narrowly tailored to that compelling interest. I have no personal views which would interfere with my ability to apply the Supreme Court's holding in *Adarand* and any subsequent case addressing the issue of affirmative action.

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RESPONSES OF JOHNNIE B. RAWLINSON TO QUESTIONS FROM SENATOR THURMOND

*Question 1.* We frequently hear the argument that the courts act in response to various social problems because the legislature has failed to act on important issues. What is your view of courts acting in this manner?

*Answer 1.* It is the function of the courts to interpret the laws which have been enacted by the legislative branches of government. Legislative inaction does not justify judicial intrusion into the policymaking function reserved for the legislative branch.

*Question 2.* Do you have any personal objections to the death penalty that would cause you to be reluctant to impose or uphold a death sentence?

*Answer 2.* I have no personal objections to the death penalty that would cause me to be reluctant to impose or uphold a death sentence.

*Question 3.* What is your view of mandatory minimum criminal sentences, and would you have any reluctance to impose or uphold them as a Federal judge?

*Answer 3.* Mandatory minimum sentences are an expression of the will of Congress regarding the appropriate sentences for certain criminal offenses. As a district court judge, I have imposed mandatory minimum sentences, and I would not be reluctant to uphold them if I were fortunate enough to be confirmed as a circuit judge.

*Question 4.* As you are well aware, the sentencing of criminal defendants in Federal court is conducted under the Federal Sentencing Guidelines. Some argue that the guidelines do not provide enough flexibility for the sentencing judge, while others say the Guidelines provided needed consistency. What is your view of the Federal Sentencing Guidelines and their application?

*Answer 4.* As a district court judge, I have applied the Federal Sentencing Guidelines, which strike a balance between flexibility and consistency, and I have found them to be very helpful in fashioning appropriate sentences.

*Question 5.* As you know, the Prison Litigation Reform Act, was an attempt to limit prisoner litigation and court involvement in prison operations. Do you believe it places too many restrictions on the ability of prisoners to make claims and for judges to remedy Constitutional violations in the prison context?

*Answer 5.* No, the Prison Litigation Reform Act as upheld by the Supreme Court in *Miller v. French*, 2000 WL 775572 (June 19, 2000), provides additional statutory authority for weeding out frivolous claims and ruling on the merits of legitimate claims, while leaving intact the limited jurisdiction of federal courts to consider

claims of constitutional violations in the prison context. In *Miller v. French*, the Supreme Court emphasized that prospective relief in prison conditions cases should be narrowly drawn and minimally intrusive.

*Question 6.* As you are aware, Federal Rule of Civil Procedure 11 permits federal judges to impose sanctions against attorneys for unwarranted claims or representations made in their pleadings. Some say this rule is an important tool for judges, while others believe it discourages litigants from testing the boundaries of existing law. What is your opinion of Rule 11?

Answer 6. Rule 11 is a useful tool for judges to have available in those cases where a litigant or attorney abuses the court process and procedures. Rule 11 also preserves the opportunity to test the boundaries of existing law so long as the claims are warranted by existing law or grounded in a non-frivolous argument for a change in the law. While the sanctions provided for in Rule 11 should be used sparingly, they should be used without hesitation when necessary to prevent or prohibit vexatious litigation.

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RESPONSES OF JOHNNIE B. RAWLINSON TO QUESTIONS FROM SENATOR HATCH

*Question 1.* If a particular judge or court has a high rate of reversal on appeal, either to the Court of Appeals or the Supreme Court, is that a problem? If it is, what can and should be done to remedy that problem?

Answer 1. Yes, a high rate of reversal is a cause for concern. If presented with that circumstance, a judge or court should carefully read the overruling precedent with a view toward correcting the erroneous ruling(s) at the earliest opportunity. The judge or court should also make a concerted effort to focus on only the issues before the judge or court, judiciously applying precedent to resolve cases on the narrowest basis possible. Finally, the judge or court should conscientiously refrain from reaching out to decide matters which are not before the court.

*Question 2.* In your view, to what extent, if any, do the rights protected by the Constitution grow or shrink with changing historical circumstances?

Answer 2. No, rights protected by the constitution do not grow or shrink with changing historical circumstances. However, the Supreme Court may be called upon to interpret those rights within a changed historical setting, such as changes in technology like the telephone. The Supreme Court's interpretation of those rights constitute precedent which lower courts are bound to follow.

*Question 3.* Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Answer 3. A federal court should always begin its statutory analysis keeping in mind the strong presumption of constitutionality to which Congressional enactments are entitled. Every effort should be made to interpret the statute in a way that would result in a finding of constitutionality. Adherence to these well established statutory construction precepts would result in a finding of unconstitutionality only in rare and exceptional circumstances.

*Question 4.* Please describe in reasonable detail the Supreme Court's recent decision in *United States v. Morrison*, and its 1995 decision *United States v. Lopez*, explaining to the Committee your understanding of those decisions, and their holdings regarding congressional power. Some commentators have accused the Supreme Court of judicial activism because of its decisions in those cases. Do you agree? Please explain.

Answer 4. In *United States v. Morrison*, 120 S.Ct. 1740 (2000), the Supreme Court invalidated a statute which created a federal civil cause of action for victims of sexual assault. In *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court struck down a statute which made it a crime to knowingly possess a firearm within a school zone. The Supreme Court found that both statutes exceeded Congress' power to regulate under the commerce clause. The Supreme Court opined that Congress has the power to regulate channels of interstate commerce or instrumentalities of interstate commerce. However, there must be a substantial effect upon interstate commerce to trigger the commerce clause regulatory authority if the subject of the legislation is intrastate activity. As a lower court judge, my practice is not to analyze the decisions of the Supreme Court, such as *Lopez* and *Morrison*, with the aim of characterizing them in terms of judicial activism, but rather I read them to ascertain their holdings and to understand their application to particular cases. They constitute binding precedent which I must follow whether I agree with them or not.

*Question 5.* In your view, is the use of race, gender, or national origin-based preferences in such areas as employment decisions (hiring, promotion, or layoffs), college

admissions and scholarship awards, and the awarding of government contracts, lawful under the Equal Protection Clause of the 14th Amendment. Please explain.

Answer 5. The United States Supreme Court in the case of *Adarand v. Peña*, 515 U.S. 200 (1995), has definitively ruled that race or national origin-based classifications in state programs or any state action are subject to strict scrutiny, must address a compelling state interest and must be narrowly tailored to that compelling interest. In *United States v. Virginia*, 518 U.S. 515 at 533 (1996), the Supreme Court articulated an intermediate scrutiny standard for analyzing gender based programs. I hold no personal views which would interfere with my ability to apply the Supreme Court's holding in *Adarand v. Peña*, *United States v. Virginia* and any subsequent case addressing this area.

*Question 6.* Do you believe that the view of the death penalty taken by Justices Brennan, Marshall, and Blackburn—that the death penalty is unconstitutional notwithstanding the clear constitutional text sanctioning it—is a permissible view for a judge to hold?

Answer 6. The Supreme Court has upheld the constitutionality of the death penalty in *Gregg v. Georgia*, 428 U.S. 153 (1976). I hold no personal views which would affect my ability to follow this precedent and any subsequent precedent regarding the death penalty.

*Question 7.* Do you personally have any legal or moral beliefs that would inhibit or prevent you from imposing a death sentence in any criminal case that might come before you as a federal judge? Please explain.

Answer 7. No, I personally have no legal or moral beliefs that would inhibit or prevent me from imposing a death sentence.

*Question 8.* Do you believe the 10, 15, or even 20-year delays between conviction of a capital offender and execution is too long?

Answer 8. Yes, inordinate delay compromises the integrity of the justice system.

*Question 9.* Do you believe that once Congress or a State legislature has made the policy decision that capital punishment is appropriate, then the federal courts should focus their resources on resolving capital cases fairly and expeditiously.

Answer 9. Yes, I believe that once the policy decision has been made, it is the role of the judge to resolve capital cases fairly and expeditiously.

*Question 10.* The sentencing of criminal defendants in federal court is conducted under the federal Sentencing Guidelines. Some have argued that the Guidelines do not provide enough flexibility for the sentencing judge, while others have argued that the Guideline provide needed consistency in sentencing. What is your view of the federal Sentencing Guideline and the application?

Answer 10. As a district court judge, I have applied the Federal Sentencing Guidelines, which strike a balance between flexibility and consistency, and I have found them to be very helpful in fashioning appropriate sentences.

*Question 11.* What is your view of mandatory minimum criminal sentences, and would you have any reluctance to impose or uphold them as a federal judge?

Answer 11. Mandatory minimum sentences are an expression of the will of Congress regarding the appropriate sentences for certain criminal offenses. As a district court judge, I have imposed mandatory minimum sentences without reluctance, and I would not be reluctant to uphold them if I were fortunate enough to be confirmed as a circuit judge.

*Question 12.* What would you do if you believed the Supreme Court or Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision? Or would you apply your own best judgment of the merits? Take, for example, the Supreme Court's recent decision in *United States v. Playboy Entertainment Group Inc.* where the Court struck down a provision of the 1996 Telecommunications Act that was designed to protect children from exposure to sexually explicit adult programming on cable television.

Answer 12. Even if I believed the Supreme Court or Court of Appeals had seriously erred in rendering a decision, I would still be bound by my oath of office to follow precedent. I hold no views regarding any Supreme Court precedent, including *Playboy*, which prevent me from following the precedent of the higher court.

*Question 13.* Please describe in reasonable detail your understanding of the case recently argued before the Supreme Court entitled *Dickerson v. United States*, which asked whether a defendant's voluntary confession could be admitted into evidence in the Government's case in chief under 18 U.S.C. 3501, even if the confession was not preceded by the warnings set forth in *Miranda v. Arizona*? Please explain to the Committee your understanding of *Miranda*, section 3501, and the proper role of the Congress and the Courts in establishing rules of evidence and procedure for



federal courts. Also, please state whether you believe the *Miranda* decision is an example of judicial activism.

Answer 13. *Miranda v. Arizona* is binding precedent on the lower courts unless and until the Supreme Court overrules or modifies that decision. *Dickerson* involves a conflict between the Supreme Court's decision in *Miranda* to require specific warnings before a confession may be admissible and the Congress' decision to impose a rule, 18 U.S.C. § 3501, which requires instead a consideration of the totality of the circumstances surrounding the confession. Whatever the outcome of the *Dickerson* case, the Supreme Court's decision will constitute precedent which I, as a lower court judge, am obligated to follow. As a lower court judge, my practice is not to analyze the decisions of the Supreme Court, including *Miranda*, with the aim of characterizing them in terms of judicial activism, but rather I read them to ascertain their holdings and to understand their application to particular cases.

*Question 14.* Please define judicial activism. In your view, is *Roe v. Wade* an example of judicial activism?

Answer 14. Judicial activism is considered by some to be injection of one's personal views into decisions or reaching out to decide matters which are not properly before the court. As a lower court judge, my practice is not to analyze the decisions of the Supreme Court, including *Roe* as modified as *Casey*, with the aim of characterizing them in terms of judicial activism, but rather I read them to ascertain their holdings and to understand their application to particular case. *Roe v. Wade*, as modified by *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), is binding Supreme Court precedent which I am obligated to follow.

*Question 15.* The Supreme Court, through a process of so-called selective incorporation, has applied most if not all, of the provisions of the Bill of Rights against the States. Thus, for instance, the First Amendment, which originally was intended to apply only to the federal government, has been applied to the States. The Second Amendment, however, which protects the rights of law-abiding citizens to own firearms in this country, has not. Do you believe that the Second Amendment ought to be applied to the States?

Answer 15. I leave to the Supreme Court the determination regarding which of the Bill of Rights provisions are to be applied to the States based on incorporation jurisprudence. As a lower court judge, I am obligated to follow Supreme Court precedent.

*Question 16.* If most of the other provisions of the Bill of Rights apply to the States, why shouldn't the Second Amendment? On what principled basis would it be appropriate to apply almost all of the other provisions of the Bill of Rights against the States, but not the Second Amendment?

Answer 16. Whether any or all of the provisions of the Bill of Rights are applied to the states is a question for the Supreme Court to resolve. Perhaps it is a matter of the Second Amendment incorporation issue not having been presented to the Supreme Court in a posture where it is ripe for review. In any event, I hold no personal views which would prevent me from following Supreme Court precedent on this issue.

*Question 17.* The precedents of Circuit Courts 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?

Answer 17. I am absolutely committed to following the precedents of higher courts faithfully and giving them full force and effect, even if I personally disagreed with a precedent.

*Question 18.* You have stated that, if confirmed, you could be bound by Supreme Court precedent and the precedent of the Circuit Court of Appeals over your district or circuit. There may be times, however, when you will be faced with cases of first impression. What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Answer 18. In the rare case of first impression, if I were interpreting a statute and the language of the statute were clear, I would decide the case based on the plain meaning of the statute. If the statutory language were ambiguous, I would review the legislative history in an effort to ascertain the intent of the legislature. Finally, I would look to analogous cases for guidance.

## RESPONSES OF JOHN W. DARRAH TO QUESTIONS FROM SENATOR THURMOND

*Question 1.* We frequently hear the argument that the courts act in response to various social problems because the legislature has failed to act on important issues. What is your view of courts acting in this manner?

Answer 1. Such an approach is contrary to the well established principle of separation of powers. It is absolutely improper for a Court to act in any manner which involves the function of the legislative branch of government.

*Question 2.* Do you have any personal objections to the death penalty that would cause you to be reluctant to impose or uphold a death sentence?

Answer 2. I have no personal objections to the death penalty which would cause me to be reluctant to impose or uphold a death sentence which was justified under the facts and law of the case.

*Question 3.* What is your view of mandatory minimum criminal sentences, and would you have any reluctance to impose or uphold them as a Federal judge?

Answer 3. The enactment of these statutes is a valid exercise of legislative authority. I would have no reluctance in imposing or upholding mandatory minimum criminal sentences.

*Question 4.* As you are well aware, the sentencing of criminal defendants in Federal court is conducted under the Federal Sentencing Guidelines. Some argue that the Guidelines do not provide enough flexibility for the sentencing judge, while others say the Guidelines provided needed consistency. What is your view of the Federal Sentencing Guidelines and their application?

Answer 4. The Federal Sentencing Guidelines do provide a general uniformity in the sentences imposed for various criminal misconduct. The consistency which is achieved through the Guidelines assures that all will receive equal treatment under the law. If I were confirmed as a Federal District Court Judge, I would have no reluctance to follow the Guidelines.

*Question 5.* As you know, the Prison Litigation Reform Act, which was an attempt to limit prisoner litigation and court involvement in prison operations. Do you believe that the Act has been beneficial to the legal system or do you believe it places too many restrictions on the ability of prisoners to make claims and for judges to remedy Constitutional violations in the prison context?

Answer 5. The Prison Litigation Reform Act has been found to be a valid exercise of the legislative power, and I would apply the law as it is written in any such cases that come before me.

*Question 6.* As you are aware, Federal Rule of Civil Procedure 11 permits federal judges to impose sanctions against attorneys for unwarranted claims or representations made in their pleadings. Some say this rule is an important tool for judges, while others believe it discourages litigants from testing the boundaries of existing law. What is your opinion of Rule 11?

Answer 6. Federal Rule 11 permits federal judges to impose sanctions against attorneys for a prohibited conduct in the proper case. However, the Rule is written to permit attorneys to argue in good faith for an extension of existing law based on sound principles of jurisprudence.

## RESPONSES OF JOHN W. DARRAH TO QUESTIONS FROM SENATOR SMITH

*Question 1.* Article II, Section 2 of the Constitution states that the President shall have the power to appoint federal judges with "the advice and consent" of the Senate. If a nominee for any federal judgeship refuses to answer questions about a Constitutional issue, should that individual be confirmed?

Answer 1. A nominee should try to answer all questions of a Senator, although a judicial candidate is obligated to preserve the integrity of the judicial position sought by avoiding answering questions in any fashion which may suggest the nominee has prejudged an issue or has personal feelings which would interfere with the nominee's ability to be fair and impartial. It is up to the Senator to determine the circumstances under which he will vote to confirm a nominee.

*Question 2.* Article II, Section 2 of the constitution states that the President shall have the power to appoint federal judges with "the advice and consent" of the Senate. If you were a member of the United States Senate, would you agree that it is difficult to advise and consent to a nominee when a candidate refuses to answer questions on Constitutional issues?

Answer 2. Yes, however, a Senator can seek assurances that the nominee is aware of and will discharge the duties imposed on a federal judge pursuant to the Con-

stitution of the United States. These duties include respecting the principles of stare decisis and separation of powers.

*Question 3.* What is the purpose of the United States Senate in holding hearings on nominees for the federal bench?

Answer 3. My understanding is that the Senate holds hearings on nominees for the federal bench to determine their qualifications, including whether a candidate respects the Constitution's limitations on judicial power and whether the candidate has sufficient professional experience, ability and integrity to perform the functions required of the federal judiciary.

*Question 4.* Is it possible for a Senator to advise and consent to a nominee if nominee simply refers to precedent without explaining his or her legal analysis?

Answer 4. Yes, in my view, it is possible to advise and consent to a qualified nominee who refers to precedent on legal questions. A nominee can demonstrate an understanding of legal issues by reference to past holdings of higher courts, which implies that the nominee would follow the legal analysis of that precedent.

*Question 5.* How can I as a Senator advise and consent to a nominee without answers to Constitutional questions?

Answer 5. A Senator may advise and consent to a nominee by seeking assurances that the nominee is aware of and will discharge the duties imposed on a federal judge pursuant to the Constitution of the United States. These duties include respecting the principles of stare decisis and separation of powers. A Senator may also exercise his responsibilities under the advice and consent clause by assessing whether the candidate has sufficient professional experience, ability and integrity to perform the functions required by the federal judiciary.

*Question 6.* What questions are legitimate to ask a candidate without the candidate prejudicing himself or herself?

Answer 6. A Senator may ask any questions he or she deems appropriate. Questions that would not be likely to prejudice a candidate include those regarding the candidate's professional and personal background to determine if the candidate has the necessary intelligence, education, training, experience, integrity and work ethic to perform the duties of a federal judge. Other such questions include those intended to determine whether the candidate appreciates and will discharge the duties and obligations imposed upon the federal judiciary by the Constitution and other laws.

*Question 7.* Are there any questions that you feel are off limits for a Senator to ask?

Answer 7. No, a Senator may ask any questions he or she deems appropriate.

*Question 8.* If a U.S. District Court Judge or U.S. Court of Appeals judge concludes that a Supreme Court precedent is flatly contrary to the Constitution, are there any circumstances under which the Judge may refuse to apply that precedent to the case before him or her?

Answer 8. No, a U.S. District Court judge or a U.S. Court of Appeals judge is bound to follow a Supreme Court precedent if it is applicable to the case, regardless of the judge's own conclusion that the higher court erred.

*Question 9.* If you were a Supreme Court Justice in 1856, what would you have held in *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393?

Answer 9. I am not able to conclude how I would have held in *Dred Scott v. Sandford* if I were a Justice of the Supreme Court in 1856. To responsibly discharge the duties of a Supreme Court Justice, one would have to read the briefs, listen to the arguments of counsel, and discuss the case with the other Justices in conference.

*Question 10.* In *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856), the court apparently held, as you well know there were eight separate opinions in the case, that black slaves were not citizens of the United States. How should that precedent be treated by the courts today?

Answer 10. The decision in *Dred Scott v. Sandford* has been overruled by the Thirteenth and Fourteenth Amendments to the Constitution. The case has no binding precedential value and is of no force and effect today.

*Question 11.* If you were a judge in 1857, would you have been bound by your Oath and would you have been mandated to follow the binding precedent of *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856)?

Answer 11. If I were a judge in 1857, I would have been obligated to follow the then binding precedent of the decision in *Dred Scott v. Sandford*.

*Question 12.* If you were a Supreme Court Justice in 1896, what would you have held in *Plessy v. Ferguson*, 163 U.S. 539 (1896)?

Answer 12. I am not able to conclude how I would have held in *Plessy v. Ferguson* if I were a Justice of the Supreme Court in 1896. To responsibly discharge the duties of a Supreme Court Justice, one would have to read the briefs, listen to the arguments of counsel, and discuss the case with the other Justices in conference.

*Question 13.* In *Plessy v. Ferguson*, 163 U.S. 539 (1896), a majority of the court held as not a violation of the Fourteenth Amendment to the Constitution a Louisiana statute which provided that all railway companies provide “equal but separate accommodations” for black and white passengers, imposing criminal penalties for violations by railway officials. How should that precedent be treated by the Courts?

Answer 13. *Plessy v. Ferguson* has been overruled by subsequent Supreme Court decisions, such as *Brown v. Board of Education*. It is not binding case precedent and is of no force and effect today.

*Question 14.* If you were a Supreme Court Justice in 1954, what would you have held in *Brown v. Board of Education*, 347 U.S. 483 (1954)?

Answer 14. I am not able to conclude how I would have held in *Brown v. Board of Education* if I were a Justice of the Supreme Court in 1954. To responsibly discharge the duties of a Supreme Court Justice, one would have to read the briefs, listen to the arguments of counsel, and discuss the case with the other Justices in conference.

*Question 15.* In *Brown v. Board of Education*, 347 U.S. 483 (1954), the court held that the segregation of children in public schools solely on the basis of race, even though the physical facilities and other tangible factors may be equal, deprive the children of the minority group of equal educational opportunities contrary to the protections contained within the fourteenth Amendment to the constitution. How should that precedent be treated by the Courts?

Answer 15. The case of *Brown v. Board of Education* has not been overruled, and the law as pronounced by the Supreme Court in that case is binding case precedent on all lower courts.

*Question 16.* If you were a Supreme Court Justice in 1973, what would you have held in *Roe v. Wade*, 410 U.S. 113 (1973)?

Answer 16. I am not able to conclude how I would have held in *Roe v. Wade*, if I were a Justice of the Supreme Court in 1973. To responsibly discharge the duties of a Supreme Court Justice, one would have to read the briefs, listen to the arguments of counsel, and discuss the case with the other Justices in conference.

*Question 17.* In *Roe v. Wade*, 410 U.S. 113 (1973) the court held that a Texas statute which proscribed an abortion except when necessary to save the life of the mother was a violation due process clause of the Fourteenth Amendment as an unjustified deprivation of liberty. Do you agree with the legal reasoning of the holding or of the Justice Renquist dissent in that case?

Answer 17. The holding of *Roe v. Wade*, as modified and explained by *Casey*, has not been overruled and is still binding precedent. If I were confirmed to serve as a federal judge, I would perform my obligation and apply that precedent. I have no personal view which would prevent me from doing so.

*Question 18.* We understand the Supreme Court precedent, but what is your personal view on this issue of abortion?

Answer 18. I have no personal view or attitude which would prohibit me from discharging my duty to apply Supreme Court precedent regarding the issue of abortion.

*Question 19.* We understand the Supreme Court precedent, but what is your personal view on the issue of the death penalty?

Answer 19. I have no personal view or attitude which would prohibit me from discharging my duty to apply Supreme Court precedent regarding the issue of the death penalty.

*Question 20.* We understand the Supreme Court precedent, but what is your personal view on the issue of the Second Amendment to the Constitution?

Answer 20. I have no personal views regarding the Second Amendment which would prevent me from applying Supreme Court opinions regarding this issue.

*Question 21.* In *Planned Parenthood v. Casey*, (505 U.S. 833 (1992)) the Supreme Court held that the government interest in preserving life must be balanced against a mother’s right of privacy and access to abortion which may not be unduly burdened. Do you believe the “right to privacy” includes the right to take away the life of an unborn child?

Answer 21. The Supreme Court opinion, in the case of *Planned Parenthood v. Casey*, is binding precedent. I have no personal views which would prevent me from discharging my obligation to apply the holding of this case.

*Question 22.* Again, I understand the state of the law on the Supreme Court's interpretation on the issue of abortion, but I am interested in your personal beliefs on the issue, do you personally believe that an unborn child is a human being?

*Answer 22.* I have no personal beliefs that would prevent me from discharging my obligation as a federal judge to apply any Supreme Court precedent on this issue.

*Question 23.* Do you believe that the death penalty is Constitutional?

*Answer 23.* The Supreme Court determined that the death penalty is constitutionally permissible in *Gregg v. Georgia*. I have no personal belief which would prevent me from following the law in this area.

*Question 24.* If you were a Supreme Court Justice, under what circumstances would you vote to overrule a precedent of the Court?

*Answer 24.* The Supreme Court has announced several factors it considers when deciding whether to overrule its precedent, including whether or not the prior ruling is unworkable, the cost of overruling the prior decision for people who have ordered their lives based on the principles of that case, whether the doctrinal footings of the prior opinion have been weakened by the evolution of any legal principle decided therein, and whether there has been a change in the basic facts of the prior opinion that renders the opinion obsolete or supports an argument for overruling the decision. If I were Justice on the United States Supreme Court, I would apply these factors, which were discussed in *Casey*, in deciding a request to overrule a prior precedent.

*Question 25.* Do you consider legislative intent and the testimony of elected officials in debates leading up to passage of an act? And what weight do you give legislative intent?

*Answer 25.* A statute must be applied so as to give full effect to the intent of the legislature in enacting the statute. Legislative intent is first determined by giving effect to the plain meaning of the words of the statute. If there is doubt as to the meaning of the statute and no case precedent which has previously construed the statute, then a court should look to the interpretations given statutes that are analogous to the statute in question. If these means still do not permit a court to discern the legislative intent, then secondary sources such as legislative history and debate may be considered to make this determination. A judge should accord more weight to a committee report on the legislation than to the statements of individual elected officials in debates.

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#### RESPONSES OF JOHN W. DARRAH TO QUESTIONS FROM SENATOR HATCH

*Question 1.* If a particular judge or court has a high rate of reversal on appeal, either to the Court of Appeals or the Supreme Court, is that a problem? If it is, what can and should be done to remedy that problem?

*Answer 1.* Yes, a high rate of reversal is a problem. It is inappropriate if a federal judge disregards legal precedent or statutes in deciding a case. If I am fortunate enough to be confirmed as a federal judge, I would follow and apply precedent and statutes.

*Question 2.* In your view, to what extent, if any, do the rights protected by the Constitution grow or shrink with changing historical circumstances?

*Answer 2.* The rights of the Constitution are generally found in the plain language of its provisions. As a lower court judge, I would follow the opinions of the Supreme Court as it has examined, considered, and interpreted the Constitution.

*Question 3.* Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

*Answer 3.* A statute enacted by Congress is presumed to be constitutional. As a Federal District Court Judge, I would uphold that presumption of constitutionality and examine the language of the statute so challenged to find a construction of the statute both consistent with the intention of Congress and within the provisions of the Constitution. It would seem to be an extremely rare instance when a Congressional enactment was found to be beyond the presumption of constitutionality.

*Question 4.* Please describe in reasonable detail the Supreme Court's recent decision in *United States v. Morrison*, 120 S. Ct. 1740 (2000), and its 1995 decision *United States v. Lopez*, 514 U.S. 549 (1995), explaining to the Committee your understanding of those decisions, and their holdings regarding congressional power. Some commentators have accused the Supreme Court of judicial activism because of its decisions in those cases. Do you agree? Please explain.

*Answer 4.* In *United States v. Lopez*, the Supreme Court invalidated the gun-free school zone act which made it a federal offense to possess a firearm at or near a

school. The Court found that such a possession was not an economic activity under the commerce clause as not “substantially affecting interstate commerce.”

In *United States v. Morrison*, the Court held that the 1994 Violence Against Women Act, which created a federal cause of action for victims of sexually related violence against their assailant for damages in federal court, exceeded Congress’s power under the commerce clause. The opinion held that it was appropriate to aggregate interstate incidents of activity to determine whether it “substantially affected interstate commerce” only if the activity was economic in nature.

In both cases, the Supreme Court was interpreting the outer boundaries of Congressional power. As a federal judge, I would be obligated to follow these Supreme Court opinions, regardless of whether some commentators view them to be examples of judicial activism.

*Question 5.* In your view, is the use of race, gender or national origin-based preferences in such areas as employment decisions (hiring, promotion or layoffs), college admissions and scholarship awards, and the awarding of government contracts, lawful under the Equal Protection Clause of the 14th Amendment? Please explain.

Answer 5. In *Adarand Constructors v. Peña*, 515 U.S. 200 (1995), the Supreme Court held that affirmative action-type programs based on race or national origin be subject to “strict scrutiny” and will be upheld only if they are the least restrictive means of serving a compelling government interest. As a federal judge, I would apply the holding of the Supreme Court opinion.

*Question 6.* Do you believe that the view of the death penalty taken by Justices Brennan, Marshall and Blackmun—that the death penalty is unconstitutional notwithstanding the clear constitutional text sanctioning it—is a permissible view for a federal judge to hold?

Answer 6. The Supreme Court has repeatedly held the death penalty to be constitutional. A federal judge is obligated to follow that mandate and apply the death penalty when required. It is not permissible for a federal judge to hold otherwise.

*Question 7.* Do you personally have any legal or moral beliefs that would inhibit or prevent you from imposing a death sentence in any criminal case that might come before you as a federal judge? Please explain.

Answer 7. I have no legal or moral beliefs that would inhibit the imposition of the death sentence in a criminal case that might come before me as a federal judge. As a federal judge, it would be my obligation to apply this law, which has been held to be constitutional.

*Question 8.* Do you believe that 10, 15 or even 20-year delays between conviction of a capital offender and execution is too long?

Answer 8. Inordinate delays between the conviction of a capital offender and the execution of the death sentence are contrary to a basic principle of jurisprudence that the execution of all court orders should be accomplished in a reasonably timely fashion.

*Question 9.* Do you believe that once Congress or a State legislature has made the policy decision that capital punishment is appropriate, then the federal courts should focus their resources on resolving capital cases fairly and expeditiously?

Answer 9. Yes, I believe that once Congress or a State legislature has made the policy decision that capital punishment is appropriate, the federal courts should focus their resources on resolving capital cases fairly and expeditiously.

*Question 10.* The sentencing of criminal defendants in federal court is conducted under the federal Sentencing Guidelines. Some have argued that the Guidelines do not provide enough flexibility for the sentencing judge, while others have argued that the Guidelines provide needed consistency in sentencing. What is your view of the federal Sentencing Guidelines and their application?

Answer 10. The Federal Sentencing Guidelines do provide a general uniformity in the sentences imposed for various criminal misconduct. The consistency which is achieved through the Guidelines assures that all will receive equal treatment under the law. If I were confirmed as a Federal District Court Judge, I would have no reluctance to follow the Guidelines.

*Question 11.* What is your view of mandatory minimum criminal sentences and would you have any reluctance to impose or uphold them as a federal judge?

Answer 11. Mandatory minimal criminal sentences are a valid exercise of Congressional authority. I would have no reluctance to impose or uphold them as a federal judge.

*Question 12.* What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision? Or would you apply your own best judgment of the merits? Take, for example, the Supreme Court’s recent decision in *United States v. Playboy*

*Entertainment Group Inc.*, No. 98-1682 (decided May 22, 2000), where the Court struck down a provision of the 1996 Telecommunications Act that was designed to protect children from exposure to sexually explicit adult programming on cable television.

Answer 12. If I were conformed as a Federal District Court Judge, I would apply a decision of the Supreme Court or the Court of Appeals to all cases before me when required. I would not apply any personal views to the merits of those decisions.

*Question 13.* Please describe in reasonable detail your understanding of the case recently argued before the Supreme Court entitled *Dickerson v. United States*, which asked whether a defendant's voluntary confession could be admitted into evidence in the Government's case in chief under 18 U.S.C. § 3501, even if the confession was not preceded by the warnings set forth in *Miranda v. Arizona*, 384 U.S. 486 (1966)? Please explain to the Committee your understanding of *Miranda*, Section 3501, and the proper role of the Congress and the Courts in establishing rules of evidence and procedure for federal courts. Also, please state whether you believe the *Miranda* decision is an example of judicial activism.

Answer 13. The question presented in *Dickerson* is whether a voluntary confession may be admitted into evidence under 18 U.S.C. § 3501, even if the confession was obtained without providing the warnings set forth in the Supreme Court case of *Miranda v. Arizona*. In the *Miranda* case, the Supreme Court required certain admonishments given before any statements made by an accused could be admissible into evidence. Section 3501 uses a "totality of the circumstances test" to determine whether or not such a confession would be admissible even if *Miranda* warnings were not given. The case presents complicated legal issues, which will soon be resolved by the Supreme Court. If I am fortunate enough to be confirmed as a Federal District Court Judge, I will follow whatever the Supreme Court rules in the *Dickerson* case.

*Question 14.* Please define judicial activism. In your view, is *Roe v. Wade*, 410 U.S. 113 (1973), an example of judicial activism?

Answer 14. Judicial activism has sometimes been defined as an improper refusal of a judge to follow a statute or the precedential ruling of a higher court. Such judicial activism is inappropriate. Although some commentators have labeled *Roe v. Wade* as an example of judicial activism, if I am fortunate enough to be confirmed as a Federal District Court Judge, I would follow the Supreme Court's ruling in *Roe v. Wade*, as modified by *Planned Parenthood* 505 U.S. 833 (1992).

*Question 15.* The Supreme Court, through a process of so-called selective incorporation, has applied most, if not all, of the provisions of the Bill of Rights against the States. Thus, for instance, the First Amendment, which originally was intended to apply only to the federal government, has been applied to the States. The Second Amendment, however, which protects the rights of law-abiding citizens to own firearms in this country, has not. Do you believe that Second Amendment ought to be applied to the States?

Answer 15. If I were confirmed as a Federal District Court Judge, I would follow any Supreme Court precedent regarding this issue. If I am fortunate enough to be confirmed as a Federal District Court Judge and were presented with a Second Amendment case, I would follow Supreme Court precedent as well as the plain language of the Second Amendment.

*Question 16.* If most of the other provisions of the Bill of Rights apply to the States, why shouldn't the Second Amendment? On what principled basis would it be appropriate to apply almost all of the other provisions of the Bill of Rights against the States, but not the Second Amendment?

Answer 16. The decisions regarding the application of certain provisions of the first eight amendments to the Constitution to the States raises complicated legal issues. If I were confirmed as a Federal District Court Judge and a case presenting this issue came before me, I would carefully examine the facts of the case and research thoroughly all decisions involving the doctrine of incorporation and follow all binding precedent.

*Question 17.* The precedents of Circuit Courts 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?

Answer 17. The precedents of Circuit Courts are binding on all the district courts within that particular Circuit. If I am confirmed as a Federal District Court Judge, I would faithfully follow the precedents of the higher courts and give them full force and effect in every case.

*Question 18.* You have stated that, if confirmed, you would be bound by Supreme Court precedent and the precedent of the Circuit Court of Appeals over your district or circuit. There may be times, however, when you will be faced with cases of first impression. What principles will guide you, or what methods will you employ, in deciding cases of first impression?

*Answer 18.* I would first determine whether the case was truly one of first impression. If faced with such a case, the statute must be applied so as to give full effect to the intent of the legislature in enacting the statute. Legislative intent is first determined by giving effect to the plain meaning of the words of the statute. If there is doubt as to the meaning of the statute and no case precedent which has previously construed the statute, then a court should look to the interpretations given statutes that are analogous to the statute in question. If these means still do not permit a court to discern the legislative intent, then, under Supreme Court precedent, secondary sources such as legislative history and debate may be considered to make this determination. A judge should accord more weight to a committee report on the legislation than to the statements of individual elected officials in debates.

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CIRCUIT COURT OF THE  
18TH JUDICIAL CIRCUIT,  
Wheaton, IL, June 19, 2000.

Re Jacqueline Grischow.

HON. ORRIN G. HATCH,  
*Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building,  
Washington, DC.*

DEAR MR. CHAIRMAN: I have read letters written by Jacqueline Grischow to Senator Peter Fitzgerald dated May 23, 2000 and the Senate Judiciary Committee in care of Senator Orrin Hatch dated May 31, 2000. I have no present recollection of hearing Ms. Grischow's case. Appeals of a decision of the Illinois Industrial Commission are heard by the Circuit Court as an administrative review of the Commission's decision. The review is limited to the transcript of proceedings before the administrative agency. No evidence is considered by the Circuit Court Judge at this time.

Ms. Grischow's accusations that I considered lies and false testimony, therefore, could not possibly have occurred. Of course, I do not threaten litigants before me and take every possible step regarding *pro se* litigants to try to minimize any anxiety in the experience in appearing in court without an attorney. I am certain this was true in the case of Ms. Grischow. It is unfortunate that Ms. Grischow has the perception she was treated unfairly by me, even though I ruled in her favor, as explained below. Ms. Grischow asserts that she was told that I discussed the case with her lawyer. Her attorney, Ralph Gabric, is a past-president of the Illinois State Bar Association and a lawyer with an impeccable reputation for honesty and legal propriety. It is difficult to believe that Mr. Gabric would have made the statements she attributes to him.

My records disclose the following history of the case. The case was filed in 1990 by Ms. Grischow through her attorney against the Illinois Industrial Commission. I reversed the Commission's ruling against Ms. Grischow on June 26, 1991 and entered judgment in favor of her. My ruling was reversed by the Illinois Appellate Court in April of 1992, which reinstated the Commission's decision against Ms. Grischow. (See Answer 15(2) #12 on page 8 of my response to the United States Senate Questionnaire for Judicial Nominees). Five years later, in 1997, Ms. Grischow filed a *pro se* petition for further relief. Ms. Grischow's previous attorney, Ralph Gabric, had withdrawn from representing her in this matter. In August of 1997, I granted the defendant's motion to dismiss Ms. Grischow's petition for further relief. The defendant also sought sanctions against Ms. Grischow for her alleged frivolous continued prosecution of this claim. I refused to enter sanctions against her. In November of 1997, the Illinois Supreme Court denied Ms. Grischow's appeal to that court.

I have never been advised by the Illinois Judicial Inquiry Board that Ms. Grischow has ever submitted any complaint regarding my conduct in her case. Thank you for your consideration of the foregoing. Please contact me if any further discussion is necessary.

Very truly yours,

JOHN W. DARRAH,  
*Circuit Court Judge.*



## RESPONSES OF PAUL C. HUCK TO QUESTIONS FROM SENATOR THURMOND

*Question 1.* We frequently hear the argument that the courts act in response to various social problems because the legislature has failed to act on important issues. What is your view of courts acting in this manner?

Answer 1. Our tripartite form of government, providing an essential balance of powers, is the genius of our nation. It is founded on the clear notion that the will of the people is to be expressed by their elected representatives through laws which they enact or choose not to enact. The courts, on the other hand, are only to interpret those laws and the Constitution and to hear and resolve, in a neutral, even-handed manner only those legal disputes which are properly brought before them, not to legislate.

*Question 2.* Do you have any personal objections to the death penalty that would cause you to be reluctant to impose or uphold a death sentence?

Answer 2. No, I have no personal objections to the death penalty that would cause me to be reluctant to impose or uphold a death sentence.

*Question 3.* What is your view of mandatory minimum criminal sentences, and would you have any reluctance to impose or uphold them as a Federal judge?

Answer 3. Mandatory minimum criminal sentences are an appropriate attempt to bring consistency, fairness and predictability to sentencing. I will uphold and follow these sentencing guidelines without any reluctance if confirmed as a judge of the United States District Court.

*Question 4.* As you are well aware, the sentencing of criminal defendants in Federal court is conducted under the Federal Sentencing Guidelines. Some argue that the Guidelines do not provide enough flexibility for the sentencing judge, while others say the Guidelines provided needed consistency. What is your view of the Federal Sentencing Guidelines and their application?

Answer 4. Like mandatory minimum criminal sentences, the Federal Sentencing Guidelines properly reflect the collective judgment of those ultimately responsible for establishing an appropriate and consistent level of punishment for criminal activity. The basic premise for the guidelines is that sentencing should be uniform and not dependent upon the personal feelings of any particular judge. If confirmed, I will apply the guidelines as written.

*Question 5.* As you know, the Prison Litigation Reform Act, which was an attempt to limit prisoner litigation and court involvement in prison operations. Do you believe that the Act has been beneficial to the legal system or do you believe it places too many restrictions on the ability of prisoners to make claims and for judges to remedy Constitutional violations in the prison context?

Answer 5. The 1996 Prison Litigation Reform Act reflects a balance struck by Congress between eliminating frivolous prisoner litigation and preserving a limited role for courts in the prison context. By requiring exhaustion of administrative remedies by limiting the number of unsustainable lawsuits and by requiring the finding of a specific violation of a prisoner's constitutional rights, the PLRA appears to be beneficial to the legal system by more efficiency and fairly allocating its assets. It is reasonable to conclude that unnecessary litigation, which has burdened the federal courts with countless frivolous cases, will be eliminated and that, as a consequence, appropriate litigation may obtain even greater judicial attention and resources. If confirmed, I will follow the PLRA and its applicable precedents.

*Question 6.* As you are aware, Federal Rule of Civil Procedure 11 permits federal judges to impose sanctions against attorneys for unwarranted claims or representations made in their pleadings. Some say this rule is an important tool for judges, while others believe it discourages litigants from testing the boundaries of existing law. What is your opinion of Rule 11?

Answer 6. Rule 11 was a response to certain abusive litigation conduct by some lawyers and their clients and provides judges an additional and useful tool for assuring that pleadings filed by an attorney are filed in good faith. The range of Rule 11 sanctions, limited to that which will be sufficient to deter the offensive conduct involved, allows for a measured and incremental response to inappropriate litigation conduct. In my experience, most trial lawyers want courts to use these kinds of rules more often to counter unprofessional, sometimes unethical conduct. As I understand Rule 11, it does not unduly discourage attorneys from testing the boundaries of existing law. As Rule 11 has been interpreted, arguments for extensions, even reversal, of existing laws are not violations of Rule 11 as long as they are non-frivolous. Moreover, the "safe harbor" provision, giving the alleged offender twenty-one days to consider withdrawing the filed papers, protects those attorneys who inadvertently file inappropriate pleadings.

## RESPONSES OF PAUL C. HUCK TO QUESTIONS FROM SENATOR SMITH

*Question 1.* Article II, Section 2 of the Constitution states that the President shall have the power to appoint federal judges with “the advice and consent” of the Senate. If a nominee for any federal judgeship refuses to answer questions about a Constitutional issue, should that individual be confirmed?

Answer 1. A nominee for a federal judgeship should answer all questions asked of him or her consistent with the applicable Code of Conduct for federal judges. Whether refusal to answer any specific question warrants denial of confirmation depends on the circumstances involved.

*Question 2.* Article II, Section 2 of the Constitution states that the President shall have the power to appoint federal judges with “the advice and consent” of the Senate. If you were a member of the United States Senate, would you agree that it is difficult to advise and consent to a nominee when a candidate refuses to answer questions on Constitutional issues?

Answer 2. I agree that the more information a member of the United States Senate has about a District Court nominee, the better able that member is to personally evaluate the nominee. This includes the nominee’s general understanding of Constitutional issues, the most important of which is whether that nominee will follow binding precedent of the Supreme Court and the applicable Circuit Court on Constitutional issues.

*Question 3.* What is the purpose of the United States Senate in holding hearings on nominees for the federal bench?

Answer 3. It is my understanding that the purpose of the United States in holding hearings on nominees for the federal bench is to assure that qualified, experienced, honorable and respectful persons are appointed to the bench. Specifically with regard to District Court nominees, the Senate must assure itself that the nominees will follow binding precedent, will neutrally, even-handedly apply that precedent to a specific legal dispute properly brought before the court and will not legislate by allowing their own bias or personal views to dictate their decisions.

*Question 4.* Is it possible for a Senator to advise and consent to the nominee if nominee simply refers to precedent without explaining his or her legal analysis?

Answer 4. Yes, it is possible for a United States Senator to fairly and appropriately evaluate a nominee for purposes of advising and consenting where the nominee commits to following binding precedent to the best of his or her ability. This, of course, assumes that the nominee has also demonstrated a high level of legal ability and experience, excellent character, a judicial temperament and other positive personal qualities.

*Question 5.* How can I as a Senator advise and consent to a nominee without answers to Constitutional questions?

Answer 5. A United States Senator can advise and consent to a nominee by asking questions regarding his or her general knowledge of the Constitution, ability to understand and analyze legal questions, and his or her commitment and ability to abide by the District Court’s role in a constitutionally consistent fashion. That role is to decide specific legal disputes, which are narrowly and properly presented to the court by the litigants, on a neutral, unbiased basis under established precedent, and where there is no direct precedent the most closely analogous precedent, to ensure a fair, reasoned and consistent resolution.

*Question 6.* What questions are legitimate to ask a candidate without the candidate prejudicing himself or herself?

Answer 6. Questions that may be asked of a candidate without the candidate improperly prejudicing himself or herself include questions relating to the candidate’s character, legal ability and experience, understanding of the limited role of the courts in our tripartite government, adherence to binding precedent, judicial temperament, personal background, financial issues, conflicts of interest issues, respect for others, work habits and similar subjects and characteristics.

*Question 7.* Are there any questions that you feel are off limits for a Senator to ask?

Answer 7. No, each United States Senator has the right to ask any question which he or she deems appropriate and instructive as they relate to a judicial candidate’s qualifications for appointment. However, the Code of Conduct sets limits to the answers which a federal judge may express, including those which may present an appearance of impartiality or of an advisory opinion.

*Question 8.* If a U.S. District Court Judge or U.S. Court of Appeals judge concludes that a Supreme Court precedent is flatly contrary to the Constitution, are

there any circumstances under which the Judge may refuse to apply that precedent to the case before him or her?

Answer 8. No, both U.S. District Court judges and U.S. Court of Appeals judges are bound by the Supreme Court's interpretation of the Constitution regardless of the judges' personal views, if any.

*Question 9.* If you were a Supreme Court Justice in 1856, what would you have held in *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393?

Answer 9. I honestly do not know what I would have done because I cannot fairly place myself back in time, in those completely different circumstances and without the benefit of the history, regarding the issues and legal arguments raised in *Dred Scott v. Sandford*. This is particularly so without having the parties legal briefs, oral arguments and existing precedent.

*Question 10.* In *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856), the court apparently held, as you well know there were eight separate opinions in the case, that black slaves were not citizens of the United States. How should that precedent be treated to the courts today?

Answer 10. The *Dred Scott v. Sandford* decision is not good precedent today and should not be treated as precedent because it was abrogated.

*Question 11.* If you were a judge in 1857, would you have been bound by your Oath and would you have been mandated to follow the binding precedent of *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856)?

Answer 11. Yes, as a U.S. District Court judge in 1857, I would have been bound to follow the holdings in *Dred Scott v. Sandford*.

*Question 12.* If you were a Supreme Court Justice in 1896, what would you have held in *Plessy v. Ferguson*, 163 U.S. 539 (1896)?

Answer 12. I cannot reasonably place myself back in 1896 and honestly state how I would have voted in *Plessy v. Ferguson*, particularly without the benefit of the contending briefs, oral arguments and a sense of all the then existing precedent.

*Question 13.* In *Plessy v. Ferguson*, 163 U.S. 539 (1896), a majority of the court held as not a violation of the Fourteenth Amendment to the Constitution a Louisiana statute which provided that all railway companies provide "equal but separate accommodations" for black and white passengers, imposing criminal penalties for violations by railway officials. How should that precedent be treated by the Courts?

Answer 13. *Plessy v. Ferguson* is not a good precedent for any court today and should not be treated as a binding decision because it was overruled by the Supreme Court.

*Question 14.* If you were a Supreme Court Justice in 1954, what would you have held in *Brown v. Board of Education*, 347 U.S. 483 (1954)?

Answer 14. If I were a Supreme Court Justice hearing the case of *Brown v. Board of Education* in 1954, I do not know how I would have ruled, particularly without having access to the factual context presented and considered, the decisions since *Plessy v. Ferguson*, the legal briefs and the oral argument which the Justices had to consider.

*Question 15.* In *Brown v. Board of Education*, 347 U.S. 483 (1954), the court held that the segregation of children in public schools solely on the basis of race, even though the physical facilities and other tangible factors may be equal, deprive the children of the minority group of equal educational opportunities contrary to the protections contained within the Fourteenth Amendment to the Constitution. How should that precedent be treated by the Courts?

Answer 15. *Brown v. Board of Education* remains good precedent and should be treated as such by all inferior courts.

*Question 16.* If you were a Supreme Court Justice in 1973, what would you have held in *Roe v. Wade*, 410 U.S. 113 (1973)?

Answer 16. I do not know how I would have ruled in *Roe v. Wade*, especially without the benefit of the parties' briefs, legal arguments and applicable precedents. Inferior courts are obligated to follow this case, as modified by *Planned Parenthood v. Casey*, as it is binding Supreme Court precedent.

*Question 17.* In *Roe v. Wade*, 410 U.S. 113 (1973), the court held that a Texas statute which proscribed an abortion except when necessary to save the life of the mother was a violation due process clause of the Fourteenth Amendment as an unjustified deprivation of liberty. Do you agree with the legal reasoning of the holding or of the Justice Renquist dissent in that case?

Answer 17. Since the *Roe v. Wade*, holding, as modified by the *Planned Parenthood v. Casey* decision, is binding precedent, the role of a District Court Judge is to follow that precedent.

*Question 18.* We understand the Supreme Court precedent, but what is your personal view on the issue of abortion?

Answer 18. I have no personal view on any facet of the abortion issue which would prevent me from following applicable precedent and rendering a fair decision based on all relevant, binding precedent.

*Question 19.* We understand the Supreme Court precedent, but what is your personal view on the issue of the death penalty?

Answer 19. The Supreme Court has held that the death penalty is constitutional. If confirmed I will follow that precedent. I have no personal view which would prevent me from imposing or upholding the death penalty.

*Question 20.* We understand the Supreme Court precedent, but what is your personal view on the issue of the Second Amendment to the Constitution?

Answer 20. I have no personal view which would prevent me from deciding any case which implicates the Second Amendment based on binding precedent.

*Question 21.* In *Planned Parenthood v. Casey*, (505 U.S. 833 (1992)) the Supreme Court held that the government interest in preserving life must be balanced against a mother's right of privacy and access to abortion which may not be unduly burdened. Do you believe the "right to privacy" includes the right to take away the life of an unborn child?

Answer 21. In *Planned Parenthood v. Casey*, the Supreme Court modified *Roe v. Wade*, and established a balance between the interests of the mother and those of the government. I have no personal view which would prevent me from deciding any case involving abortion issues in accordance with *Planned Parenthood v. Casey*, and any subsequent decisions on this issue.

*Question 22.* Again, I understand the state of the law on the Supreme Court's interpretation on the Issue of abortion, but I am interested in your personal beliefs on the issue, do you personally believe that an unborn child is a human being?

Answer 22. I have no personal view on any facet of the abortion issue which would prevent me from following applicable precedent and rendering a fair decision based on all relevant, binding precedent.

*Question 23.* Do you believe that the death penalty is Constitutional?

Answer 23. Yes, the Supreme Court has ruled that the death penalty is constitutional, and like all Supreme Court precedent, if I were fortunate enough to be confirmed, I would be bound to and would follow that precedent.

*Question 24.* If you were a Supreme Court Justice, under what circumstances would you vote to overrule a precedent of the Court?

Answer 24. Stare decisis is an important legal concept necessary to "the rule of law", which provides judges, lawyers and the public with consistency and predictability in their approach to legal questions. Supreme Court precedents should be seldom overruled, and then only by the Supreme Court and in such a way as to adhere as much as reasonably possible to the concept of stare decisis. The doctrine of stare decisis provides that the Supreme Court should not lightly overturn its precedent. The factors which a Supreme Court Justice may consider include whether the precedent has proven unworkable and whether overturning the precedent would damage the interests of those who relied on it and undermine the legitimacy of the courts.

*Question 25.* Do you consider legislative intent and the testimony of elected officials in debates leading up to passage of an act? And what weight do you give legislative intent?

Answer 25. Answering the second question first, all courts should and must give full weight to the legislative intent of every Congressional act. Legislative intent is generally set forth in the plain language of the act. In answer to the second question, yes, when the legislative intent is not found in the plain language of the act, courts may resort to an examination of the act's legislative history, including committee reports and relevant testimony of elected officials leading to the passage of the act.

#### RESPONSES OF PAUL C. HUCK TO QUESTIONS FROM SENATOR HATCH

*Question 1.* If a particular judge or court has a high rate of reversal on appeal, either to the Court of Appeals or to the Supreme Court, is that a problem? If it is, what can and should be done to remedy that problem?

Answer 1. If a particular judge or court has a high rate of reversal on appeal which is noticeably beyond the norm, that appears to be a problem. The judge or court should first attempt to determine if there is an inappropriate cause for the abnormal rate of reversals. If it appears that there is such a cause, which the judge

or court is unwilling or unable to rectify, then it may be appropriate for the chief judge to counsel with the judge or judges involved to try to rectify the situation.

*Question 2.* In your view, to what extent, if any, do the rights protected by the Constitution grow or shrink with changing historical circumstances?

*Answer 2.* The rights protected by the Constitution do not grow or shrink with changing historical circumstances. However, changing historical circumstances may affect how those protected rights are applied, for example, in the area of technology.

*Question 3.* Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

*Answer 3.* A federal court may declare a statute enacted by Congress unconstitutional only under very limited circumstances, which circumstances are seldom present. To begin with, all congressional acts come to the federal courts with the presumption of being constitutional. Thus, in hearing any legal case challenging the constitutionality of a Congressional statute, the reviewing court must first assume constitutionality. Next, if there is a non-constitutional issue presented which will dispose of the case without implicating the constitutional issue, the case should be resolved on that other issue. However, if the constitutional issue must be addressed and if there are different interpretations of the effect of the statute, one which results in constitutionality, the other unconstitutionality, the court must accept the former interpretation in rendering its decision. Finally, if the court finds the statute unconstitutional, it must do so only in the narrowest manner so as to leave intact as much of the legislation as possible.

*Question 4.* Please describe in reasonable detail the Supreme Court's recent decision in *United States v. Morrison*, and its 1995 decision *United States v. Lopez*, explaining to the Committee your understanding of those decision, and their holdings regarding congressional power. Some commentators have accused the Supreme Court of judicial activism because of its decisions in those cases. Do you agree? Please explain.

*Answer 4.* In *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court, for the first time in many decades, struck down a Congressional act on the grounds that the act exceeded the Congress' Commerce Power. The Gun-Free School Zones Act of 1990 made it a federal crime to knowingly possess a firearm in a school zone. The Supreme Court held that the criminal conduct must substantially affect interstate commerce and that the Congress had not sufficiently demonstrated that the possession of guns in school zones substantially affected interstate commerce. In essence, the Supreme Court found that the act went beyond the Congress' power, did not truly involve commercial activity and was directed to a local rather than a national activity.

In *United States v. Morrison*, 120 S.Ct. 1740 (2000), the Supreme Court, relying in large measure on *Lopez*, held unconstitutional that aspect of the Violence Against Women Act which provided a federal civil remedy for victims of gender-motivated violence. The Court held that this aspect of the VAWA exceeded the Congress' Commerce power because the prohibited act was not economic activity and was not sufficiently tied to or substantially affecting interstate commerce. Unlike *Lopez*, the Court acknowledged the VAWA was supported by numerous findings regarding the serious and aggregate impact of such violence on the victims and their families. However, the Supreme Court rejected these findings as being too attenuated to constitutionally support the Congress' Commerce power. In sum, as in *Lopez*, the Supreme Court concluded that the Constitution requires the courts to distinguish between prohibited activity which is truly national versus truly local, and that the Congress may not regulate non-economic, violent criminal activity based solely on the prohibited activities' aggregate effect of interstate commerce.

The net effect of *Lopez* and *Morrison* appears to be that the Supreme Court will more carefully examine Congress' reliance on its Commerce powers to enact federal criminal and civil remedies legislation.

As a litigator, I read Supreme Court decisions to determine their legal impact and applicability to my cases, without regard to whether they were the result of judicial activism. If I were a District Court judge, I would be obligated to follow, and would follow, precedent, including *Morrison* and *Lopez*.

*Question 5.* In your view, is the use of race, gender or national origin-based preferences in such areas as employment decisions (hiring, promotion or layoffs), college admissions and scholarship awards, and the awarding of government contracts, lawful under the Equal Protection Clauses of the 14th Amendment? Please explain.

*Answer 5.* The Supreme Court has held that governmental use of race or national origin-based preferences is unconstitutional and violates the Equal protection clause of the 14th Amendment. For example in *Adarand Constructor, Inc. v. Peña*, 515 U.S. 200 (1995) and *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989),

the Supreme Court ruled that strict scrutiny must be applied to all race-based affirmative action programs. This strict scrutiny requires that the government must demonstrate, by record evidence, a compelling governmental interest which justifies a remedy granted on such facially unequal treatment and further that the remedy selected is narrowly crafted and the least restrictive to accomplish that compelling interest. As to gender-based preferences, the Supreme Court has ruled that the intermediate scrutiny standard applies.

*Question 6.* Do you believe that the view of the death penalty taken by Justices Brennan, Marshall and Blackmun—that the death penalty is unconstitutional notwithstanding the clear constitutional text sanctioning it—is a permissible view for a federal judge to hold?

Answer 6. No. Justices Brennan, Marshall and Blackmun's view of the death penalty, as expressed in their dissenting opinions, is to a permissible option for any federal judge. The Supreme Court has clearly held that the death penalty is constitutional. *Gregg v. Georgia*, 428 U.S. 153 (1976).

*Question 7.* Do you personally have any legal or moral beliefs that would inhibit or prevent you from imposing a death sentence in any criminal case that might come before you as a federal judge? Please explain.

Answer 7. I have no legal or moral belief which would inhibit or prevent me from imposing the death penalty in a case before me, if I were confirmed as a federal judge. The law on this point is clear and I will follow that law.

*Question 8.* Do you believe that 10, 15 or even 20-year delays between conviction of a capital offender and execution is too long?

Answer 8. Yes, delays of 10 to 20 years between conviction of a capital offender and execution are patently too long.

*Question 9.* Do you believe that once Congress or a State legislature has made the policy decision that capital punishment is appropriate, then the federal courts should focus their resources on resolving capital cases fairly and expeditiously?

Answer 9. Yes. Moreover, failure to do so undermines the public's confidence in the judicial system.

*Question 10.* The sentencing of criminal defendants in federal court is conducted under the federal Sentencing Guidelines. Some have argued that the Guidelines do not provide enough flexibility for the sentencing judge, which others have argued that the Guidelines provide needed consistency in sentencing. What is your view of the federal Sentencing Guidelines and their application?

Answer 10. The federal Sentencing Guidelines are an appropriate method to bring fairness, consistency and predictability to sentencing and to reflect the public will with regard to the level of punishment to be imposed. The collective wisdom and breadth of experience of those who establish the guidelines are obviously far greater than any federal judge or panel of judges.

*Question 11.* What is your view of mandatory minimum criminal sentences, and would you have any reluctances to impose or uphold them as a federal judge?

Answer 11. Like the federal Sentencing Guidelines, mandatory minimum criminal sentences fairly reflect the public's voice with regard to the level of and consistency of punishment for specific criminal activity. If affirmed, I will follow both the Sentencing Guidelines and the mandatory minimum sentences.

*Question 12.* What would you do if you believed the Supreme Court or the Court of Appeals has seriously erred in rendering a decision? Would you nevertheless apply that decision? Or would you apply your own best judgment of the merits? Take, for example, the Supreme Court's recent decision in *United States v. Playboy Entertainment Group, Inc.*, where the Court struck down a provision of the 1996 Telecommunications Act that was designed to protect children from exposure to sexually explicit adult programming on cable television.

Answer 12. Even if I, as a District Court judge, believed that the Supreme Court or the Eleventh Circuit Court of Appeals had seriously erred, I would be bound to, and I would, follow that decision, as I would all applicable precedent.

*Question 13.* Please describe in reasonable detail your understanding of the case recently argued before the Supreme Court entitled *Dickerson v. United States*, which asked whether a defendant's voluntary confession could be admitted into evidence in the Government's case in chief under 18 U.S.C. § 3501, even if the confession was not preceded by the warnings set forth in *Miranda v. Arizona*? Please explain to the Committee your understanding of *Miranda*, section 3501, and the proper role of the Congress and the Courts in establishing rules of evidence and procedure for federal courts. Also, please state whether you believe the *Miranda* decision is an example of judicial activism.

Answer 13. In *Dickerson v. United States*, 166 F.3d 687 (4th Cir. 1998), the District Court suppressed defendant's confession solely on the grounds that it was obtained in violation of *Miranda v. Arizona*. The Fourth Circuit held that the District Court erred in suppressing the confession. The Court of Appeals for the Fourth Circuit noted that the Congress had enacted 18 U.S.C. § 3501 with the clear intent of supplanting *Miranda v. Arizona* with a rule that restored voluntariness as the test for admission of confessions in federal courts. That Court then concluded that § 3501 was within the Congress' rule making powers over federal court's evidence and procedures and that § 3501, not *Miranda v. Arizona*, governs the admissibility of confessions. The defendant appealed to the Supreme Court. Thus, the Supreme Court is faced squarely with the issue of whether the predicate warning set forth in and required by *Miranda v. Arizona* is a constitutional requirement or whether it is simply a court made rule or requirement. The determination of this issue is critical because if the *Miranda* warning is a constitutional requirement, the Congress may not enact statutes or rules which diminish that right. If, however, the *Miranda* warning is merely a court made rule, the Congress may enact laws which diminish that rule. In contrast to the bright-line test set forth in *Miranda v. Arizona*, § 3501 established a balancing test for determining the voluntariness of a confession. The § 3501 test takes into consideration the totality of the circumstances surrounding the accused's giving of his or her confession, including but not limited to whether or not the accused was advised by the authorities or otherwise knew that he or she was not required to make any statement that any statement could be used against him or her and that he or she was entitled to assistance of counsel.

With regard to the proper role of the Congress and the courts in establishing rules of evidence and procedure for federal courts, in the absence of a constitutional prohibition to the contrary, that prerogative belongs to the Congress. The Congress expressly delegate to the courts those rule making tasks.

As a litigator, I read Supreme Court decisions to determine their legal impact and applicability to my cases, without regard to whether they were the result of judicial activism. If I were a District Court judge, I would be obligated to follow, and would follow precedent, including the Supreme Court's decision to be rendered in *Dickerson*.

*Question 14.* Please define judicial activism. In your view, is *Roe v. Wade* an example of judicial activism?

Answer 14. "judicial activism" is courts legislating or administrating and is contrary to John Adam's classic and inciteful observation that ours is a "government of laws, not of men." Article III of the Constitution both grants and circumscribes the independent authority of federal courts. In exercising that limited authority, federal courts must acknowledge the constitutional balance of power and may not usurp the rights and prerogatives of the legislative and administrative branches of the government. Federal courts are limited to resolving only those legal cases which are properly before them and ripe for resolution. That resolution must be in a neutral manner consistent with precedent, free of the court's personal views, bias and agenda, and may not be used to advance the court's own political philosophy, if any, or attempt to impose on either the legislative or executive branches judicial oversight which is not specifically provided by the Constitution or statute. When a court fails to adhere to these principles, that is judicial activism."

As a litigator, I read Supreme Court decisions to determine their legal impact and applicability to my cases, without regard to whether they were the result of judicial activism. If I were a District Court judge, I would be obligated to follow, and would follow precedent, including *Roe v. Wade*, modified by *Planned Parenthood v. Casey*.

*Question 15.* The Supreme Court, through a process of so-called selective incorporation, has applied most, if not all, of the provisions of the Bill of Rights against the States. Thus, for instance, the First Amendment, which originally was intended to apply only to the federal government, has been applied to the States. The Second Amendment, however, which protects the rights of law-abiding citizens to own firearms in this country, has not. Do you believe that Second Amendment ought to be applied to the States?

Answer 15. If a binding precedent exists or comes into existence which holds either that the Second Amendment applies or does not apply to the States, I will, if confirmed, follow that precedent.

*Question 16.* If most of the other provisions of the Bill of Rights apply to the States, why shouldn't the Second Amendment? On what principled basis would it be appropriate to apply almost all of the other provisions of the Bill of Rights against the States, but not the Second Amendment?

Answer 16. If such an issue were presented to me, I would look to precedents of higher courts which have addressed the issue of incorporation and would follow

those holdings on that issue. I have not personal view which would prevent me from following those precedents.

*Question 17.* The precedents of Circuit Courts 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?

*Answer 17.* Yes, I am fully committed to following the precedents of the Supreme Court and the Court of Appeals for the Eleventh Circuit. If I am fortunate enough to be confirmed as a District Court judge, I will faithfully follow such precedents, giving them full force and effect, even if I were to personally disagree with them.

*Question 18.* You have stated that, if confirmed, you would be bound by Supreme Court precedent and the precedent of the Circuit Court of Appeals over your district or circuit. There may be times, however, when you will be faced with cases of first impression. What principles will guide you, or what methods will you employ, in deciding cases of first impression?

*Answer 18.* In such rare cases of first impression, I would, if I am fortunate enough to be confirmed, employ the following analysis. In cases involving a statute, I would determine and follow the legislative intent of the statute. In most cases the legislative intent will be set forth in the clear language of the statute. In the absence of such language, I would look to secondary sources to determine legislative intent. This may be the legislative history or case precedents interpreting closely analogous statutes.

In non-statutory cases, I would find the most analogous existing precedent where a superior court has decided a similar issue and try to determine my case as consistently as possible with that existing, analogous precedent.

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#### RESPONSES OF JOAN HUMPHREY LEFKOW TO QUESTIONS FROM SENATOR THURMOND

*Question 1.* We frequently hear the argument that the courts act in response to various social problems because the legislature has failed to act on important issues. What is your view of courts acting in this manner?

*Answer 1.* The fact that the legislature has not addressed a particular social problem may indicate that a consensus has not been reached among our elected representatives as to the most appropriate response to the problem, or it may mean that a consensus has been reached that the problem does not require a legislative response. Under our Constitution's separation of powers, it is not the role of the judiciary to act in place of Congress.

*Question 2.* Do you have any objections to the death penalty that would cause you to be reluctant to impose or uphold a death sentence?

*Answer 2.* I have no personal views regarding the death penalty that would prevent me from following the law regarding imposition of or upholding the death penalty. The Supreme Court of the United States has ruled in *Gregg v. State of Georgia*, 428 U.S. 153 (1976), that the Constitution permits the death penalty.

*Question 3.* What is your view of mandatory minimum criminal sentences, and would you have any reluctance to impose or uphold them as a Federal judge?

*Answer 3.* Criminal penalties are set by the legislature, and mandatory minimum penalties are properly a legislative decision. If I were confirmed as a federal district judge, I would have no reluctance to impose or uphold mandatory minimum sentences as required by the statutes and Sentencing Guidelines.

*Question 4.* As you are well aware, the sentencing of criminal defendants in Federal court is conducted under the Federal Sentencing Guidelines. Some argue that the Guidelines do not provide enough flexibility for the sentencing judge, while others say the Guidelines provided needed consistency. What is your view of the Federal Sentencing Guidelines and their application?

*Answer 4.* Congress developed the Sentencing Guidelines in order to bring more uniformity to sentencing based on the legislative determination that disparities in sentencing that are not distinguishable on the basis of differences in either the magnitude of the crime or the harm to the victim undermine the public's confidence in our criminal justice system. Congress has committed to the Sentencing Commission the ongoing responsibility to monitor and assess whether the Guidelines provide sufficient consistency and flexibility. Whether judges should have more or less discretion in sentencing is an issue committed to the Congress. If I were confirmed I would impose sentences according to the Sentencing Guidelines.

*Question 5.* As you know, the Prison Litigation Reform Act, was an attempt to limit prisoner litigation and court involvement in prison operations. Do you believe that the Act has been beneficial to the legal system or do you believe it places too



many restrictions on the ability of prisoners to make claims and for judges to remedy Constitutional violations in the prison context?

Answer 5. The Prison Litigation Reform Act was designed to discourage frivolous litigation while providing a limited role for courts to consider certain claims by prisoners. Having reviewed many prison civil rights cases which did not allege colorable constitutional claims, I agree that prisoner litigation has imposed a substantial burden on the federal court's limited resources and that the Act has alleviated that burden. If I were confirmed, I would adhere to the Act and Supreme Court and circuit precedent in applying the Act to cases before me.

*Question 6.* As you are aware, Federal Rules of Civil Procedure 11 permits federal judges to impose sanctions against attorneys for unwarranted claims or representations made in their pleadings. Some say this rule is an important tool for judges, while others believe it discourages litigants from testing the boundaries of existing law. What is your opinion of Rule 11?

Answer 6. Because the courts are a finite resources, it is important to conserve that resource for legitimate cases and to demand proper conduct from counsel and parties. As with any punitive tool, a judge should be temperate in the imposition of Rule 11 sanctions and should take an incremental approach in dealing with misbehavior or misconduct by counsel or litigants. Motions for sanctions can generate, rather than discourage, litigation because a respondent to a motion may file a counter-motion against the movant, and the court must then devote time and thought to this satellite skirmish rather than the principal case. My experience leads me to believe that the revisions to Rule 11 made in the 1993 amendments, which allowed the courts somewhat more flexibility in responding to misconduct issues, strike a workable balance and facilitate the just, speedy, and inexpensive resolution of cases by restraining improper tactics by counsel and litigants.

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RESPONSES OF JOAN HUMPHREY LEFKOWS TO QUESTIONS FROM SENATOR SMITH

*Question 1.* Article II, Section 2 of the Constitution states that the President shall have the power to appoint federal judges with "the advice and consent" of the Senate. If a nominee for any federal judgeship refused to answer questions about a constitutional issue, should that individual be confirmed?

Answer 1. The Senate should confirm those nominees whom it believes, in its collective judgment, are qualified for the position of federal judge. Although a nominee might be prevented by the Code of Conduct for United States Judges from answering some questions ("A judge should act at all times in a manner that promotes public confidence in the \* \* \* impartiality of the judiciary." Canon 2A), it is ultimately the Senate's decision whether to confirm a judge who may not be able to respond to a question about a constitutional issue.

*Question 2.* Article II, Section 2 of the Constitution states that the President shall have the power to appoint federal judges with the "advice and consent" of the Senate. If you were a member of the United States Senate, would you agree that it is difficult to advise and consent to a nominee when a candidate refuses to answer questions on constitutional issues?

Answer 2. Yes, it might be difficult to advise and consent to a nominee who refused to answer questions on Constitutional issues, unless the question impinged on the nominee's ethical responsibility to act in a manner that upholds the public's confidence in the impartiality of the judiciary.

*Question 3.* What is the purpose of the United States Senate in holding hearings on nominees for the federal bench?

Answer 3. As I understand it, the purpose of a confirmation hearing is to give the members of the Judiciary Committee an opportunity to question a nominee about his or her qualifications, integrity, temperament, and knowledge of important constitutional cases.

*Question 4.* Is it possible for a Senator to advise and consent to a nominee if the nominee simply refers to precedent without explaining his or her legal analysis?

Answer 4. Yes, a Senator may advise and consent to a nominee based on his or her qualifications, understanding of the proper role of a judge, and commitment to the following precedent, which implies a commitment to adhering to the legal analysis of that precedent.

*Question 5.* How can I as a Senator advise and consent to a nominee without answers to Constitutional questions?

Answer 5. A Senator can advise and consent to a nominee based on the nominee's background and experience, appropriate temperament, understanding of the proper role of a judge, knowledge of the law and of the Constitution's doctrine of separation

of powers. There are some questions, however, to which a nominee may not be able to respond because of constructions of the Code of Conduct.

*Question 6.* What questions are legitimate to ask a candidate without the candidate prejudicing himself or herself?

*Answer 6.* Questions concerning a nominee's background and experience which qualify the nominee for the responsibility of the position would not be likely to prejudice a candidate. Such questions include those relating to a nominee's ability to consider all positions presented, to follow the law as set down by statute and the higher courts, to exhibit suitable temperament, integrity, and decisiveness, and to possess good health, among other attributes.

*Question 7.* Are there any questions that you feel are off limits for a Senator to ask?

*Answer 7.* No, there are no questions that are off limits for a Senator to ask, although a nominee may not be able to answer some questions consistent with the Code of Conduct.

*Question 8.* If a U.S. District Court Judge or U.S. Court of Appeals Judge concludes that a Supreme Court precedent is flatly contrary to the Constitution, are there any circumstances under which the Judge may refuse to apply that precedent to the case before him or her?

*Answer 8.* There are no circumstances in which a United States district judge or circuit judge is authorized to refuse to apply a Supreme Court precedent on the basis that the judge believes the precedent to be flatly wrong.

*Question 9.* If you were a Supreme Court Justice in 1856, what would you have held in *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393?

*Answer 9.* Had I been a Supreme Court Justice in 1856, I do not know how I might have ruled in *Dred Scott v. Sandford*, but I trust I would have carefully considered the facts presented, the words of the Constitution, the arguments of the parties, and the views of my fellow justices.

*Question 10.* In *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856), the court apparently held, as you well know there were eight separate opinions in the case, that black slaves were not citizens of the United States. How should that precedent be treated by the courts today?

*Answer 10.* Because the Thirteenth Amendment to the Constitution, ratified in 1865, prohibited slavery within the United States and the Fourteenth Amendment, ratified in 1868, granted citizenship to all person born or naturalized within the United States, *Dred Scott v. Sandford* holds no precedential value.

*Question 11.* If you were a judge in 1857, would you have been bound by your Oath and would you have been mandated to follow the binding precedent of *Dred Scott v. Sandford*, 60, U.S. (19 How.) 393 (1856)?

*Answer 11.* Had I been a judge in 1857, I would have been bound by my oath and would have been mandated to follow *Dred Scott v. Sandford*.

*Question 12.* If you were a Supreme Court Justice in 1896, what would you have held in *Plessy v. Ferguson*, 163 U.S. 537 (1896)?

*Answer 12.* Had I been a Supreme Court Justice in 1896, I do not know how I might have ruled in *Plessy v. Ferguson*, but I trust I would have carefully considered the facts presented, the words of the Constitution, the arguments of the parties, and the views of my fellow justices.

*Question 13.* In *Plessy v. Ferguson*, 163 U.S. 537 (1896), a majority of the Court held as not a violation of the Fourteenth Amendment to the Constitution a Louisiana statute which provided that all railway companies provide "equal but separate accommodations" for black and white passengers, imposing criminal penalties for violations by railway officials. How should that precedent be treated by the Courts?

*Answer 13.* After *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), the courts should treat *Plessy v. Ferguson* as having no precedential value.

*Question 14.* If you were a Supreme Court Justice in 1954, what would you have held in *Brown v. Board of Education*, 347 U.S. 483 (1954)?

*Answer 14.* Had I been a Supreme Court Justice in 1954, I do not know how I might have ruled in *Brown v. Board of Education*, but I trust I would have carefully considered the facts presented, the words of the Constitution, the arguments of the parties, and the views of my fellow justices.

*Question 15.* In *Brown v. Board of Education*, 347 U.S. 483 (1954), the court held that the segregation of children in public schools solely on the basis of race, even though the physical facilities and other tangible factors may be equal, deprive the children of the minority group of equal educational opportunities contrary to the

protections contained within the Fourteenth Amendment to the Constitution. How should that precedent be treated by the Courts?

Answer 15. *Brown v. Board of Education* has not been overruled, and it should be treated as having precedential value in cases to which it is applicable.

Question 16. If you were a Supreme Court Justice in 1973, what would you have held in *Roe v. Wade*, 410 U.S. 113 (1973)?

Answer 16. Had I been a Supreme Court Justice in 1973, I do not know how I might have ruled in *Roe v. Wade*, but I trust I would have carefully considered the facts presented, the words of the Constitution, the arguments of the parties, and the views of my fellow justices.

Question 17. In *Roe v. Wade*, 410 U.S. 113 (1973), the court held that a Texas statute which proscribed an abortion except when necessary to save the life of the mother was a violation of the due process clause of the Fourteenth Amendment as an unjustified deprivation of liberty. Do you agree with the legal reasoning of the holding or of the Justice Rehnquist dissent in that case?

Answer 17. I have no views that would prevent me from following the holding of *Roe v. Wade* as modified by *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). If I am fortunate enough to be confirmed as a federal judge, it would be my duty to follow the law.

Question 18. We understand the Supreme Court precedent, but what is your personal view on the issue of abortion?

Answer 18. I have no views that would prevent me from following the precedents of the Supreme Court and the Seventh Circuit regarding abortion.

Question 19. We understand the Supreme Court precedent, but what is your personal view of the issue of the death penalty?

Answer 19. I have no views that would prevent me from following the law set forth by Congress and the Supreme Court regarding the imposition of the death penalty.

Question 20. We understand the Supreme Court precedent, but what is your personal view on the issue of the Second Amendment to the Constitution?

Answer 20. I have no views that would prevent me from applying the law as laid down by Congress and the higher courts to a case involving the Second Amendment.

Question 21. In *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), the Supreme Court held that the government interest in preserving life must be balanced against a mother's right of privacy and access to abortion which may not be unduly burdened. Do you believe the "right to privacy" includes the right to take away the life of an unborn child?

Answer 21. I have no views that would prevent me from following the precedents of the Supreme Court and the Seventh Circuit regarding abortion.

Question 22. Again, I understand the state of the law on the Supreme Court's interpretation on the issue of abortion, but I am interested in your personal beliefs on the issue. Do you personally believe that an unborn child is a human being?

Answer 22. I have no views that would prevent me from following the precedents of the Supreme Court and the Seventh Circuit regarding abortion.

Question 23. Do you believe that the death penalty is Constitutional?

Answer 23. I have no personal views regarding the death penalty that would prevent me from following the law regarding the imposition or upholding the death penalty. The United States Supreme Court has ruled in *Gregg v. State of Georgia*, 428 U.S. 153 (1976), that the Constitution permits the death penalty.

Question 24. If you were a Supreme Court Justice, under what circumstances would you vote to overrule a precedent of the Court?

Answer 24. In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the Supreme Court wrote that "when this Court reexamines a prior holding, its judgment is customarily informed by a series of prudential and pragmatic considerations designed to test the consistency of overruling a prior decision with the ideal of the rule of law, and to gauge the respective costs of reaffirming and overruling a prior case." The Supreme Court identified five separate factors to consider in determining whether to overrule precedent, namely, (1) whether the central rule of the earlier case has proven to be unworkable (and therefore continuing the rule would be intolerable); (2) whether there has been reliance on the continuation of the rule in the earlier case such that overruling it would add a special hardship to the consequences of overruling and add inequity to the costs of repudiating the rule; (3) whether related principles of law have evolved to the extent that they leave the old rule to be a remnant of an abandoned doctrine; (4) whether the factual assumptions at the heart of the earlier decision have so changed, or have come to be seen so differently, as to have robbed the old rule of significant application or justification; and

(5) whether over time the factual assumptions on which the earlier case rested proved to be untrue. If I were a Supreme Court justice I would follow this precedent and apply these factors.

*Question. 25.* Do you consider legislative intent and the testimony of elected officials in debates leading up to passage of an act? And what weight do you give legislative intent?

*Answer 25.* The first rule in construing a statute is to ascertain the meaning of the language which Congress has enacted. A judge should not rely on statements of a member of Congress concerning congressional intent in derogation of the plain meaning of the statute. If that language is ambiguous, however, or if the meaning is not clear as it applies to the facts presented in a case, a judge may consider legislative intent and the testimony of elected officials underlying passage of the Act. Legislative history, such as that set forth in Committee reports, is entitled to greater weight where it reflects a consensus than where it reflects merely the statements of individual Senators and Representatives.

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RESPONSES OF JOAN HUMPHREY LEFKAW'S TO QUESTIONS FROM SENATOR HATCH

*Question 1.* If a particular judge or court has a high rate of reversal on appeal, either to the Court of Appeals or to the Supreme Court, is that a problem? If it is, what can and should be done to remedy that problem?

*Answer 1.* A judge who has a high rate of reversal on appeal may well pose a problem for the administration of justice, both in terms of dispensing justice to litigants and of consuming an inordinate share of appellate judicial resources. Such a judge should examine carefully the opinions of the appellate court in the cases in which the judge has been reverse to learn where and why errors have occurred so that the judge may improve and correct his or her performance on the bench.

*Question 2.* In your view, to what extent. If any, do the rights protected by the Constitution grow or shrink with changing historical circumstances?

*Answer 2.* The rights protected by the Constitution do not grow or shrink with changing historical circumstances, but from time to time the Supreme Court may be called upon to interpret a constitutional right in light of changing historical circumstances. For example, mass communication in 1789 occurred primarily through newspapers, but today we have the Internet.

*Question 3.* Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

*Answer 3.* The Supreme Court recently stated in *United States v. Morrison*, "Due respect for the decisions of a coordinate branch of Government demands that we invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds." A court should always presume a statute to be constitutional and should construe it to avoid a constitutional question. Only where a statute cannot be reconciled with the clear mandate of the Constitution, as interpreted by the Supreme Court of the United States, may it be declared unconstitutional.

*Question 4.* Please describe in reasonable detail the Supreme Court's recent decision in *United States v. Morrison*, 120 S. Ct 1740 (2000), and its 1995 decision, *United States v. Lopez*, 514 U.S. 549 (1995), explaining to the Committee your understanding of those decisions, and their holdings regarding congressional power. Some commentators have accused the Supreme Court of judicial activism because of its decisions in those case. Do your agree? Please explain.

*Answer 4.* In *Lopez*, the Supreme Court held that the Gun-Free School Zones Act of 1990, 18 U.S.C. §922(q)(1)(A), which made it a federal crime to knowingly possess a firearm in a school zone, exceeded Congress' authority under the Commerce Clause. Likewise, in *Morrison*, the Supreme Court held that a provision of the 1994 Violence Against Women Act, which provided a federal civil remedy for victims of gender-motivated violence, was beyond Congress' Commerce Clause powers. It also concluded that § 5 of the Fourteenth Amendment did not provide authority for a federal cause of action based on gender-motivated violence.

In *Lopez*, the Court identified three broad categories of activity that Congress may regulate under its Commerce Clause power: (1) the use of channels of interstate commerce, (2) the regulation and protection of instrumentalities of interstate commerce, or persons or things in interstate commerce, and (3) activities substantially affecting interstate commerce. The Court in *Lopez*, set out a framework for analyzing whether an activity substantially affects interstate commerce. The first consideration is whether the Intrastate activity in question is some sort of economic endeavor that substantially affects interstate commerce. Second, the Court considered

whether the statutes had an express jurisdictional element which might limit their reach to a subset of the regulated activity that has an explicit connection with or effect on interstate commerce. The third consideration is whether there is legislative history with express findings about the effect of the activity on interstate commerce. Finally, the Court considered whether the link between the activities and a substantial effect on interstate commerce is attenuated. In other words, would the asserted link effectively obliterate the distinction between national and local authority. Whether these decisions are examples of judicial activism is not clear to me, though I am bound to follow these decisions in any events.

*Question 5.* In your view, is the use of race, gender or national origin-based preferences in such areas as employment decisions (hiring, promotion or layoffs), college admissions and scholarship awards, and the awarding of government contracts, lawful under the Equal Protection Clause of the 14th Amendment? Please explain

*Answer 5.* Under *Adarand Constructors v. Peña*, 515 U.S. 200 (1995), state and federal laws that aid racial and minorities are subject to “strict scrutiny.” There, the Supreme Court held unconstitutional a federal affirmative action program that encouraged government contractors to use “disadvantaged business enterprises” and that rebuttably presumed racial minorities were disadvantaged. Under *Adarand*, such a program can be upheld only if it is designed to remedy past intentional discrimination and is narrowly tailored to advance a compelling governmental interest. With respect to gender-based preferences, the Supreme Court has indicated in the VMI case, *United States v. Virginia*, 518 U.S. 515, 533 (1996), that it would not adopt a strict scrutiny standard but rather an intermediate scrutiny standard.

*Question 6.* Do you believe that the view of the death penalty taken by Justices Brennan, Marshall and Blackmun—that the death penalty is unconstitutional notwithstanding the clear constitutional text sanctioning it—is a permissible view for a federal judge to hold?

*Answer 6.* The view that the death penalty is invariably unconstitutional is inconsistent with the decision of the Supreme Court in *Gregg v. Georgia*, 428 U.S. 153 (1976). There the Supreme Court pointed out that the text of the Constitution itself reflects the acceptance of the penalty of death, including the reference in the Fifth Amendment to a “capital” crime and to restraints on deprivation of “life” as well as liberty and property. The Supreme Court concluded. “We hold that the death penalty is not a form of punishment that may never be imposed, regardless of the circumstances of the offense, regardless of the character of the offender, and regardless of the procedure followed in reaching the decision to impose it.” In light of *Gregg*, it is impermissible for a federal district or appellate judge to hold a contrary view because such a judge must follow the rulings of the Supreme Court.

*Question 7.* Do you personally have any legal or moral beliefs that would inhibit or prevent you from imposing a death sentence in any criminal case that might come before you as a federal judge? Please explain.

*Answer 7.* I have no legal or moral beliefs that would inhibit or prevent me from imposing a death sentence in a criminal case before me where the law required a death sentence.

*Question 8.* Do you believe that 10, 15 or even 20-year delays between conviction of a capital offender and execution is too long?

*Answer 8.* Yes, delays of ten or more years between conviction and sentencing can undermine the confidence of the public in our system of justice.

*Question 9.* Do you believe that once Congress or a State legislature has made the policy decision that capital punishment is appropriate, then the federal courts should focus their resources on resolving capital cases fairly and expeditiously?

*Answer 9.* Yes. All cases, including capital cases, should be resolved fairly and expeditiously, in accordance with applicable statutes.

*Question 10.* The sentencing of criminal defendants in federal court is conducted under the federal Sentencing Guidelines. Some have argued that the Guidelines do not provide enough flexibility for the sentencing judge, while others have argued that the Guidelines provide needed consistency in sentencing. What is your view of the federal Sentencing Guidelines and their application?

*Answer 10.* Congress developed the Sentencing Guidelines in order to bring more uniformity to sentencing based on the legislative determination that disparities in sentencing that are not distinguishable on the basis of differences in either the magnitude of the crime or the harm to the victim undermine the public’s confidence in our criminal justice system. Congress has committed to the Sentencing Commission the ongoing responsibility to monitor and assess whether the Guidelines provide sufficient consistency and flexibility. Whether judges should have more or less discre-

tion in sentencing is an issue committed to the Congress. If I were confirmed I would impose sentences according to the Sentencing Guidelines.

*Question 11.* What is your view of mandatory minimum criminal sentences, and would you have any reluctance to impose or uphold them as a federal judge?

Answer 11. Criminal penalties are set by the legislature, and mandatory minimum penalties are properly a legislative decision. If I were confirmed as a federal district judge, I would have no reluctance to impose or uphold mandatory minimum sentences as required by the statutes and Sentencing Guidelines.

*Question 12.* What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision? Or would you apply your own judgment of the merits? Take, for example, the Supreme Court's recent decision in *United States v. Playboy Entertainment Group, Inc.*, No. 98-1682 (decided May 22, 2000), where the Court struck down a provision of the 1996 Telecommunications Act that was designed to protect children from exposure to sexually explicit adult programming on cable television.

Answer 12. If I believed that the Supreme Court or the Seventh Circuit had decided a case wrongly, I would still be obliged to follow it. There are no circumstances in which a United States district judge or circuit judge is authorized to refuse to apply a controlling Supreme Court or appellate court precedent on the basis that the judge believes the precedent to be flatly wrong. This would include the ruling in *United States v. Playboy Enterprises Group, Inc.*

*Question 13.* Please describe in reasonable detail your understanding of the case recently argued before the Supreme Court entitled *Dickerson v. United States*, which asked whether a defendant's voluntary confession could be admitted into evidence in the Government's case in chief under 18 U.S.C. § 3501, even if the confession was not preceded by the warnings set forth in *Miranda v. Arizona*, 384 U.S. 486 (1966). Please explain to the Committee your understanding of *Miranda*, section 3501, and the proper role of the Congress and Courts in establishing rules of evidence and procedure for federal courts. Also, please state whether you believe the *Miranda* decision is an example of judicial activism.

Answer 13. Section 3501 of Title 18, United States Code, provides, in substantive part, that in a federal prosecution, "a confession \* \* \* shall be admissible in evidence if it is voluntarily given." *Miranda v. Arizona* imposes an exclusionary rule where a confession is given without specific advice of rights set forth in that decision, including the right not to make a statement and the right to advice of counsel.

The question presented in *United States v. Dickerson*, is whether a confession given without prior *Miranda* warnings is still admissible under section 3501 if the totality of the circumstances demonstrates that the confession was voluntarily given.

Both Congress and the courts have a proper role in establishing rules of evidence and rules of procedure. In general, rules are generated in the first instance by the Judicial Conference of the United States, but they must be approved by Congress before they have the force of law. Of course, there are many instances in which Congress has initiated rules of procedure and admissibility. Section 3501 is an example. As a judge, my duty would be to read the cases and, without characterizing them, follow their holdings in applying them to a case before me.

*Question 14.* Please define judicial activism. In your view, is *Roe v. Wade*, 410 U.S. 113 (1973), an example of judicial activism?

Answer 14. Judicial activism, to me, occurs when a judge rules based on his or her own preferred views rather than on a proper interpretation of the Constitution. Whether an example of judicial activism or not, I would study *Roe v. Wade* as modified by *Planned Parenthood v. Casey* to ascertain their holdings and, without characterizing the cases, follow their holdings in ruling on a case before me. I hold no personal views that would prevent me from following the *Roe* and *Casey* decisions.

*Question 15.* The Supreme Court, through a process of so-called selective incorporation, has applied most, if not all, of the provisions of the Bill of Rights against the States. Thus, for instance, the First Amendment, which originally was intended to apply only to the federal government, has been applied to the States. The Second Amendment, however, which protects the rights of law-abiding citizens to own firearms in this country, has not. Do you believe that the Second Amendment ought to be applied to the States?

Answer 15. I do not hold a view of whether the Second Amendment should apply to the States, but should the Supreme Court or the Seventh Circuit so hold, I will follow that ruling in any case that might come before me should I be confirmed as a district judge.

*Question 16.* If most of the other provisions of the Bill of Rights apply to the States, why shouldn't the Second Amendment? On what principled basis would it be appropriate to apply almost all of the other provisions of the Bill of Rights against the States, but not the Second Amendment?

Answer 16. I hold no view on the "selective incorporation" cases, but if such a case were before me, I would study those cases, follow the principles set forth in them and follow the relevant guidance of the higher courts.

*Question 17.* The precedents of Circuit Courts 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?

Answer 17. I am committed to following the precedents of higher courts faithfully and to giving them full force and effect, even where I personally disagree with the precedents.

*Question 18.* You have stated that, if confirmed, you would be bound by Supreme Court precedent and the precedent of the Circuit Court of Appeals over your district or circuit. There may be times, however, when you will be faced with cases of first impression. What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Answer 18. Should I be confirmed as a district judge and should I be presented with a case of first impression, which happens only rarely, I would first carefully examine the law on which the claim or defense was based to be certain that it, in fact, presented a question of first impression. If it were, and if a question of statutory construction were presented, I would look for the plain meaning of the statute. If the statute's meaning was ambiguous or if its applicability to the facts presented were uncertain, I would examine the legislative history to see whether it would shed light on the meaning of the statute. Whether a statutory or non-statutory issue, I would be guided by analogous reasoning of the United States Supreme Court and the Court of Appeals for the Seventh Circuit. If I were still unable to resolve the issue, I would consider the well reasoned opinions of state and federal courts treating similar issues in reaching my decision.

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RESPONSES OF GEORGE Z. SINGAL TO QUESTIONS FROM SENATOR SMITH

*Question 1.* Article II, Section 2 of the Constitution states that the President shall have the power to appoint federal judges with "the advice and consent" of the Senate. If a nominee for any federal judgeship refuses to answer questions about a Constitutional issue, should that individual be confirmed?

Answer 1. A nominee should attempt to answer all of a Senator's questions; however, there may be some questions that a nominee may not answer due to the obligations of the Code of Judicial Conduct. The determination of whether to vote to confirm a nominee is, of course, left to each Senator.

*Question 2.* Article II, Section 2 of the Constitution states that the President shall have the power to appoint federal judges with "the advice and consent" of the Senate. If you were a member of the United States Senate, would you agree that it is difficult to advise and consent to a nominee when a candidate refuses to answer questions on Constitutional issues?

Answer 2. Yes, but I would do my best to take the measure of the nominee based on the person's education, experience, general background, and the recommendations of people the Senator respects.

*Question 3.* What is the purpose of the United States Senate in holding hearings on nominees for the federal bench?

Answer 3. Article II, Section 2 of the Constitution provides for the "advise and consent" of the Senate. A hearing provides a Senator the ability to personally evaluate the individual and assess his or her qualifications for the position.

*Question 4.* Is it possible for a Senator to advise and consent to a nominee if the nominee simply refers to precedent without explaining his or her legal analysis?

Answer 4. Yes, a statement by a nominee that he or she would follow precedent may be taken as indicating that the nominee would follow the legal analysis of that precedent and apply it to the facts presented by a particular case.

*Question 5.* How can I as a Senator advise and consent to a nominee without answers to Constitutional questions?

Answer 5. A Senator can make a decision as to a nominee's qualification based upon an examination of a nominee's background, education, work experience, and recommendations.

*Question 6.* What questions are legitimate to ask a candidate without the candidate prejudicing himself or herself?

Answer 6. A Senator has a right to ask the candidate any question. Questions about a nominee's background, education, work experience, and commitment to following precedent, among others, can be answered without the candidate prejudicing himself or herself.

*Question 7.* Are there any questions that you feel are off limits for a Senator to ask?

Answer 7. No, there are no questions I believe that are off limits for a Senator to ask.

*Question 8.* If a U.S. District Court Judge or U.S. Court of Appeals Judge concludes that a Supreme Court precedent is flatly contrary to the Constitution, are there any circumstances under which the Judge may refuse to apply that precedent to the case before him or her?

Answer 8. A U.S. District Court Judge or U.S. Court of Appeals Judge is required by oath to follow the precedent set by the United States Supreme Court, even if the judge were to conclude that the higher court had erred.

*Question 9.* If you were a Supreme Court Justice in 1856, what would you have held in *Dred Scot v. Sandford*, 60 U.S. (19 How.) 393?

Answer 9. Without having practiced law in that era, and having had the benefit of the briefs and the oral argument before the court, as well as discussions with other Supreme Court Justices, I am unable to determine how I would have held in that case.

*Question 10.* In *Dred Scot v. Sandford*, 60 U.S. (19 How.) 393 (1856), the court apparently held, as you well know, there were eight separate opinions in the case, that black slaves were not citizens of the United States. How should that precedent be treated by the courts today?

Answer 10. *Dred Scot v. Sandford* was ultimately reversed by amendment to the Constitution and is not binding precedent today.

*Question 11.* If you were a judge in 1857, would you have been bound by your Oath and would you have been mandated to follow the binding precedent of *Dred Scot v. Sandford*, 60 U.S. (19 How.) 393 (1856)?

Answer 11. Yes, a judge in 1857 would, by his oath of office, be required to follow that binding precedent.

*Question 12.* If you were a Supreme Court Justice in 1896, what would you have held in *Plessy v. Ferguson*, 163 U.S. 539 (1896)?

Answer 12. Without having practiced law in that era, and having had the benefit of the briefs and the oral argument before the court, as well as discussions with other Supreme Court Justices, I am unable to determine how I would have held in *Plessy v. Ferguson*.

*Question 13.* In *Plessy v. Ferguson*, 163 U.S. 539 (1896), a majority of the court held as not a violation of the Fourteenth Amendment to the Constitution a Louisiana statute which provided that all railway companies provide "equal but separate accommodations" for black and white passengers, imposing criminal penalties for violations by railway officials. How should that precedent be treated by the Courts?

Answer 13. *Plessy v. Ferguson* has since been overruled by later case law and subsequent legislation. Therefore, it should not be considered binding precedent by the courts.

*Question 14.* If you were a Supreme Court Justice in 1954, what would you have held in *Brown v. Board of Education*, 347 U.S. 483 (1954)?

Answer 14. Without having practiced law in that era, and having had the benefit of the briefs and the oral argument before the court, as well as discussions with other Supreme Court Justices, I am unable to determine how I would have held in *Brown v. Board of Education*.

*Question 15.* In *Brown v. Board of Education*, 347 U.S. 483 (1954), the court held that the segregation of children in public schools solely on the basis of race, even though the physical facilities and other tangible factors may be equal, deprive the children of the minority group of equal educational opportunities contrary to the protections contained within the Fourteenth Amendment to the Constitution. How should that precedent be treated by the Courts?

Answer 15. *Brown v. Board of Education*, has not been overturned by subsequent case law or constitutional amendment and is binding on the lower courts.

*Question 16.* If you were a Supreme Court Justice in 1973, what would you have held in *Roe v. Wade*, 410 U.S. 113 (1973)?



Answer 16. Without having practiced law in that era, and having had the benefit of the briefs and the oral argument before the court, as well as discussions with other Supreme Court Justices, I am unable to determine how I would have held in *Roe v. Wade*.

*Question 17.* In *Roe v. Wade*, 410 U.S. 113 (1973), the court held that a Texas statute which proscribed an abortion except when necessary to save the life of the mother was a violation of the due process clause of the Fourteenth Amendment as an unjustified deprivation of liberty. Do you agree with the legal reasoning of the holding or of the Justice Renhquist dissent in that case?

Answer 17. The holding in *Roe v. Wade*, as modified in *Planned Parenthood v. Casey* is binding on the lower courts. Lower court judges must follow the majority's holding in any precedential area.

*Question 18.* We understand the Supreme Court precedent, but what is your personal view on the issue of abortion?

Answer 18. I have no personal beliefs preventing me from following the binding precedent of the Supreme Court on this issue.

*Question 19.* We understand the Supreme Court precedent, but what is your personal view on the issue of the death penalty?

Answer 19. I have no personal beliefs that would prevent me from applying or upholding the death penalty in accordance with the law.

*Question 20.* We understand the Supreme Court precedent, but what is your personal view on the issue of the Second Amendment to the Constitution?

Answer 20. I have no beliefs that would prevent me from following binding precedent set forth in my Circuit or the Supreme Court with regard to the Second Amendment.

*Question 21.* In *Planned Parenthood v. Casey* (505 U.S. 833 (1992)), the Supreme Court held that the government interest in preserving life must be balanced against a mother's right of privacy and access to abortion which may not be unduly burdened. Do you believe the "right to privacy" includes the right to take away the life of an unborn child?

Answer 21. This issue has been addressed by the Supreme Court in *Casey*. I have no personal beliefs that would prevent me from following binding Supreme Court and Circuit precedent on this issue.

*Question 22.* Again, I understand the state of the law on the Supreme Court's interpretation on the issue of abortion, but I am interested in your personal beliefs on the issue, do you personally believe that an unborn child is a human being?

Answer 22. I have no personal beliefs that would prevent me from following binding precedent regarding this issue.

*Question 23.* Do you believe that the death penalty is constitutional?

Answer 23. I have no personal beliefs that prevent me from following the Supreme Court's precedent that the death penalty is constitutional.

*Question 24.* If you were a Supreme Court Justice, under what circumstances would you vote to overrule a precedent of the Court?

Answer 24. Under the principle of *stare decisis*, courts are obligated to follow precedent. In those rare circumstances in which the Supreme Court considers overruling a previous decision, the Supreme Court looks to its precedent in this regard, such as *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). If I were a Supreme Court Justice, I would follow this precedent and apply the factors listed in the *Casey* decision.

*Question 25.* Do you consider legislative intent and the testimony of elected officials in debates leading up to passage of an act? And what weight do you give legislative intent?

Answer 25. In determining the meaning of legislation, a judge should look to the plain language of the statute. If the language is ambiguous, legislative intent can be derived from a number of sources such as committee reports. The weight to be given to committee reports and statements of individual legislators is determined by prior precedent. I would view with caution the statements of an individual legislator because they may not reflect the consensus of the legislative body as a whole.

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RESPONSES OF GEORGE Z. SINGAL TO QUESTIONS FROM SENATOR HATCH

*Question 1.* If a particular judge or court has a high rate of reversal on appeal, either to the Court of Appeals or to the Supreme Court, is that a problem? If it is, what can and should be done to remedy that problem?

Answer 1. Yes, it would be a problem for a particular judge or court to have a high rate of reversal on appeal. If a Federal District Court Judge, for example, found that he or she had such a problem, the judge could remedy the problem by carefully reviewing each reversal, scrupulously following the holding and reasoning of the higher court, and thoroughly reading all applicable precedents of the Supreme Court and the Court of Appeals.

*Question 2.* In your review, to what extent, if any, do the rights protected by the Constitution grow or shrink with changing historical circumstances?

Answer 2. The rights protected by the Constitution are reflected in the plain language of the document. Supreme Court precedents interpreting these rights may change over time due to the application of the law to new subjects, such as new technologies. However, the job of a District Court Judge is to follow precedent and not to create new rights or otherwise legislate from the bench.

*Question 3.* Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Answer 3. Only rarely and when compelled by precedent may a federal court declare a statute unconstitutional. A federal court should make every effort to interpret a statute in a way to permit it to be constitutional, and a court should be very hesitant to rule otherwise. Statutes are entitled to a presumption of constitutionality.

*Question 4.* Please describe in reasonable detail the Supreme Court's recent decision in *United States v. Morrison* 120 S. Ct. 1740 (2000), and its 1995 decision *United States v. Lopez* 514 U.S. 548 (1995), explaining to the Committee your understanding of those decisions, and their holdings regarding congressional power. Some commentators have accused the Supreme Court of judicial activism because of its decisions in those cases. Do you agree? Please explain.

Answer 4. In *United States v. Morrison* 120 S. Ct. 1740 (2000), the Supreme Court held that a provision of the Violence Against Women Act which created a federal cause of action for victims of sexual assault, exceeded Congress's power under the Commerce Clause.

In *United States v. Lopez* 514 U.S. 548 (1995), the Supreme Court held that the Gun-free School Zone Act, which made it a federal crime to knowingly carry a firearm in a school zone, exceeded Congress' power under the Commerce Clause.

In both cases the Supreme Court found that the intrastate activity at issue did not "substantially affect" interstate commerce, and thus Congress could not enact the laws.

I would not characterize these decisions as activist; I do not read Supreme Court decisions with a view to determine if they are examples of activism, but to determine what they hold. If confirmed, I would be obligated to follow and I would follow these decisions and all precedents of higher courts.

*Question 5.* In your view, is the use of race, gender or national origin-based preferences in such areas as employment decisions (hiring, promotion or layoffs), college admissions and scholarship awards, and the awarding of government contracts, lawful under the Equal Protection Clause of the 14th Amendment? Please explain.

Answer 5. In *Adarand Constructor v. Pena*, 515 U.S. 200 (1995), the Supreme Court held that the use of race-based or national origin-based preferences in governmental program or decisions is subject to strict scrutiny review, must serve a compelling governmental interest, and be narrowly tailored to serve that interest. In *U.S. v. Virginia* 518 U.S. 515 (1996), the Supreme Court held that the "intermediate scrutiny" standard applies to gender-based preferences in governmental programs and decisions. I have no beliefs that prevent me from following this precedent.

*Question 6.* Do you believe that the view of the death penalty taken by Justices Brennan, Marshall and Blackman—that the death penalty is unconstitutional notwithstanding the clear constitutional text sanctioning it—is a permissible view of a federal judge to hold?

Answer 6. No, The Supreme Court has ruled that the death penalty is constitutional and has noted that it was contemplated by the plain language of the Constitution. I have no beliefs that prevent me from following this precedent.

*Question 7.* Do you personally have any legal or moral beliefs that would inhibit or prevent you from imposing a death sentence in any criminal case that might come before you as a federal judge? Please explain.

Answer 7. I have no legal or moral beliefs that would inhibit or prevent me from imposing a death sentence in any applicable criminal case that might come before me as a federal judge.

*Question 8.* Do you believe that 10, 15 or even 20-year delays between a conviction of a capital offender and execution is too long?

Answer 8. Yes, delays of 10 to 20 years are too long. There is no place in our system for frivolous appeals or undue delay.

*Question 9.* Do you believe that once Congress or a State legislature has made the policy decision that capital punishment is appropriate, then the federal courts should focus their resources on resolving capital cases fairly and expeditiously?

Answer 9. Yes, I believe that all courts should resolve capital cases fairly and expeditiously.

*Question 10.* The sentencing of criminal defendants in federal courts is conducted under the Federal Sentencing Guidelines. Some have argued that the Guidelines do not provide enough flexibility for the sentencing judge, while others have argued that the Guidelines provide needed consistency in sentencing. What is your view of the Federal Sentencing Guidelines and their application?

Answer 10. I recognize that Congress has the power to determine the Federal Sentencing Guidelines, which promote both consistency and predictability in sentencing. I would have no reluctance to apply them.

*Question 11.* What is your view of mandatory minimum criminal sentences, and would you have any reluctance to impose or uphold them as a federal judge?

Answer 11. It is fully within the power of Congress to legislate mandatory minimum sentences. I would have no reluctance as a judge to impose them.

*Question 12.* What would you do if you believed the Supreme or the Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision? Or would you apply your own best judgment of the merits? Take, for example, the Supreme Court's recent decision in *United States v. Playboy Entertainment Group Inc.* No. 98-1682 (decided May 22, 2000), where the Court struck down a provision of the 1996 Telecommunications Act that was designed to protect children from exposure to sexually implicit adult programming on cable television.

Answer 12. Even if I believe the Supreme Court or the Court of Appeals had seriously erred in rendering a decision, I would be obligated to follow and would follow the precedent in the applicable case. A federal District Court Judge is required by oath to follow binding precedent as set forth by a higher Court, regardless of the judge's personal views. I have no beliefs that would prevent me from doing otherwise regarding the *Playboy* case or any other binding precedent.

*Question 13.* Please describe in reasonable detail your understanding of the case recently argued before the Supreme Court entitled *Dickerson v. United States*, which asked whether a defendant's voluntary confession could be admitted into evidence in the Government's case in chief under 18 U.S.C. § 3501, even if the confession was not preceded by the warnings set forth in *Miranda v. Arizona* 384 U.S. 486 (1966)? Please explain to the Committee your understanding of *Miranda*, section 3501, and the proper role of the Congress and the Courts in establishing rules of evidence and procedure for federal courts. Also, please state whether you believe the *Miranda* decision is an example of judicial activism.

Answer 13. *Miranda v. Arizona* 384 U.S. 486 (1966), remains binding on lower courts, but the Supreme Court is considering a challenge to the case and I would follow the holding of the Supreme Court on this issue, whatever the holding is. The question presented to the Supreme Court in *Dickerson v. United States* is whether 18 U.S.C. § 3501 (which takes a totality of the circumstances approach) controls the determination regarding the admissibility of a confession, or whether the Supreme Court's decision in *Miranda* controls that determination. In *Dickerson*, the Supreme Court is considering whether the rubric of warnings in *Miranda* is constitutionally mandated and, if not, whether Congress can substitute its judgment, i.e., 18 U.S.C. § 3501, for the Court-generated rule. I have no beliefs regarding *Miranda* that would prevent me from following precedent in this area.

*Question 14.* Please define judicial activism. In your view, is *Roe v. Wade* 410 U.S. 113 (1973) an example of judicial activism?

Answer 14. Judicial activism has been defined as judges "legislating" for the public. The holding in *Roe v. Wade* as modified in *Planned Parenthood v. Casey* is binding on the lower courts. Lower court judges must follow the majority's holding in any precedential area. I have no beliefs that would prevent me from following *Roe v. Wade* as modified by *Planned Parenthood v. Casey*.

*Question 15.* The Supreme Court, through a process of so-called selective incorporation, has applied most, if not all, of the provisions of the Bill of Rights against the States. Thus, for instance, the First Amendment, which originally was intended to apply only to the federal government, has been applied to the States. The Second Amendment, however, which protects the rights of law-abiding citizens to own firearms in this country, has not. Do you believe that the Second Amendment ought to be applied to the States?

Answer 15. If the Supreme Court were to find that the Second Amendment applied to the states, I would be obligated to follow and would follow that precedent. I have no beliefs that would prevent me from following binding precedent relative to the Second Amendment.

*Question 16.* If most of the other provisions of the Bill of Rights apply to the States, why shouldn't the Second Amendment? On what principled basis would it be appropriate to apply almost all of the other provisions of the Bill of Rights against the States, but not the Second Amendment?

Answer 16. I have no view about whether or not the Second Amendment should apply to the states, but I would follow the determination of a higher court on this issue. I have no beliefs that would prevent me from following binding precedent relative to the Second Amendment.

*Question 17.* The precedents of Circuit Courts 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?

Answer 17. Yes, I am committed to following the precedents of higher courts faithfully and giving them full force and effect, even if I were to personally disagree.

*Question 18.* You have stated that, if confirmed, you would be bound by Supreme Court precedent and the precedent of the Circuit Court of Appeals over your district or circuit. There may be times, however, when you will be faced with cases of first impression. What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Answer 18. It is rare that a Federal District Court determines a case of first impression. I would first look to the plain language of the statute and then would look to analogous case law from the Supreme court and the Circuit Courts of Appeal and apply that case law.

**NOMINATIONS OF GLENN A. FINE TO BE INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE; DENNIS M. CAVANAUGH, JAMES S. MOODY, JR., GREGORY A. PRESNELL, AND JOHN E. STEELE (U.S. DISTRICT JUDGES)**

**WEDNESDAY, JULY 12, 2000**

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

The committee met, pursuant to notice, at 2:10 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Bob Smith, presiding.

Also present: Senator Torricelli.

**OPENING STATEMENT OF HON. ROBERT SMITH, A U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE**

Senator SMITH. The hearing will come to order. Senator Torricelli is on his way, and I thought in the interests of time I would just begin the process.

Today, the Judiciary Committee is holding its seventh nominations hearing in the second session of the 106th Congress. That was a question, by the way, last night, the \$500,000 question on "The Millionaire," which Congress were we now in. So I am assuming everybody in this room would have known the answer.

At this hearing, we will consider the nominations of our individuals who have been nominated by the President to be Federal judges, and one individual to be an official with the Department of Justice.

We will have three panels of witnesses this afternoon. The first will consist of the sponsors of the nominees, who will give brief statements on behalf of their nominees. The second panel will consist of Glenn A. Fine, of Maryland, to be Inspector General of the Department of Justice.

The third panel will consist of the four district court nominees—Judge Dennis M. Cavanaugh, of New Jersey, to be U.S. District Judge for the District of New Jersey; Judge James S. Moody, Jr., of Florida, to be U.S. District Judge for the Middle District of Florida; attorney Gregory A. Presnell, of Florida, to be U.S. District Judge for the Middle District of Florida; and Judge John E. Steele, of Florida, to be U.S. District Judge for the Middle District of Florida.

Before we turn to the panels, I would yield to the ranking member, but in the interests of time, while he still not here, let me also

introduce the Senators who will be testifying here this afternoon on behalf of their respective nominees—Senator Frank Lautenberg, Senator Bob Graham, and Senator Connie Mack.

So why don't we come on up, gentlemen? Let's see. Who is the senior man here? Lautenberg, right?

Senator LAUTENBERG. You can tell by the hair color.

Senator SMITH. Senator Lautenberg.

**STATEMENT OF HON. FRANK LAUTENBERG, A U.S. SENATOR  
FROM THE STATE OF NEW JERSEY**

Senator LAUTENBERG. Thanks very much, Senator Smith. I want to thank you in your role as chairman here for bringing Dennis Cavanaugh's nomination up for consideration before the Judiciary Committee. I appreciate your efforts, which will ensure that the Federal bench in New Jersey is at full strength.

As you may know, Mr. Chairman, Dennis Cavanaugh has been a magistrate judge since 1993. Over the past seven years, he has handled a number of difficult and complex cases. He has consistently demonstrated efficiency, fairness, and compassion. We have come to expect that from our Federal jurists, and he will be a terrific asset as a district court judge.

Mr. Chairman, Mr. Cavanaugh also has a strong work ethic, and I know him very well. He is a New Jersey fellow through and through, and he has got the kind of work ethic that is essential for judges who are called on to handle literally hundreds of cases at a time. His current duties include managing all of the civil cases assigned to two active district judges and half of the civil cases assigned to a senior district judge. So he has got a workload that totals more than 600 cases.

Magistrate Cavanaugh's legal career includes years of public service as a public defender, from 1973 until 1977. Then he began private practice as a trial attorney, handling civil litigation and some criminal cases, and he has been a partner with several distinguished firms in New Jersey. His clients have included small businesses, educational institutions, insurance companies, public entities, and the Police Benevolent Association. His experience with such a broad range of interests is one of the reasons that he has performed so effectively as a magistrate judge.

Magistrate Cavanaugh has also done his part to help ease the caseloads that overwhelm other judges. He volunteered for pro bono assignments at the superior court in Essex County, where there was a severe backlog of civil cases. Additionally, he has been handling bail hearings, settlement conferences, and a wide range of other judicial duties. He has also found time to teach as an adjunct professor at his alma mater, Seton Hall University School of Law, in Newark.

And it is that kind of experience and energy that has made New Jersey's Federal bench one of the most impressive in the country. Magistrate Cavanaugh's entire career history reflects the integrity and dedication that we want to see in our Federal judges, and I know his service on the district court bench would be equally outstanding.

As I said earlier, Mr. Chairman, if the Senate confirms Magistrate Cavanaugh, there will be no vacancies on the New Jersey

District Court, and we would really like to see the court at full strength. There had been a serious backlog in cases. They are beginning to catch up, and I hope that you are going to be able to help move this nomination forward.

We also are interested in moving the nomination of Stephen Orlofsky, a district court judge, who has been nominated to the Third Circuit Court of Appeals. If the Senate can act expeditiously and confirm these two nominees, then all of the New Jersey seats on the Federal bench will be filled, and we are grateful for that.

Mr. Chairman, Dennis Cavanaugh is here with his wife, Linda. We know her very well. She has had many important assignments, political and governmental, in the State of New Jersey. They are a New Jersey family, and I am honored to bring someone like Dennis Cavanaugh before the committee, hopefully before the full Senate, and to see him confirmed.

I thank you, Mr. Chairman.

Senator SMITH. Thank you, Senator Lautenberg.  
Senator Graham.

**STATEMENT OF HON. BOB GRAHAM, A U.S. SENATOR FROM  
THE STATE OF FLORIDA**

Senator GRAHAM. Thank you, Mr. Chairman, and I would like to ask consent to file my full statement. In the interest of time, I will summarize.

Senator SMITH. Without objection.

Senator GRAHAM. Mr. Chairman, we appreciate your and Senator Torricelli's courtesy in scheduling this hearing and doing it on such a prompt basis, approximately 30 days after the President has nominated these three outstanding Floridians for appointment to the U.S. Federal bench in the Middle of District of Florida.

It is a tremendous privilege to be able to introduce these three impressive nominees for your consideration. Gregory Presnell, a private attorney in Orlando, United States Magistrate John Steele, and Florida State Circuit Judge James Moody have been nominated to the United States District Court for the Middle District of Florida, and they have the strong support of Senator Mack and myself.

These three highly qualified nominees were recommended by a non-political screening committee comprised of a diverse group of Floridians, lawyers and nonlawyers, who evaluated these three individuals as part of a much larger group of highly qualified attorneys and judges who had expressed an interest in serving in the Federal judiciary. We jointly recommended these nominations to the President and are very appreciative that now they have been nominated. We commend them for your confirmation.

The three nominees are accompanied by family members today, and I would like to recognize some of the family members. Mr. Gregory Presnell is joined by his wife, Cecelia Bonifay.

Cecelia, would you please stand?

Ms. BONIFAY. Good afternoon.

Senator SMITH. Good afternoon.

Senator GRAHAM. Cecelia is also an attorney; and three sons—Pearce, a real estate financial analyst; Bryan, a resident of Atlanta;

and Russell, who has just graduated from James Madison University.

Judge Moody is accompanied by his wife, Kelli, and three of his children—Jamey and Ryan, who are students at the University of Florida, and Tricia who is a student at the University of South Florida.

Senator SMITH. Welcome.

Senator GRAHAM. Judge Steele's wife, Lynda Marie, is unfortunately unable to be with us today.

I would like to take this opportunity, since it could be the last in such a setting of introducing judicial nominees, to thank my colleague and good friend, Senator Mack, for the extremely collaborative way in which we have worked over his 12 years in the Senate on judicial nominations.

We have approached them from the standpoint that our responsibility is to look for judicial merit, and have worked to accomplish that objective and to recommend to the President, and he to nominate to you, the highest quality potential jurists. And I believe the three men who are with us today are illustrative of the results of that collaboration, for which I wish to extend my deepest gratitude to Senator Mack, and hope that whatever happens in November that we can continue this pattern in January.

Senator MACK. Does that suggest a role for me that I am not aware of? [Laughter.]

Senator SMITH. Or for him. You never know.

Senator MACK. Good point.

Senator GRAHAM. The three nominees that we have today are a product of that collaboration. The Middle District of Florida has been one of the most overburdened districts of the 95 districts in the U.S. Federal judiciary. It has the third highest case filings, and because of the character of the cases, particularly the heavy cases in the criminal division, and of those a heavy caseload of drug related cases, they tend to be complex and very demanding on the jurist.

This action, which was taken in 1999 to authorize four additional positions and which I hope soon we will fill three of those four new authorized positions, will be the first expansion of the Middle District of Florida in many years.

With that background, Mr. Chairman, and with some brevity because of the time constraints, I would like to briefly introduce the three nominees.

Judge James Moody is a native of Florida, from a prominent family. He received both his undergraduate and law degrees from the University of Florida. He practiced law with the same firm for 22 years before becoming a circuit judge in 1995. I am confident that Judge Moody will bring his experience as a State judge to deal with the considerable caseload that he will face now as a Federal district judge, assuming he is confirmed. Judge Moody has served his profession in a variety of important positions, as he has served his community.

Judge Steele currently serves as a United States magistrate judge. He is a graduate of the University of Detroit with a degree in urban studies, as well as a juris doctorate. Judge Steele has



nearly completed a master's degree in criminal justice at the University of North Florida, in Jacksonville.

Prior to his judgeship, John Steele served as an Assistant United States Attorney in both Florida and Michigan, and practiced commercial litigation with a Jacksonville firm. He, too, has a broad and deep commitment to his profession and community, as evidenced by a number of important civic positions, including teaching law at Florida Coastal School of Law in Jacksonville.

Gregory Presnell is a graduate of the University of William and Mary, continued his studies at the University of Florida School of Law, where he graduated with high honors in 1964. Except for a tour of duty in the United States Army, Mr. Presnell has been employed continuously with one of Florida's most prominent law firms, Akerman Senterfitt, where he specialized in business litigation. He, too, has had a broad commitment to his community, with a long list of outstanding areas of community service which will be included in my full statement.

Mr. Chairman, I am confident that these three nominees will continue the pattern of public service and sound legal judgment that they have demonstrated thus far and which led to the commission's recommendation and the President's nomination. I appreciate the committee's consideration of these nominees to one of the largest and busiest judicial circuits in our country. I urge their prompt confirmation.

Thank you.

Senator SMITH. Thank you very much, Senator Graham.

Senator Mack.

**STATEMENT OF HON. CONNIE MACK, A U.S. SENATOR FROM  
THE STATE OF FLORIDA**

Senator MACK. Thank you very much, Mr. Chairman. Before I make my comments with respect to the three nominees, let me just say a couple of thank yous. I want to say thanks to you, representing the full committee, for the incredible sensitivity that I believe the committee has shown to the needs of the State of Florida.

We have made demand after demand after demand over the years. We are a growing State. We have had many vacancies to fill, and I think that, again, the committee has been extremely sensitive to the needs of my State. Both Senator Graham and I want you to know how much we appreciate the work that has been done, and I say that not just for the members, but for the staff as well.

And the second thank you—and Senator Graham really triggered this when he said that this is possibly the last time that I will be before the committee recommending individuals for judgeships. What a pleasure it has been to work with Senator Graham, and for his openness and willingness to allow me to play the type of role that I played in the selection of these nominees. I think that we both benefitted from this process, as well as our State. So I again thank you for your confidence in allowing me to play the role that I have played.

Mr. Chairman, I am delighted and honored to appear before the Judiciary Committee to introduce three judicial nominees for the Middle District of Florida. Each of the nominees that will be before you today are extremely qualified and well respected in their pro-

fessions. I would like to highlight a few facts that I find important about each of the nominees.

First, Judge James Moody. He is currently a circuit court judge for the Thirteenth Judicial Circuit for Hillsborough County, Florida. He has extensive experience in the practice of law, spending a total of 22 years as an attorney and partner in a law firm, handling both civil and criminal cases. In addition, Judge Moody has a long history of serving his community through his work with the pro bono activities of Bay Area Legal Services. He donated over 110 pro bono hours before taking the bench in 1995. And as President of the Hillsborough County Bar Association, he increased the number of lawyers participating in pro bono projects.

Next, Gregory Presnell, who is currently the senior partner in the litigation department of the prominent firm of Akerman, Senterfitt, and Eidson, in Orlando, Florida. He is admired in legal circles and is one of only 203 lawyers certified by the Florida Bar in business litigation. Mr. Presnell was the youngest President of the Orange County Bar Association, and during his tenure created Greater Orlando Legal Services, which provides legal aid to the indigent. In addition, Mr. Presnell was President of the Board of Florida Legal Services, which was established by the Florida Bar to coordinate pro bono services statewide.

And, finally, Judge John Steele, who has served as a United States Magistrate Judge for the Middle District for the past nine years. Serving as an assistant prosecuting attorney, an Assistant United States Attorney, and as the chairman of the litigation department in a Jacksonville, Florida, law firm, Mr. Steele has been involved in complex criminal and civil cases on a State and Federal level throughout his career.

Mr. Steele has taken time out of his busy schedule to teach a class on Federal courts as an adjunct professor at the Florida Coastal School of Law. And as a member of the Civil Rules Committee of the Federal Magistrate Judges Association, Mr. Steele has reviewed and made comments on proposed changes to the Federal Rules of Civil Procedure.

These nominees are excellent candidates with exemplary credentials, and I know that they will take their lifetime appointments to the Federal bench seriously and provide the community with sound legal decisions. So, Mr. Chairman, I encourage this committee and the full Senate to consider these three nominations favorably.

Thank you.

Senator SMITH. Thank you, Senator Mack.

Senator Torricelli is here in a dual role as an advocate for Judge Cavanaugh and a member of the committee. So, welcome.

Senator TORRICELLI. Thank you, Mr. Chairman. Mr. Chairman, I would like, with your permission, to have statements entered into the record by Senator Leahy, Senator Kohl, and Senator Feingold at this point in the record.

Senator SMITH. Without objection, so ordered.

[The prepared statement of Senator Leahy follows:]

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

While I am glad to see the Committee moving forward with a few of the many qualified judicial nominees to fill the scores of vacancies that continue to plague our federal courts, I am disappointed that there are no nominees to the Court of Appeals included in this hearing. I have said since the beginning of this year that the American people should measure our progress by our treatment of the many qualified nominees, outstanding women and minorities, to the Court of Appeals around the country. The Committee and the Senate are falling well short of the mark.

With 21 vacancies on the federal appellate courts across the country, and nearly half of the total judicial emergency vacancies in the federal courts system in our appellate courts, our Courts of Appeals are being denied the resources that they need. Their ability to administer justice for the American people is being hurt. There continue to be multiple vacancies on the Fourth, Fifth, Sixth, Ninth, Tenth and District of Columbia Circuits. The vacancy rate for our Courts of Appeals is more than 11 percent nationwide—and that does not begin to take into account the additional judgeships requested by the Judicial Conference to handle their increased workloads. If we added the 11 additional appellate judges being requested, the vacancy rate would be 16 percent. Still, not a single qualified candidate for one of these vacancies on our federal appellate courts is being heard today.

At our first Executive Business Meeting of the year, I noted the opportunity we had to make bipartisan strides toward easing the vacancy crisis in our nation's federal courts. I believed that a confirmation total of 65 by the end of the year was achievable if we made the effort, exhibited the commitment, and did the work that was needed to be done. I urged that we proceed promptly with confirmations of a number of outstanding nominations to the Court of Appeals, including qualified minority and women candidates. Unfortunately, that is not what has happened.

Just as there was no appellate court nominee included in the April confirmation hearing, there is no appellate court nominee included today. Indeed, this Committee has not reported a nomination to a Court of Appeals vacancy since April 12, and it has reported only two all year. The Committee has yet to report the nomination of Allen Snyder to the District of Columbia Circuit, although his hearing was eight weeks ago; the nomination of Bonnie Campbell to the Eighth Circuit, although her hearing was six weeks ago; or the nomination of Judge Johnnie Rawlinson, although her hearing was four weeks ago. Left waiting for a hearing are a number of outstanding nominees, including Judge Helene White for a judicial emergency vacancy in the Sixth Circuit; Judge James Wynn, Jr., for a judicial emergency vacancy in the Fourth Circuit; Kathleen McCree Lewis, another outstanding nominee to the multiple vacancies on the Sixth Circuit; Enrique Moreno, for a judicial emergency vacancy in the Fifth Circuit; Elena Katgan, to one of the multiple vacancies on the District of Columbia Circuit; and Roger L. Gregory, an outstanding nominee to another judicial emergency vacancy in the Fourth Circuit.

I deeply regret that the Senate adjourned last November and left the Fifth Circuit to deal with the crisis in the federal administration of justice in Texas, Louisiana and Mississippi without the resources that it desperately needs. It is a situation that I wished we had confronted by expediting consideration of nominations to that Court last year. I still hope that the Senate will consider them this year to help that Circuit.

I continue to urge the Senate to meet its responsibilities to all nominees, including women and minorities. That all of these highly qualified nominees are being needlessly delayed is most regrettable. The Senate should join with the President to confirm these well-qualified, diverse and fair-minded nominees to fulfill the needs of the federal courts around the country.

During the Committee's business meeting on June 27, Chairman Hatch noted that the Senate has confirmed seven nominees to the Courts of Appeals this year—as if we had done our job and need do no more. What he failed to note is that all seven were holdovers who had been nominated in prior years. Five of the seven were reported to the Senate for action before this year, and two had to be reported twice before the Senate would vote on them. The Senate took more than 49 months to confirm Judge Richard Paez, who was nominated back in January 1996, and more than 26 months to confirm Marsha Berzon; who was nominated in January 1998. Tim Dyk, who was nominated in April 1998, was confirmed after more than two years. This is hardly a record of prompt action of which anyone can be proud.

Chairman Hatch then compared this year's total against totals from other presidential election years. The only year to which this can be favorably compared was 1996 when the Republican majority in the Senate refused to confirm even a single appellate court judge to the federal bench. Again, that is hardly a comparison in

which to take pride. Let us compare to the year 1992, in which a Democratic majority in the Senate confirmed 11 Court of Appeals nominees during a Republican president's last year in office among the 66 judicial confirmations for the year. That year, the Committee held three hearings in July, two in August, and a final hearing for judicial nominees in September. The seven judicial nominees included in the September 24 hearing were all confirmed before adjournment that year—including a Court of Appeals nominee. We have a long way to go before we can think about resting on any laurels.

Having begun so slowly in the first half of this year, we have much more to do before the Senate takes its final action on judicial nominees this year. We should be considering 20 to 30 more judges this year, including at least another half dozen for the Court of Appeals. We cannot afford to follow the "Thurmond Rule" and stop acting on these nominees now in anticipation of the presidential election in November. We must use all the time until adjournment to remedy the vacancies that have been perpetuated on the courts to the detriment of the American people and the administration of justice. That should be a top priority for the Senate for the rest of this year. In the last three months in session in 1992, between July 12 and October 8, 1992, the Senate confirmed 32 judicial nominations. I will work with Chairman Hatch to match that record.

One of our most important constitutional responsibilities as United States Senators is to advise and consent on the scores of judicial nominations sent to us to fill the vacancies on the federal courts around the country. I look forward to our next confirmation hearing and to the inclusion of qualified candidates for some of the many vacancies on our Federal Court of Appeals.

[The prepared statement of Senator Kohl follows:]

PREPARED STATEMENT OF HON. HERBERT KOHL, A U.S. SENATOR, FROM THE STATE OF WISCONSIN

Thank you, Mr. Chairman.

I just want to voice my support for Glenn Fine, who will truly be an outstanding Inspector General at the Department of Justice. As you know, the Inspector General is charged with investigating waste, fraud, abuse and corruption. As such, it is a position of critical importance and so we need to fill it as soon as possible—hopefully before the August recess—to ensure accountable and effective oversight of the DOJ.

Mr. Fine has been dealing with corruption ever since the Harvard-Boston College basketball game on December 16, 1978, in which he scored 19 points and had 14 assists—perhaps his best performance in college—only to discover later that this particular game was part of a notorious point-shaving scandal. No doubt this firsthand experience drove him in his later quest to weed out corruption at the Department of Justice.

More seriously, though, Mr. Fine has served in a variety of professional roles and always in an exemplary fashion. He is currently the Director of the Special Investigations and Review Unit in the Department of Justice's Office of the Inspector General, where he has supervised a variety of sensitive internal investigations, including the FBI's handling of the Aldrich Ames case. He also worked as an Assistant U.S. Attorney for the District of Columbia, where he prosecuted more than 35 criminal jury trials. His academic credentials are stellar as well. He is a Rhodes Scholar and he was graduated magna cum laude from Harvard Law School. Finally, though this is a political appointment, Mr. Fine is non-partisan—exactly the type of appointee that a Republican President might very well consider keeping on. He worked as an Assistant U.S. Attorney during the Reagan and Bush administrations, and has never been involved in a political campaign.

I know that we are rapidly entering the autumn of the nomination season, but a position as important as the Inspector General deserves to be filled without delay and a candidate as outstanding as Mr. Fine merits speedy confirmation.

[The prepared statement of Senator Feingold follows:]

PREPARED STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR FROM THE STATE OF WISCONSIN

I am pleased to support the nomination of Glenn A. Fine to be Inspector General at the Department of Justice. Mr. Fine has already had a distinguished career, serving as an Assistant United States Attorney for a number of years, as an attorney in private practice and most recently as the Director of the Department's Special Investigations and Review Unit. His academic record is superb, including degrees from Harvard College, Harvard Law School, and Oxford University, where he was

a Rhodes Scholar. I note also his six years of volunteer service with the D.C. Board of Professional Responsibility where he adjudicated disciplinary complaints against lawyers charged with violations of the Bar's Rules of Professional Conduct.

I am informed by people whose judgment I respect that Mr. Fine has served with distinction at the Department in a difficult and sensitive position and I have confidence that he will serve with equal skill and judgment as the Department's Inspector General. I am pleased that the Committee is holding this hearing on Mr. Fine's nomination and hope that he will be rapidly confirmed by the full Senate.

Senator TORRICELLI. Mr. Chairman, it would be my hope to participate in introducing Mr. Fine to the committee and then Judge Cavanaugh, but would prefer to do so immediately before their statements, if that were possible.

Senator SMITH. Certainly.

I thank my colleagues for being here.

Senator MACK. Thank you, Mr. Chairman.

Senator SMITH. Mr. Fine, if you could come up, please, I guess the first order of business is to swear you in. So we might as well do that, I guess.

Do you swear that the testimony you shall give in this hearing shall be the truth, the whole truth, and nothing but the truth so help you God?

Mr. FINE. I do.

**STATEMENT OF HON. ROBERT TORRICELLI, A U.S. SENATOR  
FROM THE STATE OF NEW JERSEY**

Senator TORRICELLI. Mr. Chairman, if I could at this point, with your permission I would like to introduce the committee to Glenn Fine, of Maryland, who has been nominated for the position in the Department of Justice of Inspector General.

Mr. Fine is currently working as a counsel in the Inspector General's office. The committee should note the extraordinary credentials that have led to his nomination to this very important position. He graduated magna cum laude from both Harvard College and Harvard Law School. Unfortunately, then he was forced to go to school abroad and received a master's in politics, philosophy, and economics from Oxford University, where he served as a Rhodes Scholar.

Upon graduation from law school, he served as an Assistant United States Attorney in the District of Columbia for three years. Mr. Chairman, you will be pleased to note that in 1989 he spent a year as counsel to the Senate Labor and Human Resources Committee. That singular experience of being a staff member on the Hill, no doubt, has propelled his career to this important position.

He served 6 years as an associate in the practice of law in the District of Columbia, and has been with the Inspector General's office as a special investigative counsel since 1995. Mr. Chairman, I know that you recognize the unique importance of that office, ensuring the credibility of the Department of Justice, ensuring that it complies with its own rules and regulations, and that all of us on a bipartisan basis know that the Department of Justice is operating to the highest standards that the American people would expect. Indeed, having the office, an office which has been held in very high regard, I think has allowed all of us to have a special degree of confidence in the Department of Justice.

So I think this is a nomination in which the administration can take considerable pride, and I am very pleased to be able to present to you, Mr. Chairman, Mr. Glenn Fine for the position of Inspector General.

Senator SMITH. Thank you, Senator Torricelli.

Mr. Fine, do you have any family or friends that you wish to introduce at this point?

**TESTIMONY OF GLENN A. FINE, OF MARYLAND, TO BE  
INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE**

Mr. FINE. Yes, I do, Senator Smith. With me today are my wife, Beth Heifetz, in the black; also, my daughter, Julia, who is 4 years old; also my son, Michael, who is in the stroller, who has fallen asleep. But we have promised to brief him about the proceedings when he wakes up.

Senator SMITH. I think he will enjoy them more than anybody else.

At this point, if you have a statement, proceed.

Mr. FINE. Thank you, Senator Smith. And, Senator Torricelli, thank you for those words of support. I am very honored to appear before you today as the nominee to be the Inspector General of the Department of Justice. I am grateful to the President for nominating me, and I am also grateful to the chairman and the other members of the committee for holding this hearing to consider my nomination.

I would like to first, though, especially recognize three people to whom I am particularly grateful. First is my wife, Beth Heifetz, who has given me her unfailing love, support, and faith. She is an extremely talented lawyer in her own right, having previously worked as a partner in the Washington office of the law firm of Jones, Day, Reavis, and Pogue. Currently, she is on leave to stay at home, taking care of our two wonderful children, and she is doing a terrific job in what is the most important calling of all, raising a family.

I would also like to recognize my mother and my father for all their support. Before he passed away, my father worked for 28 years in the Justice Department as a line attorney in the Antitrust Division. I know he would be honored that his son was being considered for this important position in the Department of Justice.

I believe that working in the Justice Department provides a lawyer one of the most significant and challenging opportunities for public service that is available. The mission of the Department of Justice is critical in the life of our country. Whether attempting to ensure the safety of our citizens, to enforce the immigration laws fairly and effectively, to cleanse our communities of illegal drugs, to effectively represent the United States in courts throughout the country, or to pursue the many other important missions entrusted to the Department of Justice, the work of the Department has a profound effect on all Americans.

I have been fortunate to work in the Department as an Assistant U.S. Attorney in the District of Columbia from 1986 to 1989, prosecuting more than 35 criminal cases on behalf of the United States. I have also been fortunate to work for the last 5½ years as a career official in the Office of the Inspector General.

For the last four years, I have been the Director of the OIG's Special Investigations and Review Unit. Among other duties, this unit has participated in many of the sensitive and complex matters that the Inspector General's office has investigated, including a review of the FBI's handling of the Aldrich Ames case, a review of the FBI laboratory, a review of the use of prison telephones by Federal inmates to commit crimes, a review of claims that the Justice Department treated certain cocaine traffickers more leniently because of their alleged ties to the Nicaraguans contras or the CIA, and most recently a review of the way the INS mishandled the case of the serial railway killer Rafael Resendez-Ramirez.

I believe that it is essential for an aggressive, well-funded, and independent Office of the Inspector General to help provide effective oversight over many aspects of the Department's work. As you know, the OIG's mission is to detect and deter waste, fraud and abuse within the Department, and to promote efficiency and effectiveness in the Department's operations.

To this end, the OIG audits Department financial statements, conducts reviews of Department programs, and investigates criminal and administrative misconduct of certain departmental personnel. In pursuit of these missions, I believe the Inspector General must be hard-hitting but fair in his reviews of Department programs and personnel. He must not be afraid to deliver bad news or unpopular assessments about the Department's operations or programs.

By the same token, he must exonerate persons or programs of allegations of misconduct when that is warranted. The Inspector General also has an essential responsibility to inform Congress of problems or deficiencies in the Department operations or programs that the Inspector General uncovers.

It has been my privilege to work in the Inspector General's office these past 5½ years. I am committed, if I become the Inspector General, to do everything I can to pursue the extremely important duties of this position and to live up to the high standards of the office. I hope I will have the opportunity to work with this committee and with Congress in pursuing effective oversight over the Department.

Thank you again for considering my nomination, and I would be glad to respond to any questions you may have.

Senator SMITH. Thank you, Mr. Fine. Let me just begin, and feel free to jump in, Senator Torricelli; there is just the two of us.

In the investigation of fraud, in uncovering fraud in the office, would you make any recommended changes based on the experience that you had and the long list of cases that you talked about? Are there any recommended changes that you would make in how we would do a better job or improve?

Mr. FINE. Well, a lot of the cases are individual to the components that we have investigated. I think it is important for us to be proactive in providing integrity briefings to departmental officers and employees. I think it is important to have a well-funded, aggressive Office of the Inspector General to provide oversight over the many operations of the Department.

The Department has changed in recent years. It has become a grant making operation to some extent. In previous fiscal years,

there have been almost \$4 billion in grants that the Department gives out now. I think it is important for audits and inspections of these programs to ensure that they are being used for the proper purposes and to ensure that there is not fraud in those programs.

As a measure that the Office of Inspector General has taken, we have started a fraud detection office in our Investigations Division, and we believe it is important to look actively for fraud in the Department and I would be committed to doing that were I to be the Inspector General.

Senator SMITH. There was an initiative in 1996 that caused some controversy, the so-called Citizenship USA initiative, which naturalized a million or so immigrants before the election in 1996. There was a Wall Street Journal report, the June 9th edition I believe it was, that the report was about due or was expected. Do you have any information on when that report might be expected, and if you can comment on what may or may not be the recommendation or the conclusion?

Mr. FINE. Senator Smith, our office is investigating that matter. We have had a thorough investigation. We are in the ending stages of completing that investigation. I must tell you that I have removed myself, I have recused myself from any involvement in that matter when I became a candidate for the office of Inspector General because some of those allegations do touch on actions of the White House. And I decided that I did not want to have any potential conflict of interest being considered for the position and at the same time conducting an investigation. So I cannot and should not comment on the investigation itself. I do know from the team that they are working expeditiously and they hope to have a report done very soon, hopefully within the next month.

Senator SMITH. Thank you for that.

In another case, there was a Journal article, "The Impact of Right-to-Work Laws on Union Organizing," in 1987. You had argued that there was an economic analysis that shows, "The number of workers in newly organized bargaining units is substantially reduced in the first decade after passage of right-to-work, particularly in the first five years. In the later years, the effect is relatively small." That is pretty much an obvious conclusion. Your point is, what, that right-to-work has a negative impact on workers or on unions, or what is it?

Mr. FINE. No, that wasn't the intention. In 1979, I had done a senior honors thesis at Harvard College. I was an economics student and I was intending to use regression analysis, statistical analysis, to analyze the impact of the passage of the law on the extent of union organizing. It was not a piece to get into the benefits or the pros and cons of right-to-work laws. It was simply an economic piece using the statistical tools that I had been taught to see what the effect was.

That conclusion that you describe was the analysis, the academic analysis that we had reached, and the thesis received honors and was turned into a journal piece for an economics journal. But beyond the economic impact, I did not reach any conclusions about the effect of right-to-work laws.

Senator SMITH. I have no further questions. Each Senator could possibly submit questions to you in writing, which, of course, you



would have to respond to in whatever the time indicated. So except for that, that is pretty much all the questions that you will face here this afternoon.

If you have any other comments that you would wish to make that you would like to address, then feel free to do it now.

Mr. FINE. No. I would just like to thank you and thank the committee for considering my qualifications, and I am honored to be nominated for this position and I hope to have the opportunity to work in this very important, critical job.

Senator SMITH. I think the indication is from Senator Hatch—obviously, he was not able to be here, but the reason to have a substitute chairman, if you will, for the day is to try to expedite things. So I think all of the nominees can draw that conclusion that the chairman is interested in moving the process along.

So we are glad you could be here, and thank you again for your testimony. Thanks again to your family and it is nice to have you here as well. It is an honor to have you here, and I hope you found it an enjoyable experience. Your daughter is very good, by the way, very quiet.

Mr. FINE. She has behaved great.

Thank you very much, Senator.

Senator SMITH. Thank you, Mr. Fine. Nice to have you here.

[The questionnaire of Mr. Fine follows:]

Response of Glenn A. Fine to  
United States Senate Committee on the Judiciary  
Questionnaire for Nonjudicial Nominees

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Answer:  
Glenn Alan Fine

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

Answer:  
My current place of residence is in Chevy Chase, Maryland  
My current office address is:  
Office of the Inspector General  
Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

3. Date and place of birth.

Answer:  
March 22, 1956; Philadelphia, Pennsylvania

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

Answer:  
Married to Beth R. Heifetz. She is an attorney who previously worked as a partner in the law firm of Jones, Day, Reavis & Pogue. That law firm currently is located at 51 Louisiana Avenue, N.W., Washington, D.C. Currently, she is staying at home taking care of our two children.

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

Answer:  
1. Harvard College, 1974-1979, A.B. in economics (magna cum laude), 1979;  
2. Pembroke College, Oxford University; 1979-1981, B.A./M.A. in politics, philosophy, and economics, 1981;  
3. Harvard Law School, 1982-1985, J.D. (magna cum laude), 1985.

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

Answer:

1979: Summer intern at public employee union (AFSCME) in Boston, MA  
 1981 to 1982: Staff worker in AFL-CIO's organization and field services department  
 1983: Summer law clerk at Perkins, Coie law firm in Seattle, WA  
 1984: Summer law clerk at Debevoise & Plimpton law firm in New York, NY  
 1985 to 1986: Law clerk at Hogan & Hartson law firm in Washington, DC  
 1986 to 1989: Assistant United States Attorney in District of Columbia United States Attorney's Office  
 1989: Counsel for Senate Labor and Human Resources Committee  
 1989 to 1995: Associate attorney at Bredhoff & Kaiser law firm in Washington, DC  
 1995 to present: Special investigative counsel and Director of the Special Investigations and Review Unit in the Department of Justice Office of the Inspector General (OIG)

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

Answer:

No.

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

Answer:

Rhodes Scholarship (1979)  
 Phi Beta Kappa (1979)  
 NCAA Postgraduate Scholarship (1979)  
 Harvard's Francis Burr Scholar-Athlete Award (1979) (outstanding scholar athlete at Harvard)

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

Answer:

Admitted to D.C. Bar (in November 1985)

Admitted to Maryland Bar (admitted in June 1992; I elected to go on inactive status in 1995 because I no longer practice law in Maryland)

Member and committee chair of hearing committee of D.C. Bar's Board on Professional Responsibility (1991-1997)

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

Answer:

None.

I belong to Adas Israel synagogue in Washington, D.C., the Chevy Chase Recreational Association (a community swim club), and the American Association of Rhodes Scholars.

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

Answer:

District of Columbia Court of Appeals, admitted on November 13, 1985

United States Court of Appeals for the District of Columbia Circuit, admitted on January 8, 1988

Supreme Court of the United States, admitted on August 6, 1990

United States District Court for the District of Columbia, admitted on October 1, 1990

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

Answer:

Articles written:

Michael R. Bromwich and Glenn A. Fine "IG Gate – Investigating Major Scandals Part II: The Nuts and Bolts," The Journal Of Public Inquiry, Fall/Winter 1997

David Ellwood and Glenn A. Fine, "The Impact of Right-to-Work Laws on Union Organizing," 95 Journal of Political Economy 250 (1987)

I testified before the Senate Judiciary Committee, Subcommittee on Criminal Justice Oversight, on April 6, 2000, regarding the OIG report on the use of prison telephones by federal inmates to commit crimes.

I have given no speeches involving constitutional law or legal policy.

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

Answer:

I am in good health. My last physical examination was on April 4, 2000.

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

Answer:

None

15. Legal Career:

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

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

Answer:

No.

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

Answer:

No.

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

Answer:

From 1985 to 1986, I was a law clerk at the law firm of Hogan & Hartson, which is currently located at Columbia

Square, 555 13th Street, N.W., Washington, D.C. I worked in this capacity while I was waiting to start my job as an Assistant United States Attorney (AUSA). At Hogan & Hartson, I mainly did legal research and writing on litigation matters.

From 1986 to 1989, I was an AUSA in the District of Columbia United States Attorney's Office, which is currently located at 555 4th Street N.W., Washington, D.C. I investigated and prosecuted numerous criminal cases on behalf of the United States.

For a brief period in 1989, I worked as counsel for the Senate Labor and Human Resources Committee.

From 1989 to 1995, I worked as an attorney for the law firm of Bredhoff & Kaiser in Washington, D.C, which is currently located at 805 15th Street N.W., Washington, D.C. I worked on labor, employment, and litigation matters.

From 1995 to the present, I have worked in the Department of Justice Office of the Inspector General (OIG), first as special investigative counsel and then as the Director of the OIG's Special Investigations and Review Unit.

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

Answer:

From 1985 to 1986, when I worked as a law clerk at Hogan & Hartson from 1985 to 1986, I mainly did legal research and writing on litigation matters.

From 1986 to 1989, when I worked as an AUSA in the District of Columbia United States Attorney's Office, I was a prosecutor handling numerous criminal cases.

From 1989 to 1995, when I worked as an attorney for the law firm of Bredhoff & Kaiser in Washington, D.C., my practice specialized in labor and employment law matters. I mainly worked on negotiations, arbitrations, civil litigation, and providing legal advice to clients.

From 1989 to the present, I have worked for the OIG as special investigative counsel and as the Director of the OIG's Special Investigations and Review Unit. The matters on which I work involve administrative or criminal investigations of alleged misconduct, mismanagement, waste, fraud, and abuse in Justice Department programs and operations.

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

Answer:

At Hogan & Hartson, I mainly did legal research and writing on litigation matters. The typical clients on these matters were business entities. When I was an AUSA, I handled criminal cases on behalf of the United States. At the law firm of Bredhoff & Kaiser I specialized in labor and employment law. The firm's typical clients were labor unions or individuals. At the OIG, the matters on which I work involve administrative or criminal investigations or reviews of alleged misconduct, mismanagement, waste, fraud, and abuse.

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

Answer:

When I was at Hogan & Hartson from 1985 to 1986, I did not appear in court at all. When I was an AUSA from 1986 to 1989, I appeared in court regularly, personally handling more than 35 misdemeanor and felony jury trials; more than 5 bench trials; numerous grand jury investigations; numerous preliminary hearings, motions, and arraignments; and more than 15 appellate cases. When I was an attorney at Bredhoff & Kaiser from 1989 to 1995, I appeared in court infrequently, mainly on civil cases. At the OIG from 1995 to the present, I do not appear in court at all, because any litigation arising from the cases the OIG investigates is handled by other Department of Justice attorneys.

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

Answer:

Most of my court appearances occurred when I was an AUSA prosecuting criminal cases. All these cases were in D.C. Superior Court or the D.C. Court of Appeals, except for one appellate case that was in the United States Court of Appeals for the District of Columbia Circuit. At Bredhoff & Kaiser, the cases I worked on were mainly civil cases in federal court.

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

Answer:

As an AUSA, all of my litigation was criminal. At the law firms, most of the cases were civil. In total, approximately 80 percent of the cases I worked on have been criminal and 20 percent civil.

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

Answer:

As an AUSA, I tried over 40 criminal cases to verdict. In almost all of these cases, I was sole counsel.

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

Answer:

Approximately 90 percent of these trials were jury trials; approximately 10 percent were non-jury.

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



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

Answer:

I believe the ten most significant litigation matters that I personally handled occurred while I was an AUSA between 1986 and 1989. During that time, I personally handled more than 35 jury trials, 5 bench trials, and 15 appellate matters. These cases involved crimes such as murder, assault with intent to kill, drug distribution offenses, fraud, and obstruction of justice. Because of the volume of cases and because I have not maintained files on these matters, it would be difficult to single out or even to provide identifying information for ten of these cases.

However, the following is a list of judges before whom I appeared as an AUSA, attorneys with whom I have worked during my legal career, or attorneys who can provide information about my legal work:

1. The Honorable Michael Farrell, District of Columbia Court of Appeals (202 879-2719) (He was my supervisor in the U.S. Attorney's Office Appellate Section.)
2. The Honorable Henry Kennedy, Jr., United States District Judge (202 354-3350) (I tried several cases before him when he was a judge in D.C. Superior Court and I was an AUSA.)
3. The Honorable Nan Shuker, D.C. Superior Court Judge (202 979-1207) (I tried several cases before her in D.C. Superior Court when I was an AUSA.)
4. The Honorable Merrick Garland, currently a judge on the United States Court of Appeals for the District of Columbia Circuit (202 216-7460) (I worked on matters with him at the Justice Department, when he was the Principal Associate Deputy Attorney General.)
5. Jamie Gorelick, currently works at Fannie Mae Corporation, 3900 Wisconsin Avenue, N.W., Washington, D.C. (202 752-6120) (I worked on matters with her at the Justice Department, when she was the Deputy Attorney General.)
6. Ramsey Johnson, currently works as an Assistant United States Attorney in the District of Columbia, 555 4th Street, N.W., Washington, D.C. (202 514-7566) (He was one of my supervisors when I was an AUSA.)

7. Barry Coburn, currently works at the law firm Coburn & Schertler, 1150 18th Street, N.W., Washington, D.C. (202 628-4199) (I worked with him in the felony trial section of the United States Attorney's Office.)

8. William Blier, currently works as an Assistant United States Attorney in the District of Columbia, 555 4th Street, N.W., Washington, D.C. (202 514-7566) (I worked with him in the felony trial section of the United States Attorney's Office.)

9. Alan Strasser, currently works at the law firm of Kutak Rock, 1101 Connecticut Avenue, N.W., Washington, D.C. (202 828-2400). (He was one of my supervisors when I was an AUSA.)

10. Michael Bromwich, currently works at the law firm of Fried, Frank, Harris, Shriver & Jacobsen, 1001 Pennsylvania Avenue, N.W., Washington, D.C. (202 639-7297) (He was the Inspector General who hired me at the OIG.)

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

Answer:

I believe my most significant legal activities fall into three areas. First, as discussed above, as an Assistant United States Attorney from 1986 to 1989, I handled numerous criminal trials, appeals, and grand jury investigations, involving serious criminal offenses.

Second, from 1991 to 1997, I worked on a volunteer basis as a hearing committee member and hearing committee chair on the D.C. Board on Professional Responsibility. The committee adjudicated disciplinary complaints brought by Bar Counsel against D.C. lawyers who allegedly had violated the D.C. Bar's disciplinary rules. As chair of a hearing committee, I presided over evidentiary hearings during which Bar Counsel presented witnesses and documentary evidence supporting the disciplinary complaint and the lawyer whose conduct was at issue or his attorney would contest that evidence. I was responsible for drafting the recommendation of the hearing committee regarding findings of fact, conclusions of law, and proposed sanction for any disciplinary violation. Among the charges that we adjudicated were complaints of dishonesty, unauthorized practice of law, conduct that seriously interfered with the administration of justice, failure to serve the client with commensurate skill and care, failure to act with reasonable promptness in representing a client, and failure to provide competent representation. We also adjudicated attorneys' petitions to be reinstated to the practice of law.

Third, I am currently the Director of the OIG's Special Investigations and Review Unit. This unit is responsible for investigating complex or sensitive matters, often at the request of the Attorney General or Congress, regarding Department programs or employees. Some of the matters I supervised, helped supervise, or worked on include reviews of the FBI Laboratory, the Good O' Boys Roundup, the FBI's handling of the Aldrich Ames investigation, the use of prison telephones by federal inmates to commit crimes, the INS's interactions with alleged "railway killer" Rafael Resendez-Ramirez, the handling of FBI intelligence information related to the Department of Justice's Campaign Finance Task Force investigation, and allegations that the government treated certain cocaine traffickers more leniently because of their alleged ties to the Nicaraguan Contras or the CIA. I also have conducted or supervised investigations of complaints of misconduct against high-level officials in the Department of Justice, including United States Attorneys and a United States Marshal.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

Answer:

I am a participant in the federal government's Thrift Savings Plan, and I have assets in an IRA account. These assets are listed in the schedule to my financial net worth statement.

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

Answer:

I do not believe there are any categories of litigation or financial arrangements that would likely present potential conflicts of interest during initial service as Inspector General. To determine any potential conflicts of interest, I would consult with the OIG's Deputy Designated Ethics Officer or the Department of Justice's Ethics Office. If necessary, I would divest myself of any assets that would cause a conflict of interest or recuse myself from matters that would involve a conflict of interest.

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

Answer:

No.

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

Answer:

See the attached financial disclosure report.

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

Answer:

See the attached financial net worth statement and schedules.

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

Answer:

No.

**FINANCIAL STATEMENT  
NET WORTH**

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

ASSETS			LIABILITIES		
Cash on hand and in banks	5,000	00	Notes payable to banks—secured		
U.S. Government securities—add schedule			Notes payable to banks—unsecured		
Listed securities—add schedule	986,000	00	Notes payable to relatives		
Unlisted securities—add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due		
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid tax and interest		
Doubtful			Real estate mortgages payable—add schedule	288,000	
Real estate owned—add schedule	600,000	00	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts—itemize:		
Autos and other personal property	100,000	00			
Cash value—life insurance					
Other assets—itemize:					
<b>Total assets</b>	<b>1,691,000</b>	<b>00</b>	<b>Total liabilities</b>	<b>288,000</b>	<b>00</b>
			<b>Net worth</b>	<b>1,403,000</b>	<b>00</b>
			<b>Total liabilities and net worth</b>	<b>1,691,000</b>	<b>00</b>
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, cosigner or guarantor	No		Are any assets pledged? (Add schedule.)	No	
On leases or contracts	No		Are you defendant in any suits or legal actions?	No	
Legal Claims	No		Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax	No				
Other special debt	No				

**Schedules for Glenn A. Fine's Financial Statement Net Worth**Listed securities (owned by me, my wife, or my children, including assets in  
IRA accounts)

American Century mutual fund (\$15,000)  
American Home Products stock (\$6,000)  
Amgen stock (\$12,000)  
Bell Atlantic stock (\$5,000)  
Biochemical Pharmaceutical stock (\$7,000)  
Bristol-Myers Squibb stock (\$8,000)  
Chiron stock (\$11,000)  
Cisco stock (\$69,000)  
Citigroup stock (\$12,000)  
Columbia Bancorp stock (\$22,000)  
Costco stock (\$19,000)  
Dell Computer stock (\$19,000)  
Dreyfus Appreciation mutual fund (\$11,000)  
Etoys stock (\$2,000)  
Exodus stock (\$6,000)  
Exxon stock (\$40,000)  
Fannie Mae stock (\$9,000)  
Flextronics stock (\$13,000)  
General Electric stock (\$74,000)  
Home Depot stock (\$8,000)  
Intel stock (\$19,000)  
Ivax stock (\$33,000)  
Janus Twenty mutual fund (\$8,000)  
Johnson and Johnson stock (\$28,000)  
Jones, Day, Reavis & Pogue 401(k) retirement plan (spouse has assets in it) (\$13,000)  
Lucent stock (\$8,000)  
Merck stock (\$30,000)  
Microsoft stock (\$26,000)  
Microstrategy stock (\$2,000)  
Northern Technology mutual fund (\$15,000)  
Pfizer stock (\$35,000)  
Proctor and Gamble stock (\$21,000)  
Schwab 1000 mutual fund (\$5,000)  
Schwab 500 mutual fund (\$30,000)  
Schwab Bond Index fund (\$19,000)  
Staples stock (\$5,000)  
Sun Microsystems stock (\$129,000)  
Target stock (\$7,000)  
Federal Thrift Savings Plan (\$103,000)  
Vanguard Bond Fund (\$19,000)  
Warner Lambert stock (\$31,000)

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Charles Schwab money market funds (\$3,000)  
Citibank savings money market fund (\$3,000)  
Fidelity money market fund (\$26,000)

Total: \$986,000

Real Estate Owned

Residence worth \$600,000

Real estate mortgages payable

Mortgage on residence

Amount owed: \$288,000 to Astoria Federal Savings



III. GENERAL (PUBLIC)

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

Answer:

During part of the time I was an Assistant United States Attorney, I volunteered to work in a homeless shelter one night a week.

For several years in the 1990s, I volunteered one weekend morning a week helping disabled individuals participate in physical activity at the YMCA.

From 1991 to 1997, I was a volunteer member and chair of a hearing committee of the D.C. Bar's Board on Professional Responsibility. The committee adjudicated complaints from the public, including disadvantaged persons, concerning allegations of misconduct and inadequate treatment by attorneys. This required a large time commitment, often several hundred hours a year.

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

Answer:

No such memberships.

Executive Branch Personnel Public Financial Disclosure Report

Form Approved  
OMB No. 3025-1002

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SF 278 (Rev. 8/84) U.S. Office of Government Ethics Reporting Period (Month, Day, Year) Reporting Period (Month, Day, Year)	Reporting Status (Check Appropriate Box) <input checked="" type="checkbox"/> Full-time <input type="checkbox"/> Part-time <input type="checkbox"/> Other	Reporting Period (Month, Day, Year) Reporting Period (Month, Day, Year)	Termination Date (If Applicable) (Month, Day, Year) Termination Date (Month, Day, Year)	Agency Use Only MAY 17 2000
Reporting Individual's Name FINE	First Name and Middle Initial GLENN A	Title of Position INSPECTOR GENERAL	Department or Agency (If Applicable) DEPARTMENT OF JUSTICE	Fee for Late Filing Any individual who is required to file this report and who is required to file this report within 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period shall be subject to a \$200 fee.
Position for Which Filing INSPECTOR GENERAL	Telephone No. (Include Area Code) 202 616-0645	Location of Present Office (or forwarding address) 950 PENNSYLVANIA AVE. NW, WASHINGTON DC	Do You Intend to Create a Qualified Divorced Trust? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Reporting Periods Incumbents: The reporting period is the calendar year ending on the date of filing. For Part II of Schedule C and Part II of Schedule D where you must also include the filing year up to the date you file, Part II of Schedule D is not applicable.
Position Held with the Federal Government (If Not Same as Above) DIRECTOR, SPECIAL INVESTIGATIVE REVIEW UNIT	Signature of Reporting Individual Glenn A. Fine	Signature of Other Reviewer [Signature]	Date (Month, Day, Year) 3/18/00	Termination Filers: The reporting period begins at the end of the period for which the filer is required to file and ends at the date of termination. Part II of Schedule D is not applicable.
Presidential Nominees Subject to Senate Confirmation JUDICIARY COMMITTEE	Signature of Agency Ethics Officer/Reviewing Official [Signature]	Signature of Director/Agency Ethics Officer/Reviewing Official [Signature]	Date (Month, Day, Year) 5/17/00	Nominees, New Entrants and Candidates for President and Vice President: Schedule A: The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value of assets is reported for the calendar year within 31 days of the date of filing. Schedule B: Not applicable. Schedule C, Part I (Liabilities): The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing. Schedule C, Part II (Agreements or Arrangements): Show any agreements or arrangements as of the date of filing. Schedule D: The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.
Office of Government Ethics Use Only	Comments of Reviewing Official (If additional space is required, use the reverse side of this sheet) Annotations for conversion w/fin - May 2000 - 4/15/00	Signature [Signature]	Date (Month, Day, Year) 5/18/00	Agency Use Only

SI 27A (Rev. 4/94)  
U.S. Office of Governmental Ethics  
U.S. Office of Governmental Ethics

Reporting Individual's Name  
**Glen A. Fine**

Page Number  
**2**

**SCHEDULE A**

Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.

Valuation of Assets at close of reporting period

Assets and Income

BLOCK A	BLOCK B		BLOCK C																			
	Valuation of Assets at close of reporting period		Type	Amount																		
Identify each asset held by you, your spouse, or dependent children for this reporting period if its market value exceeds \$1,000 at the close of the reporting period.  Identify each asset or source of income held by you, spouse, or dependent child which generated over \$200 in income during the reporting period.  None <input type="checkbox"/>	None (or less than \$1,001)	\$1,001 - \$15,000	Dividends	Rent and Royalties	Interest	Capital Gains	Excepted Investment Fund	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000	Actual Amount Only if "Other" specified	Date (Mo., Day, Yr.) Only if Honoraria	
	Examples: Central Address Company Doe Jones & Smith, Henderson, State Simpsons Equity Fund IRA: Investment 400 Index Fund																				\$100,000	
1 AMERICAN CENTURY ULTRA FUND	X						X															
2 AMERICAN HOME PRODUCTS, COMMON	X											X										
3 AMGEN, COMMON	X											X										
4 BELL ATLANTIC, COMMON	X											X										
5 BIOCHEMICAL PHARMACEUTICAL, COMMON	X											X										
6 BRISTOL MYERS, COMMON SPRIBS	X											X										

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**SCHEDULE A continued**

Reporting Individual's Name	Block A		Block B										Block C																				
	Assets and Income		Valuation of Assets					Income - Type					Amount					Amount															
	Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period.	Identify each asset or source of income which generated over \$200 in income during the reporting period.	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000	Dividends	Rent and Royalties	Interest	Capital Gains	Excepted Investment Fund	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000	Actual Amount Only if "Other" specified	Date (Mo., Day, Yr.) Only if Honorary				
1	CHIRON, Common		X																X														
2	CISCO, Common			X															X														
3	CITIGROUP, Common				X														X														
4	COLUMBIA BANCORP, Common				X														X														
5	COSTCO, Common			X															X														
6	DELL COMPUTER, Common			X															X														
7	DREYFUS APPRECIATION MUTUAL FUND													X																			
8	ETOYS, Common			X															X														
9	EXXON, Common																			X													

For Filing On: Do Check: Billions Prior to 1991. Cannot Be Used.

**SCHEDULE A continued**

Page Number **4**

Block A		Block B										Block C																													
		Valuation of Assets										Income: Type																													
Assets and Income		None (or less than \$1,000)		\$1,001 - \$15,000		\$15,001 - \$50,000		\$50,001 - \$100,000		\$100,001 - \$250,000		\$250,001 - \$500,000		\$500,001 - \$1,000,000		Over \$1,000,000		None (or less than \$200)		\$201 - \$1,000		\$1,001 - \$3,000		\$3,001 - \$5,000		\$5,001 - \$15,000		\$15,001 - \$50,000		\$50,001 - \$100,000		\$100,001 - \$1,000,000		Over \$1,000,000		Actual Amount		Date (Mo., Day, Yr.)			
Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period.		Identify each asset or source of income which generated over \$200 in income during the reporting period.		Dividends		Rent and Royalties		Interest		Capital Gains		Excepted Investment Fund		Qualified Trust		Other (Specify Type)																									
1	FAMIE MAE, COMMON	X																																							
2	FLEXTRONICS, COMMON	X																																							
3	GENERAL ELECTRIC, COMMON		X																																						
4	HOME DEPOT, COMMON	X																																							
5	INTEL, COMMON	X																																							
6	IVAX, COMMON	X																																							
7	JANUS TWENTY MUTUAL FUND	X																																							
8	JOHNSON AND JOHNSON, COMMON	X																																							
9	JONES, RAY, REAGAN & CO. (P.L.L.C.)																																								
10	POGUE RETIREMENT PLAN																																								

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SI 378 (Rev. 6/94)  
 U.S. Department of the Treasury  
 U.S. Office of Tax Administration

Reporting Individual's Name

Glenn A. Fine

SCHEDULE A continued

Page Number

5

1	Assets and Income Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period. Identify each asset or source of income which generated over \$200 in income during the reporting period.	Block B										Block C																					
		Valuation of Assets										Income: Type										Amount											
		None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000	Dividends	Rent and Royalties	Interest	Capital Gains	Excepted Investment Fund	Excepted Trust	Qualified Trust	Other (Specify Type)	Note (or less than \$25,001)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000	Actual Amount Only if "Other" specified	Date (Mo., Day, Yr.) Only if Nonrec'ta					
1	LUCEM, common	X							X								X																
2	MERCK, common		X																														
3	MICROSOFT, common		X																														
4	NORTHEAST TECHNOLOGY MUTUAL FUND		X									X																					
5	PFIZER, common		X																														
6	PROCTOR AND GAMBLE, common		X																														
7	SCHWAB 1000 MUTUAL FUND		X																														
8	SCHWAB 500 MUTUAL FUND		X																														
9	SCHWAB BOND INDEX FUND		X																														

SF 270 (Rev. 09/9)  
 5 CPTN Part 2824  
 California Personal Income Tax

Reporting Individual's Name

Glen A. Fine

SCHEDULE A continued

Page Number

6

Assets and Income	Block B										Block C																				
	Valuation of Assets										Income: Type										Amount										
	None (or less than \$1,000)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000	Dividends	Rent and Royalties	Interest	Capital Gains	Excepted Investment Fund	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than \$200)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000	Actual Amount Only if "Other" specified	Date (Mo., Day, Yr.) Only if "Other" Homestead				
1 STAPLES, COMMON	X																X														
2 SUN MICROSYSTEMS, COMMON				X													X														
3 TARGET COMMON (FORMERLY PAYCOR-HOLD)	X																X														
4 VANGUARD HIGH YIELD CORPORATE BOND FUND		X										X																			
5 WARREN LAMBERT, COMMON		X																													
6 SCHWAB MONEY MARKET FUND		X										X																			
7 FIDELITY MONEY MARKET FUND		X										X																			
8 CITIBANK CHECKING ACCOUNT		X																													
9 CITIBANK SAVINGS MONEY MARKET <del>ACCOUNT</del> ACCOUNT		X																													

101. Entries Can Be Used. Editdown Prior to 101. Comment Be Used.

SF 272 (Rev. 6/94)  
 6 DFR, Part 2834  
 2001 Edition Can Be Used Electronically

Reporting Individual's Name

Glen A. Fine

Prior Number

7

SCHEDULE A continued

	Block A		Block B										Block C												
	Assets and Income	Valuation of Assets	None (or less than \$1,000)		\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000	None (or less than \$200)		\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$100,000	Over \$1,000,000	Actual Amount	Date (Mo., Day, Yr.)		
	Identify each asset held for the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period.  Identify each asset or source of income which generated over \$200 in income during the reporting period.											Dividends	Rent and Royalties	Interest	Capital Gains	Excepted Investment Fund	Excepted Trust	Qualified Trust	Other (Specify Type)						
1	ROSLYN BARCORG, COMMON (SOLO)											X													
2	WASHINGTON FEDERAL, COMMON (SOLO)											X													
3	CATSKILL FINANCIAL, COMMON (SOLO)											X													
4	SPOUSE CBETH R. HEIFETZ ATTORNEY - SELF EMPLOYED											X													
5	ASTORIA FINANCIAL CORP, COMMON (SOLO)											X													
6	CATELUS, COMMON (SOLO)											X													
7	PEOPLES BARCORG, COMMON (SOLO)											X													
8	ALLAMERICA FINANCIAL CORP, COMMON (SOLO)											X													
9	FINANCIAL INSTITUTIONS - 20 BALANCE FUND											X													
10	Small Cap Fund											X													



**SCHEDULE C**

Page Number **20**

SP 578 (Rev. 8/84)  
 U.S. Dept. of the Treasury  
 Department of the Treasury  
 Reporting Individual's Name  
**Glen A. Fine**

**Part I: Liabilities**  
 Report liabilities over \$10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

Line	Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount Owed (\$)	
						10,001 - 50,000	50,001 - 1,000,000
1	First Finance Bank, Washington, DC 1200 ... Washington, DC	Mortgage on ... Promissory note	1988	10%	30 yrs on demand		
2							
3							
4							
5							

**Part II: Agreements or Arrangements**  
 Report your agreements or arrangements for:  
 (1) continuing participation in an employee benefit plan (e.g. pension, 401K, deferred compensation); (2) continuation of payment by a former employer (including severance payments);  
 (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

Line	Status and Terms of any Agreement or Arrangement	Partner	Date
1	Partner in partnership agreement, will receive lump sum payment of capital account & partnership share calculated on services performed through 1/31/81.	Doc Jones & Smith, Romeown, State	7/85
2			
3			
4			
5			
6			

None

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SPFPA (Rev. 8/94)  
 5 CFR Part 2634  
 Office of Government Ethics  
 Reporting Requirements

Glean A. Fine

Page Number  
 21

**SCHEDULE D**

**Part I: Positions Held Outside U.S. Government**

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None

From (Mo., Yr.)	To (Mo., Yr.)	Position Held	Type of Organization	
			Non-profit, election Law firm	For-profit, election Law firm

**Part II: Compensation In Excess Of \$5,000 Paid by One Source**

Report sources of more than \$5,000 compensation received by you or your spouse, partner, or dependent child from any one source during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source.

None

From (Mo., Yr.)	To (Mo., Yr.)	Source (Name and Address)	Brief Description of Duties

Senator SMITH. I see that Congressman McCollum has just come in the room.

Bill, why don't you come up? I know you want to say something on behalf of the other nominees. We will bring the nominees up in just a second. But, Bill, I know you want to speak on behalf of Judge Cavanaugh, I assume.

**STATEMENT OF HON. BILL McCOLLUM, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA**

Representative McCOLLUM. Well, Senator Smith, I just wanted to come over to the committee for several reasons. One, obviously, I represent a good portion of the Middle District of Florida, and I know we have got a number of good men up here today to be discussed and to have an opportunity for you to examine them to be judges in our district.

I am sure you know, and you are going to hear from them individually, that we have a very big shortage of judges especially in the Middle District. And despite the lateness of this term, it is certainly my hope—and I think I express the wishes of the entire delegation in Florida, certainly, Republican and Democrat—that many, if not all of these judges can somehow pass muster and get approved.

I know the ones who are here today, a couple of them passingly, but I particularly know Greg Presnell. I know he is coming up here in a minute. And in no way does my commenting about him mean that I am not in favor of the others; I am.

But Greg and I have known each other for a long time. I knew him in practice when I was practicing law. I knew him because we were active in the local Orange County Bar Association in Orlando. I knew him more than just by reputation. So I don't come just as a Congressman in Orlando who happens to have a constituent who has been nominated to be a judge.

I think he is of the highest caliber, and I know professionally that he is considered among his peers to be extraordinarily capable, and I personally found him that way. I think he would have an excellent judicial temperament. I believe that he has the right attitude toward being a judge and would look at issues in the kind of way that you and I would be proud of.

So I didn't come to give great testimony, but I came to endorse him, in particular, and to encourage you with all of the judges to do what you can to help let us get some relief in the most overworked district in the Nation. And I thank you for that.

Senator SMITH. Well, thank you very much, Congressman. Thanks for coming over.

If we could have Judge Cavanaugh, Judge Moody, Attorney Greg Presnell, and Judge John Steele come forward. I could have sworn everybody in before, but I neglected to do that.

Do you swear that the testimony you shall give in this hearing shall be the truth, the whole truth, and nothing but the truth so help you God?

Judge CAVANAUGH. I do.

Judge MOODY. I do.

Mr. PRESNELL. I do.

Judge STEELE. I do.

Senator SMITH. We can start with you, Judge Cavanaugh. I believe your families were introduced by Senator Graham, but if you have any further introductions or comments that you would like to make regarding your family before your statement, feel free to do that, and then proceed with your statement.

**TESTIMONY OF DENNIS M. CAVANAUGH, OF NEW JERSEY, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY**

Judge CAVANAUGH. My family was introduced by Senator Lautenberg. No, I have nothing further to say other than to thank you, Mr. Chairman, and the committee for giving me the opportunity to be here today.

Senator SMITH. Do you have any opening statement?

Judge CAVANAUGH. I do not.

Senator SMITH. Judge Moody, the same.

**TESTIMONY OF JAMES S. MOODY, JR., OF FLORIDA, TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA**

Judge MOODY. Mr. Chairman, I am pleased to be here and I appreciate the committee having this meeting and trying to move this process along. Senator Graham did introduce my family, but I did want to say my daughter, Ashley, apologizes for not being here. She tried hard, but she is on a flight somewhere else and couldn't be here. And my parents are elderly and couldn't make it, but they are here in spirit.

And Senator Graham did not introduce my brother, Bill, who is here in the audience.

Senator SMITH. Welcome.

Judge MOODY. And our mutual friend, J.J. Barker. They drove all night from Columbia to be here and I appreciate that.

Senator SMITH. It is great to have you here.

Do you have any comments that you would like to make as an introduction?

Judge MOODY. No, Mr. Chairman.

Senator SMITH. Mr. Presnell.

**TESTIMONY OF GREGORY A. PRESNELL, OF FLORIDA, TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA**

Mr. PRESNELL. Thank you, Mr. Chairman. I would just like to also thank the committee for scheduling this hearing on such short notice, and also thank my family for being here today in my support. And Senator Graham has introduced them, so I won't take the time of the committee to do so further.

Thank you. I have no other comments.

Senator SMITH. All right.

Judge Steele.

**TESTIMONY OF JOHN E. STEELE, OF FLORIDA, TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA**

Judge STEELE. Senator, thank you. As Senator Graham indicated, my wife is unable to be here. She is out of the country at the moment. I would like to recognize, however, District Judge Harvey Schlesinger, from the Middle District of Florida, the Jack-

sonville Division. He is a former magistrate judge. I took his position when he became an Article III judge, and he is here to check up on me, I believe.

Senator SMITH. All right. Where is he hiding?

[Judge Schlesinger stood.]

Great to have you here.

Judge STEELE. And I have no opening statement. Thank you.

Senator SMITH. All right. Gee, you guys with no opening statements, we could really move faster around here if we had more witnesses like you.

I think you should, first of all, not infer anything by having a low attendance. This happens very frequently because of Senate business. And, frankly, you are better off. Usually, if people are here, they are either mad about something or they are going to praise you, one or the other, and the problem is you never know which it is. So you should be glad, I guess, that attendance is light.

Senator Torricelli, did you want to put anything on the record before we go to questions?

Senator TORRICELLI. I do, Mr. Chairman. I have a statement I would like to submit to the record and would like simply share with you the observation that there is usually an inverse proportion between the number of Senators at these hearings and the universality of the support for the nominees. You are only to be complimented.

I also wanted the committee to know that in my experience in nominating people to the Federal district court and the court of appeals, I have actually never had a nominee as broadly supported by the bar association and by our colleagues on the bench, as Dennis Cavanaugh.

Indeed, on a bipartisan basis, I have heard from the legal community, and actually extraordinarily of current members of the Federal judiciary who have worked with Dennis Cavanaugh have called to give their unequivocal support for his nomination. In my experience, this has never happened before and is a great testament to his reputation as a Federal magistrate, to the way he has fairly dealt with the law and to the cause of justice in the past, and his to professional reputation.

So I am extremely pleased that the President has nominated Dennis Cavanaugh. I am very pleased that you have asked him here today, Senator Smith, and I want to express my particular gratitude to Senator Hatch for scheduling this proceeding so we can proceed with Dennis Cavanaugh's nomination.

#### QUESTIONING BY SENATOR SMITH

Senator SMITH. Thank you, Senator.

Let me just start and just start with you, Judge Cavanaugh, just to give you an opportunity to just give us two or three examples of significant cases that you have handled that would show qualifications for your position just so we can get some of that on the record. You are very familiar with the position you are nominated to fill.

Let me just be a little more specific for you, if that is helpful. You were a public defender, and so in that role tell me how that experi-

ence has affected your view of the rights of the accused in the criminal proceedings.

Judge CAVANAUGH. Well, certainly, I was a public defender from 1973, I believe, until about 1977 in the State of New Jersey, not the Federal system, in the Essex County region, which was a very busy region in Newark, NJ. And it was an eye opener in that I had never seen the types of things I was going to see before, and I had the opportunity to represent people, mostly indigents, on State criminal matters, everything ranging from simple assaults to first-degree murder.

And I think it gave me a firsthand look at not only how the system worked, but the social problems and the problems that these people had that came before us, and I think has given me a feeling of empathy for those that have to come before me since, and I think it was just a wonderful experience.

Senator SMITH. There are some pretty high-profile cases such as the *O.J. Simpson* case, for example. But when you look at the cases of those who are indigent—and they may get a good public defender, they may not—and if they can't afford the so-called high-priced attorney, then are they being cheated in the system? Are we doing something wrong here? Does money get off clients that shouldn't get off?

Judge CAVANAUGH. Well, certainly that wasn't the situation when I was representing them. But to a degree, I think you are correct that those that can afford the high-priced attorneys or the dream teams, if you will, certainly probably have a better opportunity than those that are indigent.

I must admit that the assigned attorneys that I have seen—I happen to be on the CJAA panel in New Jersey and I am responsible, or partially responsible for assigning or getting the list of attorneys that would be assigned in indigent matters. I think they are excellent attorneys and they do what they can within the system, but I think there still may be a better group or better representation in the private sector.

Senator SMITH. My uncle by the name of George Eldridge—I don't know if you ever knew him or not—from Trenton, New Jersey, was very prominent as a probation officer in the court. That was the days when Hughes was a judge before he became governor, so that goes back a little while, probably before your time.

Judge CAVANAUGH. Back in the 1960's. I remember Governor Hughes, of course, but I wasn't an attorney then.

Senator SMITH. Judge Moody, you have served as a judge. From 1972 to 1995, you were an attorney, of course, for the law firm of Trinkle, Redman, Moody, Swanson and Byrd. You tried a lot of cases right through all the way to the verdict. Is there any one that jumps out at you as a private litigator that you feel gives you any special qualifications for what you are about to embark on?

Judge MOODY. I certainly don't claim any special qualifications. I think any lawyer looking back at their career can pick out two or three cases they thought were either most enjoyable or most significant, one of which for me was a case that I tried all the way to the Supreme Court dealing with the taking of private property and how that would be dealt with under the Constitution. That

was the *Grady Sweat* case. That is the only one that comes to mind right now.

Senator SMITH. Mr. Presnell, same question. Anything that jumps out at you, any special case, any case that—

Mr. PRESNELL. Mr. Chairman, those things that have happened most recently, I guess, are perhaps highest or most on your mind. I tried a case last summer in Jacksonville. It was a three-week jury case against David Boyce, who is a famed litigator, and it was a 3-week jury trial and we were able to obtain an \$18 million judgment in that case. and Mr. Boyce claims not to lose many cases, but he lost that one, and it was quite an experience for us because it was a very high-profile case involving a \$500 million power plant that would probably have gone bankrupt had we not won the case. So the case itself probably had a real value closer to \$100 million, and there was a great deal of pressure on the trial lawyers. And we were fortunate to have obtained that verdict, and it is now on appeal and I hope the appellate court affirms the judgment.

Senator SMITH. And for you, Judge Steele, you handled these felony prosecutions for the Organized Crime Task Force in Detroit.

Judge STEELE. It seems like a long time ago, but I did, fresh out of law school. The case that I remember most is when I served as one of four prosecutors in a police corruption case that lasted almost seven months at trial. At the time, I thought every case was supposed to last seven months. I didn't know any better. And certainly as a young lawyer fresh out of law school, I was given the opportunity to examine and cross-examine witnesses and make a closing argument. That was pretty heady stuff.

Senator SMITH. Has that experience affected your view of how we treat the accused, especially in the area of violent crime?

Judge STEELE. I think the totality of my experience, both being a State prosecutor for a number of years and then switching to the Federal system—and ultimately, before being appointed as a magistrate, I was with a firm that primarily did civil work, but I did some criminal defense work in Federal work. And I think being on the other side certainly gave you a different perspective than I had had as a career prosecutor up to that time.

Senator SMITH. Senator Torricelli, do you have any questions?

#### QUESTIONING BY SENATOR TORRICELLI

Senator TORRICELLI. Thank you, Mr. Chairman.

We are approaching that part of the calendar when the House of Representatives will be reapportioned. It often falls upon the most junior members of the Federal district court in any given State to redraw these lines. Few States will have the kind of radical change and reapportionment that will be experienced by Florida. Hopefully, New Jersey will have none. The laws related to reapportionment are very much now in flux—the requirements for minority representation, the exact equality of each district in absolute numbers of citizens, the compactness in communities of interest.

It is not at all unlikely that one of the three of you could be given this charge. Given the fact that with the exception of some cases related to minority representation, the law is so unsettled from the Supreme Court, do you have any thoughts about the competing factors to be considered in redistricting and what should be the pri-

ority or the standards as we approach reapportionment? Every Congressman in Florida will be reading this transcript tomorrow with enormous interest for any possible hint of your thinking about how a new Federal standard should be written.

Mr. PRESNELL. Is that question to any one of us, in particular? I usually defer to the judges.

Senator TORRICELLI. It is to any of the three.

Judge STEELE. Senator, I have no prior experience in that area, so if such a case does come to me, it will be totally new. I would certainly look forward to reading the cases from the Supreme Court that you have mentioned and doing the best I could. There is certainly no possible way I could give any hint of my feelings or my leanings because I have none.

Mr. PRESNELL. Senator, I would just add to that, obviously when a judge is asked or required to enter the political arena, that becomes one of the most difficult assignments, I think, for an Article III judge. And one should tread very carefully and defer to the legislative and prerogative to the extent it can, consistent with constitutional precedent.

Senator TORRICELLI. Often, of course, the political process has broken down. I will just leave you with this thought to consider. These decisions have not been the best of the Federal judiciary in recent decades. It often has operated with a numerical fiction.

I have been involved in redrawing the maps in my State, and sometimes the Federal courts have chosen between a plan where among our congressional districts one had a deviation of two citizens and one had a deviation of five citizens. The census is never more accurate than 8 to 10 percent, which is 50,000 to 60,000 people in a congressional district. It is usually 2 years old, which means it is another 15 percent off, which is another 75,000 citizens. And yet you choose between two people and five people per district for which is the most one-man, one-vote.

There comes a need here to deal with reality, that there are other considerations in redistricting—compactness, continuity of representation. Nothing is more damaging to the functioning in the House of Representatives than the fact that a Member of Congress representing a particular neighborhood can change repeatedly, when no one knows who represents them. It is changed at a whim. It is a complex formula. It should be much more than running 600,000 citizens' names through a computer and seeing what comes out the other end, and I hope you are all sensitive to it.

I wanted to raise one other issue, as well, one the chairman commented upon. I think all of us in the country, wherever we are on the issue of the death penalty, are concerned about the indigent and the quality of representation.

I support the death penalty. I think it is appropriate. I think it is the right of a State in extraordinary circumstances. But I only support the death penalty because of the strict standards applied by the Supreme Court of the United States on how trials are to be conducted, the standards, the second judgment of a jury.

I will confess, even as an advocate of the death penalty, to being highly offended at the notion that this penalty would be visited upon anyone without quality representation, where the State is genuinely challenged by the defense bar.



Would any of you like to comment upon the controversy or the national debate?

[No response.]

These are clearly very smart nominees, Mr. Chairman. [Laughter.]

I keep trying to draw them into controversy and they will not do so. Each of these men is obviously eminently qualified.

Senator SMITH. Typical judges.

Senator TORRICELLI. No?

Mr. PRESNELL. Senator, I would just observe, in Florida, we do have an office of capital representative that is separately funded by the legislature to ensure that the appropriate appeals are handled with respect to death penalty cases on a statewide basis. And I think that is an important procedural safeguard, at least in the State of Florida. I don't, of course, know how it is handled in New Jersey.

Senator TORRICELLI. Well, Mr. Chairman, let me just conclude then by saying that in the life of American citizens who will appear before you, in no other times in their lives do they feel complete equality—and they may be poor and they may be powerless, but if in that one time they appear before you and all the forces of the Government are arrayed against them, but they feel that they had an equal opportunity to be heard, to be defended, and have the law applied equitably, I hope it is the one moment they appear before you. Ultimately, that is the only thing we ask because that is at the heart of justice.

Congratulations to each of you.

Yes?

Judge MOODY. Senator, if I could throw in that we in the judiciary are aware that one of our problems in perception is that the members of the public see us as giving other than equal justice, that the poor don't have the same justice as the rich. And we are trying to deal with that. It is not an easy problem and we in the judiciary are slow to change, but I can assure you we are trying and we are trying to meet that perception.

Senator TORRICELLI. I am glad that you are. You know, it is one of the things that troubles me where I think good and honest men and women go to the judiciary and they lose sight of the fact that they are in the government, but they are not of the government.

It is notable, and even extraordinary, I think, that in the birth of this Nation the Founding Fathers, though on this vulnerable continent could have fallen to the prey of any world power, their principal fear in the loss of American liberties was not Britain, France, or Spain. Their principal fear was the power of our own Government.

Sometimes I fear that those in the judiciary, because they want our citizens to be safe from criminals—and you should—and they want the laws enforced—and they must be—lose sight of the fact that you are ultimately the only line of defense against those who would take our liberties from within. If we lose that, we lose everything, and we have no one to count upon but you to protect against it. I trust, in all your lives and your careers, you will be mindful of it.

Mr. Chairman, I have no other questions. I have been so unsuccessful with the ones I have asked.

Senator SMITH. Thank you.

I am going to try one or two more issues and then we will be ready to wrap it up. I am not going to get into any specific areas, but just generically, it is very frustrating for us as Senators in the advise and consent role in nominees that are not Supreme Court nominees, where the area of precedent is more of a legitimate question to ask.

We could say, well, if you are a Supreme Court nominee, how do you feel about this decision or that where there is judicial precedent. But you are not Supreme Court nominees, and all of your predecessors that I have ever asked this question have always said, well, I am not a Supreme Court nominee, therefore I am not going to answer the question.

But is there any circumstance that you can think of where you might be able to refuse to apply a Supreme Court precedent in any decision other than as a member of the U.S. Supreme Court?

Judge CAVANAUGH. My answer would be no.

Senator SMITH. And I ask this just out of ignorance because I am not an attorney. Is there any opportunity for you to express an opinion as to that precedent in your decision? For example, could you say the answer is, no, I can't overturn the precedent, I have to stick with the precedent, however this is the way I feel about it?

Judge CAVANAUGH. I think that would be inappropriate. I think our job, if confirmed as district court judges, would be to follow precedent, and to not follow precedent would be a problem.

Senator SMITH. You all agree with that?

Judge STEELE. I do.

Senator SMITH. And I understand that, and that is the correct answer. But you can also see from our perspective, traditionally and historically and usually, judges move from whatever level you start at, the district, to the appellate, eventually to the Supreme Court. So you are basically saying that in our advice and consent role, we can't ask that question until you are a Supreme Court nominee because, in other words, it might influence my vote if I were to know how you felt about this particular precedent.

Use *Dred Scott*, for example. After Justice Tawney's decision, it was never challenged, but it wasn't right. And so if no one ever challenged that, we would still say that blacks can't sue in Federal court because they are property rather than people, or three-fifths property, or whatever. So, that is a precedent.

And you could also go to the *Plessy* case, as well, where we say they are so outrageous in their determination and yet if you are sitting there, you have no choice but to implement that precedent. And the only opportunity I get is when you come up before me as a Supreme Court nominee to ask you that question.

Now, if you were a Supreme Court nominee and I asked you—I am not going to ask for your opinion on any of that, but if I asked you as a nominee of the Supreme Court, would you be willing to comment on a precedent at that time if you were a nominee for a Supreme Court position? Would you be willing to comment on what you felt about any particular precedent that might be outstanding?

Judge CAVANAUGH. Well, Mr. Chairman, I could see where that could create a problem for the nominee, in that in so doing they could be, in effect, giving an advisory opinion prior to that problem coming before them. And as I am sure you well know, the types of cases that you have mentioned, in particular, are multi-faceted. There are all kinds of things that could play a part in it, and I think that any nominee would have to be very careful about responding to that because there could be nuances that they just aren't aware of once the case actually came before them. So I could see where it could be difficult.

Senator SMITH. On a particular case, but you can also see it from our perspective. I mean, we have to answer questions all the time in our campaigns of what we might do if we are elected to the United States Senate. Would we vote this way or would we vote that way?

So let's say you were a Supreme Court nominee sometime after *Plessy v. Ferguson*. If I were to ask you, do you think that separate but equal education is the proper precedent to follow—it is the precedent of the Court. Is it proper? Then you are saying that you couldn't answer that because that question may come before you on the Court? Is that everybody's position here?

So you could not even answer in a generic sense whether you think separate but equal education is—so how do we know, then—

Judge CAVANAUGH. I could answer that question today because, since *Plessy v. Ferguson*, there has been *Brown v. Board of Education* which says that separate but equal is not the law. So I would follow that precedent.

Senator SMITH. But I am talking in between that, in between *Plessy* and *Brown*. You are saying if you were a nominee in that time period, you would not be able to answer my question if you were a nominee. And I am not beating you up on it. My point is it is awfully frustrating for us in the advice and consent role.

How can we advise and consent if we don't even know whether someone would be willing to vote one way or the other on a precedent, or at least conceptually, not a case but a precedent, the issue of a precedent? I mean, how do we know?

Mr. PRESNELL. Mr. Chairman, I think the Supreme Court has in several opinions set forth guidelines and a structure within which they will reconsider prior opinions that might be overruled. And I think you could certainly question the nominee about the process and about the guidelines and framework within which those decisions can be made. But I think as judicial nominees, it is difficult, and I am flattered that we are being asked questions as if we were here as a Supreme Court nominee.

Senator SMITH. Well, I am not asking you the question really specifically on the issue. I know that, but what I am asking is just in a conceptual way. I mean, the point is what I have said before publicly, and the reason why I bring it up again is that it is frustrating for us as Senators to try to—we get a ton of information on each of you, you know, from personal information, which frankly I have no real interest in knowing because I don't like to delve into people's personal lives. But we get FBI backgrounds, we get all these things on you.

Yet, when it comes down to really the reason why we want you on the courts, we can't ask questions because it might be some case coming before you. Well, that is the whole point. There may be a case coming up on some of these issues and we would like to know what your thoughts are, not what the decision is. There is a difference between having an opinion on something and translating that opinion into a decision on the court.

I mean, I might have an opinion on something that is unconstitutional, so what my opinion is is irrelevant. It is whether or not it is constitutional or not. And what I find unfortunate is something that is unconstitutional becomes constitutional by precedent once it is established, whether it is wrong or right. That is my concern, and there is no way to undo that knowingly.

We literally, as the advise and consent folks, have to hopefully get the precedent that we don't like overturned by pure luck because we are never going to get an answer. And what you have seen in many of the high-profile Supreme Court nominations, whether it is Bork or Thomas, is don't answer the questions. Bork learned that if you answer the questions, you get punished for it. If you don't answer the questions—David Souter—you get on the Court. So I mean that is the frustration, and I don't think that is a good process.

So I understand you are not up for the Supreme Court, but how do you feel about judicial activism? Is there a proper role for judicial activism? Do you feel that judicial activism goes up against the Constitution? I mean, isn't that the same issue for all of you? If you have a particular view, do you feel that you should put that view into a decision, in general, whether it is constitutional or not?

Mr. PRESNELL. I do not, Mr. Chairman. I think—

Senator SMITH. You could separate those two? You could separate your personal view from the constitutional view? You feel you could do that?

Mr. PRESNELL. Absolutely. As a judge, I would make every effort to do that, and if I felt I could not, then, of course, I could recuse myself.

Senator SMITH. Right.

Mr. PRESNELL. But I see no reason why I would not and could not.

Senator SMITH. Does anybody disagree with that statement?

Judge CAVANAUGH. No. I agree.

Senator SMITH. Good. All right. Well, I don't have any further questions. Does anybody have any further comments they wish to make?

Judge STEELE. No, sir.

Judge CAVANAUGH. None, other than to again thank you on behalf of the committee for having us here today. I certainly appreciate it.

Senator SMITH. All right. Well, I am sure Senator Hatch will do everything he can to expedite the process. The record will be left open until the close of business on Friday. There could be another Senator or two that submits questions for the record, and you would need to respond to those and then we would move forward from there.

Thank you all, and your families, for being here today. It is a pleasure to have you.

[The questionnaires of Judge Cavanaugh, Judge Moody, Mr. Presnell, and Judge Steele follow:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Dennis M. Cavanaugh

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

Residence: North Caldwell, New Jersey

Office: Martin Luther King Jr. Federal Building &  
Courtthouse  
50 Walnut Street - P.O. Box 999  
Newark, New Jersey 07101

3. Date and place of birth:

January 28, 1947  
Orange, New Jersey

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

Married to Linda Lordi Cavanaugh.

Occupation: Attorney and  
New Jersey Finance Coordinator

Employer: Corzine 2000, Inc.  
Robert Treat Hotel Building  
50 Park Place, Eighth Floor  
Newark, New Jersey 07102

Freeholder at Large (Elected)  
Essex County Board of Chosen Freeholders  
Essex County Hall of Records  
Newark, New Jersey 07102

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

Morehead State University,  
Morehead, Kentucky  
September 1965 to June 1969  
B.A. (English/Political Science) June 1969

Seton Hall University School of Law  
Newark, New Jersey  
September 1969 to June 1972  
J.D. June 1972

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

1969-1972 Bar Tender (Part-time)  
The Westwood Restaurant (no longer in business)  
Pleasant Valley Way, West Orange, New Jersey

Clerk-Driver (Part-time)  
Tully's Drug Store (no longer in business)  
Main Street, West Orange, New Jersey

1972-1973 Judicial Law Clerk  
Hon. Francis W. Hayden (Deceased)  
New Jersey Superior Court  
Newark, NJ

1974-1977 State of New Jersey, Office of the Public Defender, Newark, NJ  
Assistant Deputy Public Defender  
Essex Trial Region, Staff Attorney

1977-1984 Lum Biunno & Tompkins (now defunct)  
Newark, New Jersey  
Associate 1977 to 1980  
Partner 1980 to 1984

1984-1987 Tompkins McGuire & Wachenfeld  
Newark, New Jersey  
Partner

- 1987-1992 Whipple Ross & Hirsh, PA (now defunct)  
Parsippany, New Jersey  
Partner
- 1988-1989 Borough of Caldwell, New Jersey  
Caldwell, New Jersey  
Borough Prosecutor (Part-time)
- 1992-1992 McCormack Petrolle & Matthews  
Roseland, New Jersey  
Partner
- 1993-Present  
United States Magistrate Judge  
District of New Jersey
- 1999-Present  
Adjunct Professor (Part-time - evenings)  
Seton Hall University School of Law  
Newark, New Jersey

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

Yes.  
United States Army 1972-1980 (Est.)  
Inactive Reserve  
Rank of Captain  
XXXXXXXXXX  
Honorable Discharge

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

Fellow of American Bar Foundation  
Blue Key National Honor Society (College)

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



American Bar Association  
New Jersey Bar Association (Executive Committee of  
Civil Section 1984-1985)  
Essex County Bar Association (Judicial Selection  
Committee 1983-1984)  
Association of the Federal Bar of New Jersey  
Federal Magistrate Judges Association  
Trial Attorneys of New Jersey (until 1992)  
New Jersey State Bar Association,  
District V-A Ethics Committee  
Seton Hall School of Law Alumni Inn of Court (Co-  
founder, Master 1993-1999)  
Vanderbilt Inn of Court (Master 1985-1992)  
Blue Key National Honor Society (College)  
New Jersey Supreme Court Subcommittee on the use of fax  
submissions in filing (1988)  
Member, Public Relations and Collegiality Committee of  
the District Court for the District of New Jersey  
(1995-1996)  
Member, Committee on Automation and Technology of the  
District Court for the District of New Jersey  
(1997-1999)  
Member, CJA Plan Panel Selection and Management  
Committee of the District Court for the District  
of New Jersey (1999-Present)

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

I do not belong to any organizations that are active in lobbying before public bodies.

Other organizations to which I belong:

The Fellows of the American Bar Foundation  
Seton Hall Law School Alumni Association

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

Supreme Court of the United States

April 1984

United States Court of Appeals, 3rd Circuit	May 1982
United States District Court, District of New Jersey	Nov. 1972
Supreme Court, New Jersey	Nov. 1972
Superior Court, New Jersey	Nov. 1972

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

I have not published any books, articles or reports; I have not given any speeches relating to constitutional law or legal policy.

I have participated in the annual meetings of the New Jersey State Bar Association by appearing on panel discussions most recently relating to Practice before U.S. Magistrate Judges (May 1999). I also appeared as a panelist for the New Jersey Institute of Continuing Legal Education on practicing before United States Magistrate Judges (October 1999).

All remarks were extemporaneous and I made no notes in preparation.

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

Present state of health is excellent. Last physical examination was in December of 1999.

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

United States Magistrate Judge,  
District of New Jersey  
Appointed January 11, 1993.

As a Magistrate Judge, my duties include case management of

all of the civil cases assigned to two of the active District Court Judges and one-half of those assigned to a senior member of our Court. I presently manage in excess of 600 cases.

Management includes conducting Rule 16 scheduling conferences, resolving all discovery disputes or other issues that arise during pretrial discovery, ruling on various non-dispositive motions as well as dispositive motions and conducting of trials upon consent of counsel. Upon referral from the district judge, I also prepare and enter reports and recommendations and conduct settlement conferences.

I also have numerous duties pertaining to criminal matters, to include conducting initial appearances, bail and detention hearings, arraignments and disposition of misdemeanors. It is also my duty to accept indictments from the Grand Jury and issue arrest warrants, search warrants and criminal complaints.

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

(1) Citations for the ten most significant opinions you have written:

1. Tolchin v. Supreme Court of New Jersey, No. 94-4860, aff'd 111 F.3rd 1099 (3d Cir. 1997) cert. denied; 118 S.Ct. 435 (1997).
2. Reich v. Hercules, Report and Recommendation dated 4/5/94 adopted by Judge Bassler's Opinion, 857 F.Supp. 367 (D.N.J. 1994).
3. United States v. National Talent Assoc., 1997 WL 829176 (D.N.J. 1997).
4. Harter v. GAF Corporation, 150 F.R.D. 502 (D.N.J. 1993), aff'd, No. 88-4052.
5. Blakey v. Continental Airlines, 93-2194 Opinions denying in limine motions to bar expert testimony.
6. Rumlin v. Amboy, 92-3338 Opinion granting summary judgment; aff'd, 3d Cir. No. 95-5670.

7. Smith Barney v. Kaplan, 95-0688 Opinion denying in part and granting in part motion for permanent injunction.
8. Belco Technologies Corp. v. Wilhelm Environmental Tech., 93-2220 Opinion granting motion to compel discovery.
9. In re Mid-America Waste Systems, Inc., 1997 WL 1045729 (D.N.J. 1997) Opinion denying motion to compel production of documents.
10. Esoldi v. Esoldi, 92-5190 Opinion denying motion to intervene; denying motion to strike jury demand and granting motion to bifurcate.

(2) A short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings:

1. Elizabeth Miller v. Beneficial Management Corp. 844 F.Supp. 990. This was an employment discrimination action wherein both the employer and the employee appealed an Order entered by me denying the employer's motion to amend its Answer and the employee's motion for sanctions against the employer. The District Court, Judge Lechner, reversed my ruling with respect to defendant's motion to amend and affirmed my ruling with respect to plaintiff's motion for sanctions.
2. United States of America v. Daniel Malloy, 11 F.Supp. 283. In this matter, defendant Daniel Malloy who was charged with violating the Arms Export Control Act, moved to review and reverse my denial of his previous motion seeking a modification of the bail conditions I previously set from a 24-hour electronic monitoring to a curfew restriction. While the matter was pending, defendant further requested the Court to authorize the use of a satellite tracking system to monitor his movements while away from home. The District Court reconsidered and modified my prior bail condition to allow for the use of the satellite tracking system as a means to monitor defendant's away-from-home activities. All other bail conditions remained the same.
3. Littlestown Manufacturing, Inc. v. Import 1, Inc. and

Partap Singh, C.A. No. 98-1516 (HAA). Plaintiffs initiated this action asserting breach of contract and fraud claims against the defendants. Defendants did not respond to plaintiff's Complaint and default was entered by the Clerk. Plaintiffs then moved the Court for entry of default judgment pursuant to F.R.C.P. 55(b)(2). At that time defendant Singh opposed the motion for default judgment and filed a cross-motion to vacate the entry of default against him. Singh also moved to dismiss the Complaint pursuant to R. 12(b)(1) for lack of subject matter jurisdiction or in the alternative pursuant to R. 12(b)(6) for failure to state a claim upon which relief may be granted. Additionally, Singh sought R.11 sanctions against plaintiffs. These matters were referred to me by Judge Ackerman and two separate Reports and Recommendations were submitted. In the second report the recommendation was that Singh's motion to dismiss the Complaint pursuant to R. 12(b)(6) be granted. The parties appealed the Reports and Recommendations and Judge Ackerman disagreed with my determination and reversed the second Report and Recommendation.

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

Municipal Prosecutor 1989-1990  
Borough of Caldwell, New Jersey

This was an appointed position that I held for one term. I was appointed by the former Mayor with approval by the Borough Council.

17. Legal Career:

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

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

I served as Judicial law clerk for the Hon. Francis W.

Hayden (deceased), New Jersey Superior Court, August 1972 - August 1973.

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

I never practiced law alone.

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

1974-1977 State of New Jersey, Office of the Public Defender  
151 Halsey Street, Newark, New Jersey 07102  
Assistant Deputy Public Defender

1977-1984 Lum Biunno & Tompkins (now defunct)  
550 Broad Street, Newark, New Jersey 07102  
Associate 1977-1980  
Partner 1980-1984

1984-1987 Tompkins McGuire & Wachenfeld  
Gateway Four, Newark, New Jersey 07102  
Partner

1987-1992 Whipple Ross & Hirsh, PA (now defunct)  
8 Campus Drive, Parsippany, New Jersey 07054  
Partner

1992-1992 McCormack Petrolle & Matthews  
38 Roseland Ave. Roseland, New Jersey 07068  
Partner

1993-Present  
U.S. District Court, District of New Jersey  
50 Walnut St., Newark, New Jersey 07102  
United States Magistrate Judge

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

While a Public Defender (1974-1977), my law practice was limited to criminal defense at the trial level. I

represented clients charged with felonies as a staff attorney for the New Jersey State Office of the Public Defender.

Upon entering private practice in 1977, my practice and legal specialty was that of a trial attorney engaged primarily in civil litigation including but not limited to medical malpractice, products liability, personal injury, commercial and labor disputes (employee/employer). The great majority of these matters were handled on behalf of defendants, although I prosecuted a number of plaintiffs' personal injury claims resulting from automobile accidents, accidents in the workplace and medical malpractice. To a lesser extent, I also handled criminal matters. I am a Certified Civil Trial Attorney since certification began in 1982, and recertified in 1989. I have had extensive experience in both the State and Federal Courts.

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

Typical clients included individuals, small businesses, corporations, educational institutions, insurance carriers, public entities such as municipalities, and a number of PBAs (police benevolent associations) throughout the State. As stated above, while in private practice my specialty was litigation. I had extensive trial experience in both the State and Federal Courts, trying numerous cases to conclusion.

While I was a public defender, my clients were individuals charged with state crimes.

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

While in private practice I was a trial attorney and appeared in court frequently.

2. What percentage of these appearances was in:

a) Federal courts	40%
b) State courts of record	50%
c) Other courts	10% (Administrative and Municipal courts)

3. What percentage of your litigation was:

- a) Civil 90%
- b) Criminal 10%

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

This is a difficult question to answer with precision since I left private practice in 1993. My best estimate is that I have tried approximately 100 cases to conclusion, as either sole or chief counsel.

5. What percentage of these trials was:

- a) Jury: 80%
- b) Non-jury: 20%

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

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

1. State v. Sherman Haddock, approximately 1975. (Unreported case, docket number unknown, Superior Court, Essex County).

This was a criminal case charging my client, the defendant, a third year dental student, with first degree murder. After a night out socializing, the alleged murder victim either followed or was invited to defendant's apartment. Defendant claimed that the decedent attempted to rob him at which time a struggle ensued and my client, the



defendant, shot the decedent in the head, killing him. My client panicked, attempted to hide the body in an elevator shaft and fled.

Upon defendant's return several days later, he was arrested and ultimately charged with murder and possession of an unregistered weapon.

The case was tried in the New Jersey Superior Court, Essex County, New Jersey for approximately two weeks and my client was found not guilty on the grounds of self defense.

I learned after the verdict that just prior to this incident, there had been a rash of attacks on a number of unsuspecting homosexual males in the same geographical area, and the victim in our case fit the description and profile of the attacker. All such attacks ceased after the night of this shooting, confirming and supporting our defense theory. The aforementioned evidence was withheld from the defense until after the trial.

This case was tried before Judge William Harth (deceased). My opposing counsel was the then Assistant Essex County Prosecutor:

William E. Latimer, Jr., Esq.  
Assistant Deputy Public Defender  
31 Clinton Street  
Newark, New Jersey 07102  
(973) 693-5856

2. Brown v. Fairleigh Dickinson Univ. et al, 560 F.Supp 391 (1983)

This was a five-week trial before Judge Frederic Lacey in the U.S. District Court for the District of New Jersey. I represented the defendants.

Plaintiff brought a discrimination claim against the University and numerous officers and agents of the University, including its president and State Senator Fairleigh S. Dickinson Jr. as Chairman of the Board of Regents. Many of the claims were dismissed during the course of the case and most of the defendants were released from the case prior to the verdict.

An eventual verdict of no cause was rendered as to all counts of the complaint as to all defendants.

Defendants were ultimately awarded fees and costs of approximately \$25,000.

I was chief trial counsel for the defendants.

My opposing counsel were:

Susan Singer, Esq. (formerly of the firm of Brown,  
Brown & Furst) (later relieved)  
111 Mulberry Street  
Newark, New Jersey 07102  
(973) 802-1245

Michael Sussman, Esq. (trial counsel),  
25 Main Street  
Goshen, New York 10924  
(914) 294-3991

3. Peoples Express Airlines, Inc. v. ConRail, BASF Wyandotte Co. and Union Tank Car Co., 100 NJ 246, 495 A.2d 107 (1985).

This was a case of first impression argued before the New Jersey Supreme Court. The issue was whether a defendant's negligent conduct that interferes with a plaintiff's business resulting in purely economic losses, unaccompanied by property damage or personal injury, is compensable in tort.

The Supreme Court held that economic damages are recoverable despite the lack of physical damages if suffered by individuals whom the defendant knows or has reason to know are likely to suffer economic damages.

Basically, this holding overruled the prior rule that economic damages alone without personal injury or property damages were not recoverable.

I represented defendant BASF Wyandotte Co.

Counsel for co-defendants was:

John C. Heavey, Esq.  
Carpenter, Bennett & Morrissey  
Gateway Three  
Newark, New Jersey 07102  
(973) 565-2005

Counsel for plaintiff was:  
Raymond P. D'Uva, Esq.  
Rodino, Forman & D'Uva  
17 Academy Street  
Newark, New Jersey 07102  
(973) 643-7750

4. Richardson v. State of New Jersey, International Harvester and Bostrum Seat Co., a Subsidiary of Allied Signal Corp.

This is an unreported case, tried for approximately four weeks before the Honorable Edward Neagle (retired), Superior Court, Essex County, New Jersey in approximately 1985.

This case received some notoriety due to the fact that it was alleged to be the oldest civil case pending in Essex County and one of the oldest pending cases in New Jersey. As such, the Chief Justice of the New Jersey Supreme Court ordered the trial court to commence trial due to complaints from the plaintiff and criticism of the courts by the news media. It should be noted that our defendant was neither responsible nor criticized for any delay.

The case involved a quadriplegic plaintiff whose injuries were allegedly caused when plaintiff struck a bump in the road maintained by the New Jersey Department of Transportation. Plaintiff was driving an International Harvester truck without a trailer. The driver claimed that the air suspension seat, manufactured by Bostrum (my client), was defective and that International Harvester improperly placed the seat in the cab of its truck. Plaintiff claimed that International Harvester and the seat manufacturer should have known or taken into consideration the fact a driver of plaintiff's size, 6'4" tall, would be caused to strike his head on the roof of the cab when a bump in the road was struck, due to the movement of the air suspension seat and the proximity of the roof to the driver.

As a result of the accident, plaintiff suffered a broken neck and became quadriplegic. Defendants argued that plaintiff was guilty of comparative negligence due to the manner he was driving.

This was a very interesting case involving issues of negligence, proximate cause and product liability law. A

number of experts were called to testify.

A verdict was rendered in favor of plaintiff and his wife for approximately eight million dollars (I believe the largest personal injury verdict in New Jersey up until that time) against defendants State of New Jersey and International Harvester. The jury found no cause as to my client, Bostrum Seat Company. This case was eventually settled while pending appeal.

Plaintiff was represented by William Sellinger, deceased.

The State of New Jersey was represented by:  
 Former Assistant Attorney General George H. Avery,  
 Esq.  
 McElroy Deutsch & Mulvaney  
 1300 Mt. Kemble Avenue  
 Morristown, New Jersey 07962  
 (973) 993-8100

International Harvester was represented by:  
 Harold Braff, Esq.  
 Braff Harris & Sukoneck  
 570 West Mt. Pleasant Avenue  
 Livingston, New Jersey 07039  
 (973) 994-6677

5. Fonseca v. Deseret Pharmaceutical Co. et als, Superior Court Essex County, Docket No. L-2454-76, tried before the Honorable Peter W. Thomas, J.S.C. (Retired).

This case involved both medical malpractice and product liability claims.

Plaintiff, an infant, through his parents, brought suit against St. James Hospital and various medical personnel associated with the hospital, as well as the manufacturers and distributors of a catheter.

Plaintiff claimed that while an infant in the hospital, a portion of a catheter broke off after insertion into his body and traveled through his blood stream and lodged in his heart. Plaintiff claimed further that as a result of the blockage caused by the catheter, oxygen which would normally

circulate to the brain by the blood was diminished causing brain damage to the infant. The infant also was forced to undergo open heart surgery to remove the catheter. The surgery was successful and there were no further claims other than the trauma of having to undergo the surgery.

Defendants claimed that there was no product defect and that in the event the catheter did enter the infant's blood stream and ultimately lodge in his heart, the breaking of the catheter was a result of the medical attendants' negligence when they were attempting to insert the catheter initially. Furthermore, all defendants denied the allegation that the catheter was the proximate cause of brain damage in that the plaintiff was stricken with meningitis as an intervening cause. The defense offered medical experts who testified that it was the meningitis that caused the brain damage as opposed to the catheter. Experts also testified regarding the catheter and the open heart surgery.

After a fifteen-day trial, the jury awarded the plaintiff one hundred thousand dollars against defendant hospital and returned a no cause as to all remaining defendants, including my client, the designer and/or distributor of the catheter in question.

Plaintiff was represented by:  
 William H. Sheil, Esq.  
 2115 Millburn Avenue  
 Maplewood, New Jersey 07040  
 (973) 762-1187

Defendant Liuzzo was represented by:  
 Jay Scott MacNeill, Esq. (formerly of McDonough  
 Murray & Korn)  
 Post Polack Goodsell & MacNeill  
 75 Livingston Avenue  
 Roseland, New Jersey 07068  
 (973) 994-1100

Defendant Godwin was represented by:  
 James F. Supple, Esq.  
 Fitzpatrick Reilly Supple & Gaul  
 571 Central Avenue  
 New Providence, New Jersey 07974  
 (908) 665-1166

Defendant Bard was represented by:  
Harwood, Lloyd, Kelly, Ryan, Coyle & Wulster  
130 Main Street  
Hackensack, New Jersey 07601  
(201) 487-1080

Defendant Deseret Pharmaceutical was represented by:  
Eugene W. Cullen, Esq.  
79 Short Hills Avenue  
Short Hills, New Jersey 07078

Defendant St. James Hospital was represented by:  
John P. McGee, Esq.  
McDermott & McGee.  
75 Main Street  
Millburn, New Jersey 07041  
(973) 467-8080

6. Mills v. Friar Tuck Inn of the Catskills et al, Superior Court Essex County, Docket No. L-35349-74, tried before the Honorable Stanley G. Bedford, J.S.C. (Deceased).

Plaintiffs alleged intentional torts of false imprisonment, assault and battery as well as breach of contract causing emotional and psychological distress. I was trial counsel for defendant Friar Tuck Inn of the Catskills. After a three-day trial, the jury returned a verdict of no cause for action as to all defendants.

The case involved a married couple's allegations that they were falsely imprisoned and assaulted by the owner and various employees of the Friar Tuck Inn of the Catskills. The facts of the case are relatively simple. Mr. and Mrs. Mills made reservations to spend a weekend at the Friar Tuck Inn. After arriving at the Inn, they apparently were not happy or satisfied with the accommodations and attempted to cancel their reservations and leave. They apparently had taken advantage of an advertised special weekend package that was very popular. As a result, the hotel was booked to capacity and in fact certain guests were turned away. The defendant took the position that there was a non-cancellation policy and if the plaintiffs decided to leave, they would be charged for the time they reserved but did not use.

Plaintiffs refused to pay for the hotel and claimed they were in effect held hostage until their bill was paid. Allegedly the hotel management refused to release their luggage or their vehicle until the hotel charges were satisfied. Mr. Mills was an attorney.

The jury rejected the plaintiffs' claims and found in favor of the hotel.

The plaintiffs were represented by:  
 William F. Reilly, Jr., Esq. formerly of  
 Lowenstein, Sandler, Brochin, Kohl & Fisher.  
 65 Livingston Avenue  
 Roseland, New Jersey 0708  
 (973) 597-2500

7. Kiell v. Fiat Distrib., Superior Court Union County, Docket No. L-39184-75, tried before the Honorable Harry V. Osborne, Jr., J.S.C. (Deceased).

This was a personal injury action wherein plaintiff allegedly suffered a fracture to her nose and resulting disfigurement, as a result of an alleged product failure and improper design of the tandem braking system of a Fiat automobile. The defense was comparative negligence arguing that the plaintiff was solely at fault for the accident in that she lost control of the vehicle. The case was interesting in that plaintiff's husband was a medical doctor who attempted to convince the investigating police officer to alter the officer's investigative report approximately one week after the accident occurred and after plaintiff and her husband sought the advice of attorneys. Both medical and emergency experts testified. I was trial counsel for defendant Fiat.

After a three-day trial the jury returned a verdict of no cause for action.

Plaintiffs were represented by Friedman & D'Alessandro.  
 Paul J. Hirsh, Esq.  
 4 Campus Drive  
 Parsippany, New Jersey 07054  
 (973) 290-9555

8. Preston v. The Hospital Center at Orange, Superior Court

Essex County, Docket No. L-26699-75, tried before the Honorable F. Michael Caruso, J.S.C. (Retired); Essex County Hall of Records, Chambers 318, 465 Dr. Martin Luther King Jr. Boulevard, Newark, New Jersey 07102 (973) 693-6466.

This case involved a medical malpractice claim that hospital personnel failed to properly care for an elderly patient who fell from a hospital bed while she was unattended, resulting in severe injuries. The defense was comparative negligence and the statutory limitation of liability as to a hospital.

Plaintiff was an elderly woman who may have been suffering from early stages of Alzheimer's disease. As a result of her inability to properly follow directions, and in an effort to safely protect her, the nurses at the hospital raised the metal sidebars that were attached to the patient's bed so as to keep her from attempting to leave the bed while unattended. Instead of calling for a nurse to assist her when she needed to use a restroom, she attempted to climb over the safety bars thus falling and injuring herself. Sometime after the accident, plaintiff died of unrelated causes.

I was trial counsel for all defendants. After approximately one week of trial which included the testimony of both medical and hospital experts, the jury returned a verdict in favor of the hospital of no cause for action.

Plaintiff was represented by:

William O. Barnes, Jr., Esq. (now retired)  
Barnes & Barnes  
186 Main Street  
Chatham, New Jersey 07928  
(973) 635-1141

9. Nigro v. Desa Industries, et als, Superior Court Essex County, Docket No. L-42631-74, tried before the Honorable Paul B. Thompson, J.S.C., (Retired) presently of counsel to:  
Tompkins McGuire & Wachenfeld  
Gateway Four  
Newark, New Jersey 07102  
(973) 622-3000

This was a products liability case wherein plaintiff



alleged that the defendant improperly designed and manufactured a construction tool that allowed workers to insert nails into cement by the use of a "nail gun". The gun was loaded with a cartridge similar to a regular firearm and the nail was propelled into the cement like a bullet. The product which was manufactured by my client, Remington Arms, and distributed by Desa Industries, was designed to be held with two hands and also possessed a safety locking device which prohibited the tool from accidental discharge when it was accidentally dropped to the floor or otherwise not specifically ready for use. Unfortunately a co-worker of plaintiff without plaintiff or defendant's knowledge, tampered with the nail gun and either removed or by-passed the locking and safety device. As a result a co-worker accidentally dropped the gun which discharged when it struck the floor causing the metal nail to strike the plaintiff in the chest causing damage to his heart.

After approximately five days of trial, just prior to verdict, the case settled for \$50,000 with my client's contribution amounting to \$20,000.

Plaintiff was represented by  
 James L. Cooper, Esq.  
 Cooper, Perskie, Katzman, April, Niedelman &  
 Wagenheim  
 1125 Atlantic Avenue  
 Atlantic City, New Jersey 08401  
 (609) 344-3161

Counsel for defendant Drilling & Fastening:  
 Albert C. Lisbona, Esq.  
 Dwyer, Connell & Lisbona.  
 100 Passaic Avenue  
 Fairfield, New Jersey 07004  
 (973) 276-1800

10. Leshinsky v. Fairleigh Dickinson University, United States District Court for the District of New Jersey, Civil Action No. 88-3140 tried before the Honorable Harold A. Ackerman, U.S.D.J., United States District Court, U.S. Post Office & Courthouse, Federal Square, Newark, New Jersey 07102 (973) 645-3493 in or about 1991.

This case involved a discrimination claim filed by

plaintiff, a female, who had been the Acting Athletic Director at Fairleigh Dickinson University. Prior to being named acting director, plaintiff had been the assistant director until the director of athletics retired. Plaintiff filed this charge of discrimination when she was not offered the job as full-time Athletic Director.

In this case, Plaintiff, a relatively young and inexperienced female who had been teaching in the Athletic Department was appointed as the assistant to the then serving Athletic Director. When the director retired, plaintiff was appointed as acting athletic director during the course of a nationwide search for an individual to fill the position. She was not promised the permanent position although she was encouraged to apply.

Pursuant to university policy, a search committee was appointed and numerous applications were considered. Ultimately, approximately five finalists were chosen and interviewed for the job. Plaintiff was included in the final interview process as one of the five finalists.

In addition to plaintiff, the other finalists consisted of both males and females. Ultimately one of the male finalists was chosen and plaintiff sued claiming sex discrimination.

Defendant successfully argued that the gentleman that was ultimately chosen for the position was approximately 20 years senior to plaintiff and had experience as both an athletic director and basketball coach at at least two other well-known national universities, guiding one of them to the national finals. This issue became important since one of the criteria sought in the candidates was the ability to raise donations through the Alumni Association. After a bench trial before the Honorable Harold Ackerman, Judge Ackerman ruled in favor of the defendants and against plaintiff, accepting defendant's claim that the chosen individual was more qualified, and gender played no part in the process. I represented the successful defendants.

Plaintiff was represented by  
Alan Serrins, Esq.  
Dienst & Serrins  
Broadway  
New York, NY  
(212) 406-1700

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

During my career prior to being appointed as a Magistrate Judge, my practice centered around litigation. After serving as a judicial law clerk, I became a public defender and tried criminal cases exclusively. Upon entering private practice, I shifted to civil litigation. I ultimately became a partner in one of New Jersey's oldest and largest law firms and became actively involved in both the New Jersey and Essex County Bar Associations. I actively participated in bar association meetings and annual conventions and was appointed to a number of committees, including the District 5-A Ethics Committee (1985-90) wherein I was called upon to investigate and prosecute attorneys who were charged with ethical violations. I also served on the Essex County Judicial Selection Committee and I was a member of the New Jersey State Bar Trial Practice Executive Committee. I also volunteered for pro bono assignments for the Superior Court, Essex County, the State's largest and busiest court docket, due to an unprecedented backlog of civil cases.

Since becoming a Magistrate Judge, I have participated as a panelist at the New Jersey State Bar Annual Conventions along with several other Magistrate Judges to present a program pertaining to practicing before United States Magistrate Judges.

I have also served on the following mock trials and appellate arguments as a judge:

- Gibbons Appellate Moot Court competition, Seton Hall University School of Law since 1994;
- Lacey Moot Court competition in Essex County sponsored by Essex County Bar Association;
- The Appellate Moot Court competition at Rutgers University School of Law in Newark, New Jersey;

In addition, I have served as a Master in both the Vanderbilt Inn of Court (1987 to 1992) and the Seton Hall Alumni Inn of Court from 1993 to 1999 as one of the co-founders of the program.

For the past two years, I have served as an Adjunct Professor at Seton Hall University School of Law in Newark, New Jersey, teaching classes in "Pre-trial Civil Litigation" and "Negotiations" in the evening division.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

I am enrolled in the Federal Employee Retirement System Thrift Savings Plan. I have no other business interests.

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

I am unaware of any category of litigation which would present a potential conflict of interest. In the event of any claim of conflict of interest, I would rely upon the Code of Judicial Conduct (28 U.S.C. 455).

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

No.

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

Attached please find a copy of my most recent Financial Disclosure Report, AO Form 10.

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

See attached net worth statement.

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

No.

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FINANCIAL STATEMENT

NET WORTH

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

See attached Net Worth Statement and Financial Disclosure Form AO-10.

**NET WORTH**

Dennis M. & Linda L. Cavanaugh

APRIL 2000

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

ASSETS			LIABILITIES		
Cash on hand and in banks	5,000		Notes payable to banks—secured	0	
U.S. Government securities—add schedule	0		Notes payable to banks—unsecured	25,000	
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		
Due from relatives and friends	0		Unpaid income tax	0	
Due from others	0		Other unpaid tax and interest	0	
Doubtful	0		Real estate mortgages payable—add schedule	330,000	
Real estate owned—add schedule	425,000		Summer Home	30,000	
Residence	225,000		Chattel mortgages and other liens payable		
Real estate mortgages receivable	0		Other debts—itemize:		
Autom and other personal property	35,000		Education Loans (Daughter)	45,000	
Cash value—life insurance			Education Loans (Son)	12,000	
Other assets—itemize:			Credit Cards:		
401(K) US Gov't. Thrift Plan	16,000		Discover Card	6,000	
Series E Savings Bonds	7,000		VISA	5,000	
			<b>Total Liabilities</b>	<b>453,000</b>	
			<b>Net Worth</b>	<b>260,000</b>	
<b>Total Assets</b>	<b>713,000</b>		<b>Total Liabilities and net worth</b>	<b>713,000</b>	
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, co-maker or guarantor	None		Are any assets pledged? (Add schedule.)	No	
On leases or contracts	None		Are you defendant in any suits or legal actions?	No	
Legal Claims	None		Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax	None				
Other special debt	None				



AO-10 (w)  
Rev. 1/2000

**FINANCIAL DISCLOSURE REPORT**

Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

<b>1. Person Reporting</b> (Last name, first, middle initial) CAVANAUGH, DENNIS M.		<b>2. Court or Organization</b> U.S. District Court District of New Jersey	<b>3. Date of Report</b> 5/3/00
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge - Nominee		<b>5. Report Type (check type)</b> <input checked="" type="checkbox"/> Nomination, Date / / Initial      Annual      Final	<b>6. Reporting Period</b> / / to / /
<b>7. Chambers or Office Address</b> Martin Luther King Jr. Federal Building & Court House 50 Walnut St., Newark, NJ		<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	

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

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

POSITION	NAME OF ORGANIZATION / ENTITY
<input checked="" type="checkbox"/> NONE (No reportable positions.)	
1	
2	
3	

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

DATE	PARTIES AND TERMS
<input checked="" type="checkbox"/> NONE (No reportable agreements.)	
1	
2	
3	

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

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1		
1999-2000	Seton Hall University School of Law	\$4,000.00
2	Annual Salary - Tompkins McGuire & Wachenfeld	S
3	Annual Salary - Corzine 2000 Campaign	S
4	Annual Salary - Essex County Board of Chosen Freeholders	S

Name of Person Reporting	Date of Report
FINANCIAL DISCLOSURE REPORT CAVANAUGH, DENNIS M.	5/3/00

**VII. Page 1 INVESTMENTS and TRUSTS – income, value, transactions** (Includes those of spouse and dependent children. See pp. 35-35 of Instructions.)

A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code3 (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month- Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
1 Series EE Savings Bonds			J	T	Exempt				
2 Putnam Investments - Linda Cavanaugh Custodian for 3 son Joseph	A	Div.	J	T	Exempt				
4 Merrill Lynch OID - Linda Cavanaugh Custodian for 5 son Joseph	A	Div.	J	T	Exempt				
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									

1 Income/Gain Codes: A=\$1,000 or less (See Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 I2=More than \$5,000,000

2 Value Codes: J=\$15,000 or less (See Col. C1, D3) N=\$250,001-\$500,000 K=\$15,001-\$50,000 O=\$500,001-\$1,000,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=More than \$50,000,000

3 Value Method Codes: Q=Appraisal U=Book value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting CAVANAUGH, DENNIS M.	Date of Report 5/3/00
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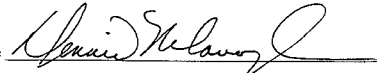
VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

IX. CERTIFICATION.

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

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, § 501 et. seq., 5 U.S.C. § 7553 and Judicial Conference regulations.

Signature



Date May 3, 2000

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App. 4, § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

## III. GENERAL (PUBLIC)

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

Subsequent to serving as a Public Defender, I was appointed on several occasions to represent indigent defendants pro bono in local municipal court.

As a member of the Essex County Bar, I also volunteered for pro bono assignments in civil matters in the Superior Court, Essex County in an effort to reduce a docket backlog.

As a Magistrate Judge, I have taken part in the Newark Fresh Air Fund Attorney Softball Tournament for the benefit of inner-city youths. This tournament raises tens of thousands of dollars each year and funds summer camp participation for disadvantaged youths.

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

No.

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

I know of no formal selection commission in the State of New Jersey that recommends candidates for federal judicial appointments.

Senator Torricelli formed a judicial selection committee consisting of prominent attorneys and lay people to review applications, screen applicants, interview applicants and make recommendations to the Senator.

Upon learning of the committee, I submitted a response to a questionnaire and was interviewed. After some time elapsed, I was invited to attend a second interview and shortly thereafter I was advised by Senator Torricelli that he was recommending me to the President to fill an upcoming vacancy on the District Court.

After Senator Torricelli's recommendation, I was contacted by individuals with the Department of Justice and asked to complete various forms and questionnaires including the Attorney General's form for Prospective Judicial Nominees, Standard Form 86 for the Federal Bureau of Investigation, the American Bar Association Personnel Data Questionnaire and this present Biographical Information form for review by the Senate Judiciary Committee.

I also met with and was interviewed by representatives of the Department of Justice in Washington, D.C.

I have also been interviewed by two agents of the Federal Bureau of Investigation and a representative of the American Bar Association's Standing Committee on Federal Judiciary.

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

No.

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

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of

increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the Judicial Branch has usurped many of the prerogatives of other branches and levels of government.

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

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The paramount duty of the trial court is, and must be, to resolve the case or controversy before it expeditiously and fairly. A judge should make certain that the litigants appearing before him or her have standing to be in the federal court. In matters where the law is settled, its job is simply to apply that law and supervise the fact-finding function of the jury. In matters where the law is not clear or the claim is novel, its job is to interpret the law; in accordance with the intent of Congress when the issue is statutory, in accordance with precedent when the issue is constitutional or common law.

It is not the duty of the judiciary to solve the problems of society instead of the cases before it; nor is it proper to utilize specific cases merely as a vehicle for societal change. Such broad-based changes in institutions, policies and mores are better suited to the Legislature and the Executive Branch. The trial court's vital role in that process is not to make such changes, but rather to make certain that the policies and rules so established are effectuated by being applied consistently, equitably, promptly and impartially to each case and each litigant that enters the federal judicial system.

## BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full Name:** (include any former names used.)  
James Shelton Moody, Jr.
2. **Address:** List current place of residence and office address(es).  
Home: Plant City, FL  
Office: 419 Pierce Street, #314, Tampa, FL 33602
3. **Date and Place of Birth:**  
March 31, 1947, Tampa, FL
4. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
I have been married to Kelli Denise Ossi Moody since November 21, 1993.  
Occupation: Manager  
Employer: Vision Care, Inc., P.O. Box 30349, Tampa, FL 33630-3349, and  
1511 North Westshore Blvd., #1000, Tampa, FL 33607.
5. **Education:** List each college and law school you have attended, including dates of attendance, degrees received and dates degrees were granted.  
  
Washington and Lee University, Lexington, VA  
Dates attended: 1965-1966  
Degree Awarded: None (transferred to the University of Florida)  
  
University of Florida, Gainesville, FL  
Dates attended: 1966-1969  
Degree Awarded: Bachelor of Science in Business Administration with high honors,  
1969  
  
University of Florida, School of Law, Gainesville, FL  
Dates attended: 1969 - 1972  
Degree Awarded: Juris Doctorate with honors, 1972  
  
University of Florida, Business Graduate School, Gainesville, FL  
Dates attended: 1972  
Degree Awarded: None (Attended one term to qualify to take CPA exam, which I passed. I became licensed as a C.P.A., but the license has since expired.)

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

**Employment:**

1969-1972: Circulation manager, student publications, University of Florida

1972-1994: Trinkle, Redman, Moody, Swanson, & Byrd, P.A. (Because of individuals joining or leaving the firm, the name changed a few times during the years, but was the same basic law firm.)

1995-present: Circuit Judge for the Thirteenth Judicial Circuit in and for Hillsborough County, FL.

**Other:**

1982-1994: Moody & Moody, Inc., Vice President, Director

1985-1997: East Hillsborough County United Way, Director (dates approximate)

1993-1998: United Way of Hillsborough County, Director

1983-1994: Director of Hillsboro SunTrust Bank

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

No.

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

Hall of Fame, University of Florida.  
 Omicron Delta Kappa.  
 Phi Kappa Phi.  
 Beta Gamma Sigma.  
 Order of the Coif.  
 Florida Blue Key, University of Florida.  
 Who's Who among Students in American Universities and Colleges.  
 Outstanding Young Man of America, United States Jaycees, 1982.  
 Who's Who of Emerging Leaders in America, Second Edition, 1988.



Who's Who in American Law, Fifth, Sixth and Ninth Editions.  
 Community Leaders of America, Fourteenth Edition, 1990.  
 Board Certified Civil Trial lawyer.  
 AV Rating (highest rating) Martindale Hubbell.

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

American Bar Association, 1972-1990.  
 Hillsborough County Bar Association, 1975 (approximately) - present.  
 President, 1987-1988.  
 Vice President, 1986.  
 Director, 1983-1985.  
 Chair, Law Library Committee, 1980-1983.  
 Medical/Legal Committee, 1982.  
 Florida Bar Association, 1978-1981.  
 Jurisprudence Committee, 1972-1977.  
 Chair, 1977.  
 Vice-Chair, 1976.  
 Attorneys Fee Committee, 1978-1981.  
 Chair, 1980.  
 Vice-Chair, 1980.  
 Annual Meeting Committee, 1982.  
 Family Law Inn of Court, 1995-1996.  
 Florida Conference of Circuit Judges.  
 Educational Steering Committee, 1995 - present.

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

None.

**Please list all other organizations to which you belong.**

Hillsborough Tomorrow, 1997 - present.  
 Vice-Chair, 1997 - present.  
 Chair of the Children and Families Workgroup, 1998 - present.  
 Chair of Success by Six (a county-wide School Readiness effort), 1999 - present.  
 Member of the University of South Florida Economic Development Board, 1998 - present.  
 Chair of the University of South Florida School of Psychology Advancement Committee, 1998 - present.  
 Florida Blue Key Alumni Advisory Board, 1998 - present, Chair 1999 - present.  
 Walden Lake Country Club, 1981 - present.  
 University Club, 1999 - present.  
 Plant City Arts Council, approximately 1975 - present.  
 East Hillsborough Historical Society, approximately 1985 - present.  
 School Enrichment Resource Volunteers in Education (SERVE) speaker in Hillsborough County Schools.

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

All Florida State Courts, April 1972.

United States District Court for the Middle District of Florida, January 19, 1973.

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

I have given numerous speeches over the years, but have never kept copies. I have attached copies of notes from courses I taught at judicial education conferences and an outline of a course taught at a trial lawyers' seminar.

Florida Bar Journal article "The Birth of a Legal Presumption," Nov. 1996 (co-authored with a court staff attorney, Phil Wartenberg, 505 E. Jackson Street #306, Tampa, FL 33602-4935. Phone: 813-223-5421).

I edited the monthly newsletter for the Hillsborough County Bar Association and wrote monthly columns as Editor from September 1984 through May 1986, and as President from May 1987 through June 1988.

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

Good. April 4, 2000.

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

1995 - present: Circuit Court Judge. Elected. I sit in the Civil Division of the Circuit Court, a Court of general jurisdiction in and for Hillsborough County, Florida.

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

(1) **Ten Most Significant Opinions:**

- (1) Wal-Mart Stores, Inc. v. Turner, 7 Fla. L. Weekly Supp. 38b, Thirteenth Judicial Circuit, Hillsborough County, Civil Division, Case #98-2679, July 13, 1999.
- (2) Sallen v. Wayne J. Boyer, P.A., 5 Fla. L. Weekly Supp. 381a, Thirteenth Judicial Circuit, Hillsborough County, Civil Division, Case #96-6142, December 17, 1997.
- (3) Mutual Marine Office v. Specialty Restaurants Corp., Hillsborough County Circuit Court, Civil Division, Case #91-4410, August 11, 1997, *aff'd*, 719 So.2d 901 (Fla. 2<sup>nd</sup> DCA 1998).
- (4) Liebreich v. Church of Scientology, Hillsborough County Circuit Court, Civil Division, Case #97-1235, March 13, 1998, *cert. denied*, 737 So. 2d 1086 (Fla. 2<sup>nd</sup> DCA 1999).
- (5) Doe v. Merry Land & Investment Co., Hillsborough County Circuit Court, Civil Division, Case #95-3666, March 13, 1998.
- (6) City of Tampa, Florida v. P.M. Realty & Investments, Inc., Hillsborough County Circuit Court, Civil Division, Case #96-2397, December 18, 1998, *aff'd*, 2000 WL 554403 (Fla. App. 2 Dist.).
- (7) Hillsborough County v. Westshore Glass, Hillsborough County Circuit Court, Civil Division, Case #97-466, June 10, 1998, *aff'd*, 748 So. 2d 271 (Fla. 2d DCA 1999).
- (8) Taylor v. Moody, Hillsborough County Circuit Court, Civil Division, Case #90-13646, December 23, 1999.
- (9) Spielvogel v. Cunningham Law Group, P.A., Hillsborough County Circuit Court, Civil Division, Case #98-709, September 24, 1998.

- (10) Florida Water Serv. v. The Board of County Commissioners of Hillsborough County, Florida, Hillsborough County Circuit Court, Civil Division, Case #98-7189, September 30, 1999.

(2) **Reversals:**

- (1) Progressive Express Insurance Company v. MTM Diagnostics, Inc., Hillsborough County Circuit Court, Civil Division, Case #99-333, June 18, 1999, *quashed in part*, 25 Fla. L. Weekly D746 (Fla. 2<sup>nd</sup> DCA 2000).

In this appeal, appellant challenged the constitutionality of Florida's personal injury protection statute regarding: (1) its mandatory arbitration provisions and (2) its attorney fee provisions. The Second District Court of Appeal, the court with controlling authority in the district in which my court is located, had previously held the arbitration provisions constitutional, but had not ruled upon the attorneys fee issue. The Fifth District Court of Appeal had previously held the attorneys fee provision unconstitutional.

I followed the controlling precedents and held the arbitration provisions constitutional and the attorneys fee provisions unconstitutional. Thereafter, the Supreme Court of Florida reversed the Second District's holding of constitutionality of the arbitration issue. The Second District Court of Appeal then reversed itself and the corresponding portion of my order.

- (2) Coffaro v. Hillsborough County Hospital Authority, Hillsborough County Circuit Court, Civil Division, Case #98-2532, November 23, 1998, *rev'd and remanded*, 752 So. 2d 712 (Fla. 2<sup>nd</sup> DCA 2000), *review pending*, Case #00-665 (filed March 27, 2000).

In this medical malpractice case, the issue concerned the calculation of the statute of limitations. The statute allowed a claimant to "purchase" an extension of the statute. Coffaro appealed my summary final judgment ruling that her claim was barred. The Second District Court of Appeal reversed, pointing out that following the plain language of the statute could result in a different limitation period depending on when the extension was purchased. Thus, some plaintiffs, as here, would have a shorter length of time than others within which to file suit. The court held that the statute of limitations should be calculated by assuming that the plaintiff had purchased the extension on a date that would give the longest period of limitations, regardless of when the extension had actually been purchased. The Second District certified this issue as a question of great public importance and has requested the Florida Supreme Court to consider it.

- (3) Griffin v. American General Life and Accident Ins. Co., Hillsborough County Circuit Court, Civil Division, Case #95-4104, August 7, 1998, *rev'd and remanded*, 24 Fla. L. Weekly D2556 (Fla. 2<sup>nd</sup> DCA 1999).

Shortly before he died of AIDS, Griffin had taken out a life insurance policy with American General. The application for insurance incorrectly stated that Griffin had not tested positive for HIV and had no health problems. Griffin's estate brought suit claiming that the insurance agent had completed the application form after Griffin had signed it in blank, and that Griffin had supplied no false information to the agent. Griffin's estate contended that the agent had committed the fraud by wrongfully filling out the application form.

The application form contained a provision in bold print that no coverage would be effective unless, at the time the company received and executed the form, the insured's health was as represented. I held that, regardless of who had placed the false information in the form, the insured's health was not as represented at the time the company received the form. Therefore, there was no coverage and the previously paid premium should be returned to the plaintiff. Griffin's estate appealed. The Second District decided that jury issues remained which precluded summary judgment and reversed. Those issues were:

1. Whether the misrepresentation about having AIDS was material to the risk covered by a life insurance policy,
2. Whether the misrepresentation was made by the insured or the agent, and
3. If the agent was responsible for the misrepresentation, could it be imputed to American General.

- (4) ETS of New Orleans, Inc. v. Jones, Hillsborough County Circuit Court, Civil Division, Case #95-3148, January 22, 1998, *aff'd in part, rev'd in part, and remanded*, 738 So. 2d 958 (Fla. 2<sup>nd</sup> DCA 1999).

A worker's compensation lienholder appealed my judgment determining equitable distribution of the lien from the proceeds of a negligence suit. The lienholder contended three errors had been committed: (1) permitting counsel for the defendant in the underlying tort suit to testify as an expert on the value of that tort claim, (2) improperly determining the full value of the tort claim, and (3) improperly including in the final order of equitable distribution all costs incurred by the injured worker instead of just taxable costs.

The Second District Court of Appeal found no error as to the first two issues, but reversed as to the third. The statute in question provided for a determination of the lienholder's share "less their pro rata share of all court costs expended by the plaintiff in the prosecution of the suit including attorney's fees for the plaintiff's attorney."

The issue on appeal was whether the phrase "all court costs" meant "taxable costs" or "all costs" incurred in prosecuting the claim on behalf of the employee. The Second District held that it meant only taxable costs.

- (5) Buckley v. Commonwealth Mortgage Assurance Company Service Company, Hillsborough County Circuit Court, Civil Division, Case #92-6495, December 16, 1997, *rev'd and remanded*, 725 So. 2d 1146 (Fla. 2<sup>nd</sup> DCA 1998).

Mortgagors appealed my entry of final summary judgment establishing a deficiency amount in favor of Commonwealth Mortgage Assurance Company following a foreclosure. Mortgagors had filed a motion to dismiss for failure to prosecute after the final judgment of foreclosure was entered, but before the petition for deficiency judgment was filed. The motion to dismiss was filed May 6, 1994, not quite one year after the summary final judgment was entered on May 7, 1993. The motion was heard on May 12, 1994, by the judge who sat in my division at the time. He denied the motion saying it could be raised later. The issue was raised again in front of me. I denied the motion to dismiss because it was filed prematurely, i.e., before a full year of inactivity had elapsed. The Second District reversed finding the year of inactivity elapsed after the filing of the motion, but before the hearing, and held that was sufficient to warrant dismissal.

- (6) Garcia v. Garcia, Hillsborough County Circuit Court, Family Law Division, Case #94-7665, May 21, 1996, *aff'd in part, rev'd in part*, 696 So. 2d 1279 (Fla. 2<sup>nd</sup> DCA 1997).

This was a divorce case involving a marriage of about 29 years in length. The wife, who was 54 years of age, had a college degree and had been previously employed with earnings of about \$11,000 per year for a 25 hour work week. I found that she was employable at a greater earning capacity, but could not earn sufficient income to live in the lifestyle to which she had become accustomed. The husband was a veterinarian who earned approximately \$130,000 per year. I determined the wife would need two years to get re-established in a decent full time job earning \$25,000 to \$30,000 per year. The parties owned substantial assets which I equitably divided between them.

I entered a Final Judgment of Dissolution of Marriage which provided \$5,000 per month alimony to the wife for three years, which reduced to \$4,000 per month in the fourth year and to \$3,000 in the fifth year and thereafter.

The wife appealed, alleging error in the equitable distribution of the assets and the award of alimony. The equitable distribution of the parties' assets was affirmed, but the award of alimony was reversed. The appellate court ruled alimony should have been \$5,000 per month with no reduction.

- (7) Kilgannon v. Champiny, Hillsborough County Circuit Court, Family Law Division, Case #94-12643, June 15, 1995, *aff'd in part, rev'd in part*, 684 So. 2d 304 (Fla. 2<sup>nd</sup> DCA 1996).

The father appealed the final judgment in a paternity action challenging several aspects of his child support obligation. The Second District affirmed in all respects with the exception of the award of 10% of the father's future bonuses. The father did not dispute that he must pay some part of his yearly bonus towards his child support obligation, but he contended that it was error to order the payment of a flat 10% of his future bonus without first having a hearing at the time of the bonus to consider the child's needs and the mother's income. The appellate court agreed with the father.

- (8) Fuxan v. Seaholm, Hillsborough County Circuit Court, Family Law Division, Case #89-14195, July 14, 1995, *rev'd and remanded*, 685 So.2d 899 (Fla. 2<sup>nd</sup> DCA 1996).

In this post-judgment action, I modified the final judgment and ordered that custody of the parties' minor child be transferred to the father. The transfer of custody was based upon the best interests of the child due to the mother's failure to provide appropriate and consistent visitation with the father, her failure to provide a stable home environment for the child, her inability to control the child's behavior, and the father's better ability to provide a permanent, stable home environment. The mother appealed. The Second District Court of Appeal reversed the transfer of custody, holding that the governing standard for modification of custody included factors other than the best interest of the child, such as the existence of a substantial change in circumstances and that the failure to change custody would be detrimental to the child's overall best interest.

- (9) Danner Construction Company v. Reynolds Metals Company, Hillsborough County Circuit Court, Civil Division, Case #97-885, January 4, 1999, and January 19, 1999, *rev'd and remanded*, 2000 WL 367737 (Fla. App. 2 Dist.).

This property damage case involved the construction of Florida Rule of Civil Procedure 1.442 which governs offers of judgments. Two defendants had made a joint offer of judgment to plaintiff without stating which defendant was offering what amount. Subsection (c)(3) of the rule authorizes jointly made settlement proposals and provides that "(a) joint proposal shall state the amount and terms attributable to each party." The appellate court held that the amount and terms attributable to each party did not have to be stated when the second defendant's only alleged liability was vicarious.

- (10) Charles D. Thomas v. Tampa Bay Downs, Inc., Hillsborough County Circuit Court, Civil Division, Case #95-5227, December 8, 1998, and December 30, 1998, *aff'd in part, rev'd in part*, 2000 WL 571413 (Fla. App. 2 Dist.).

Charles Thomas sued Tampa Bay Downs claiming it committed libel and slander on two separate occasions: (1) in written statements, contained in a report from Tampa Bay Downs Director of Security to other member racetracks, that Mr. Thomas had been barred from Tampa Bay Downs based on allegations received from a complainant, and (2) in verbal statements allegedly made over the telephone to Joseph Bilodeau, an acquaintance of Mr. Thomas, who had called the Director of Security of Tampa Bay Downs seeking a job reference on Mr. Thomas. Summary judgment was rendered in favor of Tampa Bay Downs as to both incidents. The Second District Court of Appeal affirmed that a qualified privilege existed and not overcome as to the first instance, but held it was a jury question as to whether or not plaintiff could overcome the statutory qualified privilege in the second instance.

- (11) Liebreich v. Church of Scientology, Hillsborough County Circuit Court, Civil Division, Case #97-1235, April 9, 1999, *rev'd*, 2000 WL 639314 (Fla. App. 2 Dist.).

Approximately two (2) years after this Court had ordered the production of the pre-clear file of Lisa McPherson to the Estate of Lisa McPherson, and after the Order was affirmed on appeal, nine individuals and the Church of Scientology International sought to contest the production. The individuals asserted that production would violate their constitutional rights as fellow members of the Church of Scientology. The Church of Scientology International, identifying itself as "the mother church," asserted that these files really belonged to it and the particular church which was a defendant in this cause merely had possession by permission and had no right to produce the documents as previously ordered.

I denied both motions as untimely. This ruling was affirmed as to the Church of Scientology International, but reversed as to the individuals.

(3) **Cases involving constitutional issues:**

- (1) City of Tampa, Florida v. P.M. Realty & Investments, Inc., Hillsborough County Circuit Court, Civil Division, Case #96-2397, December 18, 1998, *aff'd*, 2000 WL 554403 (Fla. App. 2 Dist.). Listed in section (1) above.
- (2) Progressive Express Insurance Company v. MTM Diagnostics, Inc., Hillsborough County Circuit Court, Civil Division, Case #99-333, June 18, 1999, *quashed in part*, 25 Fla. L. Weekly D746 (Fla. 2<sup>nd</sup> DCA 2000). Listed in section (2) above.



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

None.

17. **Legal Career:**

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

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

I did not clerk for a judge.

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

I did not practice alone.

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

I graduated from law school in 1972 and began practicing with the law firm then known as Trinkle, Redman, Clawson & Peavyhouse. I began as an associate attorney and became a partner sometime around 1975. When the firm incorporated in 1976, I became a shareholder and officer. I practiced law with the same firm until the end of 1994, when I withdrew to assume my duties as a circuit judge. The firm went through a few name changes during those years and, at the time of my withdrawal, was known as Trinkle, Redman, Moody, Swanson & Byrd, P.A., which is located at 121 N. Collins Street, P.O. Drawer TT, Plant City, FL 33564.

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

1972 - 1977: As a junior attorney, I handled a wide range of matters. I assisted all of the attorneys in the office with their cases and clients.

During that time, I also maintained an active trial practice as well as real estate, probate, business and contract matters, collection, criminal law, zoning and land planning, and even tax matters.

1977 - 1994: After those first five years, I focused on civil trial work. Over the next 17 years, I had a very active trial practice in the areas of personal injury, commercial litigation, family law and other general litigation matters.

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

I represented both plaintiffs and defendants, but most often represented plaintiffs. In addition to representing various individuals in the areas of personal injury and family law, typical clients were banks, an electric utility, commercial retailers, and convenience store chains. I was a Board Certified Civil Trial Lawyer.

I practiced in both state and federal courts throughout the State of Florida, but mostly in the Tampa Bay area (Tampa, Plant City, Lakeland, Bartow, Dade City, St. Petersburg and Clearwater).

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

Throughout my practice, I appeared in court frequently.

**2. What percentage of these appearances was in:**

- (a) federal courts: 5 to 10%
- (b) state courts of record: 90 to 94%
- (c) other courts: 1% (administrative proceedings)

**3. What percentage of your litigation was:**

- (a) civil: 99%
- (b) criminal: 1%

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

Even from the early years of my practice, I handled trials as lead or sole counsel. In the course of my career, I have only handled a handful of cases as associate counsel. It is impossible to know the actual number of cases I tried to verdict over my 22 years of trial

practice, but, depending on how one calculates such figures, my best estimate is that I tried somewhere between 600 and 2,000 cases to verdict or judgment.

5. **What percentage of these trials was:**
- (a) jury: 5% (25 to 75 trials)
  - (b) non-jury: 95% (600 to 2,000 trials)

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

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

- (1) **Department of Agriculture and Consumer Services v. Bonanno**  
 568 So. 2d 24 (Fla. 1990), Judge Robert Bonanno, Circuit Court in Hillsborough County.  
 Florida Supreme Court  
 Date of representation: 1988-1990

The Department of Agriculture destroyed the citrus trees of Grady Sweat, my client, because the trees were exposed to what was suspected to be canker. The Florida legislature had passed a law setting up an administrative claims procedure with a fixed schedule of compensation for the destroyed trees. The state filed for a Writ of Prohibition to prevent Judge Bonanno from hearing Sweat's inverse condemnation case.

The case involved significant issues of the right to a jury trial for the fixing of compensation, separation of powers principles since the law provided for non-judicial officers to determine compensation, access to courts, and burden of proof as to value of the destroyed trees. I was lead trial counsel and argued the case on appeal.

We received mixed results from the Supreme Court. Results contrary to the contentions of the property owners were:

1. citrus growers had no constitutional right to jury trial on inverse condemnation claims,
2. statutes allowing administrative hearing officer to make initial determination of what constituted just compensation did not violate constitutional separation of powers principles, and
3. retroactive application of statutes did not violate citrus growers' right to due process.

In an important ruling in support of the contentions of the property owners, the court determined that the schedule of value adopted by the Legislature was not a conclusive determination of just compensation, but merely a presumptive value subject to rebuttal by the property owner. Once the State was convinced that its schedule of values was not a final determination and that a court would ultimately determine compensation, the case settled for a reasonable sum of money.

Counsel for Petitioner:

David G. Guest, Esquire, Assistant Attorney General, 111 S. Martin Luther King Blvd., Tallahassee, FL 32301, phone: 850-681-0031.

Parker D. Thomson, Esquire, of Thomson, Muraro, Bohrer and Razook, P.A., Miami, Special Assistant Attorney General, 1 S.E. Third Avenue, 17<sup>th</sup> Floor, Miami, FL 33131, phone: 813-350-7200.

Co-Counsel for Respondent:

Johnnie Byrd, Jr., Esquire, of Trinkle, Redman, Moody & Swanson, P.A., 121 N. Collins Street, Plant City, FL, 33564, phone: 813-752-6133.

Elizabeth Wheeler, Esquire, of Berg & Wheeler, P.A., 217 E. Robertson Street, Brandon, FL, 33511-5234, phone: 813-685-0050.

Many parties appeared as Amicus Curiae.

(2) **Porter v. Saddlebrook**

Pasco County Circuit Court, Case #CA83-1860, Judge Lynn Tepper.

Dates of representation: 1983-1994

This case involved flooding issues. Porter sued Saddlebrook, a subdivision development, alleging Saddlebrook had developed its land in such a way as to cast additional waters onto the Porter property causing damages and loss of use. I was lead trial counsel for Porter from 1983 through 1994. My client received an \$8,000,000 verdict, which, at the time, was the largest jury verdict in Pasco County. The case was reversed on appeal and was still in litigation when I went on the bench.

Until the end of 1994, when I became a judge, I handled the active trial issues of the case and David Maney handled the appellate issues. I withdrew at the end of 1994, and Ben Hill assumed the role of trial counsel. The case was finally settled in March, 2000.

Additional Counsel for Porter:

David Maney, Esquire, of Maney, Damsker & Jones, P.A., P.O. Box 172009, Tampa, FL 33672, phone: 813-228-7371.

Successor Counsel for Porter:

Benjamin H. Hill, III, Esquire, of Hill, Ward & Henderson, P.A., P.O. Box 2231, Tampa, FL 33601-2231, phone: 813-221-3900.

Principal Counsel for Saddlebrook:

John Lawson, Esquire, of Johnson, Blakely, Pope, Booker, Ruppel & Burns, P.A., P.O. Box 1100, Tampa, FL 33601, phone: 813-225-2500.

Stephen R. Patton, Esquire, of Kirkland & Ellis, 200 E. Randolph Drive, Chicago, IL 60601, phone: 312-861-2000.

(3) **Time Warner v. Withlacoochee River Electric Cooperative**

United District Court for the Middle District of Florida

Case #93-1782-CIV-T-24(B), Judge Bucklew.

Date of representation: 1993-1994

I represented Withlacoochee, an electric utility company serving Pasco, Hernando and Citrus Counties. Time Warner sued in Federal Court to force the utility to hang Time Warner's cable on poles owned by Withlacoochee located in public and private rights of way. The significant issue was whether public bodies, after issuing a permit to a private party for the placement of poles on public rights of way, could require that private party to lease the poles to others at a price set by the government.

I was sole trial counsel until I went on the bench, at which time representation was assumed by Marvin Barkin.

Successor Counsel for Withlacoochee:

Marvin Barkin, Esquire, of Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis, P.O. Box 1102, Tampa, FL 33601-1102, phone: 813-223-7474.

Principal Counsel for Time Warner:

Kevin Carey, Esquire, of Carlton Fields, P.O. Box 3239, Tampa, FL 33601-3239, phone: 813 223-7000.

Gardner Gillespie, 556 13th St. NW, Washington, DC 20004, phone: 202-637-8796.

- (4) **ITC, Inc. v. Winn Dixie**  
Case #93-2972, Circuit Court, Hillsborough County  
Judge Perry Little  
Date of representation: 1993-1994

This was an environmental damage case. I defended Winn Dixie, which had spilled corn syrup while unloading from a railroad car. The substance had begun to solidify as it sat in the open and one of Winn Dixie's employees had used a bulldozer to bury a large quantity of the substance behind the Winn Dixie ice cream plant. A few months later, one of Winn Dixie's downstream neighbors suffered a fish kill in a pond located on its property. The case involved issues of whether the corn syrup damaged the environment and involved expert testimony from hydrologists, chemists and fisheries experts.

A jury rendered a verdict in favor of the fish owner who was awarded money damages.

Counsel for Plaintiff ITC:

David Galloway, Esquire, of the Law Offices of David H. Galloway, 506 N. Alexander Street, Plant City, FL 33566-3036, phone: 813-754-3438.

- (5) **Jaeger v. Boyter**  
Case #82-1431, Federal Court, United States District Court for the Middle District of Florida  
Judge Terrell Hodges  
Date of representation: 1982-1985

I represented Jaeger, the son of a nationally known law professor at Georgetown University. The professor, during the last year or so of his life, had developed a romantic relationship with one of his students. The professor was in his 70's and in declining health. The girlfriend was 32. Shortly before his death, the professor transferred all of his assets to the girlfriend. A dispute between the son and the girlfriend arose immediately following the professor's death. The jury returned a mixed verdict finding some of the transfers valid and some invalid.

This case took on additional significance for me because it involved a lengthy jury trial in front of Judge Terrell Hodges which was a great learning experience. Additionally, Mike Addison, opposing counsel, had attended Georgetown specifically because Professor Jaeger was there although he never took a class with him.

Counsel for Boyter:

Michael Addison, Esquire, of the Law Offices of Michael C. Addison, P.O. Box 2175, Tampa, FL 33601-2175, phone: 813-223-2000.

Charles Ketchey, Jr., Esquire, of Ketchey Horan, P.A., P.O. Box 500, Tampa, FL 33601-0500, phone: 813-223-9395.

- (6) **Dykes v. Brown**  
Hillsborough County Circuit Court, case #90-20135, Judge James Whittemore  
Citation: 601 So.2d 568 (Fla. 2d DCA 1992), *rev. den.*, 613 So. 2d 2 (Fla. 1992).  
Judges McDonald, Lehan and Threadgill  
Date of representation: 1990-1992

I represented Mr. Dykes, the father of a child born out of wedlock. When he declined to marry the mother, she refused to allow visitation and gave the child her own last name. The significant issue concerned the naming of the child. The Florida Statute appears to make the mother the sole arbiter of choosing a name for a child born out of wedlock. The father was successful in changing the child's last name to his by showing, through the mother's own expert, that it was in the child's best interest.

Additionally, Mr. Dykes was successful in having the attorneys fees portion of the statute construed to include awards to men even though the express wording refers only to women.

Counsel for Brown:

David Galloway, Esquire, of the Law Offices of David H. Galloway, 506 N. Alexander St., Plant City, FL 33566, phone: 813-754-3438.

Edna Elliott, Esquire, of Edna Y. Elliott, J.D., P.A., 111 S. Blvd., Tampa, FL 33606, phone: 813-254-5051.

- (7) **Mostoufi v. Presto Food Stores, Inc.**  
Hillsborough County Circuit Court, Case #92-01138, Judge James Whittemore  
Citation: 618 So. 2d 1372 (Fla. 2d DCA 1993).  
Judges Campbell, Frank and Parker  
Date of representation: 1992-1993

I represented Presto Food Stores, Inc. which was sued by the owner of a convenience store for alleged gasoline contamination to the soil. Mostoufi had purchased the property from an individual who had purchased it from Presto a few years earlier. The issues in the case were whether caveat emptor, which had been abolished in Florida a few years earlier as to residential property, was still viable as to commercial property, and whether, under Florida's environmental damage statute, a landowner could sue a remote seller for damages. Both issues were resolved in Presto's favor on summary judgment and were upheld on appeal.

Counsel for Mostoufi:

Russell Thomas, Esquire, of Anderson & Orcutt, 401 E. Jackson St. #2400, Tampa, FL 33602, phone: 258-4747.

Co-counsel for appeal:

David Maney, Esquire, of Maney, Damsker & Jones, P.A., P.O. Box 172009, Tampa, FL 33672, phone: 813-228-7371.

- (8) **Dicks v. Dicks**  
Hillsborough County Circuit Court, Case #80-5829  
Date of representation: 1980  
Judge Vernon Evans

This divorce case involved a broad range of issues and constitutes a good example of my practice in the family law area. James Dicks was the owner of two resorts, one in Mount Snow, Vermont, and one in Crystal River, Florida. The divorce was bitter and involved property division, alimony, and child custody. It was ultimately settled.



Counsel for Marcia Dicks:

Stephen Sessums, Esquire, of Sessums, Mason & Black, P.A., 307 S. Magnolia Avenue, Tampa, FL 33606-4108, phone: 813-251-9200.

- (9) **Staving v. TriState Motor Transit, Inc.**  
Hillsborough County Circuit Court, Judge James Whittemore  
Case #88-22208  
Date of representation: 1988-1990

This was a typical personal injury action tried to jury verdict. I represented Karen Staving, the driver of an automobile, who received serious facial injuries when she ran into a flatbed trailer which had pulled across her lane of travel and stopped, blocking the roadway. The accident occurred at night and the lights on the flatbed trailer, even though working, tended to blend into the myriad of lights in the background.

The case involved the use of experts on the issues of accident reconstruction and lighting as well as medical experts concerning injuries. Karen Staving received an award of money damages in the case.

Counsel for Tri-State:

G. Yates Rumbley, Esquire, of Cameron, Marriott, Walsh, Hodges & Coleman, P.A., 1020 E. Ridgewood Street, Orlando, FL 32803-5726, phone: 407-425-4251.

- (10) **Purcell v. Charles Foy and Folds Transport**  
Hillsborough County Circuit Court, Judge John Hodges  
Case #89-16468 and 88-14677  
Date of representation: 1989-1991

This is another typical personal injury action. I represented Susan Purcell, a passenger in a vehicle on Interstate 4 which was sideswiped and subsequently flipped by an 18-wheeler. The case involved an interesting interplay between interstate commerce regulations and lessor/lessee liabilities.

The jury returned a verdict in favor of Susan Purcell for her injuries. However, the court ruled against her on the liability issue concerning interstate commerce regulations. That ruling affected the collectability of the damage award.

Counsel for Co-Plaintiff, Susan Purcell's brother:

Woodson Isom, Jr., Esquire, of A. Woodson Isom, Jr., P.A., 101 S. Franklin Street #101, Tampa, FL 33602, phone: 813-276-0999.

## Counsel for Folds Transport:

James Kadyk, Esquire, of Smith, Clark, Delesic, Bierley, Mueller & Kadyk, 100 N. Tampa Street, #2120, Tampa, FL 33602-5809, phone: 813-226-1873.

**Members of Legal Community who have had recent contact with me as a judge:**

- (1) William Hahn, Esquire, of Hahn, Morgan & Lamb, P.A., 2701 N. Rocky Point Drive #410, Tampa, FL 33607, phone: 813-281-9700.
- (2) Edward Savitz, Esquire, of Bush, Ross, Gardner, Warren & Rudy, P.A., 220 S. Franklin Street, Tampa, FL 33602-5330, phone: 813-224-9255.
- (3) Michael Rywant, Esquire, of Rywant, Alvarez, Jones, Russo & Guyton, P.A., P.O. Box 3283, Tampa, FL 33601-3283, phone: 813-229-7007.
- (4) William D. Shepherd, Esquire, c/o Hillsborough County Property Appraiser's Office, 601 E. Kennedy Blvd., 13<sup>th</sup> Floor, Tampa, FL 33602, phone: 813-276-8815.
- (5) Richard M. Blau, Esquire, of Holland & Knight, LLP, P.O. Box 1288, Tampa, FL 33601-1288, phone: 813-227-8500.
- (6) Caroline Black, Esquire, of Sessums, Mason & Black, P.A., 307 S. Magnolia Avenue, Tampa, FL 33606-4108, phone: 813-251-9200.
- (7) James P. Knox, Esquire, of Knox & Givens, P.A., 607 W. Horatio Street, Tampa, FL 33606-2227. Phone: 813-254-0034, phone: 813-254-0034.
- (8) Catherine M. Catlin, Esquire, of Catherin M. Catlin, P.A., 412 E. Madison Street #817, Tampa, FL 33602, phone: 813-277-0928.
- (9) David A. Maney, Esquire, of Maney, Damsker & Jones, P.A., P.O. Box 172009, Tampa, FL 33672-2009, phone: 813-228-7371.
- (10) Benjamin H. Hill, Esquire, of Hill, Ward & Henderson, P.A., P.O. Box 2231, Tampa, FL 33601-2231, phone: 813-221-3900.

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

In addition to my significant litigation experience, I have been involved in the following legal activities, among others:

I have been a member of the Hillsborough County Bar Association since approximately 1975. I served as editor of the monthly newsletter from approximately 1984 to 1986, as director in 1983-1985, as Vice President in 1986, and as president in 1987 to 1988.

I have been a member of the Florida Bar Association from 1972 to the present. I was on the Attorneys Fee Committee from 1978 through 1981, serving as its vice-chair in 1979 and the chair in 1980. I also served on the Jurisprudence Committee from 1974 to 1977 and was its chair in 1977. I also served on the Annual Meeting Committee in 1982.

Throughout my career, I have been active in pro bono activities with Bay Area Legal Services, donating a significant amount of time before becoming a judge. In 1987, as President of the Hillsborough County Bar Association, I greatly increased the number of lawyers volunteering their time through Bay Area Legal Services by convincing the local trial judges to put sign up sheets in the waiting areas of their offices.

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

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

As an employee of the State of Florida, I have a deferred compensation plan and a retirement plan. I continue to maintain a profit sharing retirement account at my former law firm. Contributions cannot be made to that account since I am no longer affiliated with the firm. It is administered by an entity independent of the law firm. It will be rolled over to my individual IRA account at the end of June, 2000. (It is presently frozen in a blackout period because of a transfer of investment assets by the firm to a new mutual fund company.)

I also had a 7 ½% interest in a contingent fee from one case from my former firm. That case finally settled in March, 2000, for \$350,000. I received \$26,250 in May, 2000.

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

I am aware of no conflicts that would need to be resolved. However, if any such conflicts arose, I would follow the judicial canons of ethics and recuse myself as required.

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

No.

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

A copy of the financial disclosure report required by the Ethics in Government Act of 1978 is attached.

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

The financial net worth statement with requested schedules is attached.

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

My only role in a political campaign was as a non-partisan candidate for election as a Circuit Judge in 1994. I won that election and have been a Circuit Judge since 1995.

AO-10 (w)  
Rev. 1/2000

**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**

*Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4, Sec. 101-112)*

<b>1. Person Reporting</b> (Last name, first, middle initial) MOODY, JR., JAMES S.		<b>2. Court or Organization</b> U.S. Dist. Ct. Middle Dist. FL	<b>3. Date of Report</b> 06/09/2000
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. Dist. Ct. Judge Nominee		<b>5. Report Type (check type)</b> X Nomination, Date 06/08/2000 Initial Annual Final	<b>6. Reporting Period</b> 01/01/1999 to 05/31/2000
<b>7. Chambers or Office Address</b> Hillsborough County Courthouse 419 Pierce Street, Room #314 Tampa, FL 33602		<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	
<i>IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.</i>			

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

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Custodian (bank account)	for children: Ashley, Jamey, Tricia
2 Director	Florida Blue Key Advisory Board (University of Florida)
3 Director, Vice-Chair	Hillsborough Tomorrow

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

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 02-02-76	Trinkle, Redman Profit Sharing Plan - retirement account with former firm, no control, no participation in profits of firm. Amended 03-01-00.
2 12-94	One-half interest in contingent fee from one case with former firm
3	

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

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1998	State of Florida	107,000
2 1999	State of Florida	114,000
3 YTD 2000	State of Florida	39,000
4 98-00	Vision Care, Inc. (spouse)	

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	MOODY, JR., JAMES S.	06/09/2000

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

*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

<input type="checkbox"/> NONE (No such reportable reimbursements.)	SOURCE	DESCRIPTION
1 EXEMPT		
2		
3		
4		
5		
6		
7		

**V. GIFTS**

*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

<input type="checkbox"/> NONE (No such reportable gifts.)	SOURCE	DESCRIPTION	VALUE
1 EXEMPT			
2			
3			

**VI. LIABILITIES**

*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

<input type="checkbox"/> NONE (No reportable liabilities.)	CREDITOR	DESCRIPTION	VALUE CODE*
1 NONE			
2			
3			
4			
5			
6			

\* VAL CODES: J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001 to \$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000  
 0=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more

**FINANCIAL DISCLOSURE REPORT** Name of person reporting: MOODY, JR., JAMES S. Date of Report: 06/09/2000

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

A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure				
					(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)		
NONE (No reportable income, assets, or transactions)										
1 SUN TRUST ACCOUNTS										EXEMPT
2 -- Individual checking	A	Interest	J	T						
3 -- Polk County Property	A	Interest	J	T						
4 -- McIntosh Road	A	Interest	J	T						
5 -- Young & Moody	A	Interest	J	T						
6 -- Beach Account	A	Interest	J	T						
7 -- Beach Hi-Fi	A	Interest	J	T						
8 -- Joint Checking	A	Interest	J	T						
9 -- Joint Savings	A	Interest	J	T						
10 EDWARD JONES										
11 -- Individual	A	Interest	J	T						
12 -- Joint Condo	A	Interest	J	T						
13 GREAT WESTERN (Closed in 1999)	B	Interest								
14 BANK AMERICA STOCK	E	Dividend	N	T						
15 GEO THERMAL STOCK	A	None	N	W						
16 LEE MORTGAGE	C	Interest	J	T						
17 PATEL MORTGAGE	E	Interest	M	T						
1 Inc/Gain Codes: A=\$1,000 or less    B=\$1,001-\$2,500    C=\$2,501-\$5,000    D=\$5,001-\$15,000    E=\$15,001-\$50,000 (Col. B1, D4)    F=\$50,001-\$100,000    G=\$100,001-\$1,000,000    H=\$1,000,001-\$5,000,000    I=\$5,000,001 or more										
2 Val Codes: J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001-\$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000 (Col. C1, D3)    O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more										
3 Val Mth Codes: Q=Appraisal    R=Cost (real estate only)    S=Assessment    T=Cash/Market (Col. C2)    U=Book Value    V=Other    W=Estimated										



<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting MOODY, JR., JAMES S.	Date of Report 06/09/2000
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(Includes those of spouse and dependent children. See pp. 36-34 of Instructions.)

A. Description of Assets (including trust assets)  <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
18 REAL PROPERTY					EXEMPT				
19 -- Diamond Hill	A	Rent	K	W					
20 -- Polk County	A	Rent	M	W					
21 -- Franklin Street, Plant City, FL	A	Rent	L	W					
22 -- Condo, Longboat Key, FL	D	Rent	L	W					
23 -- Rental property, Wimauma, FL	D	Rent	L	W					
24 -- Rental property, McIntosh, Hillsborough Co., FL	D	Rent	L	W					
25 -- Property #1, Celo, NC	A	None	O	W					
26 -- Property #2, Celo, NC	A	None	K	W					
27 -- Property #3, Highlands, NC	A	None	K	W					
28 -- Rental property, Plant City, FL	D	Rent	K	W					
29 INVESTMENT PARTNERSHIP	F	Dividend	P1	T					
30 -- Bank of America stock									
31 -- Bank of Granite stock									
32 -- Carolina Bank stock									
33 -- Coastal Financial stock									
34 -- Colonial Bancgroup stock									

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

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting MOODY, JR., JAMES S.	Date of Report 06/09/2000
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**VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions** (Includes those of spouse and dependent children. See pp. 36-34 of Instructions.)

A. Description of Assets (including trust assets)  <i>Place "CO" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
35 -- First Tennessee stock					EXEMPT				
36 -- SunTrust stock									
37 -- Wachovia stock									
38 -- Xerox stock									
39 -- Dell stock									
40 SUNTRUST IRA (Rollover to Edward Jones)	A	Interest							
41 EDWARD JONES IRA	A	Interest	J	T					
42 -- MCI WorldCom stock									
43 PROFIT SHARING RETIREMENT ACCT (Changed to Edward Jones)	A	Dividend							
44 EDWARD JONES RETIREMENT ACCOUNT	A	Dividend	N	T					
45 -- American Growth Fund of America									
46 -- American New Perspective									
47 -- American Washington Mutual Investors									
48 -- American New Economy									
49 -- American Smallcap World									
50 CUSTODIAN ACCOUNT, SUNTRUST	A	Interest	J	T					
51 TRUST #1	E	Dividend	P1	T					
1 Inc/Gain Codes: A=\$1,000 or less      B=\$1,001-\$2,500      C=\$2,501-\$5,000      D=\$5,001-\$15,000      E=\$15,001-\$50,000 (Col. B1, D4)      F=\$50,001-\$100,000      G=\$100,001-\$1,000,000      H=\$1,000,001-\$5,000,000      I=\$5,000,001 or more									
2 Val Codes:      J=\$15,000 or less      K=\$15,001-\$50,000      L=\$50,001-\$100,000      M=\$100,001-\$250,000      N=\$250,001-\$500,000 (Col. C1, D3)      O=\$500,001-\$1,000,000      P=\$1,000,001-\$5,000,000      Q=\$5,000,001-\$25,000,000      R=\$25,000,001-\$50,000,000      P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal      R=Cust (real estate only)      S=Assessment      T=Cash/Market (Col. C2)      U=Book Value      V=Other      W=Estimated									

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting MOODY, JR., JAMES S.	Date of Report 06/09/2000
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**VII. Page 4 INVESTMENTS and TRUSTS-- income, value, transactions** *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
	(1) Amount Code (A-I)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure				
					(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-I)	(5) Identity of buyer/seller (if private transaction)		
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)										
52 -- Agribands stock										EXEMPT
53 -- Amsouth stock										
54 -- Bank of America stock										
55 -- Coca Cola stock										
56 -- Coastal Financial stock										
57 -- Compass stock										
58 -- First Tennessee stock										
59 -- First Union stock										
60 -- Flowers Ind. stock										
61 -- Motorola stock										
62 -- Ralcorp Holdings stock										
63 -- Ralston Purina stock										
64 -- SouthTrust stock										
65 -- SunTrust stock										
66 -- Wachovia stock										
67 WIFE										
68 -- 401(K)	B	Dividend	K	T						
1 Inc/Gain Codes: A=\$1,000 or less    B=\$1,001-\$2,500    C=\$2,501-\$5,000    D=\$5,001-\$15,000    E=\$15,001-\$50,000 (Col. B1, D4)    F=\$50,001-\$100,000    G=\$100,001-\$1,000,000    H1=\$1,000,001-\$5,000,000    H2=\$5,000,001 or more										
2 Val Codes:    J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001-\$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000 (Col. C1, D3)    O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more										
3 Val Mth Codes: Q=Appraisal    R=Cost (real estate only)    S=Assessment    T=Cash/Market (Col. C2)    U=Book Value    V=Other    W=Estimated										

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting MOODY, JR., JAMES S.	Date of Report 06/09/2000
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**VII. Page 5 INVESTMENTS and TRUSTS -- income, value, transactions** *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
					If not exempt from disclosure				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (I-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	(2) Date: Month-Day	(3) Value Code (I-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
69 -- Deferred compensation	A	Interest	J	T	EXEMPT				
70 -- SunTrust checking	A	Interest	J	T					
71 -- SunTrust savings	A	Interest	J	T					
72 -- Edward Jones	A	Interest	J	T					
73 CHILDREN									
74 -- Ryan bank account	A	Interest	J	T					
75 -- U.S. Savings bonds	A	Interest	J	T					
76 -- Jamey bank account	A	Interest	J	T					
77 -- Tricia bank account	A	Interest	J	T					
78 REAL PROPERTY #1, Gainesville, FL	C	Rent	L	W					
79 LTD. PARTNERSHIP REAL PROPERTY, Tampa, FL	A	Rent	N	W					
80 MORTGAGE REC. #1, Davenport, FL	C	Interest	L	T					
81 SOUTHRUST STOCK	A	Dividend	J	T					
82 SUNTRUST STOCK	A	Dividend	J	T					
83 TRUST #2	A	Dividend							Terminated-assets distri. to SC Trust #1
84 SC TRUST #1	D	Dividend							Terminated-benes.put assets in SC Trust #3
85 SC TRUST #3	A	Dividend	P1	T					
<b>1 Inc/Gain Codes:</b> A=\$1,000 or less    B=\$1,001-\$2,500    C=\$2,501-\$5,000    D=\$5,001-\$15,000    E=\$15,001-\$50,000 (Col. B1, D4)    F=\$50,001-\$100,000    G=\$100,001-\$1,000,000    H=\$1,000,001-\$5,000,000    I=\$5,000,001 or more    H2=\$5,000,001 or more									
<b>2 Val Codes:</b> J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001-\$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000 (Col. C1, D3)    O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more									
<b>3 Val Meth Codes:</b> Q=Appraisal    R=Cost (real estate only)    S=Assessment    T=Cash/Market (Col. C2)    U=Book Value    V=Other    W=Estimated									

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting MOODY, JR., JAMES S.	Date of Report 06/09/2000
	<i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>	

**VII. Page 6 INVESTMENTS and TRUSTS -- income, value, transactions**

A. Description of Assets (including trust assets)  <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (I-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
86 -- AmSouth stock					EXEMPT				
87 -- Bank of America stock									
88 -- Bank of Granite stock									
89 -- Coastal Financial stock									
90 -- FNB Corp. stock									
91 -- First Union stock									
92 -- Merck stock									
93 -- Republic Bancshares stock									
94 -- SouthTrust stock									
95 -- SunTrust stock									
96 -- United Healthcare stock									
97 -- Wachovia stock									
98 JM TRUST #3	B	Dividend	N	W					
99 -- Anchor Fin. stock									
100 -- Bank South Carolina stock									
101 -- Coastal Financial stock									
102 -- Compaq stock									
1 In/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000									
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated									

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting MOODY, JR., JAMES S.	Date of Report 06/09/2000
	<i>(Includes those of spouse and dependent children. See pp. 56-54 of Instructions.)</i>	

A Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
103 -- First Tennessee stock					EXEMPT				
104 -- SunTrust stock									
105 -- Real property, Brooksville, FL									
106 MOODY & MOODY, INC. STOCK	D	Dividend	J	W					
107									
108									
109									
110									
111									
112									
113									
114									
115									
116									
117									
118									
119									
<b>1</b> Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000									
<b>2</b> Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$50,001-\$1,000,000 K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000 L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000 M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000 N=\$250,001-\$500,000 P4=\$50,000,001 or more									
<b>3</b> Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting MOODY, JR., JAMES S.	Date of Report 06/09/2000
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**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.**  
*(Indicate part of report.)*

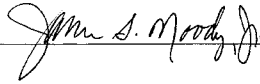
FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	MOODY, JR., JAMES S.	06/09/2000

**IX. CERTIFICATION**

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

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date



Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

**FILING INSTRUCTIONS**

Mail original and three additional copies to:

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



## FINANCIAL STATEMENT

NET WORTH AS OF MAY 31, 2000

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	33,000.00	Notes payable to banks—secured	
U.S. Government securities—add schedule. See attached schedule for	Child's US Savings Bonds Ryan	Notes payable to banks—unsecured	
Listed securities—add schedule	505,000.00	Notes payable to relatives	490,000.00
Unlisted securities—add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid tax and interest	
Doubtful		Real estate mortgages payable—add schedule	
Real estate owned—add schedule	1,485,000.00	Chattel mortgages and other liens payable	
Real estate mortgages receivable	224,000.00	Other debts—itemize:	
Autos and other personal property	30,000.00		
Cash value—life insurance			
Other assets—itemize:			
IRA	11,000.00		
Retirement account	275,000.00		
Interest in Moody Inv. Partnership	2,500,000.00	Total liabilities	490,000.00
Total Assets	5,063,000.00	Net Worth	4,573,000.00
		Total liabilities and net worth	
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	NONE	Are any assets pledged? (Add schedule.)	NONE
On leases or contracts	NONE	Are you defendant in any suits or legal actions?	NONE
Legal Claims	NONE	Have you ever taken bankruptcy?	NO
Provision for Federal Income Tax	NONE		
Other special debt	NONE		

\*\* Financial information as to wife and child living at home is attached. Information on my adult dependent children living outside my household (they are in college) is not included.

**SCHEDULE OF STOCKS AND BONDS**

<u>Shares</u>	<u>Description</u>	<u>Value</u>
9,262	Bank America	460,000.00
	Geo Thermal Systems, Inc.	45,000.00
<b>TOTAL</b>		<b>\$505,000.00</b>

EXHIBIT "B"

REAL ESTATE

Residence		150,000.00
1/4 interest Diamond Hill (10 acres vacant property)	1/4 interest	30,000.00
1/2 interest Polk Co. Prop. (37 acres vacant property)	1/2 interest	200,000.00
Franklin St. Pasture	1/6 interest	70,000.00
Castillian Condo	1/2 interest	100,000.00
Wimauma Presto	1/2 interest	80,000.00
McIntosh Rd.	1/3 interest	90,000.00
North Carolina - Celo Knob		600,000.00
North Carolina - Blue Tract	1/2 interest	45,000.00
North Carolina lot (Sagee Woods)	1/2 interest	50,000.00
Tampa Condo	joint with wife (1/2 total value)	20,000.00
Young & Moody Building	1/5 interest	<u>50,000.00</u>
 TOTAL		 \$1,485,000.00

EXHIBIT "D"

**ATTACHMENT TO FINANCIAL STATEMENT**

**KELLI MOODY (Wife)**  
Director/Manager, VCI, Inc.

Assets:	401(K)	\$35,000
	Deferred compensation	\$ 7,000
	Cash	\$ 2,000
	½ Condo	\$20,000
	½ joint accounts with husband	<u>\$ 3,000</u>
TOTAL ASSETS:		\$ 67,000
Liabilities:	James & Irma Moody (½)	\$20,000
	Discover card	\$ 3,000
	Visa	<u>\$ 2,000</u>
TOTAL LIABILITIES:		<u>\$ 25,000</u>
NET WORTH:		\$ 42,000

\*\*\*\*\*

**RYAN FULCHER (Son)**  
Senior in high school

Assets:	Cash	\$ 2,000
	Savings bonds	\$ 1,500
	Prepaid tuition/dorm	<u>\$ 6,000</u>
TOTAL ASSETS:		\$ 9,500

**NOTE:** My other children are college students living outside the home. They are Ashley (25), Jamey (22), and Tricia (20). I still claim Jamey and Tricia as dependents. If financial information on them is required, please advise and I will promptly provide it.

### III. GENERAL (PUBLIC)

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

Throughout my career, I have been active in pro bono activities with Bay Area Legal Services. I had donated over 110 pro bono hours before I took the bench at the beginning of 1995. In 1987, as President of the Hillsborough County Bar Association, I greatly increased the number of lawyers volunteering their time through Bay Area Legal Services by convincing the local trial judges to put sign up sheets in the waiting areas of their offices.

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

I was a member of the Plant City Lions Club from 1973 to 1994. When I first became a member, the Lions Club was limited to men and had a separate associate organization for women. On several occasions, I expressed to my fellow members my desire that Lions International change these rules. While I had no control over rule changes and claim no credit, those rules were ultimately changed.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?**

Yes.

**If so, did it recommend your nomination?**

Yes.

**Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

In the fall of 1999, I learned that applications would be accepted in January 2000, by the Middle District Conference for recommendations to fill four vacancies on the United States District Court for the Middle District of Florida. It is my understanding that 41 applications were received. The conference, which is made up of lawyers and citizens throughout the Middle District, reviewed the applications and granted personal interviews to 18 applicants. Following those personal interviews, the conference recommended nine applicants to Senator Bob Graham.

Senator Bob Graham and Senator Connie Mack worked together in the process to ensure that the final recommendations would be acceptable on a bipartisan basis. On March 15, 2000, each applicant had an interview with the two senators at the Orlando Airport. Senator Graham then recommended four individuals to President Clinton for nomination.

I then completed forms for the Department of Justice, the American Bar Association, and the Federal Bureau of Investigation, each of which conducted an investigation as to my qualifications.

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

No.

5. Please discuss your views on the following criticism involving “judicial activism.”

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

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

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes or individuals;
- c. A tendency by the judiciary to impose broad affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The jurisdiction of the federal judiciary is limited. Within the confines prescribed by the Constitution and Congress, the judicial branch is to resolve disputes involving an actual or threatened injury for parties with standing.

Our system of justice is grounded in the principle of *stare decisis*, the following of legal precedent which helps assure stability, predictability and limits of judicial power. Under the Constitution’s system of separation of powers of the three branches of government, the setting of policy and the business of governing are consigned to the representative branches.

**I. BIOGRAPHICAL INFORMATION (PUBLIC)**

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

Gregory A. Presnell

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

Office:  
Akerman, Senterfitt & Eidson, PA  
Post Office Box 231  
Orlando, Florida 32802

Residence:  
Windermere, Florida

**3. Date and place of birth.**

November 20, 1942, Tampa, Florida

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

Yes. I am currently married to Cecelia Bonifay; we were married on January 2, 1987 in Orange County, Florida. My spouse is a lawyer at Akerman, Senterfitt & Eidson, P.A., Post Office Box 231, Orlando, FL 32802

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

College of William and Mary  
Williamsburg, Virginia  
1960 through 1964  
Bachelor of Arts Degree, Economics, 1964

University of Florida College of Law  
1964 through 1966  
Juris Doctorate, 1966



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

Upon graduation from law school in December 1966, I joined the Akerman, Senterfitt firm. Except for a six-month tour of duty in the U.S. Army in 1967, I have been continuously employed by that firm since 1966.

President, Grande Quay Homeowners Association, 2000  
President, Legal Aid Society of the Orange County (Florida) Bar Association, 1974  
President, Orange County (Florida) Bar Association, 1975  
President, Florida Legal Services, Inc., 1979  
Member, Board of Directors of The Florida Bar Foundation, 1984-1987  
Member, Board of Governors, The Florida Bar, 1989 to 1993

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

Yes. I served in the United States Army Reserve from April 1967 to April 1973; Serial No. [REDACTED]. I attained the rank of Specialist 4th class, and received an honorable discharge. My Military Occupational Speciality was military intelligence.

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

I graduated from law school with high honors (second in my class) and was elected to the Order of the Coif honorary society. I was named the outstanding graduating law student of my class, having been a member of the Moot Court Team and an Executive Editor of the University of Florida Law Review. During law school, I received numerous "Book" awards for obtaining the highest grade in the class.

Additional Honors and Awards:

1990-Listed in *Best Lawyers in America*, Business Litigation Section  
1991-Award for Outstanding Chairperson of the Orange County Bar Association  
1992-President's Award of Merit for Service to The Florida Bar  
1996-Orange County Bar Association Bill Trickle Professionalism Award  
1998-Fellow, American College of Trial Lawyers

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

Member, The Florida Bar, 1967 to present  
 Member, American Bar Association, 1968 to present  
 Member, Orange County (Florida) Bar Association, 1967 to present  
 President, Legal Aid Society of the Orange County (Florida) Bar Association, 1974  
 President, Orange County (Florida) Bar Association, 1975  
 Founding Member, Greater Orlando Area Legal Services (GOALS), 1976  
 President, Florida Legal Services, Inc., 1979  
 Member, Board of Directors of The Florida Bar Foundation; Chair, Legal Aid Grants Committee, 1984 to 1987  
 Member, Board of Governors, The Florida Bar, 1989 to 1993; Chair, Investment Committee; Member, Budget Committee; Vice-chair, Access to the Legal System Committee; Member, Program Review Committee; Chair, Legal Technicians Study Committee; Chair, Special Committee on Nonlawyer Practice  
 Member, Florida Supreme Court Gender Bias Study Commission  
 Chair, Business Litigation Certification Committee of The Florida Bar, 1999  
 Chair, Arbitration Committee of the Orange County (Florida) Bar Association, 1991  
 Chair, Florida Ninth Circuit Judicial Nominating Commission, 1982  
 Fellow, American College of Trial Lawyers, 1997  
 Delegate, Eleventh Circuit Judicial Conference (Federal), 1994-1996  
 Member, Florida Supreme Court Committee on Standard Jury Instructions, February 2000 to present

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

As a practicing lawyer, I am a member of The Florida Bar, which occasionally takes positions concerning proposed legislation; however, I have not been personally involved in any such activity.

I am also a member of the Citrus Club of Orlando and President of the Grande Quay Homeowners Association.

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

Member of The Florida Bar since June, 1967

Admitted to The Florida Supreme Court, June 1967

Federal Court admissions:

United States District Court for the Middle District of Florida, 10/19/67

United States District Court for the Northern District of Florida, 2/23/81

United States Court of Appeals, Fifth Circuit, 1/3/68

United States Court of Appeals, Sixth Circuit 10/7/71

United States Court of Appeals, Eleventh Circuit 10/1/81

United States Court of Appeals, District of Columbia Circuit 3/10/81

Supreme Court of the United States, 3/8/71

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

1. Note, Florida's New Rules of Criminal Procedure; University of Florida Law Review, 1966.
2. Report of the Committee on Re-Evaluation of Legal Aid Guidelines, Briefs, Newsletter of the Orange County Bar Association, March-April, 1972.
3. "Motor Carrier Regulation," Briefs, Newsletter of the Orange County Bar Association, July-August-September, 1973.
4. Report of the Legal Technicians Study Committee, June, 1992 (co-authored with Robert Sondak), submitted to Board of Governors of The Florida Bar.
5. Report of the Special Committee on Non-Lawyer Practice, June, 1992, submitted to the Board of Governors of The Florida Bar.
6. Acceptance speech given to the Orange County Bar Association and published in the Orange County Bar Briefs, June 1996.

7. President's Message, Briefs, Newsletter of the Orange County Bar Association, October, November, December, 1975; February, April, May, 1976.

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

My health is good. The date of my last physical examination is April, 2000.

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

I have never held judicial office.

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

Not applicable.

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

For a brief period of time in the 1970s, I was on the Municipal Planning Board for the City of Orlando. I was appointed by the mayor of Orlando, Carl Langford.

17. Legal Career:

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

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

I have never served as a judicial clerk.

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

I have never practiced alone.

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

Upon graduation from law school in December 1966, I went to work as an associate with the Akerman, Senterfitt firm.

The firm is located at 255 South Orange Avenue, Orlando, Florida 32801, and has been at that location for approximately twenty-five years.

I became a partner in the firm in 1971. I have served in numerous positions at the firm, including managing partner, vice president (managing shareholder) of the Orlando office, and Chair of the Orlando Litigation Department.

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

I have maintained a litigation practice throughout my career. During the first few years, as a young lawyer, I handled a wide variety of civil cases and also several criminal cases in federal court on a pro bono basis. During the 1970s, I developed a specialty in transportation law, representing trucking companies and passenger transportation companies. In the late 1970s and early 1980s, I handled several large cases for the air lines serving Orlando. During the past twenty years, my practice has been primarily devoted to business litigation in state and federal courts. I am one of 203 lawyers certified by The Florida Bar in Business Litigation. I have handled many different types of commercial disputes, including antitrust, securities, products liability, breach of contract, professional liability, banking and power generation. I

have also done a considerable amount of appellate work and have handled more than fifty appeals in both state and federal courts. I am also a certified Circuit Court Civil Mediator, but given my busy trial practice, my mediation work has been limited.

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

I specialize in business litigation. My typical clients include independent power producers, banks, manufacturers, insurance companies, accounting firms, sports leagues, securities brokerage firms, airlines and passenger transportation companies.

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

Since graduation from law school, I have appeared in court frequently. During the first ten to twelve years, many of my cases were administrative hearings before the Interstate Commerce Commission and Florida Public Service Commission.

**2. What percentage of these appearances was in:**

- (a) federal courts; 50%
- (b) state courts of record; 45%
- (c) other courts. 05%

**3. What percentage of your litigation was:**

- (a) civil; 95%
- (b) criminal. 5%

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

I would estimate that I have tried more than 30 cases to verdict or judgment. In addition, I have handled approximately 12-15 arbitration proceedings and approximately 50 administrative hearings to final resolution, and have argued more than 50 appeals in the state and federal appellate courts. During the past 27 years, I have acted as lead counsel in most of these cases.

5. What percentage of these trials was:

- (a) jury; 50%
- (b) non-jury. 50%

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

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

1. Cedar Bay Generating Company v. Florida Power & Light

Fourth Judicial Circuit, Jacksonville, Florida

The Honorable Karen Cole

Case No. 97-07037 CA, Div. CV-A

Opposing Counsel: David Boies, Esq.  
Boies & Schiller, L.L.P.  
80 Business Park Drive, Suite 110  
Armonk, New York 10504  
(914) 273-9800

Michael J. Dewberry, Esquire  
Hedrick, Dewberry & Regan, P.A.  
50 North Laura Street, Suite 2225  
Jacksonville, Florida 32202  
(904) 356-1300

Co-Counsel: John A. DeVault, III, Esq.  
Bedell, Dittmar, DeVault, Pillans & Cox, PA  
The Bedell Building  
101 East Adams Street  
Jacksonville, FL 32202  
(904) 353-0211

I represented the plaintiff, Cedar Bay, in a breach of contract action against Florida Power & Light. The case involved the manner in which FPL was dispatching the electrical output of the Cedar Bay electric generation facility located in Jacksonville, Florida. This was an extremely complex case, both factually and legally and was litigated on a fast track. In a period of eighteen months, we took or defended approximately fifty depositions, engaged in substantial discovery and motion practice and tried the case to a jury in Jacksonville for three weeks. The factual issues were complex because they involved the method by which a 250 mega watt (MW) power plant is dispatched within a 16,000 MW utility system. These dispatch practices involve the use of highly sophisticated computer models and were the subject of expert testimony for which I was responsible. One of the challenging legal issues in the case was the applicability of the implied covenant of good faith and fair dealing in a contract which the court had ruled to be otherwise unambiguous. This issue also presented difficult evidentiary problems, including application of the parol evidence rule.

On August 12, 1999, the jury returned a verdict for plaintiff in the amount of \$18.5 million, finding that the defendant had breached its duty of good faith and fair dealing in connection with its dispatch practices. Subsequently, the court entered a declaratory judgment with a net present value in excess of \$50 million; the case is now on appeal to the First District Court of Appeal. I was co-lead counsel in this case, primarily responsible for the technical issues, the energy payment claim, the expert witnesses and damages. The case was defended by noted trial lawyer, David Boies.

2. ADI v. Armstrong World Industries, Inc.

United States District Court, Middle District of Florida  
The Honorable Robert Mehrige  
Case No. 94-1024-CIV-ORL-22

Opposing Counsel: G. McVay Voght, Esq.  
McMillan, Reinhart & Voght, PA  
20 North Orange Avenue, Suite 700  
Orlando, FL 32801  
(407) 843-0126

Co-Counsel: Roger Spaeder, Esq.  
Zuckerman, Spaeder  
1201 Connecticut Avenue, NW  
Washington, DC 20036  
(202) 778-1800



Kathryn B. Hoeck, Esq.  
Akerman, Senterfitt & Eidson, P.A.  
255 South Orange Avenue  
Post Office Box 213  
Orlando, Florida 32802  
(407) 843-7860

From mid-1994 to 1996, I represented the defendant, Armstrong World Industries, Inc., in a federal court case alleging antitrust violations regarding the sale and distribution of vinyl composition commercial flooring tile ("VCT"). Armstrong was a national manufacturer of VCT and distributed its VCT, in part, through wholesale distributors. Armstrong's authorized distributor for the State of Florida was Cain & Bultman, which was a co-defendant in the case. The plaintiff did not want to purchase VCT through Cain & Bultman, but wanted to purchase directly from Armstrong, despite the fact that it did not meet Armstrong's wholesale distributor criteria and that Armstrong already had a wholesale distributor for the Florida territory.

The plaintiff brought claims under Section 2 of the Sherman Act, and the Florida Statute counterpart, alleging that Armstrong monopolized, attempted to monopolize, and conspired to monopolize the wholesale distribution of VCT within a portion of the state of Florida. Major issues relevant to the Section 2 claims included the relevant product and geographic markets, market power and damages. Armstrong's contention was, inter alia, that the wholesale distribution of VCT was too narrow of a market in that VCT was interchangeable with other commercial flooring products. Furthermore, the relevant geographic market was much broader than that ascribed by the plaintiff. Armstrong also claimed that the plaintiff failed to show injury to competition, as opposed to injury to itself, as is required by the antitrust laws.

The plaintiff also alleged claims of resale price maintenance under Section 1 of the Sherman Act, and the Florida Statute counterpart, and price discrimination under the Robinson-Patman Act. As to the latter issue, the plaintiff did not purchase product directly from Armstrong, and interposed the "sham entity" exception to the direct-seller doctrine.

Armstrong and Cain & Bultman filed a counterclaim against the plaintiff for violations of the Lanham Act, alleging that the plaintiff falsely represented itself as an Armstrong distributor which was likely to cause confusion or mistake with respect to the plaintiff's association with Armstrong, and with respect to Armstrong's sponsorship of the plaintiff's services.

As lead counsel, I took or defended all the major depositions and developed the expert testimony of an antitrust economist and a damages economist. After extensive

discovery, the case was tried to a jury in Orlando before the Honorable Robert Mehrige. On the third day of trial, in January, 1996, a confidential settlement was reached and the claims were dismissed.

3. Washington Power, Inc. v. West Penn Power Company  
 United States District Court, Western District of Pennsylvania  
 The Honorable Robert J. Cindrich  
 Case No. 95-0658
- Opposing Counsel: David L. McClenahan, Esquire  
 Kirkpatrick & Lockhart  
 1500 Oliver Building  
 Pittsburgh, Pennsylvania 15222  
 (412) 355-6500
- Co-Counsel: Edward J. Beder, Jr., Esquire  
 Spriggs & Hollingsworth  
 1350 I Street Northwest, Suite 900  
 Washington, DC 20005  
 (202) 898-5800
- Douglas G. Robinson, Esquire  
 Skadden, Arps, Slate, Meagher & Flom  
 1440 New York Avenue, N.W.  
 Washington, D.C. 20005-2107  
 (202) 371-7000

From 1995 to 1997, I represented the plaintiff, Washington Power, in a breach of contract and antitrust action against West Penn Power in Pittsburgh, Pennsylvania. This case involved a contract to build and operate an 80 megawatts (MW) waste coal-fired power plant in Western Pennsylvania. I was brought in as lead counsel to head up the plaintiff's legal team. The case involved extensive written discovery, numerous depositions and motion practice. In addition, the case presented difficult issues of contract and antitrust law under the Public Utility Regulatory Policy Act (PURPA).

Under the contract, Washington Power agreed to construct and operate a power plant costing in excess of \$200 million and to sell all of the power output to West Penn Power Company for a period of twenty-five years. During development, the project incurred delays as a result of regulatory proceedings which caused West Penn Power to claim that Washington Power missed a contractual milestone. In the meantime, the price of wholesale electricity had declined and West Penn Power refused to honor the contract. Numerous appeals were taken and ultimately Washington Power abandoned the project and sued West Penn Power for damages.

In addition to complex factual issues involving power plant development, the case involved difficult legal issues, including whether a wholesale supplier of electricity has standing to assert an antitrust claim against a utility purchaser who also competes with the plaintiff at the wholesale level. After extensive discovery and briefing of motions for summary judgment, the case was settled at mediation for \$48 million.

4. Orlando Cogen Ltd. v. Florida Power Corp.  
United States District Court, Middle District of Florida  
The Honorable Kendall Sharp  
Case No. 94-303-CIV-ORL-18  
Opposing Counsel: Chris Coutroulis  
Carlton, Fields  
Post Office Box 3239  
Tampa, FL 33601-3239  
(813) 223-7000  
  
Co-Counsel: Robert B. Nadeau, Esquire  
Akerman, Senterfitt & Eidson, PA  
Post Office Box 231  
Orlando, Florida 32802  
(407) 843-7860

From 1993 to 1995, I represented the plaintiff, Orlando Cogen, Ltd. (OCL), in a breach of contract and antitrust claim against Florida Power Corporation. OCL was a limited partnership formed by Air Products & Chemicals, Inc. to develop a 120 MW combined cycle cogeneration plant in Orlando, Florida. This was the first of three major cases that I handled on behalf of independent power producers against traditional investor-owned electric utilities. The case involved a long-term power purchase agreement under PURPA for the construction and operation of a cogeneration plant which obligated Florida Power Corporation to purchase the plant's electrical output for a period of twenty-five years. This case involved extremely complex factual and legal issues and was the subject of intense discovery. The contract issues included whether OCL was obligated to construct a back-up fuel supply system and whether Florida Power Corporation was properly calculating OCL's energy payment. The latter issue involved highly-technical issues of utility dispatch practices and the economic modeling of utility dispatch. From a legal standpoint, the case involved difficult issues of antitrust law including whether OCL could establish Florida Power Corporation's monopoly power in the relevant market and whether OCL could prove harm to competition.

This case was one of several cases against Florida Power Corporation involving a similar contract and was litigated as the lead case. Thus, the case was not only critical to the economic viability of the plaintiff's plant, but was of a "test" case

importance to virtually all other co-generators in Florida. In addition, several administrative proceedings before the Florida Public Service Commission were spawned by this litigation. These proceedings were held before the full commission, comprised of Commissioners Susan F. Clark (Chairman), J. Terry Deason, Joe Garcia, Julia L. Johnson and Diane K. Kiesling. I successfully represented Orlando Cogen Ltd. in these administrative proceedings as well, which involved extensive expert testimony about Florida Power Corporation's curtailment policies, and motions questioning the agency's jurisdiction. The lawsuit was settled at mediation after two years of intense litigation.

5. Trizec Properties, Inc. v. W.R. Grace  
 United States District Court, Middle District of Florida  
 The Honorable Anne Conway  
 Case No. 91-286-CIV-FTM-99D  
 Opposing Counsel: Kenneth B. McClain, Esquire  
 Humphrey, Farrington & McClain, PC  
 123 West Kansas  
 Independence, MO 64050  
 (816) 836-5050
- Co-Counsel: William C. Turner, Jr., Esquire  
 Akerman, Senterfitt & Eidson, PA  
 Post Office Box 231  
 Orlando, Florida 32802  
 (407) 843-7860

From 1992 to 1998, I represented defendant, W. R. Grace, as lead counsel in a products liability suit wherein the plaintiff sought damages in excess of \$10 million for alleged asbestos contamination of the one million square foot Clearwater Mall in Pinellas County, Florida. These asbestos property damage cases involve extensive factual development because the asbestos material was installed when the building was originally constructed in the 1960s. Factual development also included the circumstances surrounding the plaintiff's discovery of and efforts to abate the asbestos-containing material (ACM) in the context of a statute of limitations defense. These cases are also complex from a medical, economic and scientific standpoint and involve extensive expert testimony in the fields of medicine, industrial hygiene, microscopy, construction and economics. After extensive discovery and trial preparation, which I supervised, summary judgment was entered for the defendant on statute of repose grounds. The case was appealed to the United States Court of Appeals for the Eleventh Circuit. I co-authored appellee's brief and argued the appeal. The case was affirmed by the Court of Appeals. Argument was heard before Circuit Judge Dubina, and Senior Circuit Judges Roney and Eschbach. Thereafter,

following a series of evidentiary hearings and discovery, a cost judgment was entered on behalf of my client in excess of \$500,000, based on a prior offer of judgment.

6. Butterworth v. National League of Professional Baseball Clubs

Florida Ninth Judicial Circuit

The Honorable James Stroker

Case No. CI-92-1604

Opposing Counsel: Jerome W. Hoffman, Asst. Attorney General  
 Chief Antitrust Section  
 Department of Legal Affairs  
 Alexander Building, Suite 306  
 2020 Capitol Circle  
 Tallahassee, FL 32301  
 (850) 487-1963

Now in private practice:  
 Holland & Knight  
 315 South Calhoun Street, Suite 600  
 Tallahassee, FL 32301-1807  
 (850) 224-7000

Co-Counsel: Robert Kheel, Esq.  
 Willkie Farr & Gallagher  
 One Citicorp Center  
 153 East 53rd Street  
 New York, NY 10022  
 (212) 935-8000

In 1993-1994, I represented Major League Baseball (the National League) in several high profile proceedings involving the effort to move the San Francisco Giants to Tampa/St. Petersburg. One of these cases involved an antitrust claim against the league. In connection with that matter, the Florida Attorney General issued a civil investigative demand seeking all the league's records concerning this transaction. I filed a motion in circuit court to quash the subpoena, based on the historic antitrust exemption accorded to the business of baseball. The key issue was the scope of baseball's antitrust exemption: Did it apply solely to the reserve clause contained in players' contracts with the league, or did it extend, as I advocated, to the business of baseball, including relocation of franchises? Federal cases, and state court decisions following federal precedent, strongly supported the position I advocated. The circuit court, following extensive briefing and argument, issued an order quashing the subpoena. The State Attorney General appealed to the Fifth District Court of Appeal (before Judges Goshorn, Harris, and Peterson) which affirmed the lower court, but certified the question to the Florida Supreme Court as one of great public importance.

After briefing and argument before Chief Justice Grimes, and Justices Harding, Shaw, Kogan, Overton, and McDonald the Florida Supreme Court reversed. Butterworth v. National League of Professional Baseball Clubs, 644 So. 2d 1021 (Fla. 1994). Ultimately, Tampa Bay obtained an expansion team and the case was dropped.

7. Brevard County v. W. R. Grace  
 United States District Court, Middle District of Florida  
 The Honorable Robert Mehrige  
 Case No. 89-571-CIV-ORL-19  
 Opposing Counsel: Robert A. Vosbein  
 4500 One Shell Squire  
 New Orleans, LA 70139  
 (504) 581-3234
- Co-Counsel: P. Larry Farese, Esq.  
 Cummings & Lockwood  
 3001 Tamiami Trail North  
 Post Office Box 413032  
 Naples, FL 34101  
 (941) 262-8311
- P. Kevin Castel, Esq.  
 Cahill, Gordon & Reindel  
 80 Pine Street  
 New York, NY 10005-1702  
 (212) 701-3000

I represented defendant, W.R. Grace, as lead counsel in a products liability claim by Brevard County alleging asbestos contamination in the Titusville courthouse. The chief judge of the judicial circuit for Brevard County had ordered an emergency evacuation of the eight-story courthouse due to the discovery of asbestos contained in the building materials. The asbestos-containing building materials were removed at substantial cost to Brevard County. The County then sued W. R. Grace, allegedly a manufacturer of the building materials. Because of the public nature of the building and its occupants (e.g., judges), this became a high-profile case in which the plaintiff was seeking damages in excess of \$10 million. The case was factually complex, involving numerous difficult, scientific, medical and economic issues. The case also involved interesting legal issues including products liability, the state of the art defense, the economic loss rule, the statute of limitations and the statute of repose. I took or defended all of the major depositions, and supervised all aspects of discovery and pre-trial preparation. At the conclusion of a two-week jury trial in January, 1993, the jury returned a defense verdict. The case was affirmed on appeal

by the U.S. Court of Appeals, Eleventh Circuit (Circuit Judge Cox, Senior Circuit Judge Johnson, Senior District Judge Paine).

8. Delta Air Lines v. Greater Orlando Aviation Authority  
 U.S. District Court for the Middle District of Florida  
 The Honorable George C. Young  
 Case No. 79-230-Orl-Civ-Y  
 Opposing Counsel: Hubert W. Williams (deceased)  
 Robertson, Williams, Duane, Lewis, Briggs  
 & Ranson, PA  
 538 E. Washington  
 Orlando, FL 32801
- Co-Counsel: Egerton K. Van den Berg  
 Greater Orlando Aviation Authority  
 Orlando International Airport  
 1 Airport Boulevard  
 Orlando, FL 32827-4399  
 (407) 825-1826

Over a period of several years, beginning in 1979, I successfully represented Delta Air Lines and the other airlines providing scheduled service in Orlando in a series of cases in both state and federal court, involving construction of the new \$100 million terminal facility at the Orlando International Airport. In the late 1970s, the airlines agreed to finance the construction of a new airport in Orlando using revenue bonds backed by landing fees. The agreement included a commitment by the Greater Orlando Aviation Authority (GOAA) to maximize non-aviation concession fees through competitive bidding. After construction of the new facility began, GOAA extended the food and beverage concession without competitive bidding. Delta Air Lines, as the lead airline, sued in federal court to enjoin the extension of this concession and to require GOAA to issue the revenue bonds necessary to complete the project. I acted as lead counsel and supervised all aspects of this case. Following extensive fast-track discovery and several evidentiary hearings which I handled, the injunction was granted. This litigation and the surrounding political debate was extremely high-profile in the Orlando community and was critical to the success and financial viability of the project.

9. Hodgson v. Tamiami Trail Tours, Inc.  
United States District Court, Southern District of Florida  
The Honorable Peter Fay  
Case No. 71-1791-Civ-PF  
Opposing Counsel: Daniel M. Williams, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
1371 Peachtree Street NE  
Atlanta, GA 30309  
(800) 366-2753  
(current address unknown)
- Co-Counsel: Thomas C. Garwood, Esquire  
Garwood, McKenna, McKenna & Wolf  
815 North Garland Avenue  
Orlando, Florida 32801  
(407) 841-9496

This was a case of first impression, in which the Department of Labor asserted that my client, Trailways, had violated the Age Discrimination in Employment Act (ADEA). The defendant admitted that it had a policy against hiring new drivers over the age of 40, but claimed the policy was a bona fide occupational qualification (the BFOQ defense). The defense was based on defendant's seniority system which required new drivers to work the "extra board" until sufficient seniority would allow them to bid a regular route. Extra board work requires that drivers be available on short notice to drive long distances, often at night. The case involved interesting medical issues, including regarding the effects of the aging process on night vision. The case was filed in federal court in Miami. On March 31, 1972, Judge Peter Fay entered a judgment for the defendant. The case was appealed to the U.S. Court of Appeals, Fifth Circuit and was briefed twice. I wrote the briefs and presented oral argument before the Court of Appeals. The judgment was affirmed (Chief Judge Brown, Circuit Judge Ainsworth, and Circuit Judge Wisdom) and became a landmark case in the United States. Usery v. Tamiami Trail Tours, Inc., 531 F. 2d 224 (5th Cir. 1976).



10. Malinauskas v. United States of America  
 United States District Court, Middle District of Florida  
 The Honorable George C. Young  
 Case No. 72-295-Orl-Civ-1  
 Opposing Counsel: Jeffrey R. Jontz, Esq.  
 Assistant U.S. Attorney  
 Post Office Box 2593  
 Orlando, FL 32802  
 (407) 648-7500  
 Now in private practice:  
 Carlton, Fields  
 Post Office Box 1171  
 Orlando, FL 32802  
 (407) 849-0300

From 1972 to 1974, I represented the petitioner, pro bono, in a habeas corpus proceeding. The petitioner had pleaded guilty and was serving a prison sentence for armed robbery and kidnaping. In the petition, I questioned the petitioner's sanity and contended that the district judge used the wrong standard when accepting petitioner's guilty plea. After losing in the District Court, we appealed to the U.S. Court of Appeals, Fifth Circuit (Chief Judge Brown, Circuit Judge Ainsworth and Circuit Judge Dyer). The appellate court, while noting that this was an important case of first impression, affirmed the lower court's judgment.

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

In addition to the cases described above, I have handled a significant number of legal activities which did not progress to trial, including the following:

1. For approximately two years, I represented one of the two owners of John's Island, a development in Vero Beach, Florida. My representation included general legal advice concerning all aspects of this business activity.
2. For the past ten or more years, I have served as outside general counsel for Mears Transportation Group. In this capacity, I coordinate legal representation for these companies within our firm.

3. I have handled numerous arbitration matters, representing Morgan Stanley Dean Witter and Merrill Lynch, in claims asserted by customers against broker-dealers for alleged securities fraud.

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

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

Upon my withdrawal from Akerman, Senterfitt & Eidson, I would be entitled to the return of my capital account, approximately \$105,000.00, and a retirement benefit of approximately \$230,000.00, payable over a period of five years. If appointed to the federal bench, I intend to negotiate a discounted lump sum payment in satisfaction of these obligations.

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

In resolving potential conflicts of interest, I would be governed by The Code of Judicial Conduct, 28. U.S.C. Section 455. Specifically, for a period of at least three years, I would recuse myself from any case in which my law firm is involved and would recuse myself from any case involving any clients I have recently represented.

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

No.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

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

No.

**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**

*Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4 - Sec. 101-112)*

AO-10 (w)  
 Rev. 1/2000

<b>1. Person Reporting</b> (Last name, first, middle initial) Presnell, Gregory A.	<b>2. Court or Organization</b> U.S. Dist.Court, MD of FL	<b>3. Date of Report</b> 06/09/2000
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge Nominee	<b>5. Report Type (check type)</b> X Nomination, Date 06/08/2000 Initial Annual Final	<b>6. Reporting Period</b> 01/01/1999 to 05/31/2000
<b>7. Chambers or Office Address</b> 255 South Orange Avenue Post Office Box 231 Orlando, FL 32802	<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	

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

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

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Shareholder	Akerman, Senterfitt & Eidson, P.A.
2 President	Grande Quay Homeowners Association
3	

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

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 2000	Akerman, Senterfitt & Eidson, P.A.--Payment of Capital and Retirement benefit over period of five years
2 2000	Akerman, Senterfitt & Eidson, P.A. Case or Deferred Profit Sharing Plan (401K)
3	

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

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1999	Akerman, Senterfitt & Eidson, P.A.	\$557,207
2 2000	Akerman, Senterfitt & Eidson, P.A.	\$125,000
3 1999	Akerman, Senterfitt & Eidson, P.A. (Spouse)	
4 2000	Akerman, Senterfitt & Eidson, P.A. (spouse)	

FINANCIAL DISCLOSURE REPORT Name of Person Reporting \_\_\_\_\_ Date of Report \_\_\_\_\_  
 Presnell, Gregory A. 05/30/2000

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

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

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

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

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

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

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

	Name of Person Reporting	Date of Report
<b>FINANCIAL DISCLOSURE REPORT</b>	Presnell, Gregory A.	05/30/2000
(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)		

**VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions**

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period																																						
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g. buy, sell, partial sale, merger, redemption)	If not exempt from disclosure																																					
						(2) Date Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)																																		
Place "X" after each asset exempt from prior disclosure.																																											
<b>NONE</b> (No reportable income, assets, or transactions.)																																											
<b>Exempt</b>																																											
1 SunTrust Checking	A	Interest	K	T																																							
2 SunTrust MMA	C	Interest	M	T																																							
3 Merrill Lynch MMA	A	Interest	J	T																																							
4 MSDW MMA (Spouse)	A	Interest	J	T																																							
5 MSDW MMA	A	Interest	J	T																																							
6 Home Depot Common Stock	A	Dividend	K	T																																							
7 Boeing Common Stock	A	Dividend	J	T																																							
8 Schlumberger Common Stock	A	Dividend	J	T																																							
9 MSDW Tech Index	A	Dividend	J	T																																							
10 MSDW Tech Index (spouse)	A	Dividend	J	T																																							
11 Merrill Lynch Capital Fund	A	Dividend	K	T																																							
12 Merrill Lynch GL Allocation Fund	A	Dividend	J	T																																							
13 STI Tax Ex Bond Fund	B	Dividend	L	T																																							
14 Putnam Investors Fund		None	K	T																																							
15 MSDW Growth Fund	A	Dividend	K	T																																							
16 MSDW GlobalDiv. Fund	A	Dividend	K	T																																							
17 MSDW Amer. Opp. Fund	B	Dividend	K	T																																							
<table border="0" style="width: 100%; font-size: x-small;"> <tr> <td>1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4)</td> <td>F=\$50,001-\$100,000</td> <td>B=\$1,001-\$2,500 G=\$100,001-\$1,000,000</td> <td>C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000</td> <td>D=\$5,001-\$15,000 I=\$15,001-\$50,000</td> <td>E=\$15,001-\$50,000 J=\$50,001 or more</td> <td colspan="5"></td> </tr> <tr> <td>2 Val Codes: J=\$15,000 or less (Col. C1, D3)</td> <td>O=\$500,001-\$1,000,000</td> <td>K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000</td> <td>L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000</td> <td>M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000</td> <td>N=\$250,001-\$500,000 P4=\$500,001 or more</td> <td colspan="5"></td> </tr> <tr> <td>3 Val Mth Codes: Q=Appraisal (Col. C2)</td> <td>U=Book Value</td> <td>R=Cost (real estate only) V=Other</td> <td>S=Assessment W=Estimated</td> <td>T=Cash/Market</td> <td colspan="6"></td> </tr> </table>											1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4)	F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 I=\$15,001-\$50,000	E=\$15,001-\$50,000 J=\$50,001 or more						2 Val Codes: J=\$15,000 or less (Col. C1, D3)	O=\$500,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$500,001 or more						3 Val Mth Codes: Q=Appraisal (Col. C2)	U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market						
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4)	F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 I=\$15,001-\$50,000	E=\$15,001-\$50,000 J=\$50,001 or more																																						
2 Val Codes: J=\$15,000 or less (Col. C1, D3)	O=\$500,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$500,001 or more																																						
3 Val Mth Codes: Q=Appraisal (Col. C2)	U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market																																							

Name of Person Reporting  
Date of Report

**FINANCIAL DISCLOSURE REPORT** Presnell, Gregory A. 05/30/2000

*(Includes those of spouse and dependent children. See pp. 36-54 of instructions.)*

**VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions**

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period						
	(1) Amount	(2) Type	(1) Value	(2) Value	(1) Type						
	(A-H) Code	(e.g., dividend, rent or interest)	(I-P) Code	(Q-W) Code	(e.g., buy, sell, partial sale, merger, redemption)	if not exempt from disclosure					
Place "X" after each asset exempt from prior disclosure.											
NONE (No reportable income, assets, or transactions.)											
18 MSDW Div. Growth Fund	A	Dividend	K	T							Exempt
19 Vanguard Funds	C	Dividend	M	T							
20 Vanguard Annuity	A	Dividend	J	T							
21 Family Trust (Income Beneficiary)	B	Dividend	L	W							
22 Boggy Creek Ltd. Orange County, Florida	A	Interest	L	W							
23 Jetport Ltd., Orange County, Florida	A	Interest	L	W							
24 Wetherbee Ltd., Orange County, Florida		None	L	W							
25 Airport Industrial, Ltd., Orange County, Florida	A	Interest	L	W							
26 Akerman, Senterfitt & Eidson, P.A. stock	D	Interest	M	U							
27 Akerman, Senterfitt & Eidson, P.A. stock (spouse)	B	Interest	K	U							
28 MSDW High Yield (IRA)	A	Dividend	J	T							
29 MSDW Comp. edge (IRA)		None	J	T							
30 MSDW Mid Cap. (IRA)		None	J	T							
31 MSDW Eur. Gr. (IRA)		None	J	T							
32 MSDW Gl. Div. Gr. (IRA)	A	Dividend	K	T							
33 MSDW Div. Gr (IRA)	A	Dividend	K	T							
34 MSDW Amer. Opp. (IRA)		None	K	T							
1 Int./Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more D=\$5,001-\$15,000 E=\$15,001-\$50,000 2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000 L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000 M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000 N=\$250,001-\$500,000 P4=\$50,000,001 or more 3 Val Mth. Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market											



FINANCIAL DISCLOSURE REPORT Name of Person Reporting Date of Report  
 Presnell, Gregory A. 05/30/2000

VII. Page 3 INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children. See pp. 36-54 of instructions.)

A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type	If not exempt from disclosure				
						(2) Date Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)	
NONE (No reportable income, assets, or transactions.)										
35 MSDW Growth Fund (IRA)		None	K	T						Exempt
36 MSDW U.S. Government Sec. (IRA)	A	Dividend	J	T						
37 Montag & Caldwell Growth Fund (AS&E Profit Sharing)	C	Dividend	N	T						
38 STI Sm. Cap. Fund (AS&E Profit Sharing)	B	Dividend	M	T						
39 STI Bond Fund (AS&E Profit Sharing)	D	Dividend	M	T						
40 T. Rowe Price Mid-Cap. Fund (AS&E Profit Sharing)	C	Dividend	M	T						
41 Templeton Foreign Equity Fund (AS&E Profit Sharing)	C	Dividend	L	T						
42 STI Value Inc. Fund (AS&E Profit Sharing)	D	Dividend	N	T						
43 Putnam International Growth Fund (AS&E Profit Sharing)	B	Dividend	L	T						
44 SunTrust Stable Asset (AS&E Profit Sharing)	C	Dividend	L	T						
45										
46										
47										
48										
49										
50										
51										

1 Ine/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000

2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated

	Name of Person Reporting	Date of Report
<b>FINANCIAL DISCLOSURE REPORT</b>	Fresnell, Gregory A.	03/30/2000

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.**

*(Indicate part of report.)*

Regarding Part VII, the Family Trust contains two assets, common stock in Chrysler Corporation and Weyerhaeuser.

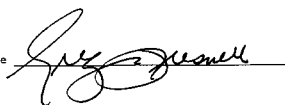
	Name of Person Reporting	Date of Report
<b>FINANCIAL DISCLOSURE REPORT</b>	Presnell, Gregory A.	05/30/2000

**IX. CERTIFICATION**

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

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

6/9/00

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

**FILING INSTRUCTIONS**

Mail original and three additional copies to:

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

## FINANCIAL STATEMENT

Gregory A. Presnell  
Cecelia Bonifay

As of May 31, 2000

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

ASSETS		LIABILITIES	
Cash on hand and in banks	187,600 00	Notes payable to banks -- secured (Auto)	20,000 00
U.S. Government securities -- add schedule	0	Notes payable to banks -- unsecured	0
Listed securities -- add schedule A	720,000 00	Notes payable to relatives	0
Unlisted securities -- add schedule	0	Notes payable to others	0
Accounts and notes receivable:	0	Accounts and bills due	2,500 00
Due from relatives and friends	15,000 00	Unpaid income tax	0
Due from others	0	Other unpaid tax and interest	0
Doubtful	0	Real estate mortgages payable -- add schedule D	560,000 00
Real estate owned -- add schedule B	1,250,000 00	Chattel mortgages and other liens payable	0
Real estate mortgages receivable	0	Other debts -- itemize:	0
Autos and other personal property	100,000 00		
Cast value -- life insurance	25,000 00		
Other Assets -- itemize:	0		
AS&E Profit Sharing	1,375,000 00		
CRP Trust	75,000 00	Total liabilities	582,500 00
AS&E Capital Account	145,000 00	Net worth	3,635,100 00
Limited Pntnrships-Sched C	325,000 00	Total liabilities and net worth	4,217,600 00
<b>Total assets</b>	<b>4,217,600 00</b>		
<b>CONTINGENT LIABILITIES</b>	<b>0</b>	<b>GENERAL INFORMATION</b>	
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		
	0		

**Gregory A. Presnell  
Cecelia Bonifay****Schedule A - Listed Securities**

Home Depot	\$ 16,000
Boeing	4,000
Schlumberger	6,000
MSDW Tech. Index (Bonifay)	9,000
MSDW Tech. Index (Presnell)	9,000
Merrill Lynch Capital Fund	33,000
Merrill Lynch Alloc. Fund	7,500
STI Tax Exempt Bond	54,000
Putnam Investors Fund	25,500
MSDW Growth	28,500
MSDW Global Div.	18,500
MSDW Amer. Value	17,000
MSDW Div. Growth	26,000
Vanguard Portfolio (Presnell)	273,000
Vanguard Mid. Cap.	28,000
Merrill Lynch Tech. 2000	5,000
Vanguard Annuity (Bonifay)	10,000
IRA (Bonifay)	<u>150,000</u>
TOTAL	\$720,000

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**Gregory A. Presnell  
Cecelia Bonifay**

**Schedule B - Real Estate Owned**

Windermere, Florida residence	\$ 500,000
Boca Grande, Florida residence	750,000
	\$1,250,000

**Gregory A. Presnell  
Cecelia Bonifay**

**Schedule C\* - Limited Partnerships**

Boggy Creek	\$ 50,000
Jetport	100,000
Wetherbee	100,000
Airport Industrial	75,000

\*There is no market for these limited partnership interests; these are therefore estimates of net present value.

766

**Gregory A. Presnell**  
**Cecelia Bonifay**

**Schedule D -- Real Estate Mortgages Payable**

Windermere Home (Bank United)	\$320,000
Boca Grande Home (SunTrust Mortgage)	<u>240,000</u>
	\$560,000



**III. GENERAL (PUBLIC)**

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

I have actively participated in pro bono work during my entire 33 year career as a lawyer. As a young lawyer, I handled numerous pro bono cases for indigent clients, including several major criminal cases in federal court. I still accept cases today from the legal aid society of the Orange County Bar Association.

In addition, I have been in the forefront of legal aid activity in the State of Florida and am recognized statewide as one of the leading promoters of bar-sponsored pro bono work. For example, as president of the Legal Aid Society of the Orange County Bar Association in 1974, I was instrumental in obtaining additional funding to expand the scope of our pro bono services. In addition, I led the effort to change the organization's by-laws to require every member of the Orange County Bar Association to accept legal aid cases or make a mandatory monetary contribution in lieu thereof, which received national recognition. As president of the Orange County Bar Association, I led the effort, despite vocal opposition, to obtain funds to start a federally-funded legal services program in Central Florida, and was one of the founders of the Greater Orlando Area Legal Services program (GOALS).

I was one of the first members of the board of Florida Legal Services, Inc., which was established by The Florida Bar to coordinate pro bono services statewide, and later served as its second president, succeeding William Reece Smith, Jr., a former president of the American Bar Association. As president of Florida Legal Services, I was instrumental in obtaining approval from the Florida Supreme Court of the Interest on Trust Accounts (IOTA) program in Florida. My statewide legal aid service continued when I was elected to serve on the board of directors of the Florida Bar Foundation, and became chair of its legal aid grants committee. The Florida Bar Foundation is the entity authorized by the Florida Supreme Court to collect and disburse IOTA funds.

In addition, as a member of the Board of Governors of The Florida Bar, I served on numerous committees, including the Access to the Legal System Committee, of which I was the vice-chair. In addition, I served as chair of two special committees appointed by the president of The Florida Bar to study the volatile issue of legal technicians--unsupervised "paralegals" who provide legal assistance to clients. Our committee's report, which I co-authored, stimulated a debate at the national level and became the subject of an American Bar Association commission. In 1992, I received the President's Award of Merit for Service to The Florida Bar in recognition of my leadership role in this area.

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

I do not currently belong to any organization with discriminatory practices. I have previously participated with my sons in Little League baseball and Boy Scouts of America. I do not know what their policy was, but the participants were all boys. For several years, I was a member of the University Club in Orlando. Although it had no express discriminatory policy, it was perceived as exclusionary. I resigned many years ago in protest and since that time, the club has begun to admit minorities and women (including my wife).

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

Yes, I was recommended for this position by the Federal Judicial Nominating Commission for the State of Florida. I submitted an application in January, 2000 and was interviewed by the Commission on February 29, 2000. I was interviewed by Senator Mack and Senator Graham on March 15, 2000. Thereafter, I was interviewed on April 11, 2000 by representatives of the United States Department of Justice and on April 18, 2000, I was interviewed by a Special Agent of the Federal Bureau of Investigation. On May 17, 2000 I was interviewed by a representative of the American Bar Association Standing Committee on the Federal Judiciary.

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

No.

5. **Please discuss your views on the following criticism involving "judicial activism." The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.**

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

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I believe the federal courts should be mindful of their limited constitutional authority to adjudicate actual disputes over which they have subject matter and personal jurisdiction. This limitation on the court's authority is an important aspect of the separation of powers which is fundamental to our system of government. Accordingly, the court should ensure that jurisdictional requirements such as standing and ripeness be observed and that relief be fashioned as narrowly as possible to remedy the legal wrong which has been proven. In addition, because consistency and predictability are important attributes of the legal process, *stare decisis* should be observed and binding precedent must be followed.

**QUESTIONNAIRE FOR JUDICIAL NOMINEES**

**I. BIOGRAPHICAL INFORMATION (PUBLIC)**

1. Full name (include any former names used.)  
**John Edwin Steele**  
**Jay Steele - nickname**
2. Address: List current place of residence and office address(es).  
**Office:**  
**United States Magistrate Judge**  
**Middle District of Florida**  
**311 W. Monroe St., Room 311**  
**Jacksonville, Florida 32202**  
**Home:**  
**St. Augustine, Florida**
3. Date and place of birth.  
**June 3, 1949**  
**Detroit, Michigan**
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
**I am married to Lynda Marie Steele, whose maiden name is Lynda Marie Boyd. She is a health educator at Baptist St. Vincent's, formerly Baptist/St. Vincent's Health System, 1325 San Marco Blvd., Suite 502, Jacksonville, Florida 32207.**
5. Education: List each college and law school you have attended, including dates of attendance, the degrees received and dates degrees were granted.  
**I attended the University of Detroit, now the University of Detroit-Mercy, Detroit, Michigan, from 1967 to 1971 and received a Bachelors of Arts with an Urban Affairs Major in 1971.**  
**I attended the University of Detroit College of Law, now the University of**

**Detroit-Mercy College of Law, Detroit, Michigan, from 1971 to 1973, and I received a Juris Doctorate in December 1973.**

**I have attended the University of North Florida, Jacksonville, Florida, from January 1997 to the present. I am one course and a thesis short of a Masters of Arts degree in criminal justice.**

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

**(1) November 1971 to November 1972:**

**Law Clerk  
United States Attorney's Office  
Detroit, Michigan**

**(2) December 1972 to June 1974:**

**Law Clerk  
Wayne County Organized Crime Task Force  
Wayne County Prosecuting Attorney's Office  
Detroit, Michigan**

**(3) July 1974 to May 1977:**

**Assistant Prosecuting Attorney  
Wayne County Organized Crime Task Force  
Wayne County Prosecuting Attorney's Office  
Detroit, Michigan**

**(4) May 1977 to February 1980:**

**Assistant Prosecuting Attorney  
Ingham County Prosecutor's Office  
Lansing, Michigan**

(5) February 1980 to January 1981:

Assistant United States Attorney  
United States Attorney's Office  
Western District of Michigan  
Grand Rapids, Michigan

(6) January 1981 to April 1988:

Assistant United States Attorney  
United States Attorney's Office  
Middle District of Florida  
Jacksonville, Florida

(7) May 1988 to November 1991:

Litigation Attorney  
Mahoney, Adams, & Criser  
now McGuire, Woods, Battle, & Boothe  
Jacksonville, Florida

(8) November 25, 1991 to present:

United States Magistrate Judge  
Middle District of Florida  
Jacksonville, Florida

(9) Spring 1999 to present:

Adjunct Professor  
Florida Coastal School of Law  
Jacksonville, Florida

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

No.

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

None.

9. Bar Associations: List all bar associations, legal or judicial-related committee 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, 1989 to present**

**Federal Magistrate Judges Association, 1993 to present**

**Civil Rules Committee of Federal Magistrate Judges Association, 1993-1994**

**Jacksonville Bar Association, 1990 to present**

**Federal Bar Association, 1982 to present**  
**Treasurer, May 1983-October 1985**

**Chester Bedell Inn of Court, 1998-present**

**Florida Bar Grievance Committee, 1989-1991**  
**Chairman, 1991**

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

**I belong to no organizations which are active in lobbying before public bodies.**

**I am a current member of the Epping Forest Yacht Club, Jacksonville, Florida.**  
**(Copy of by-laws attached.)**

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

**State of Michigan, 1974**

**State of Florida, 1982**

**United States Court of Appeals for the Sixth Circuit, 1980**

**United States Court of Appeals for the Fifth Circuit, 1981**

**United States Court of Appeals for the Eleventh Circuit, 1981**

**United States District Court for the Eastern District of Michigan, 1974**

**United States District Court for the Western District of Michigan, 1980**

**United States District Court for the Middle District of Florida, 1981**

**United States District Court for the Northern District of Florida, 1991**

**To my knowledge, all admissions are current.**

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

**None.**

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

**Good. I have high blood pressure and cholesterol, which are controlled by medication. I was recently diagnosed with mild sleep apnea.**

**My last physical examination was on October 19, 1999, by Dr. Gary Lee, Mayo Clinic, Jacksonville, Florida, with an updated examination by Dr. Lee on April 4, 2000.**

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

**United States Magistrate Judge, Middle District of Florida, Jacksonville Division, November, 1991 to present.**

**I was appointed to this position by the district judges of the Middle District of Florida. A magistrate judge has jurisdiction in civil and criminal cases over non-dispositive matters, over the entirety of civil cases with the consent of all parties, and over misdemeanor criminal cases with the consent of all parties.**

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

**1. Ten Most Significant Opinions:**

**Sanders v. Apfel, 85 F. Supp.2d 1275 (M.D. Fla., 1999).**

**Wimberg v. Chandler, 986 F. Supp. 1447 (M.D. Fla. 1997).**



O'Neal v. United States, 77 A.F.T.R.2d 96-2491 (M.D. Fla. 1996). (Copy attached).

Ali v. Wang Laboratories, Inc., 162 F.R.D. 165 (M.D. Fla. 1995).

Chris-Marine USA, Inc. v. United States, 892 F. Supp. 1437 (M.D. Fla. 1995).

United States v. Stoecklin, 848 F. Supp. 1521 (M.D. Fla. 1994).

United States v. Ellis, 154 F.R.D. 692 (M.D. Fla. 1993); United States v. Ellis, 154 F.R.D. 697 (M.D. Fla. 1993). A related order, United States v. Ellis, 1994 WL 90324 (copy attached), was affirmed in United States v. Ellis, 90 F.3d 447 (11th Cir. 1996), rehearing denied, 99 F.3d 1157 (11th Cir. 1996), cert. denied, 519 U.S. 1118 (1997).

Hooks v. Singletary, Case Nos. 71-144-Civ-J-21B and 71-1011-Civ-J-21B. (Copy attached).

United States v. Jacobs, Case No. 97-240-Cr-J-20B. (Copy attached).

United States v. Fields, et al., Case No. 94-3(S2)-Cr-J-16. (Copy attached).

## 2. Appellate Reversals or Affirmances with Significant Criticism:

In United States v. Smith, Case No. 97-120-Cr-J-20B, I recommended that defendant's motion to suppress be denied because, among other things, the bus check was not a seizure within the meaning of the Fourth Amendment. This was adopted by the district judge. In United States v. Smith, 201 F.3d 1317 (11th Cir. 2000) the court held, based upon intervening Eleventh Circuit authority, that the bus check was a seizure, but was reasonable and therefore the conviction was affirmed.

In United States v. Alex C. Bonner, Case No. 94-10-Cr-Oc-10, I recommended that defendant's motion to suppress be granted. The recommendation was based on a finding that law enforcement officers, without reasonable suspicion, illegally seized defendant where the officers allowed a drug dog to enter a vehicle in which defendant was attempting to depart. This recommendation was rejected by the district judge, and the district judge was affirmed by the Eleventh Circuit in an unpublished opinion. Case No. 94-3172. (Copy attached.)

In Doiron v. Chater, Case No. 92-806-Civ-J-16, I recommended affirmance of the ALJ's Decision and that the case not be remanded to consider evidence submitted for the first time to the district court. This was adopted by the

district judge and reversed by the Eleventh Circuit in Case No. 94-3541. (Copy attached.)

In Richard B. Goodin v. Sun Bank N.A., Case No. 92-394-Civ-J-16, I granted summary judgment for the defendant in a Section 1983 case. This was reversed by the Eleventh Circuit in an unpublished opinion, which held the case should have been dismissed for lack of jurisdiction instead of being denied on the merits. Case No. 93-2171. (Copy attached.)

In Barney L. Beverly v. Shalala, Case No. 91-714-Civ-J-10, I recommended that the Social Security Secretary's denial of disability benefits be affirmed, and this was adopted by the district judge. This was reversed by the Eleventh Circuit in an unpublished opinion, which found the pain standard was improperly applied. Case No. 93-2846. (Copy attached.)

3. Constitutional Issues: (Copies attached).

In United States v. Gerald Bronson, Case No. 00-166-Cr-J-21B, I recommended that the defendant's motion to suppress evidence be denied, finding that the evidence supported an exception to the knock-and-announce rule generally followed in the execution of a search warrant. The report and recommendation also addresses the defendant's right to claim protection of the Fourth Amendment, and the assertion by defendant that the officers used excessive force in executing the warrant. The report and recommendation was entered on May 16, 2000; objections to the report and recommendation may be filed until June 2, 2000. The District Judge has not yet ruled on the motion to suppress.

In United States v. Nathaniel Hatcher, Case No. 99-51(S1)-J-20B, I recommended that defendant's motion to suppress physical evidence be denied. The motion involved the lawfulness of a traffic stop, the duration of the stop, and the seizure of evidence found in the vehicles. The report and recommendation was adopted by the District Judge, and the defendant later pleaded guilty pursuant to a plea agreement.

In United States v. Antonio Lamar Glover, Case No. 99-04-Cr-J-10B, I recommended defendant's motions to suppress statements be granted in part and denied in part. The defendant moved to suppress post-arrest statements, asserting violation of his right to remain silent and Miranda. The Report and Recommendation was adopted by the District Judge, and, following a jury trial, the defendant was found guilty of bank robbery by force or violence.

In United States v. Terral D. Williams, Case No. 98-319-Cr-J-21B, I

recommended that defendant's motion to dismiss for violation of speedy trial rights be denied. Defendant alleged violation of his speedy trial rights under the Sixth Amendment, the Speedy Trial Act, the Interstate Agreement on Detainers Act, and Federal Rule of Criminal Procedure 48. The report and recommendation was adopted by the District Judge and defendant later pleaded guilty.

**In United States v. Walter A. Marin, Case No. 92-72-Cr-J-10B, I recommended defendant be granted the right to file an out-of-time appeal based on ineffective assistance of counsel. The recommendation was adopted by the District Judge, who granted the defendant's motion to file an out-of-time appeal.**

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

**None.**

17. Legal Career:

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

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

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

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

**I have never practiced law alone.**

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

- (1) **July 1974 to May 1977:**

**Wayne County Organized Crime Task Force  
Wayne County Prosecuting Attorney's Office  
1441 St. Antoine  
Detroit, Michigan 48226**

**I was an Assistant Prosecuting Attorney assigned**

to handle felony prosecutions with the Task Force.

- (2) May 1977 to February 1980:

Ingham County Prosecutor's Office  
303 W. Kalamazoo  
Lansing, Michigan 48933

I was an Assistant Prosecuting Attorney handling felony cases.

- (3) February 1980 to January 1981:

United States Attorney's Office  
Western District of Michigan  
P.O. Box 208  
Grand Rapids, Michigan 49501

I was an Assistant United States Attorney working in the criminal division.

- (4) January 1981 to April 1988:

United States Attorney's Office  
P.O. Box 600  
Jacksonville, Florida 32202

I was an Assistant United States Attorney working in the criminal section.

- (5) May 1988 to November 1991:

Mahoney, Adams, & Criser  
now McGuire, Woods, Battle, & Boothe  
50 North Laura Street, Suite 3300  
Jacksonville, Florida 32202

I practiced in the litigation department, handling primarily commercial litigation and some federal criminal cases.

**(6) November 25, 1991 to present:**

**United States Magistrate Judge  
Middle District of Florida  
311 W. Monroe St. , Room 311  
Jacksonville, Florida 32202**

**I am currently a magistrate judge in the Jacksonville Division of the Middle District of Florida.**

**(7) Spring 1999 to present:**

**Florida Coastal School of Law  
7555 Beach Blvd.  
Jacksonville, FL 32216**

**I teach a course on Federal Courts at the law school.**

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

**From 1974 to 1980, I was an Assistant Prosecuting Attorney prosecuting state criminal cases in Michigan. Initially I was an Assistant Prosecuting Attorney assigned to handle felony prosecutions with the Organized Crime Task Force in Detroit, Michigan. I also provided legal advice to police officers assigned to the Task Force during investigations. In 1977, I became an Assistant Prosecuting Attorney in Lansing, Michigan handling felony cases. I assisted in the implementation of the county's first citizens' grand jury and its investigation of narcotics trafficking. I was later part of a two-attorney repeat offenders unit.**

**In 1980, I was an Assistant United States Attorney prosecuting felony criminal cases in the Western District of Michigan. I also wrote several appellate briefs and presented oral argument before the Sixth Circuit Court of Appeals.**

**From 1981 to 1988, I was an Assistant United States Attorney prosecuting felony criminal cases in the Jacksonville and Ocala Divisions of the Middle District of Florida. I handled felony cases involving narcotics, public corruption, white collar fraud, and firearms violations. I also wrote approximately twelve appellate briefs and presented oral argument in cases before the Eleventh Circuit Court of Appeals.**

**From 1988 to 1991, I was in the litigation department of Mahoney, Adams &**

**Criser in Jacksonville, Florida. I started as an associate for a year, then became a partner, and eventually became head of the litigation department. Most of the cases were commercial litigation, but several cases involved "white collar" federal criminal defense.**

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

**I represented the people of the State of Michigan as a state prosecutor and the government of the United States as an Assistant United States Attorney. At Mahoney, Adams, & Criser, the typical civil client was a business person or business entity involved in a business-related dispute. The firm, including me, did a fair amount of work for the former Barnett Bank. I also handled criminal defense in what are generally considered "white collar" cases.**

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

**I appeared in court from 1974-1980 on virtually a daily basis representing the Michigan counties where I was an assistant prosecuting attorney. As an Assistant United States Attorney from 1980-1988, I appeared in court representing the United States in criminal cases on an almost daily basis, although the number of trials was fewer than in state court. In civil practice from 1988 to 1991, I appeared regularly, but not nearly as frequently, in state and federal court.**

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

**1974-1980:**  
     **0% federal courts.**  
     **100% state courts.**

**1980-1988:**  
     **100% federal courts.**  
     **0% state courts.**

**1988-1991:**  
     **3% federal courts.**  
     **97% state courts.**

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

**1974-1988:**  
 0% Civil.  
 100% Criminal.

**1988-1991:**  
 97% Civil.  
 3% Criminal.

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

**Although I have no way of knowing precisely, I would estimate I have tried 75-100 felony criminal trials and ten civil trials. In most of the criminal trials I was sole counsel, although on several larger prosecutions I was co-counsel. I was sole counsel in most of the civil trials.**

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

**95% jury trials.  
 5% non-jury trials.**

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

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

**(1) Denson v. Stack, Case No. 90-Cv-10050 MMP, United States District Court for the Northern District of Florida. Reported at Denson v. Stack, 997 F.2d 1356 (11th Cir. 1993), rehearing denied, 7 F.3d 242 (11th Cir. 1993)(Table).**

This case involved the purchase of over 7000 acres of timberland in the Florida panhandle. The marketability of title to the property became an issue when the extent of the navigable waterway on the property was disputed. I represented Mr. Denson, the plaintiff-property purchaser. A bench trial in 1991 resulted in a verdict for defendant. This was reversed by the Eleventh Circuit Court of Appeals.

The trial judge was:

The Honorable Maurice M. Paul  
Senior U.S. District Court Judge  
Northern District of Florida

The appellate judges were:

The Honorable Phyllis A. Kravitch  
Senior United States Circuit Court Judge  
United States Court of Appeals, Eleventh Circuit

The Honorable Stanley F. Birch Jr.  
United States Circuit Court Judge  
United States Court of Appeals, Eleventh Circuit

The Honorable Thomas A. Clark  
Senior United States Circuit Court Judge  
United States Court of Appeals, Eleventh Circuit

Opposing counsel were:

Bert Edward Moore, Esq.  
P.O. Box 950  
Niceville, Florida 32588  
850-678-4210

Glenn Gates Taylor, Esq.  
1062 Highland Colony Parkway, Suite 200  
Ridgeland, Mississippi 39158  
601-856-7200

(2) Centurion Investment Group, Inc. v. Greenberg, Case No. 86-13848 CR, in the circuit of the 17th Judicial Circuit of Florida, Broward County, Florida. Appeal reported at Barnett Banks Trust Co., N.A. v. Centurion Investment Group, Inc., 605 So.2d 1275 (4th DCA 1992) (Table).



This litigation had been pending approximately twenty-one years before I started at Mahoney, Adams & Criser, and involved conflicting demands on the trustee of a trust indenture which had financed bonds to construct dormitories at Florida International University. Following a non-jury trial in July and August 1990, the Court held that the trustee had paid certain funds to the wrong party. The decision was upheld on appeal in an unpublished opinion.

The trial judge was:

The Honorable H. Eugene Fischer (Retired)  
Circuit Court Judge for the 17th Judicial Circuit of Florida

Counsel for Centurion Investment Group, Inc. was:

Kenneth B. Whitman, Esq.  
3020 NE 49th Street  
Ft. Lauderdale, Florida 33308  
954-728-8922

Counsel for the third-party plaintiff was:

C. Daniel Petrie, Jr., Esq.  
300 SW 2nd Street  
Ft. Lauderdale, Florida 33312  
954-463-9593

The names of the appellate judges are not listed in the table decision.

(3) United States v. Watchmaker, Case No. 82-101-Cr-J, United States District Court for the Middle District of Florida. Reported at United States v. Watchmaker, 761 F. 2d 1459, rehearing denied 766 F.2d 1493 (11th Cir. 1985), cert. denied 474 U.S. 1100-01 (1986).

This case started as a grand jury investigation of the Outlaw Motorcycle Club in Jacksonville, and ultimately merged with a similar investigation by the Tampa United States Attorney's Office. I was extensively involved in the 1982 grand jury and pretrial proceedings, but was not directly involved in the trial. I also participated in post-trial and appellate proceedings after the 1983 trial and convictions.

**The trial judge was:**

**The Honorable John H. Moore, II  
Senior United States District Court Judge  
Middle District of Florida**

**The appellate judges were:**

**The Honorable Phyllis A. Kravitch  
United States Circuit Court Judge  
United States Court of Appeals, Eleventh Circuit**

**The Honorable Frank M. Johnson, Jr.  
Senior United States Circuit Court Judge  
United States Court of Appeals, Eleventh Circuit**

**The Honorable Elbert P. Tuttle - deceased**

**Trial counsel for the government were:**

**Lee W. Atkinson, Esq.  
(Former Assistant U.S. Attorney)  
2655 McCormick Dr.  
Clearwater, Florida 33758  
727-799-2882**

**Michael J. Obringer, Esq.  
(Former Assistant State Attorney)  
Brown, Obringer, Shaw, et. al  
12 E. Bay St.  
Jacksonville, Florida 32202  
904-354-0624**

**Opposing counsel in the appeal were:**

**David R. Fletcher, Esq.  
Attorney for defendant Ronald Watchmaker  
541 E. Monroe St.  
Jacksonville, Florida 32202  
904-356-5311**

**Bruce J. Greenspan, Esq.**  
Attorney for defendant Christopher Keating  
1300 Riverplace Blvd., Suite 103  
Jacksonville, Florida 32207  
904-391-1000

**Randall J. Silverberg, Esq.**  
Attorney for defendant Eugene Marcaccio  
1930 San Marco Blvd., Suite 204  
Jacksonville, Florida 32207  
904-398-0038

**Robert S. Willis, Esq.**  
Attorney for defendant Wilson Harrell  
503 E. Monroe St.  
Jacksonville, Florida 32202  
904-356-0990

**Robert B. Persons, Jr., Esq.**  
Attorney for defendant Roger White  
2215 3rd Street, Suite 101  
Jacksonville Beach, Florida 32250  
904-246-9994

**Ralph J. Humphries, Esq.**  
Attorney for defendant Harry Ruby  
6015 Chester Circle, Suite 210  
Jacksonville, Florida 32217  
904-737-3737

**John P. Stone, Jr. Esq.**  
Attorney for defendant Kenneth Hart  
1315 Lane Ave S., Suite 6  
Jacksonville, Florida 32205

**T. Hugh Cotney, Esq.**  
Attorney for defendant Charles Gibson  
401 E. Jackson St., Suite 2700  
Tampa, Florida 33602  
813-222-6644

The Honorable Brent D. Shore  
Attorney for defendant Scott Seaver  
County Court Judge, Fourth Judicial Circuit  
Duval County Courthouse  
330 E. Bay St., Suite 300  
Jacksonville, Florida 32202  
904-630-2566

Eugene F. Murphy, Esq.  
Attorney for defendant Edward Lackey  
2121A Corporate Square Blvd., #117  
Jacksonville, Florida 32216  
904-805-9419

The Honorable Jack M. Schemer  
Attorney for defendant Charles Graves  
Circuit Judge, Fourth Judicial Circuit  
Duval County Courthouse  
330 E. Bay St., Suite 229  
Jacksonville, Florida 32202  
904-630-2592

(4) United States v. Gaffney, Case No. 87-37-Cr-J, United States District Court for the Middle District of Florida. Reported at United States v. Gaffney, 676 F. Supp. 1544 (M.D. Fla. 1987); United States v. Gaffney, 689 F. Supp. 1578 (M.D. Fla. 1988); United States v. Gaffney, 689 F. Supp. 1580 (M.D. Fla. 1988); United States v. Bryant, 697 F. Supp. 457 (M.D. Fla. 1988).

This was a prosecution of a State Representative and two associates for conspiracy to commit extortion and various substantive counts of extortion. A lengthy jury trial in 1987 resulted in convictions on multiple counts, but the verdicts were set aside and a new trial granted due to jury misconduct involving the jury's consideration of extrinsic evidence.

Defendant's motion to change venue was granted to Miami, Florida, and a motion to dismiss was denied. Defendant Gaffney was tried in 1988 and convicted on a separate fraud indictment in Miami, Case No. 88-14 Cr-J, and his motion for new trial was denied. The remaining defendants' motion to dismiss was denied, and they eventually were convicted. No appeals were pursued.

**The original trial judge was:**

**The Honorable Howell W. Melton  
Senior United States District Judge  
Middle District of Florida**

**The trial judge after the change of venue was:**

**The Honorable Thomas E. Scott, Jr. (currently  
United States Attorney for Southern District of  
Florida)**

**Co-counsel for the government was:**

**Stephen M. Kunz, Esq.  
Assistant United States Attorney  
400 N. Tampa St., Suite 3200  
Tampa, Florida 33602  
813-274-6000**

**Defense counsel were:**

**Robert J. Link, Esq.  
Attorney for defendant Don Gaffney  
Pajcic & Pajcic  
1900 Independent Dr.  
Jacksonville, Florida 32202  
904-358-8881**

**The Honorable Brent D. Shore  
Attorney for defendant Maurice Bryant  
County Court Judge, Fourth Judicial Circuit  
330 E. Bay St., Room 300  
Jacksonville, Florida 32202  
904-630-2566**

**Robert S. Willis, Esq.  
Attorney for defendant Samuel Mosley  
503 E. Monroe St.  
Jacksonville, Florida 32202  
904-356-0990**

The Honorable Jack M. Schemer  
Attorney for defendant Don Gaffney  
Circuit Court Judge, Fourth Judicial Circuit  
330 E. Bay St., Room 229  
Jacksonville, Florida 32202  
904-630-2592

(5) United States v. Spradley, Case Nos. 84-88-Cr-J and 84-160-Cr-J, United States District Court for the Middle District of Florida.

This was part of a series of drug and corruption prosecutions in Columbia County, Florida. Sheriff Spradley and approximately thirty others were indicted in connection with drug activities in and around Columbia County, Florida. After lengthy pretrial proceedings, Sheriff Spradley pleaded guilty and was imprisoned. Most of the other defendants pleaded guilty, although there was at least one trial, involving defendant Jack Leo Thomas, Case No. 83-102-Cr-J, that I recall from this series of cases. Defendant Thomas went to trial in 1984, was convicted, and his conviction was affirmed in an unpublished opinion.

Sheriff Spradley's attorneys were:

The Honorable Larry G. Turner  
Circuit Court Judge, Eighth Judicial Circuit  
Alachua County Courthouse  
201 E. University Ave., Room 415  
Gainesville, Florida 32601  
352-337-6137

Robert S. Griscti, Esq.  
204 W. University Ave, Suite 6  
Gainesville, Florida 32601  
352-375-4460

The attorney for Jack Leo Thomas was:

Lacy Mahon, Jr. Esq.  
1120 Blackstone Bldg.  
233 E. Bay St.  
Jacksonville, Florida 32202  
904-354-3526

The trial judge in the Spradley prosecution was:

The Honorable John H. Moore, II  
Senior United States District Judge  
Middle District of Florida

The trial judge in the Thomas prosecution was:

The Honorable Howell W. Melton  
Senior United States District Judge  
Middle District of Florida

The appellate judges in the Thomas appeal, Case No. 84-3309, were:

The Honorable Gerald B. Tjoflat  
United States Circuit Court Judge  
Eleventh Circuit Court of Appeals

The Honorable James C. Hill  
Senior United States Circuit Court Judge  
Eleventh Circuit Court of Appeals

The Honorable R. Lanier Anderson, III  
United States Circuit Court Chief Judge,  
Eleventh Circuit Court of Appeals

(6) United States v. Greene, Case No. 85-81-Cr-J, United States District Court for the Middle District of Florida.

A former assistant state attorney was indicted on various counts essentially involving favoritism in the prosecution and disposition of state criminal prosecutions. I was the lead prosecutor in a lengthy jury trial in 1986 which resulted in an acquittal.

The trial judge was:

The Honorable Howell W. Melton  
Senior United States District Judge  
Middle District of Florida

My co-counsel was:

Peter Strianse, Esq.  
First American Center, Suite 2100  
Nashville, Tennessee 37238  
615-244-2770

Defense counsel was:

The Honorable Charles W. Arnold, Jr.  
Circuit Court Judge, Fourth Judicial Circuit  
330 E. Bay St., Room 200  
Jacksonville, Florida 32202  
904-630-2592

(7) United States v. Haimowitz, Case No. 81-6-Cr-J, United States District Court for the Middle District of Florida. Reported at United States v. Haimowitz, 706 F.2d 1549 (11th Cir. 1983), rehearing denied, 712 F.2d 457 (1983), cert. denied, 464 U.S. 1069 (1984).

This was a prosecution of a local Jacksonville attorney and three others for conspiracy and substantive counts of fraud and misapplication of the proceeds of a Small Business Administration loan in connection with Abbott's Restaurant. The case had just been indicted when I arrived in Jacksonville in early 1981, and I participated in pretrial motion proceedings and was lead trial counsel in the two-week trial. The attorney was convicted and the two others were acquitted. The conviction was affirmed on appeal.

The trial judge was:

The Honorable William J. Castagna  
Senior United States District Court Judge  
Middle District of Florida

The appellate judges were:

The Honorable John C. Godbold  
Senior United States Circuit Court Judge  
United States Court of Appeals, Eleventh Circuit

The Honorable Paul H. Roney  
Senior United States Circuit Judge  
United States Court of Appeals, Eleventh Circuit



**The Honorable Virgil Pittman  
United States District Judge  
Southern District of Alabama  
(Sitting by designation)**

**I tried the case with:**

**Elizabeth E. Hoyt, Esq.  
(Former Assistant U.S. Attorney)  
6883 Goldpine Court  
San Jose, California 95120  
408-997-7068**

**Defendants were represented by:**

**Lacy Mahon, Jr., Esq.  
Attorney for defendant Harold Haimowitz  
1120 Blackstone Building  
220 E. Bay St.  
Jacksonville, Florida 32202  
904-354-3526**

**Edward Booth, Esq.  
Attorney for defendant Frederick Bacon  
Booth & Arnold  
1301 Riverplace Blvd., Suite 2440  
Jacksonville, Florida 32207  
904-399-5400**

**Samuel Jacobson, Esq.  
Attorney for defendant Harold Bloom  
1 Independent Dr., Suite 2902  
Jacksonville, Florida 32202  
904-355-5467**

**Albert Datz, Esq.  
Attorney for defendant Harold Bloom  
1 Independent Dr., Suite 2902  
Jacksonville, Florida 32202  
904-355-5467**

William H. Maness, Esq.  
Attorney for defendant Sam Silberstein  
112 W. Adams St., Suite 808  
Jacksonville, Florida 32202  
904-353-5786

**(8) United States v. Cox**, Case No. 80-59-Cr, United States District Court for the Western District of Michigan.

This was a prosecution of a number of local marijuana dealers and their Texas and Florida sources based upon an undercover investigation. Seven defendants ultimately went to trial in February, 1981. Although by the time of trial I was an Assistant United States Attorney in Jacksonville, Florida, I returned to Grand Rapids as the sole prosecutor in this two week trial. All defendants were convicted, and I understand their appeals were ultimately dismissed.

The trial judge was:

The Honorable Benjamin F. Gibson  
Senior United States District Judge  
Western District of Michigan

Defense counsel and their current addresses are:

James J. Kobza, Esq.  
Attorney for defendants Jeffrey Russell and Maurice Cox  
201 Ameribank Building  
First and Clay  
Muskegon, Michigan 49443  
231-722-7175

Alan S. Rapoport, Esq.  
Attorney for defendant Donald Stalzer  
2533 Scenic Dr.  
Muskegon, Michigan 49445  
231-744-9578

Darrell G. Brown, Esq.  
Attorney for defendant Donald Smith  
401 Ameribank Building  
P.O. Box 600  
Muskegon, Michigan 49443  
231-728-6377

Donald H. Hann, Esq.  
Attorney for defendant Dale Newberg  
503 Century Lane  
Holland, Michigan 49422  
616-396-1245

Jeffrey D. Smith, Esq.  
Attorney for defendant Roger Rice  
350 E. Michigan  
Kalamazoo, Michigan 49007  
616-382-2300

Stuart R. Mishkin, Esq.  
Attorney for defendant Dallas Moore  
1471 NW 14th St.  
Miami, Florida 33125  
305-545-8000

Michael Neil - deceased

(9) United States v. Reminga, Case No. 80-36-Cr., United States District Court, Western District of Michigan. Reported at United States v. Reminga, 493 F. Supp. 1351 (W.D. Mich. 1980).

This case involved a prosecution for dealing in firearms without a license. A bench trial was held in 1980 before the Honorable Richard A. Enslin in which I was the sole prosecutor for the United States. Defendant was convicted of dealing in firearms without a license and acquitted of two related charges in an opinion published by the court. The trial judge afterwards wrote a letter of commendation to the United States Attorney.

The trial judge was:

The Honorable Richard A. Enslin  
Chief Judge, United States District Court  
Western District of Michigan

Defense counsel was:

David A. Dodge, Esq.  
200 N. Division  
Grand Rapids, Michigan 49503  
616-459-3850

(10) People v. Iaconelli, Case No. 73-03636, Detroit Recorder's Court (now the criminal division of Wayne County Circuit Court), Detroit, Michigan. Reported at: People v. Rudy Davis, 394 Mich. 942 (1975); People v. Iaconelli, 317 N.W.2d 540, 512 Mich. App. 725 (1982), vacated in part on rehearing 321 N.W.2d 684, 116 Mich. App. 176 (1982).

This was a sixteen defendant trial which lasted from June 30, 1975 to December 20, 1975. The defendants were Detroit police officers and civilians accused of conspiracy to traffic in narcotics and conspiracy to obstruct justice. I was extensively involved in the pretrial proceedings and preparation and was one of four trial prosecutors in this high profile case. Although the most junior of the prosecutors, I examined and cross examined witnesses and gave a portion of the closing argument. Eight of the defendants were convicted. On appeal, one of the convictions was set aside.

The trial judge was:

The Honorable Justin C. Ravitz  
Recorder's Court (now the Wayne County Circuit Court)

The appellate judges were:

The Honorable George N. Bashara, Jr.  
District Court Judge  
Michigan Court of Appeals for the First District

The Honorable Kenneth N. Sanborn  
District Court Judge  
Michigan Court of Appeals for the First District

The Honorable John H. Gillis - deceased

The other Assistant Prosecuting Attorneys who conducted the trial and their current addresses are:

Roy C. (Joe) Hayes, Esq.  
The Hayes Law Firm  
207 Ferry Ave  
Charlevoix, Michigan 49720  
231-547-1111

Clayton L. Davis, Jr., Esq.  
Assistant Prosecuting Attorney  
1441 St. Antoine, #1139  
Detroit, Michigan 48226  
313-224-6642

Walter Gibbs - deceased

The attorneys representing the defendants at trial and their current addresses are:

Norman L. Lippett, Esq.  
Attorney for defendants Richard Herrold, David Slater  
Hyman Lippett PC  
185 Oakland, #300  
Birmingham, Michigan 48009  
248-646-8292

Robert S Harrison, Esq.  
Attorney for defendant Rudy Davis  
Robert Harrison & Associates  
2550 Telegraph Rd. #275  
Bloomfield Hills, Michigan 48302  
248-253-1800

The Honorable Alfred H. Varga  
Attorney for defendants Willie Peoples, Daniel O'Mara, Robert Mitchel  
Administrative Law Judge  
Social Security Administration  
Office of Hearings and Appeals  
25900 Greenfield, #430  
Oak Park, Michigan 48237  
248 -968-0844, ext. 348

Richard L. Ruby, Esq.  
Attorney for defendant Harold Davis  
185 Oakland Ave., #260  
Birmingham, Michigan 48009  
248-594-6000

Clarence M. Bradfield, Esq.  
Attorney for defendant Maurice Bivens  
1150 Griswold St. #2100  
Detroit, Michigan 48226  
313-961-2772

Sidney Kraisman, Esq.  
Attorney for defendant Erskine Haslip  
615 Griswold St., #1616  
Detroit, Michigan 48226  
313-961-7078

The Honorable Michael F. Sapala  
Attorney for defendant Guido Ianconelli  
Chief Judge, Third Judicial Circuit  
701 City-County Building  
Detroit, Michigan 48226  
313-224-5531

James L. Feinberg, Esq.  
Attorney for defendant Milton Battle  
535 Griswold, Suite 2632  
Detroit, Michigan 48226  
313-962-8280

Lee DesChamps, Esq.  
Attorney for defendant Harold Turner  
Last available address:  
P.O. Box 385  
Socorro, New Mexico 87801  
505-835-1288

Sienna La Rene, Esq.  
Attorney for defendant Robert Neeley  
2395 Tahoe Dr.  
Vail, Colorado 81657  
970-476-6660

Wilfred C. Rice - deceased

Armand D. Bove - deceased

Because these cases are more than five years old, the following are some members of the legal community who have had recent contact with me as a judge:

Marshall M. Criser, Esq.  
McGuire, Battle, Woods & Boothe  
50 N. Laura Street, Suite 3300  
Jacksonville, Florida 32202  
904-798-3200

Henry M. Coxe, III, Esq.  
Bedell, Dittmar, Devault & Pillans  
101 E. Adams St.  
Jacksonville, Florida 32202  
904-353-0211

John Devault, Esq.  
Bedell, Dittmar, Devault & Pillans  
101 E. Adams St.  
Jacksonville, Florida 32202  
904-353-0211

William J. Sheppard, Esq.  
215 N. Washington St.  
Jacksonville, Florida 32202  
904-356-9661

W. C. Gentry, Esq.  
6 E. Bay Street, Suite 400  
Jacksonville, Florida 32201  
904-356-4100

Brian Kane, Esq.  
Managing Assistant United States Attorney  
United States Attorney's Office  
200 W. Forsyth, Suite 700  
Jacksonville, Florida 32202  
904-232-2682

James R. Klindt, Esq.  
Deputy Managing Assistant United States Attorney  
United States Attorney's Office  
200 W. Forsyth, Suite 700  
Jacksonville, Florida 32202  
904-232-2682

James H. Burke, Jr., Esq.  
Assistant Federal Public Defender  
200 W. Forsyth, Suite 1240  
Jacksonville, Florida 32202  
904-232-3039

Alexandra Hedrick, Esq.  
Hedrick, Dewberry & Regan  
50 N. Laura, Suite 2225  
Jacksonville, Florida 32202  
904-356-1300

Christine R. Milton, Esq.  
McGuire, Battle, Woods & Boothe  
50 N. Laura Street, Suite 3300  
Jacksonville, Florida 32202  
904-798-3200

Ernst D. Mueller, Esq.  
Assistant General Counsel  
Office of the General Counsel  
City of Jacksonville  
117 W. Duval St., Suite 480  
Jacksonville, Florida 32202  
904-630-1700

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

**All my legal career prior to becoming a magistrate judge involved litigation, first as a prosecuting attorney and then as an attorney in the litigation department of a Jacksonville law firm.**

**As a member of the Civil Rules Committee of the Federal Magistrate Judges Association, I reviewed and made comments on proposed changes to the Federal Rules of Civil Procedure.**

**While serving as a member of the Florida Bar Grievance Committee, I participated in the investigation and rulings in connection with complaints against members of the Florida Bar.**



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

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

**None.**

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

**Conflicts of interest or potential conflicts of interest will be resolved by my recusal from participation in a given case. The category of litigation which is most likely to present potential conflicts of interest is litigation involving companies in which my wife and I own stock. Other than ministerial matters, I will recuse myself from such cases by following the Code of Judicial Conduct.**

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

**Yes. I anticipate continuing to teach a course on Federal Courts at the Florida Coastal School of Law, with the permission of the Chief Judge.**

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

**See attached financial disclosure report.**

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

**See attached financial net worth statement.**

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

**No.**

AG-10 (9)  
Rev. 1/2000

**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**

Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial) Steele, John E.		2. Court or Organization U.S. District Court, Middle Fl.	3. Date of Report 06/07/2000
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge (Nominee)		5. Report Type (check type) <input checked="" type="checkbox"/> Nomination, Date 06/06/2000 Initial _____ Annual _____ Final _____	6. Reporting Period 01/01/1999 to 06/07/2000
7. Chambers or Office Address U.S. Courthouse 311 W. Monroe Jacksonville, FL 32201		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.  Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.			

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

<input checked="" type="checkbox"/> NONE (No reportable positions.)	POSITION	NAME OF ORGANIZATION / ENTITY
1	_____	_____
2	_____	_____
3	_____	_____

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

<input checked="" type="checkbox"/> NONE (No reportable agreements.)	DATE	PARTIES AND TERMS
1	_____	_____
2	_____	_____
3	_____	_____

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

<input type="checkbox"/> NONE (No reportable non-investment income.)	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1	1999	Baptist/St. Vincent's Health System	
2	1999	Florida Coastal School of Law - salary for teaching course	\$4,000
3	2000	Baptist/St. Vincent's Health System	
4	2000	Florida Coastal School of Law - salary for teaching course	\$2,000

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Steele, John E.	06/07/2000

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE	DESCRIPTION
<input type="checkbox"/>	<b>NONE</b> (No such reportable reimbursements.)	
1	Exempt	
2		
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
<input type="checkbox"/>	<b>NONE</b> (No such reportable gifts.)		
1	Exempt		
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
<input type="checkbox"/>	<b>NONE</b> (No reportable liabilities.)		
1	None		
2			
3			
4			
5			
6			

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

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Steele, John E.	Date of Report 06/07/2000
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*(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

**VII. Page 1 INVESTMENTS and TRUSTS-- income, value, transactions**

A. Description of Assets (including trust assets)  <i>Place "X" after each asset except from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Gain Code (I-P)	(4) Gain Code (A-I)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
1 Second Home, Blowing Rock, N.C. May, 1998 \$110,000	D	Rent	M	R	Exempt				
2 Bank of America Sav./Checking Acct.	A	Interest	J	T					
3 Jax Fed Cr Un Sav Acct	A	Interest	J	T					
4 Abbott Labs common	A	Dividend	J	T					
5 Bank of America common	A	Dividend	J	T					
6 CSX common	A	Dividend	J	T					
7 Disney common	A	Dividend	J	T					
8 Merck common	A	Dividend	K	T					
9 Public Storage	A	Dividend	J	T					
10 Home Depot common IRA	A	Dividend	M	T					
11 Thermo Inst common IRA	A	Dividend	J	T					
12 Tyson common IRA	A	Dividend	J	T					
13 Fidelity Money Mkt IRA #1	A	Dividend	J	T					
14 Valic Fixed Acct Plus IRA	A	Dividend	K	T					
15 Magellan mutual IRA	A	Dividend	J	T					
16 Puritan mutual IRA	A	Dividend	L	T					
17 Quantum Corp Hard Disk Drive common IRA	A	Dividend	J	T					
1 Inv/Gain Codes: A=\$1,000 or less    B=\$1,001-\$2,500    C=\$2,501-\$5,000    D=\$5,001-\$15,000    E=\$15,001-\$50,000 (Col. B1, D4)    F=\$50,001-\$100,000    G=\$100,001-\$1,000,000    H=\$1,000,001-\$5,000,000    I=\$5,000,001 or more									
2 Val Codes: J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001-\$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000 (Col. C1, D3)    O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal    R=Cost (real estate only)    S=Assessr (Col. C2)    U=Book Value    V=Other    W=Retinastd									

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Steele, John E.	Date of Report 06/07/2000
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*(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

**VII. Page 2 INVESTMENTS and TRUSTS-- income, value, transactions**

A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
					If not exempt from disclosure.				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	(2) Date: Month/Day	(3) Value/Gain Code (J-F)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
18 Gabelli Eq Tr IRA	A	Dividend	J	T					
19 Mutual Shares IRA	A	Dividend	J	T					
20 Spartan Money Mkt IRA	A	Interest	K	T					
21 Fidelity Money Mkt IRA #2	A	Dividend	J	T					
22 VanKampenAmCap Corp Bond Fund, IRA	A	Dividend	J	T					
23 Babson Int. mutual	A	Dividend	J	T					
24 Fidelity Brokerage, cash	A	Interest	J	T					
25 Steinroe Mgd Municipals Fund	A	Dividend	J	T					
26 T.Rowe Price Eq. mutual	A	Dividend	J	T					
27 Farnasus mutual	A	Dividend	J	T					
28 Fidelity Diver Internat IRA	A	Dividend	J	T					
29 Fidelity Short Term Bond IRA	A	Dividend	J	T					
30 McDonalds common	A	Dividend	J	T					
31 Dreyfus Small Cap IRA	A	Dividend	J	T					
32 Templeton Intl IRA	A	Dividend	J	T					
33 T-Bond (Zero), Fidelity Brokerage IRA	A	Dividend	K	T					
34 Lot, Blowing Rock, N.C., 1993, \$15,000		None	J	R					
<b>1</b> Line/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 <b>2</b> Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more <b>3</b> Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assess: W=Estimated									

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Steele, John E.	Date of Report 06/07/2000
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*(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

**VII. Page 3 INVESTMENTS and TRUSTS-- income, value, transactions**

A. Description of Assets (including trust assets)  <i>Place "XX" after each asset except from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Gain Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
35 AGFPC Social Awareness IRA	A	Dividend	K	T					
36 Putnam OTC & Emerg GRO IRA	A	Dividend	K	T					
37 Twentcent Ultra IRA	A	Dividend	K	T					
38 AGFPC Science & Tech IRA	A	Dividend	K	T					
39 Putnam Global Growth IRA	A	Dividend	K	T					
40 Century Telephone common	A	Dividend	J	T					
41 Focus Fund	A	Dividend	J	T					
42 Vanguard Life Strategic Mod Growth IRA	A	Dividend	J	T					
43 Quantum Corp DLT & Storage IRA common	A	Dividend	J	T					
44 Home Depot - common	A	Dividend	J	T					
45 Dell Computer	A	Dividend	J	T					
46									
47									
48									
49									
50									
51									

1 Inr/Gain Codes: A=\$1,000 or less (Col. B1, D4) P=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 H2=\$5,000,001 or more

2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

3 Val/Mh Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assess W=Estimated

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Steele, John E.	Date of Report 06/07/2000
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**VII. ADDITIONAL INFORMATION OR EXPLANATIONS.**  
*(Indicate part of report.)*

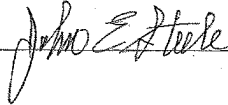
<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Steele, John E.	06/07/2000

**IX. CERTIFICATION**

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

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

6-7-00

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

**FILING INSTRUCTIONS**

Mail original and three additional copies to:

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



## FINANCIAL STATEMENT - NET WORTH -AS OF MARCH 31, 2000

ASSETSLIABILITIES

Cash on hand and in banks	\$ 8000	Notes payable to banks-secured	\$15,000
U.S. Government Securities (add schedule)	\$ 0	Notes payable to banks-unsecured	\$ 0
Listed securities (add schedule)	\$ 680,428	Notes payable to relatives	\$ 0
Unlisted securities (add schedule)	\$ 0	Notes payable to others	\$ 0
Accounts and notes receivable:	\$ 0	Accounts and bills due	Monthly
Due from relatives/friends	\$ 0	Unpaid income tax	\$ 0
Due from others	\$ 0	Other unpaid tax and interest	\$ 0
Doubtful	\$ 0	Real estate mortgages payable (add schedule)	\$ 150,000
Real estate owned (add schedule)	\$ 400,000	Chattel mortgages and other liens payable	\$ 0
Autos and other personal property	\$ 30,000	Other debts- itemize:	\$ 0
Cash value - life insurance	\$ 500		
Other assets- itemize:			
-Household furniture	\$ 10,000		
		Total Liabilities	\$ 165,000
		Net Worth	\$ 963,928
Total Assets	\$1,128,928	Total liabilities and net worth	\$1,128,928
<b>CONTINGENT LIABILITIES</b>		<b>GENERAL INFORMATION</b>	
As endorser, comaker, or guarantor	\$ 0	Are any assets pledged? (add schedule)	No
On leases or contracts	\$ 0	Are you a 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		

## STEELE INVESTMENT PORTFOLIO

March 2000

STOCK	SHARES	PRICE		MARKET VALUE
		Mar 2000		
Abbott Labs	135,462	33.00		\$4,470.25
Century Telephone Enterprises	38,339	36.50		\$1,399.37
CSX Corp	20,000	23.50		\$470.00
Walt Disney Company	183,137	40.75		\$7,462.83
McDonalds Corporation	89,686	40.75		\$3,653.89
Merck & Company Inc.	322,148	61.00		\$19,651.03
Public Storage Inc.	200,000	21.50		\$4,300.00
Synovus Financial Corporation	4,953	18.00		\$89.15
<b>Total Stock Value</b>				<b>\$41,486.52</b>

MUTUAL FUNDS	SHARES	PRICE		MARKET VALUE
		Mar 2000		
Focus Fund	30.18	44.38		\$1,339.39
Parnassus Fund (Dec 98)	189,451	64.92		\$12,104.40
T. Rowe Price Equity Income	329,750	23.31		\$7,688.47
Steinroe Managed Municipals	396,369	8.48		\$3,022.01
Fidelity Cash *				\$451.13
Babson Enterprise Fund	1039,606	13.40		\$13,930.72
<b>Total Mutual Fund Value</b>				<b>\$38,534.12</b>

IRA - JAY	SHARES	PRICE		MARKET VALUE
		Mar 2000		
Van Kampen Corporate Bond Fund - A *	445,495	6.56		\$2,922.45
Home Depot Inc.	2019	64.00		\$129,216.00
Fidelity Investments - Zero Coupon Bonds	20,000	72.67		\$14,534.00
Fidelity Cash Reserves				\$6,509.25
Spartan Money Market				\$22,082.31
Fidelity Diversified International	572,473	25.73		\$14,728.73
Fidelity Short Term Bond	765,415	9.48		\$6,490.72
US Gov't Thrift Savings Plan - (Oct 99)				\$162,609.69
<b>TOTAL RETIREMENT - JES</b>				<b>\$359,094.15</b>

IRA - LYNDA	SHARES	PRICE		MARKET VALUE
		Mar 2000		
Franklin Templeton Mutual Shares Fund - Class Z (Dec 98)	404,777	20.53		\$8,330.31
Gabelli Equity Trust Inc.	153,000	11.68		\$1,785.28
Gabelli Multimedia Trust Inc.	11	17.68		\$194.43
Gabelli Utilities Trust	15	7.50		\$112.50
NVR Inc.	10,000	52.00		\$520.00
Home Depot Inc.	50	64.00		\$3,200.00
Quantum Corp Hard Disk Drive	300	12.38		\$3,712.50
Thermo Instruments Systems Inc.	468	21.38		\$10,003.50
Tyson Foods Inc.	300	10.25		\$3,075.00
Fidelity Cash Reserves				\$1,685.53
<b>Total IRA - LMS</b>				<b>\$32,620.04</b>

<b>St. Vincent's Health System Ascension Health TSA Savings Plan</b>				
Templeton International Growth				\$3,061.53
Dreyfus Small Cap				\$5,120.88
Vanguard Life Strat Mod Gwth				\$1,930.38
Valic Fixed Account Plus				\$14,522.37
<b>TOTAL VALIC</b>				<b>\$24,634.96</b>
<b>Baptist/St. Vincent's Tax-Deferred Annuity Plan</b>				
Putnam Global Growth				\$23,772.57
Putnam OTC & Emerging Growth				\$29,789.30
American Century Ultra				\$21,850.53
AGSPC Science & Technology				\$30,836.25
AGSPC Social Awareness				\$18,441.28
<b>Total BSV TDAP</b>				<b>\$124,689.93</b>
Fidelity Magellan Fund	0.603	144.80		\$87.31
Fidelity Puritan	2742,189	18.81		\$51,580.58
DCC PENSION *			Dec 99	\$7,890.20
<b>Total TSA - LMS</b>				<b>\$208,682.98</b>

<b>TOTAL RETIREMENT - LMS</b>				<b>\$241,303.02</b>
<b>TOTAL INVESTMENTS</b>				<b>\$680,427.81</b>

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Schedule of Real Estate

Residence:	\$250,000
North Carolina second home and lot:	\$150,000

## III. GENERAL (PUBLIC)

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

**I have served on committees of The Florida Bar in the Jacksonville, Florida area which involve disputes between clients and their attorneys. These include a bar grievance committee and a bar fee arbitration dispute committee. The grievance committee involved meeting for several hours each month, plus whatever time was necessary to investigate matters assigned to you. I was the chairman of the committee in 1991 prior to my appointment as a magistrate judge. The fee arbitration dispute committee involved only one matter which went to a hearing.**

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

**No.**

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

**There is a selection commission in my jurisdiction to recommend candidates for nomination to the federal courts, and the commission did recommend my name to our state's senators. A committee of attorneys and non-attorneys was appointed by Senator Bob Graham to consider applications for new judicial appointments. I submitted the required application for a position as a District Judge in the Middle District of Florida, and was selected as one of eighteen (18) persons to be interviewed by the committee. This committee interview was conducted in Tampa, Florida and resulted in nine (9) names, including mine, being recommended to Senator Graham. Shortly thereafter Senator Graham and Senator Connie Mack conducted joint interviews of these nine persons in Orlando, Florida. Shortly after this interview, Senator Graham then contacted me to request my permission to submit my name for one of the positions. After giving my permission, I later traveled to Washington, D.C., where I was interviewed by four (4) attorneys from the Department of Justice. I have since**

**been interviewed by representatives of the Federal Bureau of Investigation for security clearance, and by a representative of the American Bar Association for purposes of the Association's recommendation. In the process, I have completed several applications and provided copies of my work to various individuals at the Department of Justice.**

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

**No.**

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

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

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

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

**The federal courts are, by design, courts of limited jurisdiction. Our constitutional system does not vest courts in general, or federal courts in specific, with the authority to remedy all problems perceived by all people. The two other branches of government have responsibility for making decisions on the multitude of choices which face a free society. Federal courts become involved only at the request of others, by virtue of a lawsuit being filed requesting the court to intervene in a particular dispute and to impose a remedy or sanction. Federal judges must keep in mind that this is a relatively limited role, and that judges must adhere to the constitutional principles of separation**

**of powers and our system of federalism. Federal courts must also ensure that the parties before it have the requisite interest in the outcome of the matter to have the constitutional standing to pursue a court determination, and that the dispute is ripe for adjudication and not moot.**

Senator SMITH. The hearing is adjourned.  
[Whereupon, at 3:14 p.m., the committee was adjourned.]





## QUESTIONS AND ANSWERS

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### RESPONSES OF GLENN A. FINE TO QUESTIONS FROM SENATOR THURMOND

*Question 1.* Mr. Fine, if confirmed, what will be your top priority as Inspector General?

Answer 1. The Inspector General must provide effective and independent oversight over Department operations and personnel. My top priority would be to ensure that our core work—investigations of criminal and administrative misconduct and financial and program reviews—is done in an aggressive, fair, and objective manner, and that the office does all it can to detect and deter waste, fraud, and abuse.

*Question 2.* Mr. Fine, in your view, how important is it for the position of the Inspector General to be independent of the chief of the agency in which they operate?

Answer 2. According to the Inspector General Act, each Inspector General “shall report to and be under the general supervision of the head of the establishment involved,” but the head of the agency may not prevent or prohibit the Inspector General from carrying out his or her duties, except in limited circumstances.

I believe that it is essential for an Inspector General to perform his or her duties independently from the head of the agency. Although an effective Inspector General must have a professional relationship with the head of the agency, independence is critical.

*Question 3.* Mr. Fine, I understand that the Inspector General’s office is currently preparing a report regarding Citizenship USA. How long has the office been working on this report, and when do you expect it to be completed?

Answer 3. The Citizenship USA investigation began in the spring of 1997. When I became a candidate for the Inspector General position in 1999, I recused myself from any involvement in the matter. I did not want there to be any appearance of a conflict of interest, since I was being considered for a Presidential appointment and the office’s investigation included examining allegations that could involve the actions of White House officials.

I understand that the team is currently completing the report of investigation and plans to issue the report within a month.

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### RESPONSES OF DENNIS M. CAVANAUGH TO QUESTIONS FROM SENATOR THURMOND

*Question 1.* Mr. Cavanaugh, we frequently hear the argument that the courts act in response to various social problems because the legislature has failed to act on important issues. What is your view of courts acting in this manner?

Answer 1. It is inappropriate for the courts to act in response to social problems because the legislature has failed to act. It is the duty of the trial court to resolve cases or controversies that come before it rather than to solve the problems of society. Such broad based changes in institutions, policies and mores are reserved for Congress. The court’s vital role in that process is to make certain that the policies and rules so established are effectuated by being applied consistently, equitably, promptly and justly to each case and each litigant that enters the federal judicial system.

*Question 2.* Mr. Cavanaugh, do you have any personal objections to the death penalty that would cause you to be reluctant to impose or uphold a death sentence?

Answer 2. No. I would have no personal objections or problems in imposing or upholding a death sentence. I would be bound by the precedent of the Supreme Court which has held that the death penalty is constitutional.

*Question 3.* Mr. Cavanaugh, what is your view of mandatory minimum criminal sentences, and would you have any reluctance to impose or uphold them as a Federal judge?

Answer 3. It is my view that mandatory minimum criminal sentences as set forth in the Sentencing Guidelines have been held to be constitutional by the Supreme

Court. I would have no reluctance to impose or uphold mandatory minimum sentences as set forth in the Guidelines.

*Question 4.* Mr. Cavanaugh, as you are well aware, the sentencing of criminal defendants in Federal court is conducted under the Federal Sentencing Guidelines. Some argue that the Guidelines do not provide enough flexibility for the sentencing judge, while others say the Guidelines provided needed consistency. What is your view of the Federal Sentencing Guidelines and their application?

Answer 4. The Sentencing Guidelines have been held to be constitutional by the Supreme Court of the United States. I have had no objection to applying them in the past as a United States Magistrate Judge and I would have no objection to applying them as a District Court Judge.

*Question 5.* Mr. Cavanaugh, as you know, the Prison Litigation Reform Act, was an attempt to limit prisoner litigation and court involvement in prison operations. Do you believe that the Act has been beneficial to the legal system or do you believe it places too many restrictions on the ability of prisoners to make claims and for judges to remedy Constitutional violations in the prison context?

Answer 5. The purpose of the Prison Litigation Reform act is to reduce the backlog of frivolous prisoner cases in the federal courts and yet not restrict the ability of prisoners to make appropriate federal claims. Since this is an act of Congress, it is presumed to be constitutional. As such, I am bound by the Act.

*Question 6.* Mr. Cavanaugh, as you are aware, Federal Rule of Civil Procedure 11 permits federal judges to impose sanctions against attorneys for unwarranted claims or representations made in their pleadings. Some say this rule is an important tool for judges, while others believe it discourages litigants from testing the boundaries of existing law. What is your opinion of Rule 11?

Answer 6. I believe that Rule 11 is an effective and appropriate rule when used in the appropriate context. While I am of the opinion that sanctions against attorneys should be imposed sparingly and as a last resort, there is no question but that this rule is an important tool that protects litigants from unwarranted and/or frivolous claims.

Under the appropriate circumstances, I would have no hesitancy in imposing sanctions pursuant to Rule 11.

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RESPONSES OF DENNIS M. CAVANAUGH TO QUESTIONS FROM SENATOR SESSIONS

*Question 1.* 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?

Answer 1. Yes. I am committed to following the precedents of higher courts and giving them full force and effect. Under our law, a United States District Court Judge must apply applicable Court of Appeals and Supreme Court precedent even if he or she disagrees with that precedent.

*Question 2.* How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision or your own best judgment of the merits? Take, for example, the Supreme Court's recent decision in the *City of Boerne v. Flores*<sup>1</sup> where the Court struck down the Religious Freedom Restoration Act.

Answer 2. Regardless of whether or not I thought the Supreme Court or Court of Appeals had seriously erred, I would still follow and apply that decision. There are no circumstances, and should be no circumstances, under which a lower court may impose its independent judgment on the merits of a case in contradiction of a Court of Appeals or Supreme Court precedent.

*Question 3.* Regardless of your personal feelings on these issues, are you committed to following precedent of higher courts on equal protection issues?

Answer 3. Yes. I am committed to following the precedents of higher courts on equal protection issues as well as all other issues.

*Question 4.* Do you have any legal or moral beliefs which would inhibit or prevent you from imposing or upholding a death sentence in any criminal case that might come before you as a federal judge?

<sup>1</sup>521 U.S. 507 (1997).

Answer 4. No. Our Supreme Court has held the death penalty to be constitutional. I have no legal or moral belief that would inhibit or prevent me from imposing or upholding a death sentence in the appropriate case.

*Question 5.* Do you believe that 10, 15, or even 20-year delays between conviction of a capital offender and execution is too long? Do you believe that once Congress or a state legislature has made the policy decision that capital punishment is appropriate that the federal courts should focus their resources on resolving capital cases fairly and expeditiously?

Answer 5. There is little question but that a delay of 10 to 20 years between conviction of a capital offender and execution is unreasonably long. I believe that once Congress or a state legislature has made the decision that capital punishment or any other punishment for non-capital cases is appropriate, the federal courts should make every effort to resolve the matters as fairly and expeditiously as possible.

*Question 6.* What authorities may a federal judge legitimately use in determining the legal effect of a statute or constitutional provision? Discuss how the use of each of these authorities is consistent with the exercise of the Article III judicial power.

Answer 6. In determining the legal effect of a statute or constitutional provision, the judicial power of an Article III judge is limited. A judge must presume a statute is constitutional. A court should carefully review the plain text of the statute or constitutional provision and give the words a plain and ordinary meaning so as not to construe the language in such a way as to unreasonably limit or expand their meaning. If after such a review, the provision is ambiguous, a court should look to other sources such as the structure of the overall text, the intent of the drafters as reflected in contemporaneous writings, and applicable analogous authorities. It must be understood that the use of sources such as legislative history may not always be accurate in that the views expressed by one legislator during a debate may not set forth the collective intent of the legislative body. Therefore, the review of the legislative history should be done with caution.

*Question 7.* Please assess the legitimacy of the following three approaches to establishing a constitutional right not previously upheld by a court: (1) interpretation of the plain meaning of the text and the original intent of the Framers of the Constitution; (2) discernment of the "community's interpretation" of constitutional text, see William J. Brennan, "The Constitution of the United States: Contemporary Ratification," Test and Teaching Symposium, Georgetown University (October 12, 1985); and (3) ratification of an amendment under Article V of the Constitution. Assess the impact of each approach on the judicial power established by Article III of the Constitution.

Answer 7. It is only the Supreme Court that could properly uphold the claim of a right not previously recognized by the Supreme Court. Such a recognition would only be done in extremely rare circumstances. Interpretation of the plain meaning of the text and original intent of the Framers of the Constitution would be a legitimate means to such an interpretation.

I do not believe that the discernment of the "community's interpretation" is a legitimate approach to establishing constitutional rights not previously upheld by a court.

Ratification of an amendment under Article V of the Constitution requires ratification of three-quarters of the States or by convention in three-quarters thereof. Such an amendment duly ratified, would become a part of the Constitution, and therefore a legitimate constitutional right.

*Question 8.* How would you, if confirmed, analyze a challenge to the constitutionality of a statute in a case that was not one of first impression? In a case of first impression?

Answer 8. The doctrine of stare decisis dictates that due deference must be given to binding precedent of cases decided by higher courts. Accordingly, in a case that was not one of first impression, that doctrine must be followed.

In analyzing a case of first impression, a court must presume that a statute is valid and constitutional. I would also consider the words of the statute in order to determine its meaning. If after such a reading I were convinced that the case was one of first impression, I would review precedents of higher courts in analogous situations for guidance. Only upon a clear showing that the statute is contrary to the Constitution or where Supreme Court precedent demands, should such a constitutional challenge succeed.

*Question 9.* In your view, what are the sources of law and methods of interpretation used in reaching the Court's judgment in the following cases? How does the use of these sources of law impact the scope of the judicial power and the federal government's power under Article III?

A. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

B. *Alden v. Maine*, 119 S. Ct. 2240 (1999).

Answer 9. In *Griswold*, the Supreme Court declared a state statute prohibiting the use or the aiding and abetting of the use of contraceptives to be unconstitutional. The Court found that implicit rights exist within the “penumbra” of those rights specified in the Constitution.

The *Alden* case involved a claim by state employees that their employer, the State of Maine, violated their rights under the Fair Labor Standards Act with respect to overtime pay. The Maine Supreme Judicial Court held that the state enjoyed sovereign immunity and could therefore not be sued in state court without the state’s consent. The Supreme Court of the United States affirmed the Maine Supreme Judicial Court’s decision and held further that article I of the Constitution does not give Congress the power or authority to subject states to private damage suits in the state courts.

These two cases are noteworthy due to the different type of protection each affords. *Griswold* deals with the rights of individual citizens who are protected from federal government regulation. *Alden* holds that federal authority does not extend to diminish the sovereignty of state governments. In both cases the Court demonstrates its willingness to look beyond the text of the Constitution to support its findings.

*Question 10.* Compare the following cases with respect to their fidelity to the text and original intent of the Constitution. Also assess their impact on the judicial power compared with Congress’s power and on the federal government’s power compared with the power of state governments.

A. *Wickard v. Filburn*, 317 U.S. 111 (1942).

B. *United States v. Lopez* 514 U.S. 549 (1995).

Answer 10. In *Wickard*, the Court upheld legislation regulating the amount of wheat produced for personal consumption on family farms. This decision recognized Congressional power under the commerce Clause to regulate intrastate activities that have a substantial and cumulative economic effect on interstate commerce, whether or not the activity itself may be commerce. The Supreme Court held that congressional powers are not just limited to those expressly stated in the text of the Constitution, but also may include implied powers as are necessary and proper to allow Congress to effectuate the express powers.

In *Lopez*, the Court found a federal statute prohibiting persons from possessing a firearm near a school was unconstitutional since the act exceeded Congress’s Commerce Clause authority in that possession of a gun in a local school zone was not economic activity that substantially affected interstate commerce. Under our federal system, the states possess primary authority for defining and enforcing criminal law. The act in question was a criminal statute that by its terms had nothing to do with “commerce” or any economic enterprise, however broadly defined. In effect, the Court held that there are limits to congressional power under the Commerce Clause. While *Wickard* set expansive outer limits, *Lopez* defined and restricted those limits.

*Question 11.* What role does the division of power between the national government and state governments play in our federal system? What impact does this division have on the liberty of the individual and the power of federal judges? Assess the impact of the following cases on the division of power between the national and state governments.

A. *United States v. Lopez*, 514 U.S. 549 (1995).

B. *Printz v. United States*, 521 U.S. 898 (1997).

C. *Alden v. Maine*, 119 S. Ct. 2240 (1999).

E. *Baker v. Carr*, 369 U.S. 186 (1962).

F. *Shaw v. Reno*, 509 U.S. 630 (1993).

Answer 11. The division of power between the federal and state governments represents an important concept in our system of federalism. In *Lopez* a federal statute prohibiting persons from possessing a firearm near any school was struck down due to the fact that the law did not fall within the federal commerce power. The Supreme Court rejected the Government’s argument that the statute in question substantially affected interstate commerce and therefore fell within the scope of the commerce clause. The Court determined that such a finding would convert the federal commerce power into a general police power of the kind retained only by the states.

In *Printz*, the Supreme Court struck down a provision of the Brady Act requiring state officials to conduct background checks on individuals purchasing firearms. The Court found the provision in question to be invalid due to the fact that it effectively transferred the executive’s responsibility to administer laws enacted by Congress to

state officials. The Court found that Congress could not require states to conduct background investigations in furtherance of federal programs.

The *Alden* case involved an action by state employees who claimed their rights were violated pursuant to the Fair Labor Standards Act due to the fact that they were not paid overtime. After the Maine Supreme Judicial Court held that the state had sovereign immunity and could not be sued in state court without its consent, the Supreme Court of the United States affirmed the holding that Article 1 of the Constitution does not give Congress the power to subject states to private damage lawsuits in state courts.

In *Baker v. Carr*, the Supreme Court decided there was federal court jurisdiction over a state's redistricting plan which had previously been considered purely a question of a state's political function. Because of the importance of the equal protection issues involved, the Court was willing to encroach upon a function reserved to the state legislature.

In *Shaw v. Reno*, the Supreme Court again took jurisdiction over a state's redistricting plan. This time the Court defined specifically the degree of constitutional scrutiny required to review a plan based on race, finding that it would be subject to a strict scrutiny analysis.

The Constitution provides for the division of powers between the various states and the federal government. Basically, the states retain governmental power and authority for those matters not enumerated as federal powers under the Constitution. This division of power is designed to protect the liberties of the individuals because the two governments check and balance each other.

The cases cited above set forth a framework to finding the appropriate role of the federal and state governments as interpreted by the Supreme Court. Lower court judges are obligated to follow these precedents in applicable cases.

*Question 12.* Do you believe that a federal district court has the institutional expertise to set rules for and oversee the administration of prisons, schools, or state agencies?

*Answer 12.* No. Under the Constitution, the role of the judiciary is to decide cases or controversies that come before it, not to encroach upon the constitutional powers conferred upon other branches of the government. Courts do not have the institutional expertise to set rules for and oversee the administration of prisons, schools or state agencies.

*Question 13.* In some cases, statutes were in effect before the ratification of a clause of the Constitution that is later used to challenge the validity of those statutes. In ruling on the constitutionality of a statute, what weight should a court give to the fact that the challenged statute existed and was routinely enforced before and after the ratification of the constitutional provision at issue? Assume the court faces this issue as a matter of first impression.

*Answer 13.* The Constitution is the supreme law of the land. In a case of first impression, which is quite rare, a court must presume a statute is constitutional. The fact that a challenged statute existed previously and was routinely enforced, should be given significant weight. I would also consider the words of the statute in order to determine its meaning. If upon review I was satisfied that the case was indeed one of first impression, I would consider precedents of higher courts in analogous areas of law. Only upon a clear showing that the statute in question is contrary to the Constitution, or where Supreme Court precedent demands, should such a challenge to a statute's constitutionality succeed.

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RESPONSES OF JAMES S. MOODY, JR. TO QUESTIONS FROM SENATOR THURMOND

*Question 1.* We frequently hear the argument that the courts act in response to various social problems because the legislature has failed to act on important issues. What is your view of courts acting in this manner?

*Answer 1.* Under our Constitution's separation of powers, the role of the District Court is to apply statutes and precedent from decisions of higher courts to the cases and controversies before it. The role of the Federal courts is not to act in response to various social problems because the legislature has failed to act or chosen not to act on a particular issue.

*Question 2.* Do you have any personal objections to the death penalty that would cause you to be reluctant to impose or uphold a death sentence?

*Answer 2.* No, I hold no personal objection to the death penalty which would cause me to be unable or reluctant to impose or uphold a death sentence.

*Question 3.* What is your view of mandatory minimum criminal sentences, and would you have any reluctance to impose or uphold them as a Federal judge?

Answer 3. Criminal sentences are within the purview of the legislative branch. If the legislative branch sets a minimum sentence for a particular offense or set of circumstances, I would have no reluctance to impose or uphold it as a Federal judge.

*Question 4.* The sentencing of criminal defendants in Federal court is conducted under the Federal Sentencing Guidelines. Some argue that the Guidelines do not provide enough flexibility for the sentencing judge, while others say the Guidelines provided needed consistency. What is your view of the Federal Sentencing Guidelines and their application?

Answer 4. The establishment of sentencing guidelines is within the purview of the legislative branch. Inconsistent sentencing gives the appearance of unequal treatment. The legislative branch adopted sentencing guidelines to ameliorate that problem and made provisions for flexibility under certain limited circumstances. I anticipate that I will find the guidelines helpful by providing an easy framework within which to determine appropriate sentences.

*Question 5.* The Prison Litigation Reform Act was an attempt to limit prisoner litigation and court involvement in prison operations. Do you believe that the Act has been beneficial to the legal system or do you believe it places too many restrictions on the ability of prisoners to make claims and for judges to remedy Constitutional violations in the prison context?

Answer 5. Prisoner litigation has threatened to overwhelm the court system. Obviously, there must be a balancing of the need to address any legitimate grievances brought by prisoners with protecting the court from frivolous lawsuits which tax the limited resources of the court. While as a state court judge I haven't had the occasion to apply the Prison Litigation Reform Act, if confirmed I would have no hesitancy in doing so.

*Question 6.* Federal Rule of Civil Procedure 11 permits Federal judges to impose sanctions against attorneys for unwarranted claims or representations made in their pleadings. Some say this rule is an important tool for judges, while others believe it discourages litigants from testing the boundaries of existing law. What is your opinion of Rule 11?

Answer 6. Federal Rule of Civil Procedure 11 is an important tool available to the court to discourage and sanction frivolous claims while permitting litigants to test the boundaries of existing law.

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RESPONSES OF JAMES S. MOODY, JR., TO QUESTIONS FROM SENATOR SESSIONS

*Question 1.* 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?

Answer 1. Yes, I am committed to following the precedents of higher courts faithfully and giving them full force and effect, even if I personally disagree with such precedents. A judge's personal views are irrelevant to his or her rulings as a Federal District Court judge.

*Question 2.* How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision or your own best judgment of the merits? Take, for example, the Supreme Court's recent decision in the City of Boerne v. Flores<sup>1</sup>, where the Court struck down the Religious Freedom Restoration Act.

Answer 2. As a Federal District judge, I will apply the precedents of the Circuit Court of Appeal and the Supreme Court even if I think the decision is seriously in error.

*Question 3.* Regardless of your personal feelings on these issues, are you committed to following the precedent of higher courts on equal protection issues?

Answer 3. Yes. I am committed to following the precedent of higher courts on all issues, including equal protection issues.

*Question 4.* Do you have any legal or moral beliefs which would inhibit or prevent you from imposing or upholding a death sentence in any criminal case that might come before you as a Federal judge?

Answer 4. I do not have any legal or moral beliefs which would inhibit or prevent me from imposing or upholding a death sentence in any criminal case that might come before me as Federal judge.

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<sup>1</sup>521 U.S. 507 (1997).

*Question 5.* Do you believe that 10-, 15-, or even 20-year delays between conviction of a capital offender and execution is too long? Do you believe that once Congress or a state legislature has made the policy decision that capital punishment is appropriate that the Federal courts should focus their responses on resolving capital cases fairly and expeditiously?

Answer 5. Yes, 10, 15, or 20 years is too long between conviction of a capital offender and execution of the sentence. Once Congress or a state legislature has made the policy decision that capital punishment is appropriate, Federal courts should focus their resources on resolving capital cases fairly and expeditiously.

*Question 6.* What authorities may a Federal judge legitimately use in determining the legal effect of a statute or constitutional provision? Discuss how the use of each of these authorities is consistent with the exercise of the Article III judicial power.

Answer 6. Authorities for a Federal District Court judge are the express provisions of the Constitution and statutes, and decisions from higher courts. If there is no precedent directly on point, a judge may look at analogous cases and attempt to apply similar reasoning to the case at hand. If a provision is ambiguous and the legislative history is clear, another appropriate authority is the legislative history of the statute or constitutional provision. Applying precedent in this manner limits the exercise of judicial power and provides stability and predictability.

*Question 7.* Please assess the legitimacy of the following three approaches to establishing a constitutional right not previously upheld by a court: (1) interpretation of the plain meaning of the text and the original intent of the Framers of the Constitution; (2) discernment of the “community’s interpretation” of constitutional text, see William J. Brennan, *The Constitution of the United States: Contemporary Ratification*, Text and Teaching Symposium, Georgetown University (October 12, 1985); and (3) ratification of an amendment under Article V of the Constitution. Assess the impact of each approach on the judicial power established by Article III of the Constitution.

Answer 7. Constitutional rights are enumerated in the Constitution. The interpretation of constitutional rights based on the plain wording and the original intent of the framers of the Constitution is a legitimate approach to considering the claims of rights not previously upheld by a court. A constitutional right may be legitimately established by a ratification of an amendment under Article V of the Constitution. If that occurs, it should be enforced and protected like the other amendments.

It is not the role of the Federal Court to attempt to discern the “community’s interpretation” in order to establish a constitutional right not previously upheld by a court. The legislative and executive branches are accountable to the public and are in the best position to ascertain the views of the community.

*Question 8.* How would you, if confirmed, analyze a challenge to the constitutionality of a statute in a case that was not one of first impression? In a case of first impression?

Answer 8. All statutes are presumed constitutional. If a challenge to the constitutionality of a statute arose and it was not a case of first impression. I would follow the binding precedents of the higher courts. In a case that was truly of first impression, I would look to the express language of the statute and the Constitution, and to analogous or otherwise relevant cases and precedent of the Supreme Court and the Eleventh Circuit Court of Appeals.

*Question 9.* In your view, what are the sources of law and methods of interpretation used in reaching the Court’s judgment in the following cases? How does the use of these sources of law impact the scope of the judicial power and the Federal government’s power under Article III?

A. *Griswold v. Connecticut*, 381 U.S. 479(1965).

B. *Alden v. Maine*, 119 S. Ct. 2240 (1999).

Answer 9. In *Griswold v. Connecticut*, the Supreme Court found a right of privacy in the penumbra of various Amendments to the Constitution, primarily the First Amendment. The right of privacy is not an expressly enumerated right within the Constitution. The Supreme Court reasoned that it was implied by the other Amendments. In contrast, in *Alden v. Maine* the Supreme Court looked to the original intent of the framers of the Constitution in determining an issue not specifically expressed in the Constitution, the sovereign immunity of the States. The Supreme Court noted that historically, the founding generation considered immunity from private suits central to the division of power and the dignity of the individual states.

The sources of law for a Federal District Court judge are the provisions of the United States Constitution, the statutes passed by Congress and the precedents of the higher courts. The method of interpretation is to apply the clear wording of the text of the statute or constitutional provision consistent with the decisions of the higher courts as applied to the facts of the case. *Stare decisis* is a fundamental prin-

principle of our system to justice. Using these sources of law in this manner of interpretation restricts the scope of judicial power, but provides stability, consistency and predictability. When in doubt about the meaning of a statute or constitutional provision, one should look to analogous reasoning by higher courts on similar issues and the intent of the original framers of the Constitution.

*Question 10.* Compare the following cases with respect to their fidelity to the text and original intent of the Constitution. Also assess their impact on the judicial power compared with Congress's power and on the Federal government's power compared with the power of state governments.

A. *Wickard v. Filburn*, 317 U.S. 111 (1942).

B. *United States v. Lopez*, 514 U.S. 549 (1995).

Answer 10. In *Wickard v. Filburn*, the Supreme Court upheld legislation passed pursuant to the Commerce Clause which restricted the production of home grown wheat. The Supreme Court held that, even though Wickard's activity might be local and trivial by itself, his activity could still be reached by regulation of the Federal government because his contribution, taken together with that of many others similarly situated, affected interstate commerce. This arguably extended the reach of Federal regulations to even "local" intrastate activities.

In *United States v. Lopez*, the Supreme Court held that the possession of a gun by a student in a local school zone was not an economic activity that might, through repetition elsewhere, have a substantial effect on interstate commerce. This decision acknowledged the intent of the original framers of the Constitution that purely local matters should be left to the regulation of the individual states.

These two cases are illustrative of the Supreme Court's exercise of judicial power in cases highlighting the tension between the enumerated powers of the Federal government with those reserved to the individual states. The Constitution created a Federal government of enumerated powers. The idea of the original framers was that the powers not given specifically to the Federal government would remain with the individual state governments.

*Question 11.* What role does the division of power between the national government and state governments play in our Federal system? What impact does this division have on the liberty of the individual and the power of Federal judges? Assess the impact of the following cases on the division of power between the national and state governments.

A. *United States v. Lopez*, 514 U.S. 549 (1995).

B. *Printz v. United States*, 521 U.S. 898 (1997).

C. *Alden v. Maine*, 119 S. Ct. 2240 (1999).

D. *Baker v. Carr*, 369 U.S. 186 (1962).

E. *Shaw v. Reno*, 509 U.S. 630 (1993).

Answer 11. The drafters of the Constitution envisioned a balance of power between the national government and the individual states, much like the system of checks and balances among the three branches of government. As *United States v. Lopez* reiterates, this constitutionally mandated division of authority "was adopted by the Framers to ensure protection of our fundamental liberties." The five cases mentioned in this question are all examples of the division of power between the national government and state governments under our Federal system.

In *United States v. Lopez*, the Supreme Court, after acknowledging this division of power, held that the possession of a gun in a local school zone by a student was a local matter with no substantial economic effect sufficient to bring the matter within the reach of Federal regulation through the Commerce Clause. Likewise, in *Printz v. United States*, the Court looked to historical understanding and practice, and to the structure of the Constitution itself, in holding that the Federal government could not compel state officers to execute Federal laws requiring background checks prior to the purchase of a gun.

Again in *Alden v. Maine*, the Supreme Court was called upon to review the division of power between the national government and the state governments. It held that under the Federal system established by the Constitution, the states retained a "residuary and inviolable sovereignty," quoting from the Federalist No. 39. The sovereign immunity of the states is not specifically mentioned in the Constitution, but the Supreme Court looked to constitutional history and noted that the founding generation considered immunity from private suits central to the Federal division of powers. The Supreme Court found that the doctrine that a sovereign could not be sued without its consent was universal in the States where the Constitution was drafted and ratified.

*Baker v. Carr* and *Shaw v. Reno* examine this same division of power as applied through the Equal Protection Clause of the Fourteenth Amendment to state voting rights cases. In *Baker v. Carr*, the Supreme Court held that it had jurisdiction to



hear a voting apportionment case involving a claim that plaintiffs were deprived of equal protection in voting in state elections. It determined that it was not a non-justiciable political question even though it involved matters traditionally left to legislative policy-making involving a state's apportionment of voting power among its numerous localities. In *Shaw v. Reno*, the Supreme Court once again entertained a claim of an equal protection violation by a state's apportionment. The Supreme Court looked to the history of racial discrimination in voting and its link to the Fourteenth Amendment as important in deciding that it was a federal question. It pointed out that the Equal Protection Clause prevents the States from discriminating against individuals on the basis of race and it applied the strict scrutiny test to the apportionment plan.

*Question 12.* Do you believe that a Federal District Court has the institutional expertise to set rules for and oversees the administration of prisons, schools, or state agencies?

Answer 12. No, the Federal District Court does not have the institutional expertise to set rules for and oversee the administration of prisons, schools, or state agencies.

*Question 13.* In some cases, statutes were in effect before the ratification of a clause of the Constitution that is later used to challenge the validity of those statutes. In ruling on the constitutionality of a statute, what weight should a court give to the fact that the challenged statute existed and was routinely enforced before and after the ratification of the constitutional provision at issue? Assume the court faces this issue as a matter of first impression.

Answer 13. A statute in effect before the ratification of a clause of the Constitution that is later used to challenge the validity of that statute is entitled to a strong presumption of validity. In a case not of first impression, binding precedent of the higher courts would control. In a case of first impressions, the analysis should begin with the strong presumption of constitutionality. I would then look to analogous reasoning from decisions of higher courts on similar issues with a view toward reaching a consistent result.

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RESPONSES OF GREGORY A. PRESNELL TO QUESTIONS FROM SENATOR THURMOND

*Question 1.* Mr. Presnell, we frequently hear the argument that the courts act in response to various social problems because the legislation has failed to act on important issues. What is your view of courts acting in this manner?

Answer 1. Courts should not attempt to fill policy voids through judicial action. The correction of perceived social problems is the prerogative of the legislature, and the failure of the legislature to act does not warrant judicial intervention.

*Question 2.* Mr. Presnell, do you have any personal objections to the death penalty that would cause you to be reluctant to impose or uphold a death sentence?

Answer 2. No, I have no personal objections to the death penalty that would cause me to be reluctant to impose or uphold a death sentence.

*Question 3.* Mr. Presnell, what is your view of mandatory minimum criminal sentences, and would you have any reluctance to impose or uphold them as a Federal judge?

Answer 3. Congress has the right to legislate mandatory minimum criminal sentences and I would, if confirmed as a Federal judge, have no reluctance to uphold them.

*Question 4.* Mr. Presnell, as you are well aware, the sentencing of criminal defendants in Federal court is conducted under the Federal Sentencing Guidelines. Some argue that the Guidelines do not provide enough flexibility for the sentencing judge, while other say the Guidelines provide needed consistency. What is your view of the Federal Sentencing Guidelines and their application?

Answer 4. In adopting the Federal Sentencing Guidelines, Congress sought to balance the competing goals of flexibility and consistency. Federal judges are bound to follow the law, and if confirmed, I would do so in connection with application of the Federal Sentencing Guidelines.

*Question 5.* Mr. Presnell, as you know, the Prison Litigation Reform Act, which was an attempt to limit prisoner litigation and court involvement in prison operations. Do you believe that the Act has been beneficial to the legal system or do you believe it places too many restrictions on the ability of prisoners to make claims and for judges to remedy Constitutional violations in the prison context?

Answer 5. As a civil lawyer, I have no personal knowledge as to the actual effect which the Prison Litigation Reform Act has had. However, if confirmed as a Federal judge, I am committed to follow the provisions of this Act and would do so.

*Question 6.* Mr. Presnell, as you are aware, Federal Rule of Civil Procedure 11 permits Federal judges to impose sanctions against attorneys for unwarranted claims or representations made in their pleadings. Some say this rule is an important tool for judges, while others believe it discourages litigants from testing the boundaries of existing law. What is your opinion of Rule 11?

Answer 6. Rule 11 is a useful tool and should be preserved. In my experience the Rule has had a beneficial effect by reducing the number of frivolous claims. It has not been my experience that the Rule in general has been abused, nor has it improperly discouraged litigants from testing the boundaries of existing law.

RESPONSES OF GREGORY A. PRESNELL TO QUESTIONS FROM SENATOR SESSIONS

*Question 1.* 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?

Answer 1. Yes, as a District Court judge, I am committed to following binding precedent of the Supreme Court of the United States and the Eleventh Circuit Court of Appeals (and the Fifth Circuit prior to 1981), regardless of any personal views I might have about those decisions.

*Question 2.* How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision or your own best judgment of the merits? Take, for example, the Supreme Court's recent decision in the *City of Boerne v. Flores* where the Court struck down the Religious Freedom Restoration Act.

Answer 2. I would follow applicable precedent of the Supreme Court and Court of Appeals even if I believed those decisions to be flawed. If confirmed as a District Court judge, I would be bound to follow Supreme Court precedent including *City of Boerne v. Flores*, 521 U.S. 507 (1997).

*Question 3.* Regardless of your personal feelings on these issues, are you committed to following precedent of higher courts on equal protection issues?

Answer 3. Yes, I am committed to following precedent of higher courts on equal protection issues, regardless of any personal feelings I might have on these issues.

*Question 4.* Do you have any legal or moral beliefs which would inhibit or prevent you from imposing or upholding a death sentence in any criminal case that might come before you as a federal judge?

Answer 4. No, I do not have any legal or moral beliefs which would inhibit or prevent me from imposing or upholding a death sentence in any criminal case that might come before me as a Federal judge.

*Question 5.* Do you believe that 10, 15, or even 20-year delays between conviction of a capital offender and execution is too long? Do you believe that once Congress or a state legislature has made the policy decision that capital punishment is appropriate that the federal courts should focus their resources on resolving capital cases fairly and expeditiously?

Answer 5. Yes, I believe that extensive delays between conviction and execution are inappropriate. Review of capital cases should be expeditiously completed, consistent with due process.

*Question 6.* What authorities may a federal judge legitimately use in determining the legal effect of a statute or constitutional provision? Discuss how the use of each of these authorities is consistent with the exercise of the Article III judicial power.

Answer 6. The jurisdiction of an Article III judge is limited to actual cases or controversies over which the judge has personal and subject matter jurisdiction. In exercising that jurisdiction, a federal judge should look first to the language of the statute or constitutional provision at issue. With a presumption of constitutionality, the court may then look at binding and persuasive precedent, consistent with the doctrine of *stare decisis*. In rare circumstances, where the provision is ambiguous and there is no helpful precedent, the court may look to legislative history in an effort to discern legislative intent.

*Question 7.* Please assess the legitimacy of the following three approaches to establishing a constitutional right not previously upheld by a court: (1) interpretation of the plain meaning of the text and the original intent of the Framers of the Constitution; (2) discernment of the "community's interpretation" of constitutional text, see William J. Brennan, *The Constitution of the United States: Contemporary Ratification*, Text and Teaching Symposium, Georgetown University (October 12, 1985); and (3) ratification of an amendment under Article V of the Constitution. Assess the

impact of each approach on the judicial power established by Article III of the Constitution.

Answer 7. Interpretation of the plain meaning of the text and the original intent of the Framers of the Constitution is certainly a legitimate approach to establishing a new constitutional right. I would question the legitimacy of any attempt to create a new constitutional right through discernment of a so-called “community interpretation.” Ratification of an amendment under Act V of the Constitution is a fundamental approach to establishing a new constitutional right and would be legitimate because the Constitution itself provides the authority for such change.

*Question 8.* How would you, if confirmed, analyze a challenge to the constitutionality of a statute in a case that was not one of first impression? In a case of first impression?

Answer 8. In analyzing a challenge to the constitutionality of a statute, I would look first at the plain language of the statute and Constitution, and presume the statute to be constitutional. If not a case of first impression, I would look to binding precedent—decisions of the Supreme Court of the United States and the Eleventh Circuit Court of Appeals. If necessary, I would also look at persuasive authority from other appellate courts. In a case of first impression, I would look for analogous authority and seek to apply the rules articulated in these cases.

*Question 9.* In your view, what are the sources of law and methods of interpretation used in reaching the Court’s judgment in the following cases? How does the use of these sources of law impact the scope of the judicial power and the federal government’s power under Article III?

A. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

B. *Alden v. Maine*, 119 S. Ct. 2240 (1999).

Answer 9. In *Griswold v. Connecticut*, 381 U.S. 479 (1965), the Supreme Court held that substantive due process under the Fourteenth Amendment protected the right of married couples to obtain contraceptives, thereby invalidating a Connecticut law restricting access to birth control. The source of this decision is grounded in the language of the Amendment: “[N]or shall any state deprive any person of life, liberty, or property without due process of law.” The *Griswold* opinion was the culmination of a line of Supreme Court cases recognizing a substantive element to the Fourteenth Amendment, as opposed to procedural due process. Article III courts should be cautious when using substantive due process as a basis to invalidate a state statute. Nevertheless, as a district judge, I would apply this precedent, if necessary, to fulfill my responsibility to uphold the Constitution of the United States as construed by the Supreme Court.

In *Alden v. Maine*, 119 S. Ct. 2240 (1999), the Supreme Court dismissed a lawsuit brought by state employees in state court under the Federal Fair Labor Standard Act. As a basis for its decision, the court relied on the Eleventh Amendment, even though the language of the Amendment itself applies only to suits in federal court. In *Alden*, the court skirted the plain text of the Amendment by noting that “sovereign immunity derives not from the Eleventh Amendment text but from the structure of the original Constitution itself. *Id.*, at 2254 *Alden* marked a recent chapter in the Supreme Court’s widening scope of the “sovereign immunity” protection given states by the Eleventh Amendment.

*Question 10.* Compare the following cases with respect to their fidelity to the text and original intent of the Constitution. Also assess their impact on the judicial power compared with Congress’ power and on the federal government’s power compared with the power of state governments.

A. *Wickard v. Filburn*, 317 U.S. 111 (1942).

B. *United States v. Lopez*, 514 U.S. 549 (1995).

Answer 10. In *Wickard v. Filburn*, 317 U.S. 111 (1942), the Supreme Court upheld a federal law that prevented individual farmers from growing more than a pre-determined amount of wheat. The validity of this statute under the Commerce Clause (Art. I, Sec. 8) was based on the Court’s view that intrastate activity could be regulated by Congress if, in the aggregate, the activity “substantially affected interstate commerce.”

In *United States v. Lopez*, 514 U.S. 549 (1995), the court overturned the federal Gun-Free School Zones Act. In striking down this Act, the Court relied on the commerce clause and rejected the government’s argument that the “cost of crime” in general had a substantial affect on interstate commerce. The Court reasoned that such an argument would justify a general federal “police power,” which was inconsistent with the structure of the federal system of government.

The Commerce Clause was intended to preserve the concept of federalism by reserving to the states the power to adopt their own substantive laws and by limiting Congress’s power to matters affecting interstate commerce. Because the Commerce

Clause itself provides scant guidance, the Supreme Court has attempted over the years to strike a difficult balance. The economic versus non-economic distinction recently articulated by the Court appears to be an effort to bring harmony to past precedent and guidance for future legislation.

*Question 11.* What role does the division of power between the national government and state governments play in our federal system? What impact does this division have on the liberty of the individual and the power of federal judges? Assess the impact of the following cases on the division of power between the national and state governments.

- A. *United States v. Lopez*, 514 U.S. 549 (1995).
- B. *Printz v. United States*, 521 U.S. 898 (1997).
- C. *Alden v. Maine*, 119 S. Ct. 2240 (1999).
- E. *Baker v. Carr*, 369 U.S. 186 (1962).
- F. *Shaw v. Reno*, 509 U.S. 630 (1993).

*Answer 11.* The division of power between our federal and state governments is fundamental to our notion of federalism. The Constitution by the Commerce Clause and Amendments make this fundamental concept clear. However, application of this basic concept to specific facts, often leads to conflicts between state and federal powers. When such disputes arise, Article III courts are often called upon to resolve them.

As noted above, the Supreme Court placed limits on Congress's commerce power in *Lopez v. United States*, 514 U.S. 549 (1995), construing the Commerce Clause of Article I, Sec. 8. In *Alden v. Maine*, 119 S. Ct. 2240 (1999), the Court extended Eleventh Amendment sovereign immunity to states being sued in state court, thus limiting the ability of an individual to seek redress in state court for violation of a federal statute. Thus, the concept of federalism restricts both the powers of the federal government as well as the rights of individuals to seek redress against a state.

*Printz v. United States*, 521 U.S. 898 (1997) involved the constitutionality of the Brady Act which imposed certain obligations on state governments related to background checks for handgun purchasers. The Supreme Court of the United States reversed the Ninth Circuit and held the act unconstitutional. Because the text of the Constitution does not address this precise issue, the Court based its decision on the structure of the Constitution and historical practice. The structure of the Constitution, according to the Court, reveals a system of "dual sovereignty" which would be violated if the federal government were able to compel the states to exercise their police power in furtherance of a federal statute. Thus, the Court concluded that the Brady Act violates the principle of state sovereignty.

*Baker v. Carr*, 369 U.S. 186 (1962), was a landmark decision which applied the equal protection clause of the Fourteenth Amendment to a state reapportionment dispute. The Supreme Court held that the matter was within the jurisdiction of the federal court and presented a justifiable issue. The Court noted that federalism questions which raise issues about the consistency of a state's actions with the federal Constitution do not call for the judicial deference which would be afforded to a purely political question; i.e., ones which chiefly relate to questions about relations between coequal branches of the government. The *Baker* case had the effect of requiring numerous states to reapportion their legislatures on a "one man, one vote" basis, and served to enfranchise many urban voters who were the subject of apportionment "discrimination." Thus, the Court in *Baker* construed the federal Constitution to require the several states to apportion their legislatures in a manner consistent with the Court's view of equal protection.

In *Shaw v. Reno*, 509 U.S. 630 (1993), the Supreme Court of the United States reversed a judgment of dismissal entered by a three-judge District Court concerning certain aspects of North Carolina's reapportionment plan for seats in the United States House of Representatives. In the majority opinion, the court held that plaintiffs had stated a claim under the equal protection clause by alleging, *inter alia*, that the reapportionment plan was so irrational on its face that the plan could be understood only as an effort to segregate voters based on race. Such race-based apportionment would require the district court on remand to determine whether the plan was narrowly tailored to further a compelling governmental interest. *Shaw*, therefore, applied the reverse discrimination standard in the context of reapportionment, which was followed shortly thereafter in *Adarand Constructors v. Peña*, 515 U.S. 200 (1995), a landmark decision involving affirmative action in the employment context.

Our "dual sovereignty" system of government often results in disputes over the exercise of political power and these cases demonstrate the difficult issues which the courts are called upon to address when dealing with the concept of federalism. Federalism restricts the power of the federal government under the commerce clause and protect state sovereignty under the Tenth and Eleventh Amendments (*see e.g.*

*Lopez, Alden, Printz*). Federalism also requires states to exercise their political power consistent with dictates of the United States Constitution (see e.g. *Baker and Shaw*).

*Question 12.* Do you believe that a federal district court has the institutional expertise to set rules for and oversee the administration of prisons, schools or state agencies?

*Answer 12.* I do not believe that federal district courts have the institutional expertise to set rules for or oversee the administration of prisons, schools, or state agencies.

*Question 13.* In some cases, statutes were in affect before the ratification of a clause of the Constitution that is later used to challenge the validity of those statutes. In ruling on the constitutionality of a statute, what weight should a court give to the fact that the challenged statute existed and was routinely enforced before and after the ratification of the constitutional provision at issue? Assume the court faces this issue as a matter of first impression.

*Answer 13.* The Constitution is the supreme law of the land. A statute is presumed to be constitutional. However, in a situation where a constitutional provision is enacted after the statute, the constitutional provision must prevail if the statute is in conflict therewith. If the constitutional provision is clear, the court would give little weight to the fact that an conflicting statute was roughly enforced before and after ratification of the constitutional provision at issue. On the other hand, if there is no language of the ratified provision which expressly conflicts with the language of the pre-existing statute, then the fact that the statute existed and was routinely enforced before and after ratification of the constitutional provision should be given significant weight.

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RESPONSES OF JOHN E. STEELE TO QUESTIONS FROM SENATOR THURMOND

*Question 1.* Mr. Steele, we frequently hear the argument that the courts act in response to various social problems because the legislature has failed to act on important issues. What is your view of courts acting in this manner?

*Answer 1.* Federal courts are, by design, courts of limited jurisdiction. Our constitutional system does not vest federal courts with the authority to remedy all problems perceived by all people. The two other branches of government have responsibility for making decisions on the multitude of choices which face a free society. Federal courts become involved in cases or controversies only at the request of parties, by virtue of a lawsuit being filed requesting the court to intervene in a particular dispute and to impose a remedy or sanction.

*Question 2.* Mr. Steele, do you have any personal objections to the death penalty that would cause you to be reluctant to impose or uphold a death sentence?

*Answer 2.* I do not have any personal objections to the death penalty that would cause me to be reluctant to impose a death sentence or to uphold a death sentence in accordance with the law.

*Question 3.* Mr. Steele, what is your view of mandatory minimum criminal sentences, and would you have any reluctance to impose or uphold them as a Federal judge?

*Answer 3.* Mandatory minimum sentences in criminal cases have consistently been found to be constitutional, and I have no view which would make me reluctant to impose such a sentence or to uphold such a sentence.

*Question 4.* Mr. Steel, as you are well aware, the sentencing of criminal defendants in Federal court is conducted under the Federal Sentencing Guidelines. Some argue that the Guidelines do not provide enough flexibility for the sentencing judge, while others say the Guidelines provided needed consistency. What is your view of the Federal Sentencing Guidelines and their application?

*Answer 4.* The Federal Sentencing Guidelines, which have now been in effect for approximately thirteen years, carry out the Congressional effort to create a system which distinguishes among different types of criminal conduct and punishes accordingly. The Sentencing Guidelines channel the courts sentencing discretion by requiring the utilization of certain sentencing factors, and provide needed assistance in the goal of consistency in sentencing. If confirmed, I would follow the Sentencing Guidelines.

*Question 5.* Mr. Steel, as you know, the Prison Litigation Reform Act was an attempt to limit prisoner litigation and court involvement in prison operations. Do you believe that the Act has been beneficial to the legal system or do you believe it places too many restrictions on the ability of prisoners to make claims and for judges to remedy Constitutional violations in the prison context?

Answer 5. Prison and prisoner litigation form a unique component of the federal docket, and create a tension between the right to a fair hearing and a heavy caseload. My general view is that the Prison Reform Litigation Act has been beneficial to the legal system and has not unduly restricted prisoners or judges.

*Question 6.* Mr. Steele, as you are aware, Federal Rule of Civil Procedure 11 permits federal judges to impose sanctions against attorneys for unwarranted claims or representations made in their pleadings. Some say this rule is an important tool for judges, while others believe it discourages litigants from testing the boundaries of existing law. What is your opinion of Rule 11?

Answer 6. Rule 11 is an important procedural mechanism which encourages litigants to present their cases in a responsible fashion and provides judges with the ability to see that cases proceed in a fair and expeditious manner. Rule 11 does not discourage litigants from testing the boundaries of existing law.

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RESPONSES OF JOHN E. STEELE TO QUESTIONS FROM SENATOR SESSIONS

*Question 1.* 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 precedent?

Answer 1. I am committed to following the precedents of higher courts faithfully and giving them full force and effect. I will faithfully follow such precedents even if I were to personally disagree with such precedent.

*Question 2.* How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision or your own best judgment of the merits? Take, for example, the Supreme Court's recent decision in the *City of Boerne v. Flores* where the Court struck down the Religious Freedom Restoration Act.

Answer 2. If I were fortunate enough to be confirmed as a district court judge, I would be bound to follow the precedents of the Supreme Court and the Court of Appeals in my circuit even if those courts had seriously erred in rendering the decision. It would be inappropriate for a district judge to simply use his or her own best judgment in the face of such binding precedent.

*Question 3.* Regardless of your personal feelings of these issues, are you committed to following precedent of higher courts on equal protection issues?

Answer 3. I am committed to following the precedent of higher courts on all issues, including equal protection issues, regardless of any personal feelings I may have about an issue.

*Question 4.* Do you have any legal or moral beliefs which would inhibit or prevent you from imposing or upholding a death sentence in any criminal case that might come before you as a federal judge?

Answer 4. I do not have any legal or moral beliefs which would inhibit or prevent me from imposing a death sentence where authorized by law and appropriate under the facts or in upholding a death sentence in a criminal case in accordance with the law.

*Question 5.* Do you believe that 10, 15, or even 20-year delays between conviction of a capital offender and execution is too long? Do you believe that once Congress or a state legislature has made the policy decision that capital punishment is appropriate that the federal courts should focus their resources on resolving capital cases fairly and expeditiously?

Answer 5. Delays of ten, fifteen or even twenty years between conviction of a capital offender and execution seem too long, despite the importance of the matter under review. It is particularly important in capital cases for federal courts to focus resources to resolve the cases fairly and expeditiously.

*Question 6.* What authorities may a federal judge legitimately use in determining the legal effect of a statute or constitutional provision? Discuss how the use of each of these authorities is consistent with the exercise of the Article III judicial power.

Answer 6. In determining the legal effect of a statute or constitutional provision, a federal judge may legitimately use the specific language and plain meaning of the statute or constitutional provision; the decisions of the Supreme Court interpreting the constitutional provision or statute, as well as the opinions of the circuit courts of appeal; the legislative history of the statute or constitutional provision, the historical context of the constitutional provision or statute; and the original intent of the drafters. Article III judicial power directs that federal judges interpret the law in the context of cases or controversies, not make the law in the first instance. Each

of these authorities provides guidance for a federal judge to properly interpret the laws which Congress has enacted in the first instance.

*Question 7.* Please assess the legitimacy of the following three approaches to establishing a constitutional right not previously upheld by a court: (1) interpretation of the plain meaning of the text and the original intent of the Framers of the Constitution; (2) discernment of the “community’s interpretation” of constitutional text, see William J. Brennan, *The Constitution of the United States; Contemporary Ratification*, Text and Teaching Symposium, Georgetown University (October 12, 1985); and (3) ratification of an amendment under Article V of the Constitution. Assess the impact of each approach on the judicial power established by Article III of the Constitution.

*Answer 7.* The Supreme Court has consistently held that it properly interpret the Constitution, including deciding claims of a constitutional right not previously upheld by a court, it is proper and necessary to look to the plain meaning of the text and the original intent of the Framers. (Approach 1). Discernment of the “community’s interpretation” of the constitutional text is not a legitimate means to establish a constitutional right not previously upheld by a court. (Approach 2). Ratification of an amendment to the Constitution is certainly a legitimate approach to establish a constitutional right which had not been previously recognized. (Approach 3).

*Question 8.* How would you, if confirmed, analyze a challenge to the constitutionality of a statute in a case that was not one of first impression? In a case of first impression?

*Answer 8.* In each case where the constitutionality of a statute is the issue, the analysis begins with a presumption that the statute is constitutional. In a case which is not one of first impression, the constitutionality of a statute is analyzed by reference to the decisions of the Supreme Court of the United States and the Court of Appeals for the Eleventh Circuit to determine the binding precedent in the area. If there was no binding precedent, I would look to the other circuit courts of appeal and district courts to see what these courts have held concerning the constitutional challenge.

In a case of first impression, the constitutionality of a statute is analyzed by an examination of the plain language of the statute as well as the “history, practice, precedent, and the structure of the constitution.” *Alden v. Maine*, 527 U.S. 706, 741 (1999). The court looks to evidence of the original understanding of the Constitution, including its specific language and historical context. The court also examines the theory and reasoning of other Supreme Court cases which touch upon the area.

*Question 9.* In your view, what are the sources of law and methods of interpretation used in reaching the court’s judgment in the following cases? How does the use of these sources of law impact the scope of the judicial power and the federal government’s power under Article III?

A. *Griswold v. Connecticut*, 381 U.S. 479 (1965)

B. *Alden v. Maine*, 119 S. Ct. 2240 (1999).

*Answer 9.* In *Griswold*, the Court looked to the Constitution and the privacy. The Court then examined its prior decisions construing constitutional amendments and found the existence of “peripheral rights” which secured the amendments. From an examination of the various specific and peripheral rights the Court concluded there was a “penumbra” of rights under the First Amendment which included the protection of privacy. The Court also examined other amendments, and found they too had penumbras “formed by emanations from those guarantees that help give them life and substance.” The Court found that privacy was a penumbra for several constitutional amendments, and was therefore a legitimate constitutional right.

In *Alden*, the Court looked to the structure of the Constitution based upon its textual provisions and certain amendments; the history of the Constitution and the intent of the generation which had designed and adopted the federal system; and the constitutional interpretations by the Court in its prior cases. The Court then set forth the issue as being whether Congress had the power under Article I to subject non-consenting States to private suits in their own courts. The Court found that Eleventh Amendment sovereign immunity and the system of federalism established by the Constitution provided separate and independent structural principles to guide the inquiry. The court concluded that Congress, in exercising its Article I powers, may subject the States to private suits in their own courts only if there was compelling evidence that the States were required to surrender this power to Congress pursuant to the constitutional design.

The impact of *Griswold* has been to expand the scope of judicial power under Article III and the power of the federal government. Since a federal court may only exercise jurisdiction in limited types of “cases or controversies,” and a claim arising

under federal law is one such type of case, finding a constitutionally-based right to privacy extends the power of federal courts. There is no direct impact on federal judicial power by *Alden*, since the case dealt with suits against a State filed in state court. *Alden* limits the power of Congress to the extent that it creates a rather high evidentiary standard before a federal statute may allow a suit against a State, even in state court.

*Question 10.* Compare the following cases with respect to their fidelity to the text and original intent of the Constitution. Also assess their impact on the judicial power compared with Congress's power and the federal government's power compared with the power of state governments.

A. *Wickard v. Filburn*. 317 U.S. 111 (1942).

B. *United States v. Lopez*. 514 U.S. 549 (1995).

Answer 10. In *Wickard*, the Court upheld the authority of Congress under the Commerce Clause over certain intrastate economic activity. The Court described in some detail the development of the Commerce Clause jurisprudence under the Court's prior decisions. Under the facts of the case, this decision established the broad reach of Congressional authority under the Commerce clause and consequently expanded the nature of cases which could be brought in federal court.

In *Lopez*, the Court found that Congress did not have authority over all intrastate activity under the Commerce Clause. The Court recognized its prior cases, including *Wickard*, and followed the historical development of its cases and the shift from preventing state discrimination against interstate commerce to determining the categories of activities Congress may regulate under the Commerce Clause. The court concluded that Congress may regulate three broad categories of activities, including those activities which have a substantial affect on interstate commerce. The Court held that the Gun Free School zone Act exceeded Congress' authority under the Commerce Clause.

The impact of *Lopez* is clearly to limit the power of the federal government and the federal courts. It confines to the state governments and courts the power to address the problems identified by Congress but which the Court found to have insufficient effect on interstate commerce to allow Congressional action.

*Question 11.* What role does the division of power between the national government and state governments play in our federal system? What impact does this division have on the liberty of the individual and the power of federal judges? Assess the impact of the following cases on the division of power between the national and state governments.

A. *United States v. Lopez*. 514 U.S. 549 (1995).

B. *Printz v. United States*, 521 U.S. 898 (1997).

C. *Alden v. Maine*, 119 S. Ct. 2240 (1999).

D. *Baker v. Carr*, 369 U.S. 186 (1962).

E. *Shaw v. Reno*, 509 U.S. 630 (1993).

Answer 11. The very structure of the federalism set forth in the Constitution calls for a division of power between the national and state governments. Concepts of federalism have limited the power of federal judges, as well as the federal government, in favor of the state governments and courts.

*Lopez* limited the power of the federal government to pass statutes under the authority of the Commerce Clause, particularly in the area traditionally considered to be within the states' police power, and found that that power rested largely with the states. *Printz* affirmed that the federal government could not, consistent with principles of federalism, compel the states or their officers to enact or administer a federal regulatory program. *Alden* established that Congress could not authorize suit against nonconsenting states in state courts. *Baker* held that a federal court had jurisdiction over an apportionment dispute because it stated a claim under the Equal Protection Clause, and was not a nonjusticiable political question. *Shaw* expanded the jurisdiction of federal courts by finding that an equal protection claim was stated in a reapportionment scheme which was alleged to be so irrational on its face that it could only be meant to segregate voters based on race.

*Question 12.* Do you believe that a federal district court has the institutional expertise to set rules for and oversee the administration of prisons, schools, or state agencies?

Answer 12. Federal district courts have no institutional expertise to set rules for and oversee the administration of these types of facilities.

*Question 13.* In some cases, statutes were in effect before the ratification of a clause of the Constitution that is later used to challenge the validity of those statutes. In ruling on the constitutionality of a statute, what weight should a court give to the fact that the challenged statute existed and was routinely enforced before and



after the ratification of the constitutional provision at issue? Assume the court faces this issue as a matter of first impression.

Answer 13. The analysis of the constitutionality of a statute begins with the presumption that the statute is constitutional. In a case of first impression, the constitutionality of a statute is analyzed by an examination of the plain meaning of the statute, as well as the “history, practice, precedent, and the structure of the Constitution.” *Alden v. Maine*, 527 U.S. 706, 741 (1999). The court looks to evidence of the original understanding of the Constitution, including its specific language and historical context. The court also examines the theory and reasoning of other Supreme Court cases which touch upon the area, and considers whether the statute is consistent with the structure of the Constitution. Significant weight should be given by a court to the fact that the statute existed and was routinely enforced before and after ratification of the constitutional provision.



**NOMINATIONS OF MICHAEL JOSEPH REAGAN,  
MARY H. MURGUIA, SUSAN RITCHIE  
BOLTON, AND JAMES A. TEILBORG (U.S.  
DISTRICT JUDGES)**

TUESDAY, JULY 25, 2000

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

The committee met, pursuant to notice, at 2:13 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Jon Kyl, presiding. Also present: Senator Leahy.

**OPENING STATEMENT OF HON. JON KYL, A U.S. SENATOR  
FROM THE STATE OF ARIZONA**

Senator KYL. The committee will come to order.

Today the Judiciary Committee is holding its sixth nominations hearing of the second session of the 106th Congress. At this hearing we will consider the nominations of four individuals who have been nominated by the President to be Federal judges. We will have two witnesses—excuse me, two panels of witnesses this afternoon.

The first panel will consist of the sponsors of the nominees, who will give brief statements on behalf of their nominees, and the second panel will consist of the four district court nominees. They are: Susan Ritchie Bolton, of Arizona, to be U.S. District Judge for the District of Arizona; Mary Murguia, of Arizona, to be a U.S. District Judge for the District of Arizona; Michael Joseph Reagan, of Illinois, to be a U.S. District Judge for Southern District of Illinois; and Jim Teilborg, of Arizona, to be a U.S. District Judge for the District of Arizona.

If one of the members of the minority are able to attend the hearing, I will afford them an opportunity to make a statement when they arrive.

At this time, if the sponsors of the nominees will take their seats at the witness table, we can begin. Representative Pastor, why don't you join Senator Durbin. I think that represents the sponsors, and we will hear from that at this point, starting with Senator Durbin.

**STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR  
FROM THE STATE OF ILLINOIS**

Senator DURBIN. Senator Kyl, thank you for this hearing, and I want to especially thank Senators Hatch and Leahy for their hard

work in preparing for this day to consider the nomination of Michael Reagan to be district court judge for the Southern District of Illinois.

Mike Reagan is from not only my home State of Illinois but my home county of St. Clair. I am sure that the committee is aware that Senator Fitzgerald and I may be of opposite political faith, but we work closely together in bringing these judicial nominees before the committee. I am happy to report that with Mr. Reagan's consideration today, we will have completed a 2-year agreement on the appointment of judges, which has been bipartisan from the start.

I also want to say that Senator Fitzgerald believes, as I do, that Michael Reagan possesses all the qualities necessary to make a tremendous contribution to the Federal bench. In addition Mike Reagan has the support of several respected judges, both State and Federal, organizations including the National Sheriffs Association, the Chief Justice of the Illinois Supreme Court, the bishop of the Diocese of Belleville, the Illinois Federation of Teachers, and the Illinois Pharmacists Association. The list goes on and on. They have written letters in support of his candidacy. They believe, as I do, he will be an excellent addition to the Federal bench.

Mike Reagan is a full-time public servant who wears many hats. He serves as commissioner for the Attorneys Registration and Disciplinary Commission for the Supreme Court of Illinois and has held that position since 1995.

When you look at his background, you understand that Mike Reagan was not born to privilege. He worked very hard for his education as well as his professional achievement.

I have always found it very interesting when I considered his nomination that Mike Reagan served as a police officer after graduating from Bradley University in 1976 until he received his law degree from St. Louis University in 1980. He has many notable positions, but the most important is the role that he plays as husband and father. He is here today with his wife, Elaine—they will be celebrating their 25th wedding anniversary next year—and their four sons: Justin, Michael, Bradley, and Jonathan.

Members of Mr. Reagan's family are here and are proud, as I am, to present his name to the committee. I am happy to introduce a man with a rare combination of intelligence, practical experience, temperament, and devotion to public service that will make for a great Federal judge.

I thank you for the prompt consideration of Michael Reagan.

Senator KYL. Thank you very much, Senator Durbin. That is a great introduction.

Let me now call on Representative Pastor.

**STATEMENT OF HON. ED PASTOR, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA**

Mr. PASTOR. Thank you, Mr. Chairman.

The nominees from Arizona, you and I have worked on them for about 6 months, so you probably know them as well if not better than I do. In some cases you do. But it is with great pride, Mr. Chairman, that I am here supporting the three nominees for Arizona.

Judge Bolton has been a judge, as you know, for the superior court since 1989, and she has been a partner in a law firm, and as you know, she has served Arizona well, Maricopa County well, and she rates very high as they assess judges when they are up for their renomination.

Jim Teilborg, whom you know, is a good friend of yours, and we are very happy to be here in support of him. He has practiced law in Maricopa County for many years and has been a partner for law firms throughout Phoenix and has a very distinguished career.

I am also very proud to bring to the committee Mary Murguia. As you know, she is the Assistant U.S. Attorney for the District of Arizona and has been there since 1990, and currently is on detail here in the District of Columbia as the Director of the Executive Office for U.S. Attorneys and the Department of Justice.

As you know, in Arizona, there was a concern that we did not have gender representation in the Federal bench, and I am happy that today we have two women that are being considered. And Ms. Murguia will make history in that she will be the first Latina Federal judge in the great State of Arizona.

And so with great pride I recommend all three. They will serve Arizona well, and they will make us proud.

Senator KYL. Thank you very much, Representative Pastor.

Let me say a few words. It is not uncommon for the individual chairing the committee to make a few remarks since frequently if it is a member of the committee who is a sponsor, it is an appropriate opportunity to say a few words. And I would like to add my thoughts to those of Representative Pastor with respect to the Arizona nominees who are here before us.

Representative Pastor and I have what I would characterize as an excellent working relationship as a House Democrat and Senate Republican both representing our State. Representative Pastor, being of the political party of the President, has had significant influence in working with the White House on judicial nominations and also the nominee for U.S. attorney for Arizona. And as a member of the Judiciary Committee, I have had the pleasure of working very closely with Representative Pastor to try to get our nominees through quickly, and we have done very, very well at that, I think, working together.

And with respect to these three nominees, Representative Pastor is exactly right. These are three very, very highly qualified candidates from Arizona.

In the case of Judge Bolton, it is a bit of a bitter pill, as a former member of the practicing bar in Arizona, to see Judge Bolton leave the Maricopa County Superior Court bench. And I will tell you a little story that makes the point.

Yesterday, I was involved in lengthy negotiations with representatives from Arizona, including the Gila River Indian community, who have also worked closely with Representative Pastor, over resolution of water rights claims in Arizona. And those of you from Arizona know these are some of the most important issues confronting our State.

Well, there is one person in our State who is a real expert on this in the judiciary, and that is Judge Bolton. And because of her expertise and fairness, all of the contending interests in Arizona have

been willing to place their concerns before her to be resolved. And she is right in the middle of this important litigation right now. They will be very sorry to see her leave the Maricopa County Superior Court bench.

So it is a little bit—I have some mixed emotions in helping to nominate or to confirm Judge Bolton, but that is how highly thought of she is.

I have a confession to make this morning as well. Representative Pastor alluded to the fact that I have known Jim Teilborg for a long time—well, only since 1964, when he and I were law school classmates together, Senator Durbin, and we studied together in the same little group. Jim then went on to a highly successful practice, a career in Phoenix, AZ, becoming a partner in a firm that he founded, very successfully, primarily focusing on civil litigation matters. And I think he will bring an extraordinary amount of experience on the civil side to the Federal district court in Phoenix.

And then Mary Murguia. Mary is the other side of the coin with a career of experience as a prosecutor with the U.S. Attorney's office, first practicing as a prosecutor in Kansas and then with the U.S. attorney in Arizona. And with her wealth of experience on the criminal side of the equation, I told her yesterday, "I hope you will sit Jim Teilborg down and teach him the ropes on the criminal law, and I know he will do the same with you with the civil." And we are going to have just an enormously significant contribution to our bench as a result of bringing these different areas of expertise to the Arizona Federal District Court.

So, as Representative Pastor said, he and I have been working to try to find the very best candidates that we could suggest to the President. The President and his folks at the Department of Justice and the White House have been very helpful in getting these candidates vetted quickly so that we could try to get them confirmed before the end of the session. And I am just very pleased that Michael Reagan from Illinois and our three candidates from Arizona are here today.

Now, with that, I want to—I will excuse our two sponsors. Go ahead, Representative Pastor.

Mr. PASTOR. Mr. Chairman, Jim also gave a secret this morning when he met with me. He said that because of his class notes and his mentoring that you were successful in graduating from the U of A Law School. [Laughter.]

Senator KYL. Others have also taken credit for that.

Thank you both very, very, much. We appreciate your sponsorship of these candidates.

Senator KYL. Now, let me make one other point before I ask the candidates to come to the table. Those of you who are here as family have a great deal of reason to be proud of the members of your family who are here, or if you are here as friends or associates, the same kind of pride will certainly be with you today. You may wonder because this hearing is only being conducted by one Senator—and I will tip you off in advance that they are not in for a real tough grilling. You may wonder whether or not this is really that serious of a process. And I have to let you in on a secret.

The reason why this hearing is not the highly charged, well-attended, difficult grilling of candidates that you have perhaps seen

on some occasions is because these four candidates are of such high quality. They have been vetted with my colleagues, with the staff, with outside groups, and there is nothing wrong with them.

And as a result, my colleagues have made it pretty clear to me that these candidates are going to be treated very well by the United States Senate very quickly. And as a result, it is not necessary to spend a great deal of time on very difficult, personal questions and that kind of thing. They all have great backgrounds, and for that reason we won't need to spend a huge amount of time.

But, believe me, it does not represent a lack of interest but, rather, the high quality of the candidates who are here that we will not take all that much time this afternoon to conduct this hearing.

But, with that said now, I would like the four candidates to please come forward and take a seat at the table, and I will swear you in after you are all ready here.

Actually, before you sit down, why don't you join me in this oath, please? Do you swear that the testimony you will give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. REAGAN. I do.

Ms. MURGUIA. I do.

Judge BOLTON. I do.

Mr. TEILBORG. I do.

Senator KYL. Thank you. Please have a seat.

Now, let me ask each of you in turn, first of all, if you have family or friends here you would like to introduce, to do so. Mr. Reagan, starting with you, please.

**TESTIMONY OF MICHAEL JOSEPH REAGAN, OF ILLINOIS, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ILLINOIS**

Mr. REAGAN. Thank you, Your Honor, and thank you for the honor to be here.

My wife is here, Elaine. My oldest son, Justin, who is 20 and attends St. Louis University, is here. My second son, Michael, who is 17, is with me today. My third son, Bradley, who is 15, is with me here today. And last, but not least, is my youngest son, Jonathan, who is 14 and with me today.

Senator KYL. Great. Well, welcome to all of you. This is a great day, and we are happy to have you here.

I know that Mary Murguia has several members of her family to introduce. Mary.

**TESTIMONY OF MARY H. MURGUIA, OF ARIZONA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA**

Ms. MURGUIA. That is true, and it is an honor to be here. Thank you, Mr. Chairman.

I would first like to introduce my parents: Mr. Alfred O. Murguia and Amalia Murguia. If they could please stand? They came from Kansas City yesterday to be here with me today.

My oldest sister, Martha Hernandez, is here today. My brother, Alfred Murguia, from Kansas City, is also here today. My sister, RoseMary Murguia, who works at UMB Bank in Kansas City, is here today. My brother, Carlos Murguia, who is a Federal district

court judge in Kansas, is present today. My brother, Ramon Murguia, a lawyer in Kansas City in private practice, and who is also chairman of the board of the National Council of La Rasa, is here with me today. My sister, my twin sister, Janet Murguia, is present. She formerly worked on the Hill and most recently with the Congressional Leg Affairs Office at the White House, is present.

I have some nephews. My nephew, Ryan, who is 17 years old today, is here. My nephew, Nicholas, a 14-year-old, is here today. And my niece, Kelly, who is 12 years old, is here today.

I have some sisters—two of my sister-in-laws could not be here along with their children, but I know they are here in spirit supporting me.

I have a couple other friends I'd like to identify. I have a good friend from the Department of Justice, Bea Witzleben, who is Associate Deputy Attorney General at the Department of Justice, is here, along with her sister, Claire, from Philadelphia. And I have a friend from Arizona, Sharon Kurn, who is currently an assistant U.S. attorney in the District of Columbia U.S. Attorney's Office, is here today.

A friend of mine, a dear friend, Charlie Steel, who is currently deputy general counsel at the FBI, and was formerly a supervisor with me in the U.S. Attorney's Office in the District of Arizona, is here today.

Another friend of mine, a partner at Baker and Botts, Diana Dietrich, is here today. And I have several other individuals who are with me and colleagues over at the Department, and I would just ask for them to all stand because I'd like for them to be acknowledged as well.

Senator KYL. The DOJ contingent, great. We are happy to—  
[Laughter.]

Senator KYL. That is great. Who is minding the store down there?

Senator LEAHY. The police officer said that there was a much larger crowd than usual in the Dirksen Building. I think they all came here.

Ms. MURGUIA. Thank you, sir.

Senator KYL. Well, Mary, thank you. And we welcome all of the members of your family and your friends who are here. This is a great occasion, and the second occasion for your parents. And I know the two of you must be very proud of all of your children for what they have accomplished here.

Sort of by prearrangement, I am kidding now, but Judge Bolton and Jim Teilborg figure that since Mary has used up the quota of Arizona relatives, they haven't brought a lot of friends and relatives here. I neglected to ask. Do either of you have any guests here? Judge Bolton.

**TESTIMONY OF HON. SUSAN RITCHIE BOLTON, OF ARIZONA,  
TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA**

Judge BOLTON. Mr. Chairman, I do not. Unfortunately, my husband, Bob Bolton, and my parents, Charles and Margaret Ritchie, were not able to be here, but they are certainly here in spirit.

Senator KYL. Great.



Judge BOLTON. And I feel their love and support.  
 Senator KYL. Thank you.  
 Jim.

**TESTIMONY OF JAMES A. TEILBORG, OF ARIZONA, TO BE U.S.  
 DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA**

Mr. TEILBORG. Thank you, Mr. Chairman, for convening this committee. My wife of 38 years, Connie, is unable to be here, nor are my sons, Andy and Jay, nor are my parents, Ralph and Erma Teilborg. But, likewise, I know they are here in spirit.

Senator KYL. Great. I was kidding about Mary using up the quota of Arizona guests, but everybody is well represented one way or another. We appreciate that very much.

Before I ask each of you to make a statement and respond to any questions we have, since Senator Leahy has now joined us, I will ask him if he has any comments he would like to make at this time.

Senator LEAHY. Thank you very much, Mr. Chairman. I am just going to put my statement in the record. I don't want to delay this. I saw Senator Durbin and Representative Pastor outside, and I know they have testified here, too. And I am glad to see this panel from Arizona. I know that the presiding chairman will give you a really tough and rough time, but you will probably make it through.

Mr. Reagan, Senator Durbin has asked me about you every day for the last several weeks, and my good friend, Michelle Laxalt, has done the same, and I get e-mails from her saying that if I have any idea how to do my job, I would make sure you were here. Actually, she was a lot nicer than that, I want to assure you. I would have gone to that at the next level if we hadn't gotten you here, so I am delighted you are here.

I will put my full statement in the record and leave you all to the tender mercies of Jon Kyl.

[The prepared statement of Senator Leahy follows:]

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

I want to thank the Chairman for calling this important nominations hearing today. I am glad to see the Committee working to fulfill its constitutional responsibility to review the President's nominees to various courts around the country. I look forward to hearing from each of the District Court nominees included in today's hearing. With 60 current and continuing vacancies within the federal judiciary, and seven more on the horizon, we cannot afford to slow down the progress we are making and the work we are doing to help the President fill those vacancies with qualified people to oversee the administration of justice.

I am, nonetheless, sorely disappointed to see another hearing come and go without even one nominee to fill one of the many vacancies to the Courts of Appeals around the country. I was encouraged to hear Senator Lott recently say that he continues to urge the Judiciary Committee to make progress on judicial nominations. The Majority Leader said: "There are a number of nominations that have had hearings, nominations that are ready for a vote and other nominations that have been pending for quite some time and that should be considered." He went on to note that the groups of judges he expects us to report to the Senate will include "not only district judges but circuit judges." Unfortunately, the Committee has not honored the Majority Leader's representations and is only willing to consider these few District Court nominees at today's hearing.

Pending before the Committee are a dozen nominees to the Federal Courts of Appeals who are awaiting a hearing—12 nominees, not one of which the Republican Majority saw fit to include in this hearing. Left off the agenda are Judge Helene

White of Michigan, who is now the longest pending judicial nomination at 43 months without action; Barry Goode, whose nomination to the Ninth Circuit was the subject of Senator Feinstein's statements at our Committee meeting last Thursday and who has been pending for over two years; as well as a number of qualified minority nominees whom I have been speaking about throughout the year, including Kathleen McCree Lewis of Michigan, Enrique Moreno of Texas and Roger Gregory of Virginia.

I noted at our last meeting of the Judiciary Committee that there continue to be multiple vacancies on the Fourth, Fifth, Sixth, Ninth, Tenth and District of Columbia Circuits. With 20 vacancies, our appellate courts have nearly half of the total judicial emergency vacancies in the federal court system. I know how fond our Chairman is of percentages, so I note that the vacancy rate for our Courts of Appeals is more than 11 percent nationwide. Of course that vacancy rate does not begin to take into account the additional judgeships requested by the Judicial conference to handle their increased workloads. If we added the 11 additional appellate judges being requested, the vacancy rate would be 16 percent. By comparison, the vacancy rate at the end of the Bush Administration, even after a Democratic Majority had acted in 1990 to add 11 new judgeships for the Courts of Appeals, was only 11 percent. Even though the Congress has not approved a single new Circuit Court position within the federal judiciary since 1990, the Republic Senate has lost ground in filling vacancies on our appellate courts.

At our first Executive Business Meeting of the year, I noted the opportunity we had to make bipartisan strides toward easing the vacancy crisis in our nation's federal courts. I believed that a confirmation total of 65 by the end of the year was achievable if we made the effort, exhibited the commitment, and did the work that was needed to be done. I urged that we proceed promptly with confirmations of a number of outstanding nominations to the Court of Appeals, including qualified minority and women candidates.

Yet only five nominees to the appellate courts around the country have had nomination hearings this year and only three of those five have been reported by the Committee to the Senate and confirmed—only three all year. The Committee included no Court of Appeals nominees at the hearings on April 27 and July 12, and there are no Court of Appeals nominee at the hearing today. The committee has yet to report the nomination of Allen Snyder to the District of Columbia Circuit, although his hearing was eleven weeks ago, or the nomination of Bonnie Campbell to the Eighth Circuit, although her hearing was eight weeks ago.

At the June 27 executive business meeting, Chairman Hatch compared this year's confirmation total against totals from other presidential election years. The only year to which this can be favorably compared was 1996 when the Republican majority in the Senate refused to confirm even a single appellate court judge to the federal bench. Again, that is hardly a comparison in which to take pride. Let us compare to the year 1992, in which a Democratic majority in the Senate confirmed 11 Court of Appeals nominees during a Republican president's last year in office among the 66 judicial confirmations for the year.

I remember in 1992, in the waning days of the Bush Administration, Timothy Lewis was nominated to fill a vacancy on the Third Circuit. His nomination was received by the Democratic Congress on September 17; his hearing was held September 24; he was reported to the floor on October 7; and he was confirmed on October 8. In fact, in 1992 the Committee held 15 hearings—twice as many as this Committee has found time to hold this year. Late that year, we met on July 29, August 4, August 11, and September 24, and all of the nominees who had hearings then were eventually confirmed before adjournment. We have a long way to go before we can think about resting on any laurels.

Having begun so slowly in the first half of this year, we have much more to do before the Senate takes its final action on judicial nominees this year. We cannot afford to follow the "Thurmond Rule" and stop acting on these nominees now in anticipation of the presidential election in November. We must use all the time until adjournment to remedy the vacancies that have been perpetuated on the courts to the detriment of the American people and the administration of justice. That should be a top priority for the Senate for the rest of this year. In the last 10 weeks of the 1992 session, between July 24 and October 8, 1992, the Senate confirmed 32 judicial nominations. I will work with the Republican Majority to try to match that record.

One of our most important constitutional responsibilities as United States Senators is to advise and consent on the scores of judicial nominations sent to us to fill the vacancies on the federal courts around the country. I continue to urge the Senate to meet its responsibilities to all nominees, including women and minorities. That these highly qualified nominees are being needlessly delayed is most regret-

table. The President spoke to this situation earlier this month in his appearance before the NAACP. The Senate should join with the President to confirm these well-qualified, diverse and fair-minded nominees to fulfill the needs of the federal courts around the country.

I commend the Senators from Illinois and Arizona for working to bringing these nominees forward to fill positions on the District Courts of Illinois and Arizona. The Arizona vacancies are each judicial emergency vacancies. Two were authorized in appropriations legislation last year when the Republicans Majority continued its refusal to consider a bill to meet the judicial Conference's recommendation for 72 additional judges around the country. All we were able to authorize were a few judge-ships in Arizona, Florida and Nevada.

Judge Bolton, Mary Helen Murguia and James Teilborg were all nominated just last Friday. They are now having their hearing, and they have been promised a vote out of committee this coming Thursday. I am happy to see us moving so swiftly on these nominees. These nominees may show that judicial nominees can be confirmed in as little as a week's time if Senators put their minds to it and make some effort. All the talk about needing six months or more to process and review nominees turns out to be just that—talk. If we can consider these nominees this week, we should be able to consider many other nominees on a similarly expedited schedule. There is no excuse for holding up nominations for months and years as has been the practice since 1996. The precedent is now being set for quick approval by this Committee.

Having a hearing does not automatically guarantee someone a vote before this Committee, however. Bonnie Campbell, nominated by the President on March 2, 2000, has completed the nomination and hearing process and is strongly supported by Senator Grassley and Senator Harkin from her home state. But her name continues to be left off the agenda at our executive meetings. The same goes for Allen Snyder. Mr. Snyder was nominated on September 22, 1999, received the highest rating from the ABA, enjoys the full support of his home state Senators, and had his hearing on May 10, 2000. The committee has yet to vote on either of these outstanding nominees, and I am not sure why, but I hope they will be included for action this Thursday.

I continue to urge the Senate to meet its responsibilities to all nominees, including women and minorities. That highly-qualified nominees are being needlessly delayed is most regrettable. The Senate should join with the President to confirm well-qualified, diverse and fair-minded nominees to fulfill the needs of the federal courts around the country.

#### QUESTIONING BY SENATOR KYL

Senator KYL. Thanks, Pat.

Well, let me ask each of you if you would like to make a statement at this time. The committee would be happy to have that statement for the record, and I would also note that the record will remain open until the close of business today for any other Senators to submit written questions.

The panelists are well aware of the fact that we are trying to move the nominations expeditiously, and, therefore, any responses to those questions should also be submitted as soon as possible in order for us to move forward.

Mr. Reagan, let me start with you and ask if you would like to make a brief statement.

Mr. REAGAN. Mr. Chairman, I have no statement other than to thank the committee for the honor and the pleasure of being here.

Senator KYL. You are very welcome.

Mary Murguia.

Ms. MURGUIA. No, sir. I just want to also thank you and the committee for the honor of being here.

Senator KYL. My pleasure. Judge Bolton?

Judge BOLTON. Mr. Chairman, I also have no statement, but also wanted to express my gratitude to you and the committee for holding these hearings today.

Senator KYL. Jim Teilborg.

Mr. TEILBORG. Likewise, Mr. Chairman, thank you very much for conducting this hearing, and I have no opening statement.

Senator KYL. OK; well, now begins the exam, then.

Let me just ask each of you some questions that other members of the committee have submitted from time to time, and one question that I have found useful to ask, the first one here. And perhaps we could begin, since I have started twice with Michael Reagan, start with Jim Teilborg here and we will just go down and ask each one of you to provide an answer to the question, and then reverse the order and so on.

The first has to do with judicial activism, a subject that all the members of the committee are interested in. As all of you know, the Founding Fathers believed that the separation of powers in a government was critical to protecting the liberty of the people. Therefore, they separated the legislative, the executive, and the judicial branches into three different powers of government, and the legislative power being the power to balance the moral, economic, and political considerations and make law, the judicial power being the power only to interpret the laws made by Congress and by the people.

In your view, is it the proper role of a Federal judge when interpreting a statute or the Constitution to accept the balance struck by Congress or to rebalance the competing moral, economic, and political considerations? And under what circumstances do you believe that it is appropriate for a Federal court to declare a statute enacted by Congress unconstitutional?

Mr. TEILBORG. Well, Mr. Chairman, I certainly appreciate the balance of powers, and I appreciate the limited jurisdiction and sphere of the Federal court. And in connection with declaring a law unconstitutional, certainly the court must first determine whether or not there is a constitutional issue, must follow the maxims of presumption of constitutionality, attempting to give the statute its plain meaning, and several other maxims. And I'm certainly committed to doing that if I am fortunate enough to be confirmed.

Senator KYL. Thank you.

Judge Bolton.

Judge BOLTON. Mr. Chairman, I think that the Constitution struck an appropriate balance of powers among the executive, the legislative, and the judiciary, and it's very important that members of the judiciary remember the limited role that they play in that balance and should never attempt to unbalance that.

There are rare circumstances when judges are compelled to declare statutes unconstitutional. But that should only be done when it is the only alternative, when there is no constitutional interpretation that can be placed, where the case cannot be decided on non-constitutional grounds, and when there is no narrower interpretation that can be made of the statute.

Senator KYL. Mary Murguia.

Ms. MURGUIA. I agree with what's been stated, and I just assure you I know what the role of the judge is to be, and that is not to legislate from the bench and to accept the law that has been handed down by the Supreme Court and uphold the Constitution. And if I'm so fortunate to be confirmed, I would pledge to do that.

Senator KYL. Thank you.

Michael Reagan.

Mr. REAGAN. Mr. Chairman, I adopt my colleagues' comments and would note that it is not permissible to encroach upon the separation of powers. We would all be shocked if a Member of Congress would walk down to the district court, sit on the bench, and try to call the next case. That would be an impermissible encroachment. Similarly, I don't think judges should legislate from the bench.

Senator KYL. Thank you very much.

The next question has to do with adhering the precedent, and let me begin with you, Mr. Reagan. Supreme Court precedents are binding on all lower Federal courts, and the circuit court precedents are binding on the district courts within a particular circuit.

Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally may disagree with those precedents?

Mr. REAGAN. Mr. Chairman, if I'm honored by this committee and the Senate and am confirmed, I can tell you not only that I can do that, but I will do that.

Senator KYL. Before I ask you to pass, let me add another personal note. When the issue was before the Congress as to whether to divide or split the Ninth Circuit Court of Appeals, which, as you all know, is very large, the comment was made to me, actually by a circuit court judge, I am sorry to say, that he felt that there should be a representation of different areas of the country within a circuit in order to give the flavor of that area to the circuit. And I thought at the time that coming from a circuit court judge bound by the precedent of the Constitution and the U.S. Supreme Court that was a rather odd comment.

Let me add that little observation to the mix here, if you would like to comment on that. Mary.

Ms. MURGUIA. Mr. Chairman, as a Federal district court judge, if I was fortunate to be confirmed, I would be bound by the precedents set forth by the Supreme Court and the appellate courts. And I understand that and I would adhere to that.

Senator KYL. Judge Bolton.

Judge BOLTON. Mr. Chairman, if confirmed as a Federal district judge, I would be bound and would follow the precedents set out by the U.S. Supreme Court and by my circuit. And my personal views would never prevent me from following that precedent.

Senator KYL. Jim Teilborg.

Mr. TEILBORG. Likewise, Mr. Chairman, I will be bound by the precedent of the Ninth Circuit as well as the precedent of the Supreme Court.

Senator KYL. Thank you. Now, let me, again, starting with you, Mr. Teilborg, go through one other question, which from time to time has arisen and is now in the news. It has to do with the death penalty.

Do you have any legal or moral beliefs which would inhibit or prevent you from imposing or upholding a death sentence in any criminal case that might come before you as a Federal judge?

Mr. TEILBORG. I have no legal or moral belief or anything else in my belief system that would prevent me from applying the death penalty as found constitutional by the Supreme Court.

Senator KYL. Judge Bolton.

Judge BOLTON. Mr. Chairman, in my 11 years as a superior court judge, I have had the occasion three times to consider the imposition of the death penalty on persons convicted of first-degree murder and have imposed the death penalty on one of those three occasions. And so, obviously, my personal view of the death penalty does not prohibit me in any way from applying the constitutional death penalty that has been upheld both by the U.S. Supreme Court and the Arizona Supreme Court.

Senator KYL. Thank you.

Mary Murguia.

Ms. MURGUIA. Similarly, Mr. Chairman, the Supreme Court has found the death penalty to be constitutional. There is nothing in my personal views that would prevent me from following the law.

Senator KYL. Thank you.

Michael Reagan.

Mr. REAGAN. Mr. Chairman, *Gregg v. Georgia* is the state of the law in the death penalty in this country. There are numerous references to the death penalty or capital punishment in the Constitution. There is nothing in my background, education, training, or experience nor do I harbor any personal belief that would preclude me from following the precedent of the United States Supreme Court or the Seventh Circuit Court of Appeals.

Senator KYL. Thank you.

Another question that has been submitted has to do with affirmative action, and let me read it. And I will start with you, Mr. Reagan. Please state in detail your best independent legal judgment on the lawfulness under the Equal Protection Clause of the 14th Amendment and Federal civil rights laws of the use of race, gender, or national origin-based preferences in such areas as employment decisions, hiring, promotion, or layoffs, college admissions and scholarship awards, and the awarding of Government contracts.

Mr. REAGAN. Mr. Chairman, in 1990, the Supreme Court handed down *Metro Broadcasting*, and in that case, which was decided on equal protection grounds, the Court by a 5-4 decision determined that only a rational relationship test would be applied when discussing immutable characteristics in preferences such as race or gender.

Five years later, when there was a change in the Court, by another 5-4 decision, this time the *Adarand* case was decided, and at that point in time, the Court determined that under equal protection grounds, a heightened level of scrutiny should be used, in that case strict scrutiny. That's the current law of the land, and if any remedy would be tailored under *Adarand*, it would have to be narrowly tailored and subject to a strict scrutiny type of review.

Senator KYL. Thank you.

Mary Murguia.

Ms. MURGUIA. Mr. Chairman, I'm aware of the *Adarand* decision as it has been set forth by Mr. Reagan, and I would follow the law, which is a strict scrutiny test in applying it.

Senator KYL. Thank you.

Judge Bolton.

Judge BOLTON. Mr. Chairman, I also am aware of the *Adarand* decision, and I believe it's been accurately summarized by colleagues and would follow and apply that strict scrutiny test.

Senator KYL. Jim Teilborg.

Mr. TEILBORG. I, too, am aware of those decisions my colleagues have spoken to, and I am committed to following them.

Senator KYL. Thank you very much. Those are all the questions that I have submitted here, and because I have spoken to at least three of the four of you independently and am well aware of your views and the way in which I think you would conduct yourself as a judge—and I am sure that Michael Reagan falls into the same category—I don't think I need to ask any other questions.

Let me just make a couple of other observations, if might, and then call upon you to make any other observations that you would like to.

I neglected to mention one thing in the resume of Jim Teilborg, and I am able to do this because I have known Jim for so long. But I think it illustrates the kind of quality of candidates that we have before us here.

In looking at the resumes of each of these candidates, they are filled not only with their legal accomplishments, and in the case of Judge Bolton, her judicial accomplishments as well, but also commitments to the community in one way or another, service to others. It is always interesting to me that that is a characteristic that almost all of the candidates who come before us possess.

Now, one shouldn't be surprised at that, but I think this is very important for judges, because people tend to think of people on the bench as somewhat apart from the rest of us, perhaps not quite like the rest of us, when, in fact, the reason that most of them got there is because they are very much like all of the rest of us. They care, they participate in the community, and they make significant contributions. And these contributions are frequently very varied.

In the case of Jim Teilborg, I happen to know because he has done something for me, and I would love to tell you about it briefly. One of the best things about being a Senator or a Representative is being able to nominate people to the service academies, and it is a very difficult job. You get hundreds of applications. You have to interview everyone. You have to rank them and send their names on.

Since the time I was elected to the House of Representatives, Jim Teilborg has chaired my service academy nominations committee with great distinction, and I think it is one of the reasons that we have had so many fine candidates from Arizona that have been selected to the service academies. And I want to thank him publicly for that bit of public service that he has performed for me, and I must tell you, it is one of the reasons that I knew of his capability of performing some of the tasks that he would have to perform as a Federal district judge, and I thank him. And I thank all of you for the contributions you have made apart from those that have been described by your sponsors in terms of your legal background.

Now, the process from here will be that the Senate Judiciary Committee will hold what we call an executive meeting. It is where

we do our business, where we pass bills and amend them, and act on judicial and other nominations. Right now, that meeting is scheduled at 10 o'clock Thursday. It is subject to change, but hopefully we will be able to meet then. And while it is possible that nominees can be put over one week, since we go into a month-long recess immediately after the end of this week, my hope is that we will be able to take these nominations up on Thursday and pass them on to the full Senate for consideration.

Now, that leaves precious little time for the full Senate to act. Ordinarily, it takes us a day to clear our throat let alone act on judicial nominees. But I will tell you that we have done some ground work in advance, and I would hope that there might be an opportunity to act before the end of the week, but that obviously cannot be guaranteed.

In any event, I can assure you that I will do my very best, and I think you heard, from what Senator Leahy said, that he certainly will join me in trying to see that the full Senate acts on your nominations as soon as possible.

Now, do any of you have any other comment that you would like to make at this time?

[No response.]

I appreciate very much the thanks that you have expressed, and I will pass those on to my colleagues. And we will, of course, through the White House, communicate with you regarding Thursday's meeting.

Let me again thank all of you in the audience who have come to participate in this hearing. This is, I think, an occasion worth celebrating because there are very few people that have an opportunity to serve their country in the capacity, life-long capacity, of judge. It is a position of great honor but also of significant responsibility because you literally have people's lives in your hands, as you heard in response to one of the questions that I raised here. It is an awesome responsibility. And for those of you who have had a hand in helping to shape the careers of those who are here at the table, I thank you on behalf of my colleagues for your contribution as well. We are delighted to have you here to participate in this process.

If there are no other questions or comments, then I would will adjourn this meeting, and we will hope to have some good news for everyone in a few days.

[The biographical information of Judge Bolton follows:]



I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
Susan Ritchie Bolton (formerly Susan Marie Ritchie)
2. Address: List current place of residence and office address(es).  
Residence: Paradise Valley, AZ  
Office: Maricopa County Superior Court  
201 W. Jefferson St.  
Phoenix, AZ 85003
3. Date and place of birth.  
September 1, 1951 Philadelphia, PA
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
I am married to Frank Garvey Bolton, Jr., Ph.D.  
My husband is a psychologist. He does business through his limited liability company, Organizational Diagnostics, L.L.C., 7220 N. 16th St., Building K, Phoenix, AZ 85020.
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
Pennsylvania State University  
September 1969 to April 1971 (married in May 1971 and moved to California for my husband's job; transferred to San Jose State University)  
San Jose State University  
Fall semester, 1971 (moved to Iowa City and transferred to University of Iowa)  
University of Iowa  
August 1972 to June 1973  
B. A. awarded with Honors, July 1973  
University of Iowa College of Law  
June 1973 to July 1975  
J. D. awarded with High Distinction, July 1975

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

1974 to 1975

Part-time research assistant  
University of Iowa College of Law  
Iowa City, Iowa

1975 to 1977

Law Clerk, Chambers of the Hon. Laurance T. Wren (deceased)  
Arizona Court of Appeals, Division One  
Phoenix, AZ

1977 to 1982

Associate Attorney  
Shimmel, Hill, Bishop & Gruender, P.C.  
Phoenix, AZ

1982 to 1989

Partner (shareholder and director)  
Shimmel, Hill, Bishop & Gruender, P.C.  
Phoenix, AZ

1989 to present

Judge of the Superior Court, Maricopa County, AZ  
Phoenix, AZ

1979 to 1986

Member of the Board of Directors  
Arizona Women Lawyers Association  
Phoenix, AZ

1988 to 1992

Officer and Member of the Board of Directors  
Soroptimist International of Phoenix  
Phoenix, AZ

1996 to 1998

Member of the Board of Directors  
National Association of Drug Court Professionals  
Alexandria, VA

1998 to 2000

Member of the Board of Directors  
Soroptimist International of Phoenix  
Phoenix, AZ

Spring semester 1999

Adjunct faculty at Arizona State University College of Law

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

No.

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

I graduated from law school with High Distinction.

I graduated from college with Honors.

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

State Bar of Arizona

Member, 1976 to present

American Bar Association

Member, 1978 to present

Maricopa County Bar Association

Member, 1978 to present

Arizona Women Lawyers Association

President, 1986

Member of Board of Directors, 1979 to 1986

President of the Maricopa Chapter, 1984

Member of the Maricopa Chapter Steering Committee, 1978 to 1984

Liaison to State Bar Board of Governors, 1986 and 1988

Arizona Judges Association

Member, 1988 to present

National Association of Women Judges  
Member, 1992 to present

Sandra Day O'Connor Inn of Court  
Member, 1989 to present

State Bar of Arizona Committees:

Civil Jury Instruction Committee, 1989 to 1994  
Chair, 1992 to 1994

Civil Practice and Procedure Committee, 1989 to 1993

Coalition for Women and Minorities in the Law, 1987 to 1992

Criminal Rules Committee, 1994 to 2000

Maricopa County Bar Association Bench Bar Committee, 1993 to 1998  
Chair, 1996

Arizona Judicial Conference  
Chair, 2000  
Co-Chair, 1999  
Committee member, 1998

Judicial Executive Committee, Maricopa County Superior Court  
Member, 1995 to present

Supreme Court Committee to Study the Criminal Justice System in the  
Superior Court  
Member, 1993

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

I do not belong to any organizations that are active in lobbying. I belong to Soroptimist International of Phoenix, Inc.

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

United States District Court, District of Arizona, admitted 1977.

Arizona Supreme Court, admitted 1976.

Iowa Supreme Court, admitted 1975 (inactive since 1977).

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

Written work:

Bolton, Frank G. & Bolton, Susan R., Working with Violent Families: A Guide for Clinical and Legal Practitioners (Sage Publications 1987).

Bolton, Susan R. & Bolton, Frank G., "Legal Considerations in Working with Perpetrators" in The Incest Perpetrator: The Family No One Wants to Treat (Anne L. Horton, ed., Sage Publications, 1989).

Commission on Women and Minorities in the Law of the State Bar of Arizona, Statement of Goals for Increasing Representation and Retention of Women and Minorities presented by the committee to the State Bar Board of Governors, May 1992.

The Report of the Committee to Study the Criminal Justice System in the Arizona Superior Court, July 1993.

Civil Jury Instructions Committee of the State Bar of Arizona, Recommended Arizona Jury Instructions (Civil), 2ND Edition: RAJI (Civil) 2D Expanded and Revised presented to the State Bar 61st Annual Convention, June 1994.

What Price Justice? Crisis in Court Funding in Maricopa County, Maricopa County Bar Association White Paper prepared by the Bench-Bar Committee, February 1996.

Speeches:

Arizona Judicial College New Judge Orientation, handwritten notes on presentation on Pre-trial Management in Civil Cases, January 1993.

What To Do About Crime: The Annual Conference on Criminal Justice Research and Evaluation, U.S. Department of Justice, Office of Justice Programs, handwritten notes for presentation on Drug Courts Panel, July 1995.

Defense Research Institute Employment Law Seminar, program materials entitled "A Summary of Recent Jury Reform in Arizona", November 1996.

"Maricopa County Drug Court Program", program summary prepared for presentation to the Arizona Department of Health Services Implementation Oversight Committee on Perinatal Substance Abuse, October 1997.

Maricopa County Bar Association continuing legal education seminar entitled "Advanced Issues In Civil Litigation: Assumptions, Burdens, Dismissals & Directed Verdicts", program materials on "Presumptions, Assumptions and Inferences", January 1999.

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

Excellent. My last physical examination was June 20, 2000.

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

Since January 1989, I have held the position of Maricopa County Superior Court Judge. This was a gubernatorial appointment by the Honorable Rose Mofford. Since my appointment, I have been retained by the voters in elections held in 1990, 1994 and 1998.

The Arizona Superior Court is a court of general jurisdiction. We have jurisdiction over all felony cases, civil cases where the amount in controversy exceeds \$5,000, juvenile delinquency and dependency matters, actions involving the dissolution of marriage and child custody, and probate.

Since my appointment to the Superior Court, I have sat by designation twice on the Arizona Court of Appeals, once in 1992 and once in 1994.

15. Citations: if you are or have been a judge, provide:

(1) citations for the ten most significant opinions you have written;

Arizona Superior Court Judges do not issue published opinions; however, the following are ten examples of rulings I have made.

1. Camelback Plaza Dev., L.L.C. v. Hard Rock Café Int'l, Inc., Maricopa County Superior Court No. CV2000-001589
2. In re the General Adjudication of All Rights to Use Water in the Gila River System & Source, Maricopa County Superior Court No. W-1, W-2, W-3, W-4, Contested Case No. W1-204
3. In re the General Adjudication of All Rights to Use Water in the Gila River System & Source, Maricopa County Superior Court No. W-1, W-2, W-3, W-4, Contested Case No. W1-100
4. State v. Griffin, Maricopa County Superior Court No. CR 94-08470
5. State v. Fulminante, Maricopa County Superior Court No. CR 142821
6. State v. Bogan, Maricopa County Superior Court No. CR 92-06670
7. Hyatt Regency Phoenix Hotel Co. v. Winston & Strawn, Maricopa County No. CV 87-39216
8. Hendershott v. Brewer, Maricopa County Superior Court No. CV 99-20192
9. Old Republic Nat'l Title Ins. Co. v. Coury, Maricopa County Superior Court No. CV 92-11090
10. Nelson v. Phoenix Resort Corp., Maricopa County Superior Court No. CV 90-00392

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

In over eleven years as a trial judge, I have ruled on thousands of issues in hundreds of cases. Some of those rulings are memorialized in minute entry orders. Others are rulings from the bench for which no written order exists. Where no minute entry order is attached, this indicates a ruling from the bench, for which there is no opinion available.

1. State v. Perez, 1 CA-CR 99-0726 (Ariz. App. 2000)

The defendant was on trial for multiple counts of child molestation involving his two nieces. After the state's expert responded to a juror's question about what might cause the expert to suspect a child might not be telling the truth, the prosecutor followed up by asking the expert if any studies had been done to determine the percentage of false allegations. The defense attorney did not object. The expert testified that the false allegation rate was under ten percent. The Court of Appeals reversed defendant's convictions finding that the error was a fundamental one that was not waived by the failure to object. Although the expert did not directly address the victims' veracity, the Court of Appeals stated that it could not conclude that the testimony did not affect the verdict.

2. Appaloosa Horse Club v. Honorable Susan R. Bolton (Bennett, Real Party in Interest), 1 CA-SA 99-0287 (Ariz. App. 2000)

The petitioner's bylaws required lawsuits by members to be filed in state or federal court in Idaho. After a member sued it in Arizona, the petitioner filed a motion to dismiss for improper venue. I denied the motion on two grounds. It was not a negotiated term of the parties' agreement and Idaho does not enforce forum selection clauses because they contravene Idaho public policy. On special action review the Court of Appeals found that Idaho law, which voids forum selection clauses, was irrelevant to a request to change venue from Arizona to Idaho. The Court of Appeals held that in Arizona forum selection clauses are presumptively valid unless the contract is found to be one of adhesion.

3. State v. Easton, 1 CA-CR 99-0038 (Ariz. App. 2000)

I dismissed the defendant's petition for post-conviction relief and rejected the defendant's argument that if the prosecutor had said more about the defendant's cooperation at sentencing I would have imposed a shorter prison sentence. On review, the Court of Appeals held that resentencing was required because the prosecutor failed to advise the presentence writer and me of the nature, scope and importance of the defendant's cooperation, as required by the plea agreement. My



ruling denying the petition noted that the defendant failed to show that any additional facts might result in a reconsideration of the sentence. The Court of Appeals also held that breach of a plea agreement cannot be harmless error and that resentencing was required.

4. Valencia v. Dental-Net, Inc., 1 CA-CV 99-0395 (Ariz. App. 1999)

I allowed the admission in evidence of the plaintiff's signed surgical consent form in this medical malpractice case. After a jury verdict in the defendant's favor, the plaintiff appealed. The Court of Appeals held that the informed consent form was irrelevant and its admission was reversible error. The Court of Appeals found that my cautionary instruction about the consent form did not cure the error.

5. State v. Mulligan, 1 CA-CR 98-0134 (Ariz. App. 1999)

The defendant was charged with possession of dangerous drugs, narcotic drugs and drug paraphernalia found during a search of a cooler in the defendant's closet. I denied his motion to suppress the evidence and the defendant was convicted of the crimes charged. The Court of Appeals reversed, holding that the search of the cooler exceeded the scope of the consent given.

6. State v. Fulminante, 975 P.2d 75 (Ariz. 1999)

The defendant was convicted of first-degree murder. Because I imposed a sentence of death, an automatic appeal to the Arizona Supreme Court was filed. Numerous issues were raised but the Arizona Supreme Court reversed the defendant's first degree murder conviction on one evidentiary ruling. Under the state of mind exception to the hearsay rule, I had permitted testimony from two witnesses of the victim's statements of fear that her step-father was going to kill her. Conceding some confusion and inconsistency in the case law on this issue, the Arizona Supreme Court held that evidence of the victim's state of mind was not admissible to establish the identity of the perpetrator of the murder.

7. San Carlos Apache Tribe v. Superior Court, 972 P.2d 179 (Ariz. 1999)

This case originated in the Arizona Supreme Court as a special action challenging the constitutionality of legislation amending the general streams adjudication statutes and other statutes affecting the right to use surface water in Arizona. The Arizona Supreme Court remanded the case to me for initial decision. I held most of the statutory changes unconstitutional because they applied retroactively to affect vested property rights, violating the due process clause of the Arizona Constitution, or because they violated the separation of powers clause of the Arizona Constitution. I then certified my ruling to the Arizona Supreme Court for its decision. For the most part they agreed and affirmed. They disagreed on two

issues. The Arizona Supreme Court held that the new law could not be considered in determining the meaning of prior law if the prior law were later found to be ambiguous and that the statute's prohibition on considering the public trust doctrine in the adjudication was unconstitutional.

8. State v. Superior Court (Moore, Real Party in Interest), 936 P.2d 558 (Ariz. App. 1997)

The defendant was convicted of assault and criminal damage in municipal court. The charges arose out of an incident in which the defendant assaulted his wife and broke down the door of their jointly-owned home. On appeal to the Superior Court, I affirmed the assault conviction but reversed the criminal damage conviction finding that the defendant had not damaged "the property of another" as required by the criminal damage statute. The State then filed a special action in the Court of Appeals which ruled that property in which the defendant was a co-owner can be property of another for purposes of a criminal damage charge and ordered the conviction reinstated.

9. State v. Ramirez, 1 CA-CR 96-0290 (Ariz. App. 1997)

After a jury convicted the defendant of first-degree murder, the defendant appealed my jury instruction on premeditation. A majority of the Court of Appeals held that the instruction contained ambiguities which became errors when the State "mis-argued" the law. The Court of Appeals held that by failing to be clear that premeditation required actual reflection, the instruction allowed the State to argue that premeditation could be just a period of time sufficient to permit reflection. The case was remanded for a new trial.

10. State v. Superior Court (Heitger, Real Party in Interest), 1 CA-SA 97-0131 (Ariz. App. 1997)

A municipal court judge dismissed with prejudice charges of driving while under the influence of intoxicating liquor against the defendant based on the State's failure to comply with a discovery order. I affirmed the dismissal on appeal. The State then filed a special action in the Court of Appeals. The Court of Appeals held that the municipal court judge had abused her discretion in dismissing the criminal charges with prejudice. The charges were ordered reinstated unless after a hearing, the municipal court found a deliberate failure to comply with the discovery order or a prejudicial non-disclosure of exculpatory evidence.

11. State v. Greer, 1 CA-CR 96-0626 (Ariz. App. 1997)

After my dismissal of his petition for post-conviction relief, defendant filed a petition for review in the Court of Appeals. The Court of Appeals ordered that an evidentiary hearing on defendant's petition for post-conviction relief be held because he had presented a colorable claim of ineffective assistance of counsel.

12. State v. Superior Court (Seidel, Real Party in Interest), 953 P.2d 926 (Ariz. App. 1997)

The defendant was arrested for driving while under the influence of intoxicating liquor after a young woman drove up to a police station and told two police officers that her intoxicated passenger had been driving. She further stated upon witnessing his driving she got into the vehicle and drove him to the police station. She told the officers she did not know the defendant. A municipal court judge found no probable cause to arrest the defendant and the State appealed. I affirmed the dismissal and the State filed a special action in the Court of Appeals. The Court of Appeals held that there was probable cause to arrest the defendant because probable cause could be based on the uncorroborated statements of a citizen that the defendant had been driving. The case was remanded to the municipal court with orders to reinstate the charges.

13. State v. McFarland, 1 CA-CR 95-0674 (Ariz. App. 1996)

The parties entered into a plea agreement which required that the defendant be sentenced to seven years in prison but did not specify whether the sentence was to be consecutive to or concurrent with the prison sentence the defendant was already serving. At sentencing, I stated that a concurrent sentence would result in no additional punishment to defendant for his new felony. I requested additional briefing on the issue of whether the State could withdraw from the plea if I imposed a concurrent sentence longer than seven years. After reviewing the memoranda, I concluded that the State could withdraw. The State also announced its intent to withdraw if I imposed a concurrent sentence longer than seven years. Therefore, I sentenced the defendant to seven years to be served consecutive to his earlier prison sentence and stated that while it was not the optimal sentence I could impose in the case, it was not an inappropriate one. In a petition for post-conviction relief, defendant again raised the arguments that the State had no right to withdraw from a plea agreement that imposed a prison term longer than stipulated. I summarily dismissed the petition. On review, the Court of Appeals agreed with my ruling that the State had the right to withdraw from the plea agreement even where the sentence was a harsher one than stipulated. However, the Court of Appeals vacated the defendant's sentence and remanded for resentencing because the Court of Appeals questioned whether I believed that I was bound by the plea stipulations for sentencing.

14. State v. Archambault, 1 CA-CR 95-0566 (Ariz. App. 1996)

Three of my rulings were challenged in this appeal from the defendant's conviction for armed robbery and kidnapping. My rulings allowing the impeachment of the defendant with a prior conviction and permitting the testimony of the State's expert in rebuttal to the insanity defense were affirmed. My denial of a motion for new trial based on alleged jury misconduct was remanded for an evidentiary hearing. During the trial, a juror told an acquaintance that she did not personally believe in the insanity defense but would follow the law. She had not expressed any reservations about the insanity defense when questioned during jury selection. The Court of Appeals found that I should not have taken the juror at her word that she could follow the law but that I should have questioned the juror before deciding the post-trial motion for new trial. The case was remanded for the hearing. After the hearing, I granted a new trial. The defendant subsequently entered a guilty plea.

15. State v. Montilla, 1 CA-CR 95-0532 (Ariz. App. 1996)

After a witness came forward taking responsibility for the crime for which the defendant was charged, the defendant's public defender filed a Motion to Determine Counsel because the witness was a former client of the public defender's office. I ruled that there was no conflict of interest requiring the removal of the public defender because the information was not provided as part of any attorney-client communication and because the witness was no longer a client of the public defender's office. The Court of Appeals held that I should have permitted withdrawal of the public defender because the public defender's office's prior representation of a witness in an unrelated matter created an appearance of a conflict of interest.

16. Hyatt Regency Phoenix Hotel Co. v. Winston & Strawn, 907 P.2d 506 (Ariz. App. 1995)

After a jury verdict awarding compensatory damages of over \$1,200,000 and \$3,000,000 in punitive damages against the defendant law firm in a legal malpractice case, I decided several post-trial issues. The defendant appealed and raised numerous claims of error. The Court of Appeals affirmed my instruction to the jury concerning the defendant's legal responsibility for the acts of the attorney whose malpractice gave rise to the action. The court also affirmed my instruction on punitive damages. My decision to award prejudgment interest and a credit against the compensatory award of amounts paid by another defendant in settlement was also affirmed. The Court of Appeals further ruled that my post-judgment review of the punitive award satisfied due process standards. However, a majority of the Court of Appeals reversed a \$1,000,000 credit I applied against the \$3,000,000 punitive damages award for the punitive damages paid in settlement by the lawyer whose malpractice gave rise to the case. The Court of Appeals held that

even though the employer was liable only because of the malpractice of this lawyer, the employer was liable for the full assessment of punitive damages against it.

17. Ward v. State, 890 P.2d 1144 (Ariz. 1995) vacating, 871 P.2d 711 (Ariz. App. 1994)

I dismissed the plaintiffs' claims against the State arising out of a boating accident on Apache Lake. I found the State immune under the recreational use statute. The Court of Appeals affirmed. The Supreme Court vacated the opinion of the Court of Appeals and held that the State cannot claim immunity under the recreational use statute because it is not an "occupant" of Apache Lake within the meaning of that statute. The Arizona Supreme Court found that the State's program for survey, placement and maintenance of aids to navigation on the lake did not make it an "occupant" and immune from liability for the boating accident. The case was remanded for trial.

18. Nelson v. Phoenix Resort Corp., 888 P.2d 1375 (Ariz. App. 1994)

Prior to trial I had granted a motion for summary judgment dismissing the plaintiffs' tort claims for defamation, breach of the implied covenant of good faith and fair dealing in employment contracts and intentional infliction of emotional distress. I denied the motion requesting dismissal of the remaining tort claim for "false light" invasion of privacy. I also denied the defendant's motion requesting dismissal of additional contract claims based on plaintiff's claim of oral modifications and extensions of the written employment contract. I granted the plaintiff's motion for summary judgment finding, that there was a breach of a valid and enforceable contract but left the issue of damages for trial. After trial, the jury awarded plaintiff over \$163,000 in lost wages, \$358,000 in damages for false light invasion of privacy and \$1,000,000 in punitive damages. Defendants appealed the jury's verdict in favor of plaintiff awarding damages for breach of contract. The plaintiff cross-appealed my dismissal of the tort claims for defamation, breach of the implied covenant of good faith and fair dealing, and intentional infliction of emotional distress. The Court of Appeals reversed my decision to grant summary judgment against the defendant for breach of contract and the jury's award of contract damages. The issues on the cross-appeal were affirmed.

19. Trantor v. Fredrikson, 878 P.2d 657 (Ariz. 1994) reversing 861 P.2d. 674 (Ariz. App. 1993)

I granted attorney's fees to the defendant after dismissing the complaint, and I assessed the fees against both the plaintiff and her lawyer. A majority of the Court of Appeals reversed the award of attorney's fees because no findings of fact or statutory basis for the award was stated in the judgment as required by an Arizona Supreme Court case that had come down close in time to my decision. The Court

of Appeals also held that the issue was not waived by the plaintiff's failure to object. Subsequently, the Supreme Court reversed the Court of Appeals and remanded, holding that failure to object to an absence of findings of fact and conclusions of law waived the issue on appeal.

On remand to the Court of Appeals, the majority vacated the attorney's fees award on the basis that there was insufficient evidence to support the award, because the plaintiff's and her lawyer's conduct, while perhaps demonstrating ineptness, negligence and lack of diligence, did not rise to the level of vexatious or harassing litigation or demonstrate bad faith or an intent to harass.

20. Dieterle v. Krieger, 1 CA-CV 91-0546 (Ariz. App. 1994)

My predecessor judge on this case ruled that the restrictive covenants in the employment agreement between the parties were unenforceable. The case was later assigned to me. This ruling was the sole issue on appeal. The Court of Appeals reversed the ruling of the prior judge and held that the restrictive covenants could be enforced. The case was remanded for trial.

21. Thoracic Cardiovascular Assoc., Ltd. v. St. Paul Fire & Marine Ins. Co., 891 P.2d 916 (Ariz. App. 1994)

I ruled that the defendant, St. Paul, was required to provide coverage to the plaintiff under its "claims-made" liability insurance policy because the insured was not aware of the existence of the claim until after the policy was canceled. A majority of the Court of Appeals reversed. The Court of Appeals held that notice of a claim within the policy period is a material consideration for a "claims-made" policy and the doctrine of impossibility does not excuse late reporting of a claim even where the insured was not aware of the existence of the claim.

22. State v. Trujillo, 2 CA-CR 93-0318 (Ariz. App. 1993)

I had denied a motion to suppress evidence obtained in a warrantless search of a motel room. The Court of Appeals reversed my denial of the motion to suppress, holding that there was no exigency and that the officers were required to obtain a warrant before entering the motel room.

23. State v. Superior Court (Cunningham, Real Party in Interest), 909 P. 2d 476 (Ariz. App. 1993)

The defendant was in an accident which resulted in damage to a vehicle. The defendant was charged only with driving while under the influence of intoxicating liquor and not with endangerment or criminal damage. The driver of the damaged vehicle later refused a defense interview asserting that he was a victim within the

Arizona Constitution's Victims' Bill of Rights and the Victims' Rights statute. I ruled that he was not a victim due to the way the case was charged. The Court of Appeals disagreed and held that the driver was a victim as defined by the Victim's Bill of Rights.

24. State v. Norton, 1 CA-CR 92-1367, 1368 & 1369 (Ariz. App. 1993)

The defendant pled guilty to three separate incidents of aggravated driving while under the influence of intoxicating liquor, and I sentenced him to three three-year terms of probation, two to be served concurrently and one consecutive to the others. I also sentenced the defendant to the mandatory six months in prison on all three cases and in one case imposed an additional 180 days in jail after completion of the prison term. The defendant's judgments of conviction were affirmed but the cases were remanded for resentencing because the Court of Appeals ruled that I could not impose consecutive periods of probation and that the failure to object did not waive the issue on appeal.

25. Neil v. Kavena, 859 P.2d 203 (Ariz. App. 1993)

After submission of the case on stipulated facts, I ruled that a plaintiff fully compensated by settlement with other defendants must credit the amount of the settlement against damages assessed against the non-settling defendant. The Court of Appeals disagreed, holding that a non-settling defendant in a medical malpractice action who is severally, but not jointly, liable is not entitled to a credit for amounts received by the plaintiff in settlement of a related action for the same injury by other defendants.

26. Reinhold v. Lewis, 1 CA-CV 92-0397 (Ariz. App. 1993)

I had dismissed the plaintiff's special action complaint seeking damages for punishment he suffered as a result of a disciplinary violation at the Arizona Department of Corrections that was reversed. The punishment included five days of solitary confinement, loss of earned time credits, loss of privileges and reclassification of his security level. The reversal of the violation overturned the sanctions but the five days of solitary confinement had already been served. The Court of Appeals reversed the dismissal and found that the plaintiff's special action complaint should have been considered as a cause of action under the Civil Rights Act and therefore not dismissed for lack of special action jurisdiction.

27. Waddell v. Arizona State Land Dep't, 1 CA-CV 91-0452 and 0460 (Ariz. App. 1993)

I ruled on cross-motions for summary judgment that the plaintiff's purchase of State school trust property was void because the sale exceeded the limitations under the Arizona Constitution and statutes for the number of acres of agricultural land that could be sold to a single purchaser. The State Land Department agreed that if the land was agricultural land within the meaning of the constitution and the statutes, then the sale was in violation of law. The issues presented to me were whether the land was, in fact, agricultural, whether the constitutional and statutory acreage limitations violated the Enabling Act and were therefore unenforceable, whether the plaintiff's claims were barred by the statute of limitations, whether the plaintiff had standing to challenge the validity of the sale because he was in default and whether the plaintiff was estopped to deny the validity of the sale. The Court of Appeals affirmed my decision that primary jurisdiction was in the plaintiff's administrative review action and affirmed my dismissal of the related declaratory judgment action. The Court of Appeals also agreed with my decisions concerning the land classification, the plaintiff's standing to file suit, and that the statute of limitations did not bar the claim. The Court of Appeals reversed the judgment voiding the sale, holding that the term "void" used in the statute restricting the sale of school trust fund lands meant "voidable" and under a balance of the equities, the plaintiff was not entitled to void the sale.

28. Arizona Biltmore Estates Ass'n. v. Tezak, 868 P.2d 1030 (Ariz. App. 1993)

I ruled in favor of the defendants on cross-motions for summary judgment that the defendants' customized bus did not fall within the deed restrictions of the Arizona Biltmore Estates. The Court of Appeals reversed. The Court of Appeals held that although restrictive covenants are to be strictly construed against persons seeking to enforce them, the provision which restricted parking of a "trailer, camper, boat, or similar equipment" included a customized bus because other provisions of the covenants, conditions and restrictions of the subdivision evidenced an intent to restrict uses of property which were unsightly or annoying.

29. Smith's Food & Drug Ctrs., Inc. v. Chase Bank, 1 CA-CV 91-0564 (Ariz. App. 1993)

I granted summary judgment in favor of the plaintiff ordering the defendant to release its deed of trust on certain real property in exchange for delivery to it of \$500,000. Based on evidence presented at a preliminary injunction hearing, I found that the bank's documents reflected beyond dispute that it had agreed to release a third collateral assignment of a beneficial interest under a deed of trust and therefore could not insist upon a reaffirmance of that assignment before it complied with the lot release provisions under a separate deed of trust. Using a de



novo standard of review, the Court of Appeals reversed, holding that there was a material issue of fact precluding summary judgment on the issue of the retention or release of the third collateral assignment. The Court of Appeals found, that while the bank's documents supported the finding that the third collateral assignment was released, the affidavit of a bank employee submitted in opposition to the summary judgment motion denied any intention on the bank's part to release the third collateral assignment.

30. Bochat v. Benneson, 1 CA-CV 90-229 (Ariz. App. 1992)

The defendant appealed from a grant of a motion for new trial based on my finding that defense counsel's improper argument may have affected the jury's verdict. The plaintiff cross-appealed my orders bifurcating the trial on the issues of liability and damages, excluding evidence of the nature and severity of plaintiff's injuries from the liability phase and prohibiting the plaintiff's personal appearance at the liability trial. My determinations at issue in the cross-appeal were affirmed. The Court of Appeals, however, reversed my order for a new trial, holding that a new trial can only be granted upon a finding that the misconduct of counsel actually did affect the jury's verdict.

31. Black v. Cooper, 2 CA-CV 92-0065 (Ariz. App. 1992)

I imposed Rule 11 sanctions after granting an unopposed motion for summary judgment in favor of a defendant in a medical malpractice case. The Court of Appeals reversed, because it found an objectively reasonable basis for filing the medical malpractice action, even though the plaintiff had failed to oppose the granting of summary judgment to the defendant.

32. Hartford Accident & Indemnity Co. v. Arizona Dep't of Transp., 838 P. 2d 1325 (Ariz. App. 1992)

I ruled that a statutory performance bond surety is not liable for its principal's unpaid unemployment insurance taxes. The Court of Appeals allowed the Arizona Department of Transportation to set-off the contractor's pre-default unemployment tax obligations against remaining contract funds due Hartford, the surety, which had taken over construction after its principal's default.

33. Cochise County v. Kirshner, 830 P.2d 470 (Ariz. App. 1992)

This case raised issues about the methodology used for the assessment of the county's required contribution to Arizona's long-term care system. I had dismissed the county's case for failure to exhaust administrative remedies. The Court of Appeals held that the county did not have to pursue administrative remedies before bringing a court challenge to the propriety of the determination of its assessment for the long-term care system.

34. Rainbow Int'l, Inc. v. State, 1 CA-CV 90-452 (Ariz. App. 1992)

After a bench trial, I entered judgment for the plaintiff finding that changed conditions at the construction site entitled the plaintiff to additional compensation under the government contract. A majority of the Court of Appeals reversed, holding that the plaintiff was not entitled to additional compensation for conditions at the construction site that differed materially from those indicated in the contract because the plaintiff had performed an inadequate site inspection.

35. Roe v. Walker, 1 CA-CV 91-175 (Ariz. App. 1992)

I ruled that the two-year statute of limitations for commencing a legal malpractice action had expired before suit was filed in 1990. I found that the evidence presented on the defendant's motion for summary judgment showed that by 1982, the plaintiff knew or should have known the facts that gave rise to his claim. The Court of Appeals reversed and held that there was a material issue of fact about when the plaintiff should have known of his claim for legal malpractice. The case was remanded for further proceedings.

36. Blutreich v. Liberty Mutual Ins. Co., 826 P.2d 1167 (Ariz. App. 1991)

I had granted judgment to Liberty Mutual, finding that the statute of limitations period for an uninsured motorist claim began on the date of the accident. The Court of Appeals decided this issue of first impression in Arizona differently. It held that the six-year statute of limitations on a cause of action for benefits under an uninsured motorist provision in an insurance policy did not begin to run on the date of the accident but upon the event of the defendant's refusal to pay benefits.

37. Czarnecki v. Volkswagen of America, 837 P.2d 1143 (Ariz. App. 1991)

After a jury verdict in favor of the defendant in this defective product case, the plaintiff appealed raising four claims of error. The Court of Appeals reversed and remanded for a new trial on one of the claims, holding, for the first time in Arizona, that the single injury rule applies in a crashworthiness case. The Court of Appeals found that I should have given an indivisible injury instruction advising the jury that if they found the defendant liable and could find no reasonable basis upon which to apportion damages between those caused by the defective product and those caused by the negligent driver, that the liability was joint and several.

38. Van Camp v. ICG Management, 1 CA-CV 89-456 (Ariz. App. 1991)

After a three-year old child fell from a third story bedroom window, a lawsuit was filed to recover for the injuries she sustained. The defendants were the owners and manager of the apartments, the general contractor and the architect who designed the building. I granted summary judgment for the apartment complex's owners and manager and for the general contractor. I denied the architect's motion, finding that the plaintiffs' expert had raised factual issues about whether the design of the window 24 inches from the floor and the specifications for the window and screen fell below the standard of care for architects. The owners and manager appealed. The majority of the Court of Appeals reversed the summary judgment granted to the owners and manager of the apartments and held that factual issues existed as to whether these defendants were negligent in renting a third floor apartment to a family with young children, when the apartment had a screened window 24 inches from the floor.

39. Wilke v. Hensler, 1 CA-CV 89-467 (Ariz. App. 1991)

I granted summary judgment for the homeowner finding he had used reasonable care in making his pool reasonably safe. The Court of Appeals reversed and held that a material issue of fact existed on the question whether the homeowner exercised reasonable care to make its pool safe for the plaintiff's son. The case was remanded the case for trial.

40. State v. Smith Pipe & Steel Co., 1 CA-CV 89-446 (Ariz. App. 1990)

I ruled that the defendant, Smith Pipe and Steel, was entitled to compensation for its expectation that its lease would continue into the future if the State had not condemned the property. The majority of the Court of Appeals held that Smith's lease created only a month-to-month tenancy and Smith could not recover condemnation damages based on anticipated continued occupancy under its lease. Review was granted by the Arizona Supreme Court but the case was settled before decision.

(3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

1. State v. Honorable Roxanne Song Ong (Nunez, Real Party in Interest), Maricopa County Superior Court No. CV 96-21876 and State v. Honorable Karyn Klausner (Marcantonio, Real Party in Interest), Maricopa County Superior Court No. CV 97-03875
  2. State v. Video Update, Inc., Maricopa County Superior Court No. LC 97-01178
  3. In re the General Adjudication of All Rights to Use Water in the Gila River System & Source, Maricopa County Superior Court No. W-1, W-2, W-3, W-4, Contested Case No. W1-100 (Arizona Supreme Court opinion: San Carlos Apache Tribe v. Superior Court, 972 P.2d 179 (Ariz. 1999))
16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I have never held any public office other than judicial office and have never run for elective public office. In 1997, I applied for appointment for the Arizona Supreme Court. While I was nominated to the governor by the appellate court nominating commission, another nominee was appointed.

17. Legal Career:

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

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

I served as a law clerk to the Honorable Laurance T. Wren, Arizona Court of Appeals, Division One from July 1975 to July 1977.

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

I have never practiced alone.

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

1977 to 1982: Associate attorney: Shimmel, Hill, Bishop & Gruender, P.C., 3700 N. 24th St., Phoenix, AZ 85016

1982 to 1988: Partner (shareholder and director): Shimmel, Hill, Bishop & Gruender, P.C., 3700 N. 24th St., Phoenix, AZ 85016

1989 to present: Superior Court Judge, Maricopa County, Arizona, 201 West Jefferson, Phoenix, AZ 85003

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

I can best describe my law practice, before becoming a judge, as a general practice with an emphasis on commercial litigation as well as labor and employment litigation. I also drafted various commercial documents including real estate contracts, business purchase and sale agreements, leases and secured transactions. I also had some practice experience in personal injury litigation, wills and probate and domestic relations.

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

My typical former clients included individuals, corporations, small businesses, construction bonding and surety companies, and insurance companies.

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

Throughout my years in private practice, I appeared in court at least once a week, on the average.

2. What percentage of these appearances was in:
- (a) federal courts: 10%
  - (b) state courts of record: 80%
  - (c) other courts: 10% (administrative tribunals)

3. What percentage of your litigation was:

- (a) civil: 100%
- (b) criminal: 0%

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

During my years in practice, I tried approximately twelve court cases to verdict or judgment. These cases included contract disputes, domestic relations, employment discrimination and juvenile dependency. I tried six as sole counsel, one as chief counsel, two as junior counsel and three with equal responsibilities. I also tried approximately four cases to completion before administrative tribunals including before the Registrar of Contractors, the American Arbitration Association, the National Labor Relations Board and the Arizona Department of Transportation. I tried one of these administrative cases as sole counsel; and the remaining three were tried with co-counsel.

5. What percentage of these trials was:

- (a) jury: 20%
- (b) non-jury: 80%

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

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

1. Hernandez v. Republic & Gazette, No. CIV 83-589 PHX CAM (D. Ariz. 1983)

This was a national origin discrimination case in which John Hernandez claimed that he had been discharged from his janitorial position with Phoenix Newspapers, Inc. because he was of Mexican origin. Hernandez was fired in October 1976 and filed charges immediately with the EEOC and the Arizona Civil Rights Division. It was not until December 1982 that the EEOC made the finding that there was reasonable cause to believe that discrimination had occurred and issued Hernandez a Right to Sue letter. The case was tried in the United States District Court over four days before the Honorable Carl A. Mueke in January 1985. The particular difficulty in this case was its age. The evidence of the EEOC's finding that there was reasonable cause to believe that discrimination had occurred had to be countered with evidence of events which had taken place over eight years prior to trial. Records had been destroyed and witnesses had died, retired and moved away.

I represented the defendant as sole counsel until trial. I was assisted at trial by Tamara Augustine.

In ruling on the matter, Judge Mueke adopted most of the proposed Findings of Fact and Conclusions of Law we submitted, finding that Hernandez had not been the victim of disparate treatment because of his national origin and had been legally terminated by his employer for poor job performance.

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Plaintiff's counsel: Richard T. Guendel  
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2. Roberts v. Morgensen Motors, 659 P.2d 1307 (Ariz. App. 1982)

Our client, Leonard Roberts, bought a new Peugeot from Morgensen Motors. After repeated attempts to have certain problems repaired, Roberts returned the car to Morgensen, revoked his acceptance of the car, rescinded the contract and demanded a refund of the purchase price. The case was tried in Maricopa County Superior Court before the Honorable Charles L. Hardy in April 1980. Judge Hardy ruled that the express warranty's remedy of repair and replacement of defective parts had failed in its essential purpose, after repeated attempts at repairing the new car. He ruled that Roberts was justified in revoking his acceptance and refusing further offers of repair.

The case was appealed and affirmed. It was the first reported decision in Arizona allowing the return of a new car and a refund of the purchase price under the Uniform Commercial Code. The later-enacted "lemon law" and the amendment to the UCC making the remedy of revocation of acceptance of non-conforming goods inapplicable to new automobiles were direct responses to this case.

I wrote the brief and argued the appeal before the Honorable Sarah D. Grant, Honorable D. L. Greer and Honorable Robert J. Corcoran.

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3. Bowslaugh v. Bowslaugh, 617 P.2d 28 (Ariz. App. 1979), vacated 617 P.2d 25 (Ariz. 1979)

This case involved the interpretation of the wrongful death statute and the doctrine of interspousal tort immunity. The case was handled by another firm, which obtained a dismissal at the trial court and was referred to me after the plaintiff appealed. Our client, Alan Bowslaugh, had negligently caused a fire in his home which resulted in the death of two of his four children. His wife, Toni Bowslaugh, brought a wrongful death action against her husband to recover the \$100,000 homeowners liability insurance they carried with State Farm Fire and Casualty Company. The trial court dismissed the case.

The Court of Appeals reversed and remanded, finding that while the trial court had properly dismissed Toni Bowslaugh's complaint, it should have permitted an amendment to allow the personal representative of the estates of the deceased children to maintain the action.

The Arizona Supreme Court accepted review, vacated the Court of Appeals decision and affirmed the trial court's dismissal. The Arizona Supreme Court ruled consistent with my argument that because the parents survived but were ineligible beneficiaries of the wrongful death action, no action could be maintained for the deaths under the statute. Alan Bowslaugh was an ineligible beneficiary due to his negligence in causing the deaths and Toni was ineligible as a result of the doctrine of interspousal tort immunity.

I argued the case before the Honorable Mary M. Schroeder, Honorable Donald F. Froeb and Honorable Eino M. Jacobson at the Court of Appeals. The Arizona Supreme Court did not allow oral argument.

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4. Equal Employment Opportunity Commission v. Phoenix Newspapers, Inc., No. 80-404 PHX VAC (D. Ariz. 1980)

In this case, the EEOC exercised its right to seek the extraordinary remedy of a preliminary injunction pending its investigation of charges of discrimination filed against Phoenix Newspapers, Inc. The EEOC claimed that alleged retaliation against persons who had filed charges with the agency hampered its investigation of those charges and chilled other employees' exercise of their civil rights. The EEOC urged that injunctive relief was appropriate prior to the investigation of the merits of the underlying charge. This was the first time this statutory remedy had been sought in Arizona by the EEOC. After a week-long trial before the Honorable Valdemar A. Cordova in United States District Court, the court ruled that the EEOC had failed to sustain its burden of proof. Judge Cordova ruled that there had been no retaliatory discharges, that the EEOC's investigation of charges of discrimination was not impeded, that Phoenix Newspapers, Inc., was not likely to engage in retaliation against its employees who assisted in the investigation of charges and that no employees had been chilled in the exercise of their civil rights.

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5. Phoenix Newspapers, Inc. v. Phoenix Newspapers Guild, Local 237, before the National Labor Relations Board, Case Nos. 28-CA-5723, 28-CA-5796, 28-CA-5904 and 28-CA-5904-2 (1980)

The union and a weekly newspaper filed charges against our client, Phoenix Newspapers, alleging unfair labor practices based on the termination of two employees and the filing of a civil libel suit by our client against the union and the weekly newspaper. The case was tried before Administrative Law Judge Jerrold H. Shapiro over six days in February and March 1981. Judge Shapiro ruled that the terminations of the two employees constituted an unfair labor practice and required our client to take remedial action. He also ruled that the filing of the civil lawsuit did not constitute an unfair labor practice.

The significance of this case was its relationship with the companion EEOC charges filed by these same two employees. Those charges were the subject of case number four described above. In that case the federal district judge made a finding that the terminations were not in retaliation for filing EEOC charges. The NLRB, on the same facts, determined that the terminations were based on the exercise of protected activity under the National Labor Relations Act.

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6. All American School Supply v. Carnes Construction, Inc., Maricopa County Superior Court No. C 542266 (1986)

My client, Carnes Construction, was the general contractor and concrete fabricator for a high school gymnasium in Tucson. The plaintiff was the subcontractor for the installation of the gym floor. The floor did not properly adhere to the underlying concrete and my client withheld payment. The plaintiff sued claiming that the failures of the floor were Carnes' responsibility because Carnes had used a "bond breaker" on the concrete floor when it poured the concrete walls for this tilt-up concrete gym.

The legal issue in the case concerned the relative responsibility of the general contractor and the subcontractor for the removal of the bond breaker from the concrete floor. After discovery I was successful in having a motion for partial summary judgment granted. The Honorable Rebecca A. Albrecht found that the subcontractor had the contractual responsibility for preparation of the concrete floor for proper adhesion of the gym floor. Thereafter, I was able to negotiate a settlement with the subcontractor for a fraction of the payment it claimed was due.

The significance of the case is that it typifies the type of construction cases I handled in private practice. Most typically they were decided by summary judgment after discovery or settled after discovery.

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7. EEOC v. Southern Pacific Transportation Co., No. 78-150 TUC ACM (D. Ariz. 1978)

Our client, Southern Pacific had been sued for sex discrimination on June 12, 1978. My law firm substituted as counsel on July 20, 1982. The EEOC claimed that the defendant had discriminated against women in the Engineer/Fireman job category and in the Brakeman/Switchman job category. Yvonne Painter, who filed the original charge with the EEOC, was an Intervenor. After extensive discovery, we reached a consent decree with the EEOC and also settled all individual charges that had been filed. The consent decree was approved and entered by the Honorable Alfredo C. Marquez in May 1983.

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8. General GMC v. Peterbilt Motors Co., before the Arizona Department of Transportation (1987)

Our client, PACCAR, Inc. doing business as Peterbilt Motors terminated a truck franchise agreement with the plaintiff effective April 25, 1987. The plaintiff then brought this administrative complaint, asserting that PACCAR lacked good cause to terminate the franchise agreement. PACCAR had the burden of proof at the administrative hearing. The hearing took place over seven days in July, August, and September 1987. The hearing officer found that the termination was for good cause. After the termination was upheld, we were able to negotiate a sale of a new franchise for Peterbilt trucks in Phoenix.

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9. Southwest Medical Ctr. v. Weitz Company, Inc., Maricopa County Superior Court  
No. CV 87-06091 (1987)

My client, Merchants Mutual Bonding Co., was sued as a third party defendant by Weitz, the general contractor on a medical building. Merchants had bonded the work of the window subcontractor. The primary complaint was that the building leaked and no one could determine why. The windows, walls and roof were all suspect. This case required a detailed understanding of the construction methods used and the commission of tests to try to locate the sources of the leaks.

After extensive discovery and investigation, I was successful in negotiating a settlement for Merchants and the glass subcontractor. This resulted in Weitz's dismissal of third party defendants, Merchants Mutual and window subcontractor, and allowed Merchants to retire its bond. The settlement was signed April 28, 1989. The judge assigned to this case was the Honorable Stephen Gerst.

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10. Atlantic Richfield v. Arizona Electric Power Cooperative, Pima County Superior Court No. C 234390 (1986)

Our client, Arizona Electric Power Cooperative (AEPSCO) and one of its members, TRICO Electric Power Cooperative, Inc., was sued by the plaintiffs over the enforceability of a "take or pay" electric power supply agreement among it, AEPSCO and TRICO. AEPSCO is an electrical generation and transmission cooperative which supplies wholesale power to its members. TRICO is a distributor of retail power to its customers, one of whom was the plaintiffs' joint venture, Anamax Mining Co. The "take or pay" contract guaranteed Anamax a certain level of power supply. Under the contract, Anamax was required to pay for the power whether it was used or not. The downturn in the copper market in the 1980's resulted in Anamax not needing the power and it did not want to pay under the agreement. After discovery and while defendants' motion for summary judgment was pending before the Honorable Lina Rodriguez, a settlement was negotiated for payment of \$18 million by Anamax in exchange for an agreement to terminate the contract.

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

I have been a member of the American Bar Association, the Maricopa County Bar Association and the Arizona Women Lawyers Association for over twenty years. I was a charter member of the Arizona Women Lawyers Association and served on the state board and the county steering committee for many years. I also served a term as president of the statewide organization and the county chapter. I have been a member of the Arizona Judges Association since I became a judge and a member of the National Association of Women Judges for eight years. I have been an active member of the Sandra Day O'Connor Inn of Court for more than ten years. I have been involved in work for several bar associations, committees and professional associations. While serving on the State Bar Civil Jury Instruction Committee, the committee published its first recommended Arizona jury instructions for contract cases, premises liability cases, bad faith insurance cases and commercial tort cases. We also revised previously published instructions on negligence, fault and medical negligence. During the two years I chaired the committee, I oversaw the development and publication of the employment law instructions. I also served as a presenter of these instructions at the 1994 State Bar Convention.

I have also served as a presenter or panelist at numerous continuing education seminars over the years. I have participated in the American Judicature Society's Sidebar programs for young lawyers, numerous educational seminars sponsored by the State Bar of Arizona and the Maricopa County Bar Association, as well as the Arizona Supreme Court and its Arizona Judicial College. I have presented at the Office of Justice Programs Annual Conference on Criminal Justice Research and Evaluation, the National Association of Drug Court Professionals Annual Training Conference, the Arizona State University Women Law Students' Association Women in Law Symposium, the Defense Research Institute's Annual Employment Law

Seminar, the Arizona Sex Crimes Investigators' Seminar and the Arizona Department of Health Services Implementation Oversight Committee on Perinatal Substance Abuse.

In 1994, I co-chaired the educational programming for the National Association of Women Judges' annual convention and in 1999, chaired the Resolutions Committee. I organized and chaired the 1996 retreat for the Maricopa County Superior Court judges and commissioners. For the past three years I have served on the Arizona Judicial Conference Committee and this year served as Chair of the General Jurisdiction Planning Committee. I have also served on the Maricopa County Superior Court's Judicial Executive Committee for the past five years.

During the 1999 Spring semester, I served as adjunct faculty for the Lawyering Theory and Practice course at Arizona State University College of Law. This course combined weekly lectures by the professor and small group sessions for practical experience. I taught one of the small groups with a colleague. Our responsibility was to take the students through two litigation cases. We began with the initial client interview, and progressed to the preparation of a complaint and an answer, discovery and a settlement negotiation. The final class was a jury trial on one of the two cases we had worked through during the semester.

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

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

I have a vested interest in the Arizona Elected Officials Retirement Plan. I am entitled to my normal retirement pension at age 62. I am eligible for a reduced monthly pension if I take an early retirement upon ceasing to hold the office of Superior Court judge.

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

Because I have served as a judge for more than eleven years, my husband and I have no financial arrangements that are likely to present conflicts-of-interest during my initial service. Similarly, there are no categories of litigation that are likely to present conflicts. I will follow the Code of Judicial Conduct if confirmed to be a federal district court judge.

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

No.

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

See attached financial disclosure report.

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

See attached financial net worth statement.

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

No.

AO-10 (03)  
Rev. 1/2000

**FINANCIAL DISCLOSURE REPORT**  
Nomination Report

Report required by the Ethics in Government Act of 1978, as amended (3 U.S.C. App. 4, Sec. 101-112)

<b>1. Person Reporting</b> (Last name, first, middle initial) Bolton, Susan K.		<b>2. Court or Organization</b> District of Arizona	<b>3. Date of Report</b> 07/19/2000
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge (Nominee)		<b>5. Report Type (check type)</b> X Nomination, Date / / Initial _____ Annual _____ Final _____	<b>6. Reporting Period</b> 01/01/1999 to 06/30/2000
<b>7. Chambers or Office Address</b> 201 W. Jefferson St. Phoenix, AZ 85003		<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	
<i>IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.</i>			

**I. POSITIONS** (Reporting individual only; see pp. 9-15 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Director	Soroptimist International of Phoenix, Inc.
2 Director	National Association of Drug Court Professionals
3	

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

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 1998	Arizona Elected Officials Retirement Plan (eligible for the normal retirement pension at age 62; eligible for a reduced monthly pension upon resignation)
2	
3	

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

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1998	State of Arizona	\$54,380
2 1998	Maricopa County	\$52,826
3 1990	State of Arizona	\$56,483
4 1999	Maricopa County	\$54,672

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Bolton, Susan R.	07/19/2000

SECTION HEADING. (Indicate part of report.)  
 Information continued from Parts I through VI, inclusive.

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

Line	Date	Source and Type	Gross Income
5	2000	State of Arizona	\$28,872
6	2000	Maricopa County	\$28,874
7	1998	Organizational Diagnostics, L.L.C. (s)	
8	1998	Oliver McMillan L.L.C. (s)	
9	1998	Episcopal Diocese of Phoenix (s)	
10	1998	Dennis Weiss, M.D. (s)	
11	1999	DDR Oliver McMillan, Inc. (s)	
12	1999	Organizational Diagnostics, L.L.C. (s)	
13	2000	DDR Oliver McMillan, Inc. (s)	
14	2000	Organizational Diagnostics, L.L.C. (s)	

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Bolton, Susan R.	07/19/2000

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 25-26 of Instructions.)*

<input type="checkbox"/> NONE (No such reportable reimbursements.)	SOURCE	DESCRIPTION
1	Exempt	
2		
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

<input type="checkbox"/> NONE (No such reportable gifts.)	SOURCE	DESCRIPTION	VALUE
1	Exempt		
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

<input type="checkbox"/> NONE (No reportable liabilities.)	CREDITOR	DESCRIPTION	VALUE CODE*
1	Sonoma National Bank, CA	Mortgage on one-third interest in office condominium (Pt. VII line 20)	K
2			
3			
4			
5			
6			

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

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Bolton, Susan R.	Date of Report 07/19/2000
	<i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>	

**VII. Page 1 INVESTMENTS and TRUSTS-- income, value, transactions**

A. Description of Assets (Including trust assets)  <i>Place "00" after each asset except from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<b>NONE</b> (No reportable income, assets, or transactions).									
1 IBM common stock	A	Dividend	L	T	exempt				
2 Merrill Lynch Cash Management Fund	C	Interest	L	T	"				
3 Bank of America, Arizona	A	Interest	J	T	"				
4 Eaton Vance Prime Rate Reserves-money fund	B	Interest	K	T	"				
5 Merrill Lynch Single Premium Life-insurance		None	L	T	"				
6 Merrill Lynch Asset-1 Annuity		None	L	T	"				
7 Philadelphia Life Insurance Co.-insurance		None	K	U	"				
8 Geig Managed Assets-mutual fund	C	Dividend	K	T	"				
9 Integrity Life Pinnacle-annuity		None	L	T	"				
10 Gova Annuity		None	K	T	"				
11 U.S. Savings Bonds	B	Interest	M	T	"				
12 MLP Retirement Plus-annuity		None	L	T	"				
13 FFL Endeavor-annuity		None	K	T	"				
14 Allianz Franklin-annuity		None	K	T	"				
15 Municipal Mtg. & Equity-mutual fund	A	Dividend			"				
16 ML Arizona Municipal Bond Fund	A	Interest			"				
17 Nelson II Freeway Limited Partnership		None	J	R	"				
1 Inc/Gain Codes: A=\$1,000 or less    B=\$1,001-\$2,500    C=\$2,501-\$5,000    D=\$5,001-\$15,000    E=\$15,001-\$50,000 (Col. B1, D4)    F=\$50,001-\$100,000    G=\$100,001-\$1,000,000    H=\$1,000,001-\$5,000,000    I=\$5,000,001 or more									
2 Val Codes:    J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001-\$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000 (Col. C1, D3)    O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal    R=Cost (real estate only)    S=Assessment    T=Cash/Market (Col. C2)    U=Book Value    V=Other    W=Estimated									



<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Bolton, Susan R.	Date of Report 07/19/2000
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(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

**VII. Page 2 INVESTMENTS and TRUSTS-- income, value, transactions**

A. Description of Assets (including trust assets)  <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure				
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)	
NONE (No reportable income, assets, or transactions.)										
18 Sasser Interest Limited Partnership		None		L R	exempt					
19 Airport Self-Storage Limited Partnership	B	Distribut ion	K	R	"					
20 Office condo (1/3 interest), Phoenix, AZ (1994, \$60,000)		None	L	R	"					
21 Merrill Lynch Basic Retirement Plan-Profit Sharing	E	Dividend & I	M	T	"					
22 --Retirement Reserves Money Market Fund					"					
23 --Conseco Bank, Utah-CD					"					
24 --Principal Treasury Zero Coupon Bond					"					
25 --U.S. Treasury Note					"					
26 --Resolution Funding Corp. Zero Coupon Bond					"					
27 --ML Eurofund-mutual fund					"					
28 --ML International Equity-mutual fund					"					
29 --Futnam New Opportunities-mutual fund					"					
30 --Eaton Vance Prime Rate-mutual fund					"					
31 --Merrill Lynch Bank-CD					"					
32 --Liberty Bank, Ohio CD					"					
33 --Ford Motor Credit-corporate bond					"					
34 --Wal-Mart corporate bond					"					
1 Int/Cam Codes: A=\$1,000 or less    B=\$1,001-\$2,500    C=\$2,501-\$5,000    D=\$5,001-\$15,000    E=\$15,001-\$50,000 (Col. E), D4)    F=\$50,001-\$100,000    G=\$100,001-\$1,000,000    H1=\$1,000,001-\$5,000,000    H2=\$5,000,001 or more										
2 Val Codes: J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001-\$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000 (Col. C), D3)    O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more										
3 Val Mth Codes: Q=Appraisal    R=Cost (real estate only)    S=Assessment    T=Cash/Market (Col. C2)    U=Book Value    V=Other    W=Estimated										

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Bolton, Susan R.	Date of Report 07/19/2000
	<i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>	

**VII. Page 3 INVESTMENTS and TRUSTS-- income, value, transactions**

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g. buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<b>NONE</b> (No reportable income, assets, or transactions.)									
35 Merrill Lynch Basic Retirement Plan-Money Purchase	D	Dividend & I	M	T	exempt				
36 --ML Government Money Market Fund					"				
37 --Retirement Reserves Money Market Fund					"				
38 --Excel Legacy common stock					"				
39 --Motorola common stock					"				
40 --Vodafone Airtouch common stock					"				
41 --ML Dragon Fund-mutual fund					"				
42 --First USA Bank, Delaware CD					"				
43 --ML Global Allocation Mutual Fund					"				
44 --Resolution Funding Corp-zero coupon bond					"				
45 --US Treasury zero coupon bond					"				
46 --Merrill Lynch Bank CD					"				
47 --Liberty Bank, Ohio CD					"				
48 Merrill Lynch IRA	C	Dividend & I	L	T	"				
49 --Retirement Reserves Money Market Fund					"				
50 --American National Bank & Trust CD*					"				
51 --US Treasury zero coupon bond					"				
1 In Col. Gain Codes: A=\$1,000 or less; B=\$1,001-\$2,500; C=\$2,501-\$5,000; D=\$5,001-\$15,000; E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000; G=\$100,001-\$1,000,000; H=\$1,000,001-\$5,000,000; I2=\$5,000,001 or more									
2 Val Codes: J=\$15,000 or less; K=\$15,001-\$50,000; L=\$50,001-\$100,000; M=\$100,001-\$250,000; N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000; P1=\$1,000,001-\$5,000,000; P2=\$5,000,001-\$25,000,000; P3=\$25,000,001-\$50,000,000; P4=\$50,000,001 or more									
3 Val Meth Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market (Col. C2) U=Book Value; V=Other; W=Estimated									

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Boltch, Susan R.				Date of Report 07/13/2000				
VII. Page 4 INVESTMENTS and TRUSTS— income, value, transactions <small>(Includes those of spouse and dependent children. See pp. 56-54 of Instructions.)</small>										
A. Description of Assets (including trust assets)  <i>Place "N/A" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure				
					(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)		
NONE (No reportable income, assets, or transactions.)										
52 --Merrill Lynch Bank CD										exempt
53 --Liberty Bank, Ohio CD										"
54 --ML Growth Fund mutual fund										"
55 Merrill Lynch IRA	A	Dividend & I	J	T						"
56 --Retirement Reserves Money Market Fund										"
57 --ML Growth Mutual Fund										"
58 --US Treasury zero coupon bond										"
59 --Merrill Lynch Bank CD										"
60 Salomon Smith Barney IRA	B	Dividend & I	M	T						"
61 --Money Market Fund										"
62 --PepsiCo common stock										"
63 --Telcel Global common stock										"
64 --Wal-Mart common stock										"
65 --Oppenheimer Income Trust mutual fund										"
66 --Pilgrim Prime Rate Trust mutual fund										"
67 --Dreyfus Worldwide Growth mutual fund										"
68 --US Treasury zero coupon bond										"
1 Inc/Gain Codes: A=\$1,000 or less    B=\$1,001-\$2,500    C=\$2,501-\$5,000    D=\$5,001-\$15,000    E=\$15,001-\$50,000 (Col. B1, D4)    F=\$50,001-\$100,000    G=\$100,001-\$1,000,000    H1=\$1,000,001-\$5,000,000    H2=\$5,000,001 or more										
2 Val Codes:    J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001-\$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000 (Col. C1, D3)    O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more										
3 Val Mth Codes:    Q=Appraisal    R=Cost (real estate only)    S=Assessment    T=Cash/Market (Col. C2)    U=Book Value    V=Other    W=Estimated										

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Bolton, Susan R.	Date of Report 07/19/2000
	<i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>	

**VII. Page 5 INVESTMENTS and TRUSTS-- income, value, transactions**

A. Description of Assets (including trust assets)  <i>Place "(0)" after each asset except from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
69 Salomon Smith Barney IRA	B	Dividend & I	M	T	exempt				
70 --Money Market Fund					"				
71 --Pepsico common stock					"				
72 --Telicon Global common stock					"				
73 --PetSmart common stock					"				
74 --Wal-Mart common stock					"				
75 --Oppenheimer Income Trust mutual fund					"				
76 --Pilgrim Prime Rate Trust mutual fund					"				
77 --US Treasury zero coupon bond					"				
78 --Dreyfus Worldwide Growth mutual fund					"				
79 Fidelity Equity Income Fund	B	Dividend	J	T	"				
80 Fidelity Magellan mutual fund	C	Dividend	K	T	"				
81 Fidelity Value mutual fund	B	Dividend	J	T	"				
82 Fidelity Asset Manager mutual fund	A	Dividend	J	T	"				
83 Fidelity Puritan mutual fund	A	Dividend	J	T	"				
84 Janus Balanced mutual fund	A	Dividend	J	T	"				
85 Janus Flexible Income mutual fund	A	Dividend			"				
1 In/Gain Codes: A=\$1,000 or less    B=\$1,001-\$2,500    C=\$2,501-\$5,000    D=\$5,001-\$15,000    E=\$15,001-\$50,000 (Col. B1, D4)    F=\$50,001-\$100,000    G=\$100,001-\$1,000,000    H1=\$1,000,001-\$5,000,000    H2=\$5,000,001 or more									
2 Val Codes:    J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001-\$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000 (Col. C1, D3)    O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal    R=Cost (real estate only)    S=Assessment    T=Cash/Market (Col. C2)    U=Book Value    V=Other    W=Estimated									

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Bolton, Susan K.	Date of Report 07/15/2000
	<i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>	

**VII. Page 6 INVESTMENTS and TRUSTS-- income, value, transactions**

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month/Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<b>NONE</b> (No reportable income, assets, or transactions.)									
86 Vanguard Growth Index Fund	A	Dividend	J	T	exempt				
87 Vanguard 500 Index Fund	A	Dividend	J	T	"				
88 Vanguard Prime Cap Fund	A	Dividend	J	T	"				
89 Vanguard Life Strategy Growth Fund	A	Dividend	J	T	"				
90 Vanguard Money Purchas Pension Plan	A	Dividend & I	K	T	"				
91 --Prime Money Market Fund					"				
92 --Total Stock Market Index Fund					"				
93 --Growth Index Fund					"				
94 Vanguard IRA	A	Dividend	J	T	"				
95 --Growth Index Fund					"				
96 Vanguard IRA	A	Dividend	J	T	"				
97 --Total Stock Market Fund					"				
98 Central AZ Water Conservation Dist. Muni Bond	A	Interest	J	T	"				
99 Maricopa Cty. Hospital Dist. #1 Muni Bond		None	K	T	"				
100 Central AZ Water Conservation Dist. Muni Bond		None	J	T	"				
101 Maricopa Cty Hospital Dist #1 Muni Bond	A	Interest			"				
102 AZ State Municipal Finance Muni Bond	A	Interest			"				
<b>1</b> Inc/Gain Codes: A=\$1,000 or less      B=\$1,001-\$2,500      C=\$2,501-\$5,000      D=\$5,001-\$15,000      E=\$15,001-\$50,000 (Col. B1, D4)      F=\$50,001-\$100,000      G=\$100,001-\$1,000,000      H=\$1,000,001-\$5,000,000      I2=\$5,000,001 or more									
<b>2</b> Val Codes: J=\$15,000 or less      K=\$15,001-\$50,000      L=\$50,001-\$100,000      M=\$100,001-\$250,000      N=\$250,001-\$500,000 (Col. C1, D3)      O=\$500,001-\$1,000,000      P1=\$1,000,001-\$5,000,000      P2=\$5,000,001-\$25,000,000      P3=\$25,000,001-\$50,000,000      P4=\$50,000,001 or more									
<b>3</b> Val Mth Codes: Q=Appraisal      R=Cost (real estate only)      S=Assessment      T=Cash/Market (Col. C2)      U=Book Value      V=Other      W=Estimated									

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Bolton, Susan R.	Date of Report 07/19/2000
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*(Includes those of spouse and dependent children. See p.p. 36-54 of Instructions.)*

**VII. Page 7 INVESTMENTS and TRUSTS-- income, value, transactions**

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period																			
			(1) Value Code (J-P)	(2) Value Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure																		
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(2) Date: Month- Day	(3) Value Code (J-P)		(4) Gain Code (A-I)	(5) Identity of buyer/seller (if private transaction)																	
<i>Place "A)" after each asset exempt from prior disclosure.</i>																								
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)																								
103 Maricopa Cty. Kyrene Elementary Dist. Muni Bond	A	Interest			exempt																			
104 AZ Dept. of Transportation Muni Bond		None	K	T	"																			
105 Maricopa Cty. Tempe School Dist. Muni Bond	A	Interest			"																			
106 Peoria School Dist. Muni Bond		None	K	T	"																			
107 Maricopa Cty. Gilbert School Dist. Muni Bonds(3)		None	K	T	"																			
108 Maricopa Cty. School Dist. #038 Muni Bond		None	J	T	"																			
109 Maricopa Cty. School Dist. #014 Muni Bond		None	J	T	"																			
110 Maricopa Cty. Hospital Dist. #1 Muni Bond	A	Interest	J	T	"																			
111 Salt River Project Muni Bond	A	Interest	J	T	"																			
112 Phoenix CVC Improvement Corp. Muni Bond	A	Interest			"																			
113 Maricopa Cty. Cave Creek School Imp. Muni Bond	A	Interest	J	T	"																			
114 Maricopa Cty. Cave Creek School Dist. Muni Bond	A	Interest			"																			
115 Maricopa Cty. Glendale School Dist. Muni Bond		None	J	T	"																			
116 Maricopa Cty. Creighton School Dist. Muni Bond		None	J	T	"																			
117 Merrillville IN muni bond zero coupon		None	K	T	"																			
118 Inermountain Power Agency Muni Bond zero coupon		None	K	T	"																			
119 Illinois DFA zero coupon muni bond		None	K	T	"																			
<table style="width:100%; font-size: small;"> <tr> <td>1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4)</td> <td>B=\$1,001-\$2,500 G=\$100,001-\$1,000,000</td> <td>C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000</td> <td>D=\$5,001-\$15,000 I=\$15,001-\$50,000</td> <td>E=\$15,001-\$50,000 J=\$50,001-\$100,000</td> </tr> <tr> <td>2 Val Codes: J=\$15,000 or less (Col. C1, D3)</td> <td>K=\$15,001-\$50,000 P1=\$1,000,001-\$1,000,000</td> <td>L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000</td> <td>M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000</td> <td>N=\$250,001-\$500,000 P4=\$50,000,001 or more</td> </tr> <tr> <td>3 Val Mth Codes: Q=Appraisal (Col. C2)</td> <td>R=Cost (real estate only) V=Other</td> <td>S=Assessment W=Estimated</td> <td colspan="2">T=Cash/Market</td> </tr> </table>										1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4)	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 I=\$15,001-\$50,000	E=\$15,001-\$50,000 J=\$50,001-\$100,000	2 Val Codes: J=\$15,000 or less (Col. C1, D3)	K=\$15,001-\$50,000 P1=\$1,000,001-\$1,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more	3 Val Mth Codes: Q=Appraisal (Col. C2)	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	
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2 Val Codes: J=\$15,000 or less (Col. C1, D3)	K=\$15,001-\$50,000 P1=\$1,000,001-\$1,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more																				
3 Val Mth Codes: Q=Appraisal (Col. C2)	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market																					

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Bolton, Susan R.	Date of Report 07/19/2000
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**VII. Page 8 INVESTMENTS and TRUSTS— income, value, transactions** *(includes those of spouse and dependent children. See pp. 36-34 of Instructions.)*

A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure				
						(2) Date: Month- Day	(3) Value Code (I-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)	
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)										
120 Ten acres, Oroville, CA (1972, \$5,000)		None	J	R	exempt					
121 Arizona Elected Officials Retirement Plan		None	M	T	"					
122 Arizona State Retirement System		None		T	"					
123										
124										
125										
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132										
133										
134										
135										
136										

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Bolton, Susan R.	07/19/2000

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

*(Indicate part of report.)*

None



<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Bolton, Susan R.	07/19/2000

**X. CERTIFICATION**

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

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Susan R. Bolton Date 7/21/2000

Note: Any individual who knowingly and willfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

**FILING INSTRUCTIONS**

Mail original and three additional copies to:

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

## FINANCIAL STATEMENT

## NET WORTH

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

ASSETS		LIABILITIES	
Cash on hand and in banks	9 500	Notes payable to banks—secured	
U.S. Government securities—add schedule	439440	Notes payable to banks—unsecured	
Listed securities—add schedule	1 256400	Notes payable to relatives	
Unlisted securities—add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid tax and interest	
Doubtful		Real estate mortgages payable—add schedule	235 568
Real estate owned—add schedule	544 000	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts—itemize:	
Autos and other personal property	50 000		
Cash value—life insurance	82 000		
Other assets—itemize:			
municipal bonds	280 929		
real estate ltd. part.	115 000		
		Total Liabilities	235 568
		Net Worth	2 541 701
Total Assets	2 777 269	Total liabilities and net worth	2 777 269
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	8 000		
Other special debt			

U.S. Government Securities schedule

Treasury Bonds	279,100
Savings Bonds	160,340
Total:	439,440

Real Estate Limited Partnerships schedule

Nelson II Freeway, Ltd.	15,500
Sasser Interest, Ltd.	89,500
Airport Self Storage, Ltd.	10,000
Total:	115,000

Real estate owned schedule

Personal residence	479,000
Ten acres, Oroville, CA	5,000
One-third interest in office condominium	60,000
Total:	544,000

Real estate mortgages payable schedule

Cendant Mortgage (home)	190,902
Sonoma National Bank (business property)	44,666
Total:	235,568

Listed securities schedule

IBM (707 shares)	76,000
Merrill Lynch Money Market Mutual Fund	206,000
Oppenheimer Multi Sector Income Trust	12,400
Pepsico, Inc. (600 shares)	24,600
Wal Mart Stores, Inc. (800 shares)	43,000
Eaton Vance Prime Rate Reserves	47,000
Merrill Lynch Asset-1 Annuity	65,500
Zweig Managed Assets Fund	35,000
Integrity Life-Pinnacle annuity	55,000
COVA Annuity	45,000
Merrill Lynch International Equity Fund	43,458
Merrill Lynch Eurofund	26,775
Merrill Lynch Global Allocation Fund	39,000
Merrill Lynch Dragon Fund	3,500
MLF Retirement Plus Mutual Fund	92,500
Putnam New Opportunities Fund	25,821
Pilgrim Prime Rate Fund	4,400
PFL-Endeavor annuity	47,500
Allianz Franklin annuity	30,400
Fidelity Mutual Funds	66,500
Janus Mutual Funds	6,000
Merrill Lynch Government Fund	27,000
Vodafone/Airtouch Communications (250 shares)	11,500
Motorola (100 shares)	9,300
Merrill Lynch Growth Fund	4,000

Listed securities schedule (cont.)

Dreyfus Premier Worldwide Growth Fund	1,500
Tricon Global Restaurants (60 shares)	2,000
Vanguard Group Mutual Funds	55,000
Salomon Smith Barney Money Funds	4,000
Petsmart, Inc. (100 shares)	300
Excel Legacy (1000 shares)	2,900
Conseco Bank CD	67,600
First USA Bank CD	33,000
American National Bank & Trust CD	79,000
Resolution Fund Corp. bond	11,000
	Total: 1,256,400

Municipal bond schedule

Central Arizona Water Conservation District (2 bonds)	25,236
Maricopa County Hospital District (3 bonds)	41,290
Arizona Dept. of Transportation	16,065
Maricopa County Peoria School Dist. #11	20,000
Maricopa County Gilbert School Dist. #41 (3 bonds)	31,172
Maricopa County Madison Elem. School Dist. #038	9,470
Salt River Project	9,062
Maricopa County Cave Creek School Dist. #93	9,342
Maricopa County Glendale School Dist. #40	11,395
Maricopa County Creighton School Dist. #14 (3 bonds)	10,150
Merrillville Indiana	26,310
Illinois DFA	20,525
Intermountain Power Agency, Utah	20,245
Total:	280,929

## III. GENERAL (PUBLIC)

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

During the time I was in private practice, I accepted pro bono appointments in juvenile court. I was also a member of Volunteer Lawyers, a program sponsored by the Maricopa County Bar Association and administered through Community Legal Services. I recall accepting approximately five juvenile court appointments in dependency cases and one involving a divorce. One of the juvenile appointments involved work over a 10-year period. The other matters were concluded in a matter of months, on the average.

In addition, over the past 20 years, I have participated in a variety of community service activities as a member of Soroptimist International of Phoenix. Soroptimist is a service club whose primary purpose is community service. We support numerous charitable and non-profit groups through fund raising efforts. I have also participated in Christmas basket programs for needy families, holiday outreach to elderly residents of a rent-subsidized residence in Phoenix, and Christmas parties and gifts to needy families we sponsor each year.

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

I have been a member of Soroptimist International of Phoenix since 1980. Soroptimist is a service club first established in the 1920s because women were excluded from membership in existing service clubs. When I joined, membership was limited to women. In the early 1990s the by-laws were amended to eliminate this limitation. Since the by-law change, we have attempted to recruit men for membership but have only been successful in having one man join. He subsequently resigned his membership because of other time commitments and the club's membership is presently only women.

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

There is no selection committee in this jurisdiction. I was initially contacted by Senator Jon Kyl and then by Congressman Ed Pastor. Since then I have been interviewed by the Justice Department and the Office of White House Counsel. I have also submitted a questionnaire to the FBI and been interviewed by an FBI special agent. I have completed the ABA Personal Data Questionnaire and submitted it along with the required attachments to the Chair of the ABA Standing Committee on the Federal Judiciary and the Ninth Circuit representative. I have participated in an interview with the Ninth Circuit representative to the ABA committee.

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

No.



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

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

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

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Under our Constitution, federal courts are limited to cases or controversies properly before them. It is essential under the Constitution that the parties to a case have an interest or standing in the matter and that the matter is ripe for disposition. In our system of government, federal judges do not give advisory opinions.

The framers of the Constitution wisely created three separate branches of government and delegated to each its appropriate powers. Judges should not legislate or attempt to be the executive. Stare decisis, the obligation of judges to follow precedent, is also an important limitation on judicial power. In addition, the stability that adherence to precedents provides is important for citizens and companies so they can have predictability for their conduct and in their business dealings.

[The biographical information of Ms. Murguia follows:]

SENATE JUDICIARY COMMITTEE QUESTIONNAIRE FOR JUDICIAL NOMINEES

**I. BIOGRAPHICAL INFORMATION (PUBLIC)**

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

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

**Current Place of Residence:** Phoenix, Arizona

**Temporary Place of Residence:** Washington, DC

**Office Address:** United States Attorney's Office  
District of Arizona  
230 North First Avenue  
Room 4000  
Phoenix, AZ 85025-0085

**Office Address (while on detail in Washington, DC):**

Executive Office for United States  
Attorneys  
950 Pennsylvania Avenue, NW  
Room 2244A  
Washington, DC 20530

3. **Date and place of birth.** September 6, 1960  
Kansas City, Kansas

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

Single

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

9/78 - 5/82: University of Kansas; Lawrence, Kansas;  
B.S. Journalism; B.A. Spanish; 5/82

9/82 - 5/85: University of Kansas; Lawrence, Kansas;  
Juris Doctorate; 5/85

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

- a. Summers of 1982 and 1983, Wyandotte County District Court, Kansas City, KS; Assistant Deputy Clerk.
- b. Summer of 1984; Wyandotte County District Attorney's Office; Kansas City, KS; Legal Intern.
- c. 8/85 - 8/90; Wyandotte County District Attorney's Office, Assistant District Attorney
- d. 9/90 - Present; United States Department of Justice
  - 9/90 - 8/98; Assistant United States Attorney, District of Arizona, Phoenix, AZ.
  - 8/98 - 2/99; Assistant United States Attorney on detail as a Counsel to the Director, Executive Office for United States Attorneys.
  - 2/99 - 9/99; Assistant United States Attorney on detail as Principal Deputy Director, Executive Office for United States Attorneys.
  - 9/99 - Present; Assistant United States Attorney on detail as Director, Executive Office for United States Attorneys.
- e. Board of Directors, Arizona Foundation for Women (1995 - 1998)
- f. Arizona Pilot Parent Partnerships Executive Board (changed name to Raising Special Kids) (1996 - 1998)
- g. Kansas City, Kansas Leadership 2000, Class of 1988 (1988)
- h. United Way of Wyandotte County, Kansas, Board of Directors, Assistant Treasurer (1989)
- i. Board of Directors, St. Thomas More Society - Catholic Lawyers (1994 - 1997)
- j. Vice President of local Mexican American Women's National Association (MANA) Chapter, Kansas City, Kansas (1987 - 1990)

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

No. I have not had any military service.

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

As an Assistant United States Attorney, I was the recipient of the Chief U.S. Postal Inspector Award given by the United States Postal Inspection Service. This is one of the highest awards given by the U.S. Postal Inspection Service.

During Law School:

American Business Women's Association Academic Scholarship  
President, Hispanic American Law Student Association

During College:

Communications Law Scholarship from the William Allen White School of Journalism and Mass Communication  
Sigma Delta, Spanish Honorary Society  
Vice President for Membership, KU Panhellenic Association  
Student Senator

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

State Bar of Arizona  
Federal Bar Association - Phoenix Chapter  
Board of Directors, St. Thomas More Society - Catholic Lawyers  
Los Abogados - Hispanic Lawyers Association, Phoenix, Arizona  
Arizona Women Lawyer's Association  
Hispanic National Bar Association  
American Bar Association  
Association of Trial Lawyers of America  
National District Attorneys' Association  
Kansas District Attorneys' Association  
Association of Women Lawyers of Greater Kansas City

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

I belong to no organizations that are active in lobbying before public bodies.

**Please list all other organizations to which you belong.**

I currently do not belong to any other organizations.

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

State Court of Arizona - 1993  
United States District Court for the District of Arizona - 1993  
United States Court of Appeals for the Ninth Circuit - 1991  
Kansas State Supreme Court/Kansas State Court of Appeals/State Court of Kansas:  
1986

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

Statement (Long and Short) of Mary H. Murguia, Director, Executive Office for United States Attorneys, before the House Appropriations Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies; March 23, 2000.

2000 United States Attorneys' National Conference, Keystone, Colorado; June 21, 2000.

Special Program in Observance and Celebration of National Women's History Month; Washington, DC; March 28, 2000.

Evaluation & Review Staff AUSA Team Leader Training, National Advocacy Center, Columbia, South Carolina; March 15, 2000.

National Firearms Trafficking Training Conference, Crystal City, Virginia; May 25, 2000.

Management Issues Seminar, National Advocacy Center, Columbia, South Carolina; May 18, 2000.

Weed and Seed Law Enforcement and Prosecution Conference, New Orleans, Louisiana; May 31, 2000.

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

My health is excellent. The date of my last physical was June 9, 2000.

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

I have not held any judicial offices.

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

I have never been a judge.

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

I have not held a public office other than Assistant District Attorney in Kansas and Assistant United States Attorney in Arizona.

**17. Legal Career:**

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

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

I did not clerk for a judge.

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

I did not practice alone.

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

- |                                   |  |
|-----------------------------------|--|
| 1985 - 1990                       | Assistant District Attorney, Wyandotte County, Kansas<br>District Attorney's Office, 710 N. 7 <sup>th</sup> Street, Kansas City, KS 66101.   |
| September 1990 -<br>August 1998   | Assistant United States Attorney, United States Attorney's Office,<br>District of Arizona, 230 North First Avenue, Room 4000, Phoenix, AZ<br>85025.<br><br>Criminal Section, Violent Crime Unit, September 1990 -<br>November 1994.<br><br>Deputy Chief, Criminal Section,<br>November 1994 - August 1998. |
| August 1998 -<br>February 1999    | Counsel to the Director, Counsel to the Director's Staff,<br>Executive Office for United States Attorneys, Department of Justice, 950<br>Pennsylvania Avenue, NW, Room 2260,<br>Washington, DC. 20530.   |
| February 1999 -<br>September 1999 | Principal Deputy Director, Executive Office for United States<br>Attorneys, Department of Justice, 950 Pennsylvania Avenue, NW, Room<br>2244A, Washington, DC 20530.   |
| September 1999 -<br>Present       | Director, Executive Office for United States Attorneys,<br>United States Department of Justice, 950 Pennsylvania Avenue, NW,<br>Room 2244A, Washington, DC 20530.  |
- b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**



September 1999 -  
Present

**Director, Executive Office for United States Attorneys (EOUSA)  
United States Department of Justice**

As Director, I supervise the EOUSA which provides oversight of and support to the 94 Offices of the United States Attorneys comprised of 93 Presidentially-appointed United States Attorneys (a single United States Attorney serves Guam and the Northern Mariana Islands), and approximately 5,000 support staff employees. I serve as the liaison between the United States Attorneys and the Attorney General, Deputy Attorney General, the Department's legal divisions, and other Department components. As Director, I supervise 22 staffs comprised of approximately 270 people and am responsible for the administration of an appropriation of over 1 billion dollars.

August 1998 -  
September 1999

**Principal Deputy Director, Executive Office  
for United States Attorneys, United States Department of Justice**

I assisted the Director of the Executive Office for United States Attorneys in the overall operations of the 94 United States Attorneys' offices nationwide. I served as a liaison between all components in the Department of Justice and the field.

September 1990 -  
August 1998

**Assistant United States Attorney, United States Attorney's Office,  
District of Arizona, 230 North First Avenue, Room 4000, Phoenix, AZ  
85025.**

**Deputy Chief, Criminal Section, November  
1994 - August 1998.**

I was responsible for my own caseload and training, direct supervision, and evaluation of 10 Assistant United States Attorneys in Violent Crime Unit. Additionally, I directly supervised seven attorneys in the Organized Crime Drug Enforcement Task Force - Major Drug Unit. I was responsible for consultation/staffing of major prosecutions, including areas such as Domestic Terrorism, Capital Murder, Civil Rights, Violence Against Women Act, Child Support Recovery Act, Gang and Juvenile matters. I served as chair of the Hiring Committee for the United States Attorney's Phoenix Office.

**Criminal Section, Violent Crime Unit, September 1990 -  
November 1994.**

I was responsible for all aspects of federal felony criminal prosecutions and appeals, with an emphasis on violent crime. My duties included evaluating the sufficiency of evidence, presenting cases to the grand jury, directing secondary investigation,

interviewing and preparing witnesses for court, jury trials, and related courtroom appearances, writing briefs, and arguing appeals before the Ninth Circuit. I tried over 25 federal felony jury trials to verdict.

1985 - 1990 **Assistant District Attorney, Wyandotte County**

**District Attorney's Office**, 710 N. 7<sup>th</sup> Street, Kansas City, KS 66101.

I was responsible for all aspects of felony criminal prosecution with emphasis on sex crimes and child abuse. I was senior trial attorney in the Sex Crimes Unit for two and one-half years. I was also a trial attorney in the Major Crimes Division for two years. My duties included evaluating the sufficiency of evidence, secondary investigation, interviewing and preparing witnesses for court, jury trials and related courtroom appearances, preparing briefs and arguing appeals before the Kansas Supreme Court and the Kansas Court of Appeals, and daily interaction with the public regarding criminal issues. I tried more than forty state felony jury trials to verdict.

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

My former clients were the United States and State of Kansas. My area of specialty has been criminal prosecution.

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

1985 - 1990: As an Assistant District Attorney for Wyandotte County, my appearances in court were frequent.

9/90-11/94: As an Assistant United States Attorney in the Criminal Section, Violent Crime Unit, my appearances in court were frequent.

11/94 - 8/98: As the Deputy Criminal Chief in the District of Arizona, my appearances in court were occasional.

8/98 - Present: I have not appeared in court during my detail as Counsel to the Director, Principal Deputy Director, and Director of the Executive Office of United States Attorneys.

2. **What percentage of these appearances was in:**
  - (a) **federal courts** - 100% (As an AUSA, 100% of my appearances have been in federal court).
  - (b) **state courts of record** - 100% (As an Assistant District Attorney in Kansas, 100% of court appearances were in state court).
  - (c) **other courts** - 0%
  
3. **What percentage of your litigation was:**
  - (a) **civil** - 0%
  - (b) **criminal** - 100%
  
4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

I would estimate that I tried at least 60 cases to verdict since I started practicing as a lawyer. I would estimate that I tried 40 cases to verdict in state court in Kansas.

I would estimate that I tried 20 cases to verdict in federal court in Arizona. In most instances, I was sole counsel. In addition, some cases resulted in guilty pleas after the trial commenced, but before verdict.
  
5. **What percentage of these trials was:**
  - (a) **jury** - 98%
  - (b) **non-jury** - 2% (I presented several bench trials in probate and traffic courts early in my career).

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

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and

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

1. United States v. Orlando Yazzie  
 U.S. District Court, District of Arizona  
 D.Ct. No. CR-96-0255-PCT-BHC

I represented the United States in this prosecution under the federal homicide statute. The charges included first degree murder, aggravated assault, and violations of the federal firearm laws. I was lead counsel in the case and argued the case on behalf of the United States before the Ninth Circuit Court of Appeals.

In this case, the defendant went to the home of an individual with whom he had previously had an altercation. The defendant broke down the front door, shot several rounds of ammunition into the front living room, and then fled. The individual the defendant had targeted, however, was not in that house. Instead, there were five children sleeping in the front room. One child was killed and another suffered serious bodily injury. The defendant had been previously convicted of second degree murder and had been out of prison less than six months before committing this offense. His possession of a handgun was thus illegal under the federal "felon in possession" law. The trial involved the presentation of medical and scientific experts and child witnesses.

To avoid undue prejudice to the defendant by disclosure of his prior felony, the District Court ordered that the trial on the felon in possession charge be bifurcated from the murder and assault trial, but in a unique fashion: subsequently, the same jury considered the felon in possession case at the conclusion of the murder and assault trial. The defendant was found guilty of all charges and sentenced to a term of life imprisonment.

a. **Dates of Trial:**

The case was tried October 23 to October 31, 1996. The Ninth Circuit affirmed the conviction in February of 1998. (United States v. Yazzie, 139 F.3d 909 (9<sup>th</sup> Cir. 1998)(unpublished opinion)).

b. **Name of court and name of judge:**

United States District Court for the District of Arizona  
 The Honorable Earl H. Carroll

United States Court of Appeals, Ninth Circuit  
 Chief Judge Hug, Circuit Judges Fernandez and Thomas

c. Co-counsel:

Sharon K. Novitsky  
Assistant U.S. Attorney  
4000 U.S. Courthouse  
230 North First Avenue  
Phoenix, Arizona 85025  
(602) 514-7500

Counsel for defendant:

Celia M. Rumann  
Assistant Federal Public Defender  
222 North Central Avenue  
Suite 810  
Phoenix, Arizona 85004  
602-379-3561

2. United States v. Frederick Yazzie  
U.S. District Court, District of Arizona  
D.Ct. No. CR-92-296-PCT-SMM

I represented the United States in this federal prosecution of fourteen counts of sex abuse against a minor. I was lead counsel and briefed the matter before the Court of Appeals for the Ninth Circuit.

The defendant was charged with committing a variety of sexually abusive acts against his stepson over an extended period of time. An uncle of the victim, who was an eyewitness to some of the offenses, was mentally handicapped. The mother of the victim originally told law enforcement that she had seen some incidents of abuse, but recanted her statement prior to trial. Closed circuit television was used during trial when the child testified. The defendant was convicted of all counts and sentenced to 365 months imprisonment.

During an emergency room visit, the victim's mother wrote a note to the physician concerning her son, and the trial court's admission of the mother's statement to the emergency room doctor presented an issue of first impression for the Ninth Circuit. The Ninth Circuit held that in limited circumstances, a statement from someone other than the patient to the doctor -- in this case the parent of a child patient -- may be introduced in court and admitted under the medical treatment exception to the hearsay rule.

a. Dates of Trial:

This case was tried May 4 - May 13, 1993. The Ninth Circuit Court of Appeals affirmed the conviction in December of 1995 in United States v. Frederick Yazzie, 59 F.3d 807 (9<sup>th</sup> Cir. 1995) (published opinion).

b. Name of court and name of judge:

United States District Court for the District of Arizona  
The Honorable Stephen M. McNamee

United States Court of Appeals, Ninth Circuit  
Circuit Judges Choy, Farris, and Brunetti

c. Co-counsel:

Bruce Taylor  
National Law Center for Children and Families  
3819 Plaza Drive  
Fairfax, Virginia 22030  
703-691-4626

Counsel for defendant at trial:

Deborah Williams  
Assistant Federal Public Defender  
222 N. Central Avenue  
Suite 810  
Phoenix, Arizona 85004  
602-379-3561

Counsel for defendant on appeal:

Sandra L. Slaton  
4815 E. Crystal Lane  
Paradise Valley, Arizona 85253  
480-483-2178

3. United States v. Albert Bedonie  
 U.S. District Court, District of Arizona  
 D.Ct. No. CR-94-033-PCT-PGR

I represented the United States in this prosecution of a defendant who shot and killed two of his brothers-in-law. After an altercation with the victims, the defendant drove 32 miles to obtain a firearm, drove 32 miles back, and shot the victims at their home while 10 children were in the house. I was the sole counsel on the case and also argued the matter before the Court of Appeals for the Ninth Circuit.

Before trial, the defendant pleaded guilty to two counts of second degree murder and one count of using a firearm in a crime of violence. The written plea agreement provided that the defendant receive a sentence of 20 to 25 years imprisonment. Despite this agreement, and the recommendation in the presentence report for a sentence of between 19 and 22½ years, the court granted the defendant a two level reduction for acceptance of responsibility, rejected the plea agreement's provision for an upward departure, and sentenced the defendant to a term of imprisonment of sixteen years and four months. The court denied the government's motion to withdraw the plea, and its motion for reconsideration of the sentence.

The government appealed. On appeal, we successfully argued that the court should have accepted the terms of the plea agreement or allowed the government to withdraw its agreement to the plea. The case was remanded to the district court, and the defendant was sentenced to twenty years in prison.

- a. Dates of Trial:

The defendant entered into the plea agreement on October 25, 1994. The Ninth Circuit Court of Appeals issued its ruling on May 28, 1996. (United States v. Bedonie, 86 F.3d 1163 (9<sup>th</sup> Cir. 1996)(unpublished opinion)).

- b. Name of court and name of judge:

United States District Court for the District of Arizona  
 The Honorable Paul G. Rosenblatt

United States Court of Appeals, Ninth Circuit  
 Circuit Judges Alarcon, Beezer, and Rymer

c. Counsel for defendant:

John Sands  
Assistant Federal Public Defender  
222 N. Central Avenue  
Suite 810  
Phoenix, Arizona 85004  
602-379-3561

4. United States v. Mark Sterkel  
U.S. District Court, District of Arizona  
D.Ct. No. CR-97-209-PCT-RMS

I was the lead prosecutor in this federal interstate stalking case. The defendant, a former employee of the National Park Service, traveled from Utah to Arizona to stalk a former co-worker. The defendant traveled to Page, Arizona in April of 1997 and wrote several vulgar statements about his former co-worker on the door of the Glen Canyon National Recreational Area headquarters building. In May of 1997, the defendant again wrote statements about the victim on the door to the headquarters and in several other locations. (The writings described the victim in sexually vulgar terms, urged sexual acts against the victim and also advocated destruction of the Glen Canyon dam.)

During the investigation, we were able to establish the defendant's identity and captured him on videotape leaving the writings. Although fearful of death or serious bodily injury, the victim did not sustain any physical injury. The defendant pleaded guilty before trial and was sentenced to six months in a community-based facility, and a three-year term of supervised release. This was apparently the first interstate stalking case filed in the country.

a. Dates of Trial:

The defendant pleaded guilty on August 22, 1997. There was no appeal.

b. Name of court and name of judge:

United States District Court for the District of Arizona  
The Honorable Roslyn Moore Silver



c. Co-counsel:

Scott Bales, former Assistant U.S. Attorney  
Solicitor General  
Arizona Attorney General's Office  
1275 W. Washington  
Phoenix, Arizona 85007  
602-542-5025

Counsel for defendant:

Bruce Griffen  
Aspey, Watkins and Diesel  
123 N. San Francisco Street  
Suite 300  
Flagstaff, Arizona 86001  
520-774-1478

5. United States v. Gutberto Beltran-Gutierrez  
United States v. Jose Beltran-Cardenas  
U.S. District Court, District of Arizona  
D.Ct. No. CR-92-178-PHX-RO

I was the sole prosecutor in this drug trafficking case involving black tar heroin. I also argued this case on behalf of the United States before the Ninth Circuit Court of Appeals.

The defendants sold black tar heroin to undercover DEA agents, and represented that they acquired the heroin from Mexico and regularly smuggled it into the United States. Both of the defendants spoke only Spanish. At the time of their arrests, the defendants reportedly had been selling as many as 15 ounces of heroin at a time, at a purchase price of approximately \$3,000 per ounce. The defendants had \$25,000 worth of heroin in their possession at the time of the arrest, and had indicated to the undercover agents that they could provide the agents up to ten ounces every ten days. The defendants used an apartment in Phoenix, Arizona to cook the heroin and conduct drug related business.

Several pretrial motions were filed by the defendants, including an unsuccessful motion to suppress the drug evidence. An evidentiary hearing was held on the suppression motion, at which one of the defendants, Beltran-Gutierrez (Gutierrez), testified.

On the day his case was set for trial, Beltran-Cardenas (Cardenas) pleaded guilty to all counts in the indictment, without any agreement with the government. Cardenas then testified on behalf of his co-defendant, Gutierrez, at Gutierrez's trial. In his testimony, Cardenas attempted to falsely exculpate Gutierrez. Gutierrez also testified at the trial, and

made several inconsistent statements, including a statement inconsistent with his testimony at the suppression hearing. He was impeached with his prior sworn statement. The jury found Gutierrez guilty of all charges.

At the sentencing hearing, the judge found that Cardenas had an aggravated role in the offense, and that Cardenas had obstructed justice by committing perjury at his co-defendant's trial. Cardenas was sentenced to a term of 82 months imprisonment. Gutierrez was sentenced to a term of 78 months imprisonment. Cardenas appealed the length of his sentence, and Gutierrez appealed his conviction on the grounds that the use of his prior testimony violated his Fifth Amendment privilege against self-incrimination.

The Ninth Circuit Court of Appeals decided in the government's favor in all respects. The use of suppression hearing testimony for impeachment purposes at trial was apparently an issue of first impression for the Ninth Circuit.

a. Dates of Trial:

The case was tried December 2 - 7, 1992. The Ninth Circuit affirmed the conviction in March of 1994. (United States v. Beltran-Gutierrez and Beltran-Cardenas, 19 F.3d 1287 (9<sup>th</sup> Cir. 1994) (published opinion) and 19 F.3d 30 (9<sup>th</sup> Cir. 1994) (unpublished opinion)).

b. Name of court and name of judge:

United States District Court for the District of Arizona  
The Honorable Richard J. Owen (visiting judge from the Southern District of New York)

United States Court of Appeals, Ninth Circuit  
Circuit Judges Alarcon and Fernandez, District Judge Wilson (sitting by designation)

c. Counsel for defendant:

Sandra Lynn Slaton  
4815 E. Crystal Lane  
Paradise Valley, Arizona 85253  
480-483-2178

6. United States v. Ronald Stephen Sneezer  
U.S. District Court, District of Arizona  
D.Ct. No. CR-91-054-PCT-RGS

I represented the United States in this prosecution under the federal kidnaping and rape statutes. I also argued this case on behalf of the government before the Ninth Circuit Court of Appeals.

The defendant in this case picked up the female victim and her boyfriend while they were hitchhiking in Arizona. He used a stop designed to allow the man to relieve himself to kidnap the female, leaving the boyfriend and another passenger behind. The defendant drove his victim to a remote area on the Navajo Indian reservation where he raped her twice. The victim eventually broke away and ran. The defendant gave chase, threatening to kill her and her boyfriend. The victim was picked up by a passing motorist on a nearby highway.

The defendant had been convicted of a nearly identical act of kidnaping and sexual assault three years earlier, but that conviction had been overturned based on the trial court's failure to give a jury instruction on voluntary intoxication. At trial, we introduced evidence of the prior kidnaping and rape under Federal Rule of Evidence 404(b). The defendant was found guilty of kidnaping and two counts of aggravated sexual abuse. He was sentenced to a term of 250 months imprisonment on each count.

The admission of evidence about the prior rape was one of several issues raised by the defendant on appeal. He also appealed the trial court's refusal to give an instruction on the defense of voluntary intoxication with respect to the kidnaping charge, and challenged the trial court's decision not to group the two rape counts together for sentencing. The Ninth Circuit upheld the government's use of evidence about the defendant's prior bad acts, and, in an issue of first impression, held that kidnaping under the provision at issue, 18 U.S.C. § 1201(a)(2), was a general, rather than a specific intent crime. Because the defense of voluntary intoxication is not a defense to a general intent crime, the Ninth Circuit held that it was not error for the district court to refuse the defendant's requested instruction. The Ninth Circuit overturned the district court's decision to sentence the defendant separately for each count of aggravated sexual abuse based on its interpretation of the Sentencing Guidelines and thus found that the court was required to group the two rapes for sentencing because of their temporal proximity. However, the Ninth Circuit panel recommended to the United States Sentencing Commission that it amend the guidelines "to avoid giving defendants a 'free rape' and to avoid forcing judges to go through the repulsive and dispiriting task of making timing distinctions in this area."

On remand for sentencing the defendant's original sentence was modified to reflect a grouping of the two rape counts.

a. Dates of Trial:

The case was tried June 4 - 6, 1991. The Ninth Circuit affirmed the conviction in December of 1992. (United States v. Sneezer, 983 F.2d 920 (9<sup>th</sup> Cir. 1992) (published opinion)).

b. Name of court and name of judge:

United States District Court for the District of Arizona  
The Honorable Roger G. Strand

United States Court of Appeals, Ninth Circuit  
Circuit Judges Wiggins, O'Scannlain, and Fernandez

c. Counsel for defendant:

Eugene A. Burdick  
P.O. Box 5367  
Mesa, Arizona 85211  
480-833-6166

7. United States v. Robert Johnson  
U.S. District Court, District of Arizona  
D.Ct. No. CR-94-326-PHX-RCB

I represented the United States in this prosecution under the federal statute concerning robbery of a postal employee. This case was the culmination of a series of investigative and prosecutorial efforts which resulted in the conviction of three individuals who were responsible for the aggravated robbery of a postal worker two years earlier. I received one of the highest awards given by the U.S. Postal Inspection Service for my work on this matter.

This aggravated robbery occurred at a docking area behind a post office in Mesa, Arizona, in December of 1992. Two masked men approached a postal worker who was loading a postal truck. One held the postal employee at gunpoint while the other went to the rear of the postal truck and removed three mail pouches containing over \$15,000. Postal Service investigators suspected that the robbery was an inside job, but the case went unsolved for almost two years. In early 1994, an individual incarcerated in the Kansas State penitentiary revealed to law enforcement officials that he had information relating to this robbery.

Several obstacles had to be overcome to have the Kansas prisoner transferred to Arizona so he could act as a confidential informant and make key phone calls and meetings with the individuals suspected of being involved in the robbery.

After the first suspect was captured on audio and video tape, he agreed to cooperate against the other robber. Covert audio and video surveillance was again used to record the second robber not only admitting his involvement, but also re-enacting it. He was arrested and also agreed to cooperate against the mastermind of the robbery, a former postal employee named Robert Johnson.

After several phone calls with the cooperating co-defendants, the third defendant, Robert Johnson, ultimately confessed.

All three pleaded guilty. Robert Johnson was sentenced to a term of nine years imprisonment.

a. Dates of Trial:

The defendant entered into a plea agreement on October 25, 1994. The Ninth Circuit affirmed the conviction and sentence on November 1, 1995. United States v. Robert Johnson, 69 F.3d 545 (9<sup>th</sup> Cir. 1995) (unpublished opinion).

b. Name of court and name of judge:

United States District Court for the District of Arizona  
The Honorable Robert C. Broomfield

c. Counsel for defendant:

J. Douglas McVay  
207 W. Clarendon  
Suite 3  
Phoenix, Arizona 85013  
602-226-2636

8. United States v. Sergey Proshak  
U.S. District Court, District of Arizona  
D.Ct. No. CR-90-358-PHX-EHC

I represented the United States in this federal counterfeiting and fraudulent passport possession case. I was the sole counsel on the case, and represented the United States before the Court of Appeals for the Ninth Circuit.

The defendant was found uttering counterfeit money with another individual at a shopping mall in Phoenix, Arizona. A large amount of counterfeit cash was found hidden in the car the two individuals had been driving. The defendant had an extensive and violent criminal background, including prostitution, resisting a public officer, assault with intent to commit rape, and kidnaping. He was also suspected of being a member of a Russian organized crime ring out of California.

The defendant pleaded guilty and was sentenced to a term of 24 months imprisonment. His sentence was ordered to run consecutive to his term of imprisonment for other state crimes in California. The defendant filed an appeal challenging the consecutive nature of his federal sentence. The Court of Appeals for the Ninth Circuit upheld the sentence.

a. Dates of Trial:

Entered into plea agreement on March 4, 1991. The Ninth Circuit affirmed the conviction and sentence in May of 1992. (United States v. Proshak, 963 F.2d 381 (9<sup>th</sup> Cir. 1992) (unpublished opinion)).

b. Name of court and name of judge:

United States District Court for the District of Arizona  
The Honorable Earl H. Carroll

c. Counsel for defendant:

Dennis G. Jones  
335 East Palm Lane  
Phoenix, Arizona 85004  
602-553-9161

9. State of Kansas v. Lorie Walker  
District Court of the State of Kansas  
Wyandotte County, Kansas  
D.Ct. Nos. 87 CR 0009, 87 CR 0350-A, 87 CR 424-B

I represented the State of Kansas in this child abuse, neglect and endangerment case involving two young boys (ages nine and twelve) who were physically and sexually abused by their stepmother. I also represented the State of Kansas on appeal before the Kansas Supreme Court.

The defendant stepmother physically beat the twelve-year-old boy regularly with her fists and, on occasion, with a two-by-four. In addition to the physical abuse, the defendant made both boys perform oral sex on her as "reward" for good behavior and as

"punishment" for bad behavior. The boys' natural father was aware of the abuse, and did nothing to stop it.

The state of the home was described by social workers as filthy and deplorable, and the children came to school improperly clothed and unusually hungry. The stepmother and father were aware that the twelve-year-old suffered from a rare and terminal disease (juvenile Huntington's Chorea), and that the younger boy ran a high risk of contracting the same illness. The stepmother and father denied the children necessary medical treatment and medication for their respective medical problems.

The children's father was charged with aiding and abetting the stepmother's crimes, and he pleaded guilty before trial pursuant to a plea bargain. The stepmother was charged with two counts of aggravated criminal sodomy, two counts of endangering a child, and one count of terroristic threats (for her threats against a hospital social worker who had prohibited her from seeing the older boy during the boy's stay in a hospital psychiatric ward for children). The evidence at trial included expert testimony and eyewitness testimony from the younger boy. (The older boy was too ill to testify.) The defendant was found guilty on all counts.

The defendant was sentenced to a term of not less than fifteen years nor more than life imprisonment on one count of aggravated criminal sodomy and to a term of not less than 5 years nor more than 20 years on the second count of aggravated criminal sodomy. The two sentences were ordered to be served consecutively. The defendant was sentenced to a term of one year on each count of endangering a child -- to be served concurrent with each other and concurrent with the other charges. The defendant was sentenced to a term of not less than one nor more than five years for making a terroristic threat. This sentence was ordered to run consecutively to the other charges. The Kansas Supreme Court found in favor of the State on appeal.

a. Dates of Trial:

This case was tried July 21 - 27, 1987. The Supreme Court of the State of Kansas affirmed the conviction in January of 1989. (State of Kansas v. Lorie Walker, 244 Kan. 275, 768 P.2d 290 (1989)(published opinion)).

b. Name of court and name of judge:

In the District Court of the State of Kansas  
The Honorable Dean J. Smith

Kansas Supreme Court  
The Honorable Robert H. Miller (Chief Justice)  
The Honorable Richard W. Holmes

The Honorable Kay McFarland  
 The Honorable Harold S. Herd  
 The Honorable Tyler C. Lockett  
 The Honorable Donald L. Allegrucci  
 The Honorable Fred N. Six

c. Counsel for defendant:

Annette Jackson  
 6582 West 49<sup>th</sup> Street  
 Mission, Kansas 66202  
 913-362-0544

10. State of Kansas v. Michael Moppin  
 District Court State of Kansas  
 D.Ct. No. 87 CR 925

I represented the State of Kansas in this prosecution of child sexual abuse offenses. I also represented the State of Kansas on the appeal of this matter to the Kansas Supreme Court.

This case involved the sexual abuse of a five-year-old girl by her natural father, who was a Kansas City, Kansas, police officer. The trial received significant local media attention.

At trial, the victim testified about the defendant's commission of oral sex on her and the defendant's sexual fondling of her. He was convicted on both counts. The defendant was sentenced to a term of not less than three years, nor more than five years on the indecent liberties count, and to a term of not less than five years, nor more than twenty years on the aggravated criminal sodomy count. The defendant was then granted probation. The defendant nonetheless appealed his conviction.

On appeal, the defendant's conviction for indecent liberties was upheld, but his conviction for aggravated criminal sodomy was overturned. The Kansas Supreme Court determined that the definition of "sodomy" under the relevant criminal code did not include oral contact with the genitals of a female.

Subsequent to the appellate ruling, a subcommittee of the Kansas legislature convened a hearing to address the issues in the sexual abuse provisions of the criminal code that had been highlighted in this case. I testified at that hearing about the relevant statutes.

a. Dates of Trial:

This case was tried April 4 - 7, 1988. The Supreme Court of the State of Kansas issued its decision affirming the conviction in part, reversing in part, and vacating



in part on December 8, 1989. (Kansas v. Moppin, 245 Kan. 639, 783 P.2d 878 (1989)(published opinion)).

- b. Name of court and name of judge:

In the District Court of the State of Kansas  
The Honorable R. David Lamar

Kansas Supreme Court  
The Honorable Robert H. Miller (Chief Justice)  
The Honorable Richard W. Holmes  
The Honorable Kay McFarland  
The Honorable Harold S. Herd  
The Honorable Tyler C. Lockett  
The Honorable Donald L. Allegrucci  
The Honorable Fred N. Six

- c. Counsel for defendant:

John Duma  
831 Armstrong  
Kansas City, Kansas 66101  
913-342-7070

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

As a state and federal prosecutor, most of the significant legal activities I have pursued involved trial litigation as described above. However, there are many cases I handled in the area of violent crime in addition to the cases described above that resulted in guilty pleas.

Additionally, as Director of the Executive Office for United States Attorneys, I provide oversight of and support to the 94 United States Attorneys' offices, comprised of 93 Presidentially-appointed United States Attorneys (a single United States Attorney serves Guam and the Northern Mariana Islands), approximately 5,000 Assistant United States Attorneys, and approximately 5,000 support staff employees. I serve as liaison between the United States Attorneys and the Attorney General, Deputy Attorney General, the

Department's legal divisions, and other Department components. I supervise 22 components comprised of approximately 270 people. I am also responsible for the administration of an appropriation of over 1 billion dollars.

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

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

Since I have been a lifelong prosecutor, I have had no outside business interests. Therefore, I have no such anticipated sources of income.

Through the Department of Justice I currently participate in the FERS Retirement Plan and the Thrift Savings Plan. Under the FERS Retirement Plan a pre-set amount of money is deducted from my paycheck each pay period and placed in a retirement account. Under the Thrift Savings Plan, a designated percentage of my paychecks are placed into a tax deferred account, with the Department matching a certain amount.

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

There are no known issues which pose a conflict or impede upon my ability to serve. Should such a conflict be deemed to be present, I would follow the Code of Judicial Conduct and seek guidance from appropriate officials.

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

No.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items**

exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Please see attached Financial Disclosure Report (AO-10).

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

Please see attached net worth statement.

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

No, I have never held a position or played a role in a political campaign.

AO-9 Rev. 1/2000		<b>FINANCIAL DISCLOSURE REPORT FOR NOMINATION FILING</b>		<i>Report Required by the Ethics in Government Act of 1976, (5 U.S.C. App. 4, §§101-111)</i>	
1. Person Reporting (Last name, first, middle initial)  Murguia, Mary H.		2. Court or Organization  United States District Court - AZ		3. Date of Report  July 20, 2000	
4. Title (Article III judges indicate active or senior status, magistrate judges indicate full- or part-time)  U.S. District Judge (Nominee)		5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination. Date _____ ___ Initial ___ Annual ___ Final		6. Reporting Period January 1, 1999 - June 19, 2000	
7. Chambers or Office Address Executive Office for U.S. Attorneys 950 Pennsylvania Avenue, NW Room 2244A Washington, DC 20530-0001		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.  Reviewing Officer _____ Date _____			
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.					

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

	POSITION	NAME OF ORGANIZATION/ENTITY
	<input type="checkbox"/> NONE (No reportable positions.)	
1	Arizona Foundation for Women	Member - Board of Directors
2		
3		

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

	DATE	PARTIES AND TERMS
	<input checked="" type="checkbox"/> NONE (No reportable agreements.)	
1		
2		
3		

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
	<input checked="" type="checkbox"/> NONE (No reportable non-investment income.)		
1			\$
2			\$
3			\$
4			\$
5			\$

<b>FINANCIAL DISCLOSURE REPORT</b>	<small>Name of Person Reporting</small> Murguia, Mary H.	<small>Date of Report</small>
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**V. REIMBURSEMENTS** -- transportation, lodging, food, entertainment.  
*(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)*

	SOURCE	DESCRIPTION
<input type="checkbox"/>	NONE (No such reportable reimbursements.)	
	Exempt	

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

	SOURCE	DESCRIPTION	VALUE
<input type="checkbox"/>	NONE (No such reportable gifts.)		
	Exempt		\$
			\$
			\$
			\$
			\$

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

	CREDITOR	DESCRIPTION	VALUE CODE*
<input checked="" type="checkbox"/>	NONE (No reportable liabilities.)		

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

Name of Person Reporting <b>Murguia, Mary H.</b>	Date of Report
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**VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions** (Includes those of spouse and dependent children. See pp. 35-53 of Instructions.)

A Description of Assets (including trust assets)  <i>(Place "02" after Subasset name from prior disclosure)</i>	B Income during reporting period		C Gross value at beginning and end of reporting period		D Transactions during reporting period					
	(1)	(2)	(1)	(2)	(1)	(2) not exempt bond issues		(3) other asset		(4)
	Am. Code1 (A-H)	Type Code2 (I-T)	Value Code2 (G-P)	Value Method Code3 (Q-W)	Date Acquired Month	Date Disposed Month	Date (J-F)	Code4 (A-F)	Code5 (A-F)	Quantity of Buyer/Seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)										
1 IRA The American Funds - New Perspective FD	A	Div	J	T	Exempt					
2 - Washington Mutual Investors FD										
3 REG The American Funds - New Perspective FD	B	Div	J	T	Exempt					
4 The Northwest Mutual Life Insurance Company (Variable Life Insurance Policy)	B	Int	J	T	Exempt					
5										
6 First Federal Credit Union	C	Int	L	T	Exempt					
7 Argentina Savings and Loan	A	Int	J	T	Exempt					
8										
9										
10										
11										
12										
13										
14										
15										
16										
17										
18										

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Murguia, Mary H.	

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

I. Positions  
Arizona Foundation for Women Member - Board of Directors From: 1/96 To: 8/98

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

Signature  Date 7.20.00

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App. 4, § 104.)

**FILING INSTRUCTIONS:**

Mail signed original and 3 additional copies to:

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



## FINANCIAL STATEMENT

## NET WORTH

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

ASSETS			LIABILITIES		
Cash on hand and in banks	62	433 36	Notes payable to banks—secured		
U.S. Government securities—add schedule			Notes payable to banks—unsecured		
Listed securities—add schedule	7	938 90	Notes payable to relatives		
Unlisted securities—add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due		
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid tax and interest		
Doubtful			Real estate mortgages payable—add schedule		
Real estate owned—add schedule			Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts—itemize:		
Cars and other personal property	10	225 00	Car Loan	1	150 26
Cash value—life insurance	2	421 42			
Other assets—itemize:					
Thrift Savings	139	690 82			
Home Furnishings	4	000 00			
			Total liabilities	1	150 26
			Net Worth	225	559 24
Total Assets	226	709 50	Total liabilities and net worth	226	709 50
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			

## FINANCIAL NET WORTH STATEMENT

## ASSETS

Listed Securities  
Mutual Funds

<u>Name</u>	<u>Market Value</u>	<u>Dividends &amp; LongTermCapGains</u>
IRA The American Funds		
- New Perspective Fund	\$ 2,469.95	\$14.13 \$170.06(99) None (00)
- Washington Mutual Investment Fund	\$ 4,684.99	\$82.40 \$444.04(99) \$46.14 (00)
<b>Total:</b>	<b>\$ 7,154.94</b>	
REG The American Funds		
- New Perspective Fund	\$ 783.96	\$3.92 \$53.97 (99) None (00)
<b>Total:</b>	<b>\$ 7,938.90</b>	<b>\$57.89</b>
<b>Auto</b>		
Honda	\$10,225.00	

**TOTAL ASSETS: \$226,709.50**

Values/Income as of June 19, 2000

## LIABILITIES

## Other Debts

- Car Loan  
First Federal Credit Union, Phoenix, AZ  
Total: \$1,150.26

**TOTAL LIABILITIES: \$1,150.26**

## III. GENERAL (PUBLIC)

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

In March of this year, I served as a judge for the Hispanic National Bar Association's Annual Moot Court competition which took place at Georgetown University Law Center in Washington, DC.

Prior to my detail at the Department of Justice in Washington, DC, I served as a board member for the Arizona Foundation for Women – a not-for-profit agency which works toward improving the quality of life for women and girls in Arizona.

I also was a member of the Arizona Pilot Parent Partnership Executive Board (this organization changed its name since I served on its board to Raising Special Kids) a volunteer organization dedicated to providing information and support to families of children with disabilities.

While in Kansas, I served as Assistant Treasurer and on the Board of Directors for the United Way of Wyandotte County, Kansas. Also while in Kansas, I was selected to participate in a civic program – Kansas City, Kansas Leadership 2000, an organization dedicated to developing future leaders and ways to better the local community.

While in Kansas, I also served as Vice President of the local Mexican American Women's National Association (MANA) chapter in Kansas City. MANA is a not for profit organization dedicated to addressing issues facing Hispanic women across the country.

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

No. I do not currently belong, or have belonged, to any organization that invidiously discriminated on the basis of race, sex, or religion.

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

No. There is no selection commission. A Senator and Congressman from my state contacted me to let me know that I was being considered as a candidate for a federal district court judgeship. The Senator called again to let me know that I was one of three persons who the Senator and the Congressman wanted to submit for consideration to the President for nomination to the district court bench. I have also met with representatives from the Department of Justice, Federal Bureau of Investigation, and the American Bar Association (ABA).

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

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

5. **Please discuss your views on the following criticism involving "judicial activism" The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.**

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

- a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**
- b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**
- c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**

- d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**
- e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

The Constitution of the United States establishes a system based on the separation of powers among the three branches of government. This system of checks and balances is critical to our form of government and to the people it serves. The Constitution clearly limits the jurisdiction of the federal courts. Federal judges are also obligated to make sure that the standards of standing and ripeness are met. It is not the role of the federal courts to get involved in abstract policy issues or attempt to give guidance on an issue not properly before the court. The role of a judge is not to make laws but to interpret the Constitution and apply the relevant statutes and precedent.

[The biographical information of Mr. Reagan follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Michael Joseph Reagan

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

Residence: Belleville, IL

Office: The Law Office of Michael J. Reagan  
3201 West Main Street  
Belleville, IL 62226

3. **Date and place of birth.**

March 27, 1954  
Albuquerque, New Mexico

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

I married Elaine Catherine Edgar, a homemaker, on September 18, 1976.

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

Belleville Area College; 1973-1974; no degree. I took police science courses which were credited by Bradley University towards my major.

Illinois Central College; 1974-1976; no degree. I took core police science courses in cooperative program with Bradley University.

Bradley University; 1972-1976; B.S., Administration of Criminal Justice 1976.

St. Louis University; 1977-1980; J.D., 1980.

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

1976-1977: Police Officer, City of Belleville, IL

1977: Sales Clerk, Walgreen's, Inc.

1977-1978: Sales Clerk, Target's Convenience Store

1978: Law Clerk, Office of the Appellate Defender, Fifth Appellate District, Mt. Vernon, IL

1979-1995: Kassly, Bone, Becker, Dix, Reagan and Young, P.C. (the firm underwent several name changes during this time frame), Belleville, IL

1980-1983: Instructor in Business Law, Belleville Area College, Belleville, IL

1982-1988: Adjunct Assistant Professor of Law, St. Louis University, St. Louis, MO

1989-1996 Member of the Board of Managers, Illinois Trial Lawyers Association

Illinois Trial Lawyers Association –1980 to present.

President, June 1999 - June 2000

President-Elect, 1998 - 1999

Second Vice-President, 1997 - 1998

Third Vice-President, 1996 - 1997

1995-present: Sole-practitioner, The Law Office of Michael J. Reagan, Belleville, IL

1995-present: Commissioner, Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois

1996-present: Assistant Public Defender (part-time), St. Clair County, Belleville, IL



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

No.

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

None.

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

American Bar Association –1980 to present

Association of Trial Lawyers of America –1980 to present

Chair of the Aquatic Injury Safety Group Litigation Committee, 1989.

Member of the Litigation Group Advisory Committee, 1990

Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois-1995 to present

Commissioner of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois.

Belleville Area College Paralegal Studies Advisory Board-1998 to present

Member of the Belleville Area College Paralegal Studies Advisory Board. The Board studies and recommends curricula for the paralegal program.

Civil Justice Reform Act of 1990 Advisory Committee-1990 to 1995

Member of the Civil Justice Reform Act of 1990 Advisory Committee to the United States District Court, Southern District of Illinois.

Illinois Trial Lawyers Association –1980 to present.

President, June 1999 - June 2000  
President-Elect, 1998 - 1999  
Second Vice-President, 1997 - 1998  
Third Vice-President, 1996 - 1997

Member of the Board of Managers, 1989 - 1996

Current member of executive and long-range planning committees.

Former member of various standing committees including membership, amicus, seminar planning, insurance, and educational seminars. (The specific dates of my participation in these committees is not available.)

Illinois State Bar Association –1980 to present.

Member of the ad-hoc committee on discovery, 1994 - 1995

Former member of the Tort Law Section Council

Former member of the Civil Practice and Procedure Section Council

St. Clair County Bar Association –1980 to present

Former member of the following committees:

Law Day, 1982 - 1983  
Judiciary, 1983 - 1984  
Unauthorized practice, 1984 - 1985

Former chair of the following committees:

Fee reconciliation, 1986 - 1987  
Medical/legal, 1989 – 1990

St. Clair County Campaign for Equal Justice-1998 to present

Co-Chair of the St. Clair County Campaign for Equal Justice. This Campaign is raising funds for Land of Lincoln Legal Assistance, Inc., a private, not-for-profit corporation providing legal assistance to low-income people.

National Board of Trial Advocacy—1990 to present

Certified as a Civil Trial Specialist

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

Organizations to which I belong that are active in lobbying:

American Bar Association  
Association of Trial Lawyers of America  
Illinois State Bar Association  
Illinois Trial Lawyers Association

Organizations to which I belong that are not active in lobbying:

St. Clair County Bar Association  
St. Joseph's Catholic Church, Freeburg, IL  
National Board of Trial Advocacy

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

State of Illinois, October 29, 1980

United States District Court for the Southern District of Illinois, January 28, 1981

State of Missouri, March 16, 1990

United States Court of Appeals for the Seventh Circuit, January 6, 1997

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

- 1989 Speaker, Illinois Trial Lawyers Association ("ITLA") Seminar, Springfield, IL: "Negotiating Techniques, Procedures & Safeguards."
- 1989 Speaker, ITLA Seminar, Chicago, IL: "Arbitration Under the Policy."
- 1990 Author "Structured Settlements – The Increasing Role of Periodic Payments in Settlement Negotiations." This article was also included in an Illinois State Bar Association publication. (Copy submitted.)
- 1990 Speaker, Aquatic Injury Safety Group Seminar, Washington, D.C.: "Structured Settlements - The Increasing Role of Periodic Payments in Settlement Negotiations." (Copy submitted.)
- 1990 Author, "Still Water Does Not Run Deep." Published in the August 1990 issue of Trial magazine. Later included in Best of Trial – Products Liability under the title "Diving Tragedies." (Copy submitted.)
- 1991 Member of the Civil Justice Reform Act of 1990, which wrote: "Report of the Advisory Group of the United States District Court for The Southern District of Illinois." (Copy submitted.)
- 1991 Speaker, ISBA Seminar, St. Louis, MO: "Purpose and Function of Opening Statement."
- 1993 Speaker, The American Fracture Society, Subgroup of the American Academy of Orthopedic Surgery, regarding medical malpractice, St. Louis, MO.
- 1994 Author, Chapter 8, "Using Expert Witnesses in a Premises Liability Case," Premises Liability, Illinois Institute for Continuing Legal Education. ("IICLE") (Copy submitted.)
- 1994 Speaker, ITLA seminar, Chicago, IL: "Product Liability Litigation-A Practical Approach."

- 1994 Speaker, ITLA seminar, St. Louis, MO: "Loss of Consortium."
- Contributor to the 1995, 1996, 1997, 1998 and 1999 Annual Report of the Attorney Registration and Disciplinary Commission of the Illinois Supreme Court. (Copies submitted.)
- 1995 Speaker, IICLE, Collinsville, IL: "Successful Techniques in Winning Vehicle Accident Cases."
- 1996 Speaker for Department of Public Health regarding Aquatic Safety in Mt. Vernon, Illinois.
- 1996 Speaker, ITLA, "The Devil is in the Details" regarding statute of limitations.
- 1998 Speaker, ITLA, St. Louis, MO: "Federal Pretrial and Trial Discovery."
- 1999 Speaker, ITLA, St. Louis, MO: "Ethical Considerations and Settlement Negotiations: Troubles and Pitfalls—Plaintiff's Prospective."
- 1999 Author, "Ethical Considerations in Personal Injury Settlements, Trial Journal, Spring 1999, Illinois Trial Lawyers Association. (Copy submitted.)
- 1999 Author of the monthly column "The President's Thoughts" as published in the newsletter of the Illinois Trial Lawyers Association titled Vested Interests. (Copies submitted.)
- 1997 Speech accompanying the presentation of the "Champion of Justice" award to Nancy Donley at the Civil Justice Foundation breakfast, San Francisco, CA.
- 1999 Principal Speaker, ceremony admitting new lawyers to the Illinois bar, Collinsville, IL.
- 2000 Co-author, speaker handout, "Ethical Issues in Personal Injury Cases", ITLA seminar: "General Tort Litigation, Including Medical Issues," Peoria, Illinois. (Copy submitted.)

\* Note that no copies of the above speeches nor any notes regarding them are available.

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

My health is excellent. I have hypertension which is well-controlled with diet, exercise and medication. My last physical examination, which included vision and hearing testing, was March 22, 2000.

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

None.

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

Not applicable.

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

I was appointed to the following positions:

While a student at Bradley University, I was a part-time police officer employed by the university from 1975 to 1976 and held a law enforcement commission from the City of Peoria, Illinois.

From 1976 to 1977, I was a police officer for the City of Belleville, Illinois. In that capacity, I served in the patrol division and was the department's designated hostage negotiator.

In January 1990, I served as a member of the Federal Magistrate Judge Selection Panel. The panel was charged with the task of interviewing, investigating and recommending candidates for the Federal Magistrate position open at the time.

From 1990 to 1995, I was a member of the Civil Justice Reform Act of 1990 Advisory Committee to the United States District Court, Southern District of Illinois. This committee was mandated by the CJRA of 1990 to investigate, report and make recommendations regarding the management of the civil side of the Federal Court system for the Southern District of Illinois. Some of our recommendations resulted in changes to the local rules for the Federal court.

From 1995 to the present, I have served as an appointed Commissioner of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois. Along with six other Commissioners, I am responsible for supervising the attorney registration and disciplinary system in Illinois. The Commission appoints the system's principal executive officer, known as the Administrator; oversees the work of a 115+ person full-time staff; creates procedural rules for disciplinary proceedings; sets policies; reviews representative samples of more than 6,500 annual investigations generated in a state with 70,000+ licensed lawyers; collects and administers the disciplinary fund; administers the Illinois Client Protection Program which compensates victims of attorney misconduct; and submits an annual report to the Supreme Court of Illinois. Additionally I chair the personnel sub-committee of the Commission. The ARDC has offices in Chicago and Springfield and has a budget in excess of \$10,000,000. This is a direct appointment by the Illinois Supreme Court. I am in my second three-year term.

From 1996 to the present, I have served as an Assistant Public Defender in St. Clair County, Illinois. In this part-time position I represent indigent criminal defendants charged with major felonies.

From 1997 to present, I have served as Honorary Deputy Sheriff in St. Clair County, Illinois. This appointment is a fully commissioned law enforcement position. I have full arrest powers and I am subject to call-up in an emergency.

17. **Legal Career:**

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

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

No, I did not clerk for a judge

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

Yes. I have been a sole practitioner since December 1, 1995. My office address is 3201 West Main Street Belleville, Illinois 62226.

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

Summer 1978: Law Clerk, Office of the Appellate Defender Fifth Appellate District, Route 15 E. P.O. Box 2430 Mt. Vernon, Illinois 62864.

1979-1995: Kassly, Bone, Becker, Dix, Reagan and Young, P.C. (the firm underwent several name changes during this time frame), 5111 West Main Street, Belleville, IL 62223.

1979-1980: Law clerk

1980-1984: Associate attorney

1984-1995: Shareholder attorney

1995-present: Sole-practitioner, The Law Office of Michael J. Reagan, 3201 West Main Street, Belleville, IL 62226.

1995-present: I have served as Commissioner of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois. The ARDC is located at One Prudential Plaza, 130 E. Randolph, Chicago, IL 60601.



1996-present: Assistant Public Defender (part-time), St. Clair County, Illinois, #10 Public Square, Belleville, IL 62220.

1997-present: I have served as Honorary Deputy Sheriff in St. Clair County, Illinois. The Sheriff's office is located at 700 N. 5<sup>th</sup>. St., Belleville, IL 62220.

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

Beginning in 1979, I held a senior law student license under Illinois Supreme Court Rule 711 which allowed me to prosecute municipal ordinance violations. After admission to the bar, and from 1980 to 1996, my practice involved general litigation, representing both plaintiffs and defendants in tort and business litigation.

From 1996 to the present, my practice has involved general litigation representing both plaintiffs and defendants in tort and business litigation, as well as criminal defense as a court-appointed public defender.

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

I have had a broad range of clients, including hospitals, corporations, physicians, insurance companies, individuals, labor unions, pension funds, municipalities, colleges, judges, lawyers, trustees in bankruptcy and banks.

I have a great deal of experience handling medical malpractice, product liability, FELA cases, Jones Act cases, slip-and-falls, legal malpractice, and other torts, as well as criminal matters.

I have also handled cases involving the Uniform Commercial Code, securities actions, class actions, transportation, Structural Work Act, chancery, estates, and employment discrimination.

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

I have appeared in court regularly since I became licensed.

**2. What percentage of these appearances was in:**

- (a) federal courts: 15%
- (b) state courts of record: 80%
- (c) other courts: 5%

**3. What percentage of your litigation was:**

- (a) civil: 90%
- (b) criminal: 10%

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

Cases tried as sole counsel 500 (estimated)

Cases tried as chief counsel 5 (estimated)

Cases tried as associate counsel 5 (estimated)

**5. What percentage of these trials was:**

- (a) jury: 10%
- (b) non-jury: 90%

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

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

1. Patterson v. NationsBank, N.A., 99-481, United States District Court, Southern District of Illinois, before Federal Magistrate Gerald Cohn. I currently represent NationsBank N.A. in this matter which began in 1998, settled in 2000 and is currently in a settlement payment and reporting stage.

This was a class action in which I co-defended NationsBank, N.A. I assisted in the preparation of pleadings and legal memoranda and handled all oral arguments. The plaintiff's allegations included claims of fraud and violation of consumer statutes for re-ordering checks during processing which resulted in additional insufficient funds charges. NationsBank, N.A., like most other major banks, would process checks presented the same day by re-ordering them high-to-low and then would pay the highest value check first. This resulted in larger, usually more important checks (mortgage, car payments) being paid but had the effect of causing more checks to bounce than if re-ordering had not occurred. Similar class actions were pending in Texas and New Mexico. The case originally was filed in state court but we removed the action to federal court. Settlement terms included injunctive relief in the form of disclosure of the banks processing methods, payments to customers who were affected by the hi-to-low processing and attorney fees to class counsel.

Other Counsel: Steven A. Katz  
 Counsel for class plaintiffs  
 10 Executive Woods Court  
 Belleville, IL 62226  
 (618) 277-1180

Douglas R. Sprong  
Counsel for class plaintiffs  
10 Executive Woods Court  
Belleville, IL 62226  
(618) 277-1180

Michael P. Casey  
Co-counsel for defendant NationsBank  
500 North Broadway, Ste. 2000  
St. Louis, MO 63102  
(314) 444-7718

2. Smalley v. Carey, No. 96 L 666A, Circuit Court, Twentieth Judicial Circuit, St. Clair County, Illinois, before Circuit Judge Lloyd Cueto. I represented Mr. Carey in this litigation beginning in 1999.

I defended Jack Carey, president of a local school board. The plaintiff's theory was that Carey, along with other board members and the school superintendent, conspired to commit to tort of intrusion upon the seclusion of the plaintiff and ultimately had her fired. She was fired after being accused of financial improprieties and failure to follow school policies. In Illinois, school board members enjoy various immunities. In order to circumvent them, plaintiff's counsel alleged that Carey was acting outside the course and scope of his authority as board president. If proven, this would also have had the effect of nullifying Carey's liability insurance. A bank was also a named defendant because it, unwittingly, disclosed confidential account information of the plaintiff to third parties, including Carey.

The case settled without financial contribution by Carey. The Court credited me with getting this contentious and highly emotional case settled. Trial began September 20, 1999 and lasted approximately 6 days prior to settling.

Other Counsel: Bruce Cook  
Counsel for Plaintiff  
12 West Lincoln Street  
Belleville, IL 62220  
(618) 235-3500

Joseph E. Martineau  
Counsel for NationsBank  
500 North Broadway  
St. Louis, MO 63102-2147  
(314) 444-7600

Judy L. Cates  
Counsel for Daryl Hardt (Superintendent)  
10 Executive Woods Court  
Swansea, IL 62226  
(618) 277-1180

Rebecca R. Jackson  
Personal Counsel for Terry Schaefer (Board member)  
211 North Broadway, Ste. 3600  
St. Louis, MO 63102-2740  
(314) 259-2217

John J. Kurowski  
Counsel for Terry Schaefer (Board member)  
The Kurowski Law Firm, P.C.  
12 Park Place Professional Centre  
Belleville, IL 62226  
(618) 277-5500

3. Wyciskalla v. Peabody Coal Company, 96-L-619A, Twentieth Judicial Circuit, St. Clair County, Illinois before Circuit Judge Lloyd Cueto. I represented Jeret and Jason Wyciskalla in this litigation from 1996 to 1999.

Jeret and Jason Wyciskalla, brothers, were passengers in a car driven by their father, Roger Wyciskalla. Jeret and Jason were injured when the car left the roadway and struck an embankment after striking debris left on the roadway by defendant Peabody Coal Company. Peabody utilized this area as a crossing for their trucks from their haulage road and by-products from their mining operation would sometimes fall on the highway.

As a result of an inter-governmental agreement, Lawrence Bockhorn, Road Commissioner, Randolph County, Illinois, was responsible for cleaning debris on the road in the area of the accident. Since the accident occurred on property maintained but not owned by defendant Bockhorn, he was not entitled to statutory immunity which road commissioners typically enjoy with respect to roads in their jurisdiction. The cases settled as to Jason with all defendants and as to Jeret with defendants Roger Wyciskalla and Peabody Coal Company. After a five-day jury trial in April of 1999, Jeret Wyciskalla lost his case to defendant Bockhorn.

Other Counsel: Raymond Bell  
Counsel for Lawrence Bockhorn  
Hoagland, Fitzgerald, Smith & Pranaitis  
401 Market Street  
Alton, IL 62002  
(618) 465-7745

James Cook  
Counsel for Roger Wyciskalla  
Walker and Williams  
4343 West Main Street  
Belleville, IL 62223  
(618) 277-1000

William A. Schmitt  
Attorney for Peabody Coal Company  
Thompson Coburn  
525 West Main Street  
P. O. Box 750  
Belleville, IL 62222-0750  
(618) 277-4700

4. Price v. Granite City Steel, No. 97-954PER, United States District Court, Southern District of Illinois, before District Judge Paul Riley (Retired). I represented Phyllis and Thomas Price in this litigation from 1997 to 1999.

This negligence action arose out of an injury to the hand of Mr. Price when a chain binder slipped. He was securing a 40,000+ pound steel coil on his employer's flatbed trailer. He was required by defendant's employees to secure his load outside the loading bay in an area that was poorly lighted. He underwent an operation for trauma induced De Quervain's tendonitis. After a three-day trial in March 1999, Mr. Price was awarded \$1.5 million, less a 1% comparative fault reduction. The jury awarded \$600,000 to Mrs. Price for loss of consortium.

The matter settled on appeal after briefs were filed but prior to oral argument.

Other Counsel: James E. DeFranco  
Counsel for Granite City Steel  
5 Park Place Professional Centre  
Belleville, IL 62226  
(618) 277-0900

5. People v. Cotton, Nos. 96-CF-40801 & 96-CF-40802, Twentieth Judicial Circuit, St. Clair County, Illinois, before Circuit Judge Jan V. Fiss. I represented Mr. James Cotton II in this litigation in 1997.

This case involved “accessorial responsibility” under the felony murder rule for an individual who relied upon the “mere presence” defense.

James Cotton II, was charged under the felony-murder rule in the baseball bat bludgeoning of a friend. He admitted to being present at the scene but said he was not an active or knowing participant. Simultaneously, the home of the victim was burglarized. Cotton was convicted after a five-day trial in March of 1997 and sentenced to 30 years. A co-defendant awaits trial with the state seeking the death penalty. Another co-defendant has pleaded guilty.

Other counsel: Judy Dalan  
 Assistant State’s Attorney  
 St. Clair County Courthouse  
 #10 Public Square  
 Belleville, IL 62220  
 (618) 277-6600

6. People v. Bond, No. 96-CF-402, Twentieth Judicial Circuit, St. Clair County, Illinois, before Circuit Judge Jan V. Fiss. I represented Mr. Douglas Bond in this litigation from 1996 to 1997.

Douglas Bond was charged with three counts of Aggravated Criminal Sexual Assault against two children for whom he baby-sat. After a four-day trial in February of 1997, he was acquitted of one count and a hung jury was declared as to the remaining two counts. Rather than face re-trial on the two undecided counts, Bond pleaded guilty to Aggravated Criminal Sexual Abuse and received 2½ years probation.

Other counsel: Elizabeth Geppert  
 Assistant State’s Attorney  
 St. Clair County Courthouse  
 #10 Public Square  
 Belleville, IL 62220  
 (618) 277-6600

7. Pryor v. Freightliner Corp., No. 94-888, United States District Court, Southern District of Illinois; before United States District Judge William Beatty. I represented Alan and Carol Pryor in this litigation from 1995 to 1997.

This product liability claim was brought as a result of a back injury to Allen Pryor who was injured when he slipped while exiting his 1985 Freightliner truck. He slipped on the diamond plate battery box cover which doubled as a step. Defendant denied any similar accidents and claimed similar vehicles had been driven millions of miles without any such accidents. After a trial in October 1996, the jury awarded \$1.05 million and the matter settled after post-trial motions.

Other counsel: G. Keith Phoenix  
Co-Counsel for defendant Freightliner Corp.  
One City Centre  
15<sup>th</sup> Floor  
515 North Sixth Street  
St. Louis, MO 63101-1880  
(314) 231-3332

Joseph R. Hillebrand  
Co-Counsel for defendant Freightliner Corp.  
5111 West Main Street  
Belleville, IL 62226  
(618) 235-0020

8. Logan v. Old Enterprise Farms, Circuit Court, Twentieth Judicial Circuit, St. Clair County, Illinois; 188 Ill.App.3d 920 (5<sup>th</sup> Dist. 1989), rev'd by 139 IL 2nd 229 (1990). This case was heard by Circuit Judge Patrick Fleming, Deceased. The trial court was reversed on appeal by the Appellate Court with Justices Goldenhersh, Welch, and Harrison sitting on the panel. The Supreme Court reversed the Appellate Court. My client was Jo Ann Berry, mother and next friend of Anthony Logan, a minor. I represented her in all aspects of the litigation and wrote the briefs in the Appellate and Supreme courts.

Anthony Logan, 16, was rendered quadriplegic when he fell from a tree while retrieving a rope swing at a church sponsored picnic. The rope was connected to a tree which enabled swimmers to swing out into the water and drop into a lake. While retrieving the rope, Logan fell 14 feet onto his head.

The defendants had alleged that the possibility of falling from a tree while retrieving a rope swing was "open and obvious" and therefore there was no duty to warn. Further, the defense claimed there was no liability absent willful and wanton misconduct on their part due to the recreational land use acts which offer a limited immunity to landowners who open their property for recreational use by others. Extensive discovery occurred in 1987 and motions for summary judgment were argued in 1988.

The court granted summary judgment to the defendants, which was overturned on appeal. The Illinois Supreme Court refused to accept a petition for leave to appeal from the Appellate Court, and then, in an



unprecedented move reversed themselves, accepted the appeal and reversed the appellate court in 1990.

This case is frequently cited when dealing with "open and obvious" conditions and the recreational land use statutes.

Other counsel: John L. McMullin  
 Counsel for O'Fallon United Church of Christ  
 705 Olive Street, 11<sup>th</sup> Floor  
 St. Louis, MO 63104  
 (314) 421-3400

Stephen W. Thomson  
 Co-Counsel for Old Enterprise Farms  
 One Sunset Hills Professional Centre  
 Edwardsville, IL 62025  
 (618) 692-0028

James Gorman  
 Co-Counsel for Old Enterprise Farms  
 101 West Vandalia, Ste. 300  
 Edwardsville, IL 62025  
 (618) 656-0257

9. Denny v. Burpc, Twentieth Judicial Circuit, St. Clair County, Illinois; 124 Ill.App.3d 73 (5<sup>th</sup> Dist. 1984). The case was tried before Circuit Judge Thomas O'Donnell, Deceased. The Appellate Court reversed the trial court with Justices Harrison, Kasserman and Karns sitting on the panel. I represented Maria Denny in this litigation from 1982 to 1984.

Due to a surgical error, Mrs. Denny sustained a vesico-vaginal fistula. I was co-counsel for Mrs. Denny. This case was tried in 1983. Dr. Willard Scrivner was defendant's expert in this medical malpractice case. Dr. Scrivner testified, over objection, about a conversation with another expert and that expert's conclusions were heard by the jury. The appellate court granted a new trial based upon this hearsay testimony and held it was outside the parameters of Federal Rules 703 and 705, which had recently been adopted by case law in Illinois.

This was one of the first reported state appellate cases after Federal Rules 703 and 705 were adopted by the Illinois Supreme Court. The matter was settled after a new trial was ordered.

Other counsel: Stephen M. Tillery  
 Co-counsel for plaintiff  
 10 Executive Woods Court  
 Belleville, IL 62226  
 (618) 277-1180

Richard M. Roessler  
Attorney for defendant Burpo  
5000 West Main Street  
Belleville, IL 62223  
(618) 277-9000

10. Board of Trustees of the Police Pension Fund of Fairview Heights, Illinois v. Mathias, Twentieth Judicial Circuit, St. Clair County, Illinois; 92 Ill.App.3d 559 (5<sup>th</sup> Dist. 1981), tried before Associate Judge David Costello (Retired). The trial court was reversed by the Appellate Court with Justices Karns, Harrison and Kasserman sitting on the panel. I represented The Board of Trustees of the Police Pension Fund of Fairview Heights, Illinois in this litigation from 1980 to 1981.

Patrick Prindable left the employ of the City of Fairview Heights as a policeman and withdrew his pension funds. He later rejoined the force but was not allowed back into the pension fund without repayment of his previous withdrawal. Pension fund participation was a prerequisite to becoming a police officer. The Board had a common interest with Prindable in allowing him to return to their employ without paying back the funds. At trial in 1981, the Board lost and Prindable was not allowed to return to the force without paying the arrearage. The trial court was reversed on appeal and former pension fund participants, including Prindable, were permitted to re-enter service without paying past withdrawals.

Other counsel: Paul Bargiel  
100 West Monroe Street  
Suite 902  
Chicago, IL 60603  
(312) 263-0888

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

Over the years, I have acted as an arbitrator in disputes including uninsured/underinsured motorists cases, business disputes and employment discrimination matters. Additionally, I have acted as mediator in personal injury matters, law firm dissolutions and attorney-client disagreements.

I have testified as an expert witness on the issue of reasonableness of attorney fees and costs. Further, I have offered opinions regarding the standard of care required of attorneys in litigation and the duty of insurers regarding their obligation of good faith towards their insureds.

Additionally, because of a special interest in attorney ethics, I arranged for 25% of the 1999 - 2000 seminars of the Illinois Trial Lawyer's Association to have an ethical topic included in the program.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

I have a SEP/IRA through The Law Office of Michael J. Reagan which is administered by A.G. Edwards, Inc. If confirmed, I would no longer make contributions to the plan and it would remain in an invested state until I am old enough to make withdrawals.

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

I will recuse myself from any cases that are assigned to me in which I have acted as counsel, co-counsel or where I have previously represented a party. I will recommend alternate counsel to my current clients so their legal service needs are addressed. For cases in which I have a contingency fee expectation, I will negotiate a referral fee. Additionally, I will negotiate terms for repayment of costs expended. I will recuse myself from any cases where the attorney handling the matter is an attorney with whom I have a referral fee arrangement. Cases that I handle which are billed on an hourly basis will be billed to the date I begin service on the bench. All hourly fees after that will be the property of the succeeding lawyer.

I will follow the guidance of Canon 3 (C) of the Code of Conduct for United States Judges with respect to disqualification. Additionally, I will follow the requirements of Canon 3 (D) regarding remittal of disqualification, where appropriate.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

No.

year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached financial report ( Form AO-10).

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

See attached financial net worth statement, which includes schedules.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

I never held an office in a candidate's campaign. However, I have participated in fundraisers and solicited contributions for candidates. On October 17, 1996 Elaine and I hosted a reception in our home in honor of State Representative Terry Deering (since deceased) who was seeking re-election in the 116<sup>th</sup> District as State Representative. We also hosted a reception in our home on July 23, 1999 in honor of United States Senator Richard Durbin. Additionally, I have written a number of fundraising letters in the past.

AO-10 (w)  
Rev. 1/2000

**FINANCIAL DISCLOSURE REPORT**  
Nomination Report

Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4, Sec. 101-112)

<b>1. Person Reporting</b> (Last name, first, middle initial) Reagan, Michael J.		<b>2. Court or Organization</b> Southern District of Illinois	<b>3. Date of Report</b> 05/15/2000
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge (Nominee)		<b>5. Report Type (check type)</b> X Nomination, Date 05/11/2000 Initial _____ Annual _____ Final _____	<b>6. Reporting Period</b> 01/01/1999 to 05/02/2000
<b>7. Chambers or Office Address</b> 3201 West Main Street Belleville Illinois 62225		<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	
<i>IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.</i>			

**I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Commissioner (See Section VIII., comment A)	Attorney Registration and Disciplinary Commission for the Supreme Court of Illinois
2 President (See section VIII., comment B)	Illinois Trial Lawyers Association
3 Trustee	For Michael Jarod Reagan under the Illinois Uniform Gift to Minors Act

**II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1	Method of handling contingent fee referrals and office wind-down--see Sec. VIII, comment C.
2	
3	

**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1993	Compensation paid the Law Firm of Michael J. Reagan for legal services rendered.	\$1,083,414.00
2 1997	Compensation paid Michael J. Reagan for services as an Assistant Public Defender.	\$10,807.00
3 2000	Compensation paid to the date of this report to The Law Office of Michael J. Reagan.	\$29,100.00
4 2000	Compensation paid to the date of this report by St. Clair County, IL for services rendered by Michael J. Reagan as an Assistant Public Defender.	\$4,100.00

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Reagan, Michael J.	05/15/2000

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
<input type="checkbox"/>	NONE	
1	EXEMPT	
2		
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
<input type="checkbox"/>	NONE		
1	EXEMPT		
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
<input checked="" type="checkbox"/>	NONE		
1			
2			
3			
4			
5			
6			

\* VAL CODES: J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001 to \$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more

Name of Person Reporting Reagan, Michael J.	Date of Report 05/15/2000
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**FINANCIAL DISCLOSURE REPORT** (Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

**VII. Page 1 INVESTMENTS and TRUSTS-- income, value, transactions**

A Description of Assets (including trust assets)  <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period	If not exempt from disclosure				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-T)	(2) Value Method Code (Q-W)		(1) Type (e.g., buy, sell, partial sale, merger, redemption)	(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-B)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)										
1 Trustee For Justin Michael Reagan Under the Illinois UGMA	A	Interest	K	T	Exempt					
2 -Capital World Growth & Income Fund Mutual Fund										
3 -New Economy Fund SBI Mutual Fund										
4 -Thornburg Investment Trust Value Fund CL A Mutual Fund										
5 Trustee for Michael Jarod Reagan under the Illinois UGMA.	A	Interest	K	T	Exempt					
6 -Capital Income Builder Fund SH Ben. Int Mutual Fund										
7 -New Economy Fund SBI Mutual Fund										
8 -Thornburg Investment Trust Value Fund CL A Mutual Fund										
9 Trustee for Bradley Edgar Reagan under the Illinois UGMA.	A	Interest	K	T	Exempt					
10 -Fundamental Investors Inc. Mutual Fund										
11 -New Economy Fund SBI Mutual Fund										
12 -Thornburg Investment Trust Value Fund CL A										
13 Trustee for Jonathan Patrick Reagan under the Illinois UGMA.	A	Interest	K	T	Exempt					
14 -Fundamental Investors Inc. Mutual Fund										
15 -New Economy Fund SBI Mutual Fund										
16 -Thornburg Investment Trust Value Fund CL A										
17 IRA- Elaine Catherine Reagan-Janus Mutual Fund	E	Dividend	L	T	Exempt					

1 In Chain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000  
(Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 I2=\$5,000,001 or more

2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
(Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

3 Val Mz Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market  
(Col. C2) U=Book Value V=Other W=Estimated



Name of Person Reporting Reagan, Michael J.	Date of Report 05/15/2000
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**FINANCIAL DISCLOSURE REPORT** *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

**VII Page 2 INVESTMENTS and TRUSTS-- income, value, transactions**

A. Description of Assets (including trust assets)  <i>Place "(C)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period	If not exempt from disclosure				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (I-F)	(2) Value Method Code (Q-W)		(1) Type (e.g., buy, sell, partial sale, merger, redemption)	(2) Date: Month- Day	(3) Value Code (I-F)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)										
18 IRA-Michael Joseph Reagan-A.G. Edwards & Sons	E	Dividend	N	T	Exempt					
19 -Anheuser-Bush Co. Stock										
20 -Caterpillar Inc. Stock										
21 -Fluor Co. Stock										
22 -Hewlett-Packard Co. Stock										
23 -Earthgrains Co. Stock										
24 -Lucent Technologies Inc. Stock										
25 -McKesson HBC Inc. Stock										
26 -J.P. Morgan & Co. Stock										
27 -NCR Co. New Stock										
28 -Potash Corporation of Saskatchewan										
29 -Sysco Co. Stock										
30 -United Technologies Co. Stock										
31 -William Wrigley Jr. Co. Stock										
32 -AMCAP Mutual Fund										
33 -Euro-Pacific Growth Fund SBI Mutual Fund										
34 -Income Fund of North America Mutual Fund										

1 Ino/Gain Codes: A=\$1,000 or less    B=\$1,001-\$2,500    C=\$2,501-\$5,000    D=\$5,001-\$15,000    E=\$15,001-\$50,000  
(Col. B1, D4)    F=\$50,001-\$100,000    G=\$100,001-\$1,000,000    H1=\$1,000,001-\$5,000,000    H2=\$5,000,001 or more

2 Val Codes: J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001-\$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000  
(Col. C1, D3)    O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more

3 Val Mth Codes: Q=Appraisal    R=Cost (real estate only)    S=Assessment    T=Cash/Market  
(Col. C2)    U=Book Value    V=Other    W=Estimated

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Reagan, Michael J.	Date of Report 05/15/2000
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**VII. Page 3 INVESTMENTS and TRUSTS-- income, value, transactions**  
*(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A Description of Assets (including trust assets)  <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
					If not exempt from disclosure				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
35 -Washington Mutual Investors Fund Mutual Fund									
36 -Trimble Navigation Ltd. Stock									
37 SEP-IRA Michael Joseph Reagan A.G. Edwards & Sons. Inc	B	Dividend	L	T	Exempt				
38 -Johnson & Johnson Stock									
39 -AT&T Co. Stock									
40 -Anheuser-Busch Co. Stock									
41 Joint account--A.G. Edwards & Sons. Inc.	E	Interest	M	T	Exempt				
42 -Synantec Co. Stock									
43									
44									
45									
46									
47									
48									
49									
50									
51									

1 Inc Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$30,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000

2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Reagan, Michael J.	05/15/2000

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.**

*(Indicate part of report.)*

Comment A: I will resign these positions prior to taking the oath of office of U.S. District Judge.

Comment B: This position will automatically terminate on June 2, 2000.

Comment C: Prior to taking the oath of office, I intend to refer my contingent fee cases to competent counsel and negotiate a referral fee and arrange for reimbursement of costs expended. Additionally, I intend to sell my office building and furnishings. These agreements will be included in a subsequent Financial Disclosure Report.

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Reagan, Michael J.	Date of Report 05/15/2000
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**SECTION HEADING.** (Indicate part of report.)  
 Information continued from Parts I through VI, inclusive.  
 PART 1. POSITIONS (cont'd.)

Line	Position	Name of Organization/Entity
4	Trustee For Bradley Edgar Reagan under the Illinois Uniform Gift to Minors Act	
5	Trustee For Justin Michael Reagan under the Illinois Uniform Gift to Minors Act.	
6	Trustee For Jonathan Patrick Reagan under the Illinois Uniform Gift to Minors Act.	
7	Honorary Deputy Sheriff (See Section VIII., comment A)	St. Clair County, IL
8	Assistant Public Defender (See section VIII., comment A)	St. Clair County, IL

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Reagan, Michael J.	05/15/2000

## IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Michael J. Reagan Date 5/15/2000

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
 Administrative Office of the United States Courts  
 One Columbus Circle, N.E.  
 Suite 2-301  
 Washington, D.C. 20544

FINANCIAL STATEMENT (NET WORTH) OF MICHAEL AND ELAINE REAGAN

ASSETS		LIABILITIES	
Cash on hand and in banks--Schedule A	\$ 6,462.43	Notes payable to banks--secured	None
U.S. Government securities	\$ 826,218.00	Notes payable to banks--unsecured	None
Listed securities--Schedule B		Notes payable to relatives	None
Unlisted securities--add schedule		Accounts and bills due	None
Accounts and notes receivable:		Unpaid income tax	None
Due from relatives and friends	\$ 36,290.00	Other unpaid tax and interest	None
Due from clients (As of 5/12/00)		Real estate mortgages payable--Schedule F	\$ 122,594.00
Doubtful		Charter mortgages and other liens payable	
Real estate owned--Schedule C	\$ 795,000.00	Other debts--itemize:	
Real estate mortgages receivable			
Autos and other personal property-- Schedule D	\$ 459,810.00		
Cash value--life insurance--Schedule E	\$ 35,803.00		
Other assets--itemize:			
Attorney Fees -work in process in contingent fee cases. Amount is undetermined. A negotiated percentage of recovery will be agreed upon with counsel to whom the cases are referred.			
Case costs due from clients (as of 5/12/00)	\$ 11,062.00	Total liabilities	\$ 122,594.00
Tax refund carryover from after 1st Qtr. Est. Taxes	\$ 16,485.00	Net Worth	\$ 2,064,536.43
Total Assets	\$ 2,187,130.43	Total liabilities and net worth	\$ 2,187,130.43
<b>CONTINGENT LIABILITIES</b>		<b>GENERAL INFORMATION</b>	
As endorser, comaker or guarantor	None	Are any assets pledged?	No.
On leases or contracts (Auto Lease-30 months left)	\$1283.03 per month	Are you defendant in any suits or legal actions?	No.
Legal Claims	None	Have you ever taken bankruptcy?	No.
Provision for Federal Income Tax	None		
Other special debt	None		

FINANCIAL STATEMENT (NET WORTH) OF MICHAEL AND ELAINE REAGAN

Schedule A- Cash on hand and in banks		
Union Bank-Office Account	\$	6,261.55
Union Bank-Home Account	\$	200.88
Cash on hand		
Total	\$	6,462.43
Data Current as of 5/12/00		

FINANCIAL STATEMENT (NET WORTH) OF MICHAEL AND ELAINE REAGAN

Schedule B—Securities	
A. G. Edwards—Joint Account	\$ 179,035.00
A. G. Edwards—SEP/IRA Account	\$ 79,854.00
A. G. Edwards—M/JR IRA	\$ 382,131.00
Janus Fund—ECR IRA	\$ 61,680.00
A. G. Edwards—JMR Account (Custodial)	\$ 28,686.00
A. G. Edwards—M/JR Account (Custodial)	\$ 31,664.00
A. G. Edwards—BER Account (Custodial)	\$ 31,664.00
A. G. Edwards—JPR Account (Custodial)	\$ 31,664.00
<b>Total</b>	<b>\$ 826,218.00</b>
Data current as of 5/12/00	





FINANCIAL STATEMENT (NET WORTH) OF MICHAEL AND ELAINE REAGAN

Schedule D—Autos and other personal property	
Ford F 150 truck	\$ 10,315.00
Ford Mustang	\$ 14,595.00
Volvo wagon	\$ 21,760.00
Toyota Land Cruiser	\$ 51,650.00
Lowie Pontoon Boat	\$ 3,500.00
Cobalt 272	\$ 32,000.00
Kawasaki 750 SS	\$ 2,000.00
Kawasaki 1100 STX	\$ 4,000.00
Furnishings-residence, Belleville, IL	\$ 200,000.00
Furnishings-office, Belleville, IL	\$ 100,000.00
Furnishings-vacation home, Camdenton, Mo.	\$ 20,000.00
Furnishings data non-appraised, estimated values	
<b>Total</b>	<b>\$ 459,810.00</b>
Auto data from Kelly Blue Book-retail 4-25-00	
Boat data estimated except Cobalt-NADA value	

FINANCIAL STATEMENT (NET WORTH) OF MICHAEL AND ELAINE REAGAN

Schedule E—Life insurance cash value	
Northwestern Mutual	\$ 22,893.00
New York Life	\$ 12,910.00
<b>Total</b>	<b>\$ 35,803.00</b>
Data current as of 9/27/99.	

FINANCIAL STATEMENT (NET WORTH) OF MICHAEL AND ELAINE REAGAN

Schedule F--Real estate mortgages	
Residence- Belleville, IL (Bank of America)	\$ 122,594.00
Total	\$ 122,594.00
Data current as of 5/12/00	

## III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

My wife Elaine and I, recognizing the importance of charitable works, provided initial funding for the Illinois Trial Lawyers Association Charitable Foundation which I founded as President in 1999. This foundation has been given provisional IRS section 501(c) (3) approval.

From 1998 to the present, I have been Co-Chair of the St. Clair County Campaign for Equal Justice. This Campaign is raising funds for Land of Lincoln Legal Assistance, Inc., a private, not-for-profit corporation providing legal assistance to low-income people. As of this writing, we have raised approximately \$350,000 of our \$500,000 goal. I spend approximately 3 hours per month on this project.

From 1998 to the present, I have been a member of the Belleville Area College Paralegal Studies Advisory Board. The Board studies and recommends curricula for the paralegal program. I spend approximately 2 hours per month with this Board.

From 1996 to the present, I have been an Assistant Public Defender in St. Clair County, Illinois representing indigent criminal defendants. While I receive a monthly salary and benefits, that remuneration does not equate to the actual time I expend in this representation. I work approximately 10 to 15 hours per month as an Assistant Public Defender.

Since 1995, I have been a Commissioner for the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois. The Supreme Court of Illinois appointed me, along with six others, to this position which administers the attorney registration and disciplinary system. I spend 15 to 20 hours per month on ARDC related matters.

I also speak approximately every other year to the Illinois Department of Public Health and attend their seminar regarding aquatic safety and liability issues.

It is my policy to handle at least one legal pro-bono matter at all times. The time expended varies due to the nature of the case but averages 2 to 4 hours per month.

Between 1990 and 1995, I was a member of the Civil Justice Reform Act of 1990 Advisory Group for the Federal Court, Southern District of Illinois. Chief Judge James Foreman appointed me to this position to help review the inner-workings of the United States District

Court with a view towards improving the civil litigation area of federal practice. I spent approximately 3 hours per month on the CJRA committee.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have belonged, to any organization which discriminates – through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?**

From 1988 to 1996, I belonged to the St. Clair County Country Club which had an express policy prohibiting female members. Along with others, I was successful in changing this policy and on November 6, 1992, I sponsored Lenore C. Hohlt, the first female member.

The St. Clair Country Club did not have an express or de facto policy prohibiting membership by African-Americans. In point of fact, however, there were no African-American members. I attempted to recruit an African-American member and made arrangements to have his initiation fees paid. However, he elected not to file an application.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

I filed an application with Senator Durbin's office after the judicial vacancy was announced. A nine-member judicial merit selection commission reviewed my application and engaged in detailed interviews with opposing counsel, judges and references. I attended an interview with the commission on February 10, 2000, which culminated in my name, along with two others, being sent to Senator Durbin for consideration. I received a "yes" vote by all Commissioners.

I underwent an additional credential and background review by the standing committee on the judiciary of the Illinois State Bar Association. They were asked to rate the finalists "qualified" or "not qualified." I was rated to be qualified for the bench.

On February 26, 2000, I met personally, as did the other two finalists, with Senator Durbin in Springfield, Illinois for an interview. On March 8, 2000, Senator Durbin announced he would send my name to the President for consideration.

Immediately thereafter, I was contacted by the Office of Counsel to the President about the nomination procedure and forwarded various forms for processing. Next, I was contacted by the Office of Policy Development of the Department of Justice. I traveled to Washington, D.C., on March 31, 2000 to meet with staff of the Office of Policy Development.

My SF-86 questionnaire was then forwarded to the FBI at the same time my ABA Personal Data Questionnaire was sent to ABA's standing Committee on Federal Judiciary.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

**The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.**

**Some of the characteristics of this "judicial activism" have been said to include:**

- a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**
- b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**
- c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**
- d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and,**

- e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

Federal judges should respect the Constitution's separation of powers; follow the doctrine of stare decisis; apply the language of the Constitution and statutes; heed the restrictions in the Federal Rules; and observe the principles of standing, ripeness, mootness and justiciability. Moreover, judges should not use the judiciary to advance personal agendas, values, or broad policy preferences.

Judicial activism encroaches upon the separation of powers. Using judicial powers for broad policy-making usurps the authority of the legislative and executive branch and brings the authority of the courts into disregard.

Judges must be neutral. A judge who imposes his or her own values and policy preferences or exceeds the bounds of adjudication is no longer neutral.



[The biographical information of Mr. Teilborg follows:]

JAMES A. TEILBORG

1. Full name (include any former names used).

**James A. Teilborg**

2. Address: List current place of residence and office address(es).

**Home: Phoenix, Arizona**

**Office: Teilborg, Sanders & Parks, P.C.  
3030 North Third Street, Suite 1300  
Phoenix, Arizona 85012-3099**

3. Date and place of birth.

**12/29/42**

**Pueblo, Colorado**

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

**Date of Marriage: 2/9/62**

**Constance Lucile (Anderson) Teilborg (homemaker)**

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

**Colorado State University**

**Ft. Collins, Colorado**

**September 1960 to December 1961**

**January 1963 to July 1963**

**Reason for leaving: To enter law school**

**Colorado State College**

**Greeley, Colorado**

**January 1962 to December 1962**

**Reason for leaving: Return to Colorado State University**

University of Arizona  
College of Law  
Tucson, Arizona  
September 1963 to May 1966  
Graduated: Juris Doctor Degree

Air War College  
(Correspondence)  
Maxwell AFB, Al 36112  
June 1987 to June 1989  
Diploma

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

During law school (August 1963 to June 1966) I held these part time jobs:

September 1963 to June 1966  
Radio announcer  
KTUC Radio  
Tucson, Arizona

June 1964 to June 1965  
Law offices  
Rees Estes and Browning  
Tucson, Arizona

From law school graduation in May 1966 to August 1967, I was on active duty with the United States Air Force.

August 1967 to September 1972  
Associate lawyer  
O'Connor, Cavanagh, Anderson, Westover, Killingsworth & Beshears  
Phoenix, Arizona

September 1972 to January 1973  
Lawyer/Partner  
Dunn & Teilborg  
Phoenix, Arizona

February 1973 to present  
Lawyer/Shareholder-Director  
Teilborg, Sanders & Parks, P.C. (then Dunn, Teilborg, Sanders,  
Haga & Parks, P.C.)  
Phoenix, Arizona

One term in 1992 and one term in the mid 1980s  
Unpaid Judge Pro Tem  
Arizona Court of Appeals  
Phoenix, Arizona

Boards

1979 to 1990  
Phoenix Baptist Hospital/Baptist Hospital & Health Systems  
Director/Officer  
Phoenix, Arizona

1978 to 1980 (approximately)  
Director  
ReCyCo  
Phoenix, Arizona

1979 to 1982 (approximately)  
Director/Officer  
Lifeguard, Inc.  
Phoenix, Arizona

1979 to 1999  
Director/Officer  
Abundant Life, Inc. (non-profit ministry)  
Phoenix, Arizona

1997 to 1999  
Director/Officer  
Northridge Village Homeowners' Association  
Phoenix, Arizona

1977 to 1985  
Director/Officer  
Maricopa County Bar Association  
Phoenix, Arizona

1977 to 1984  
Director/Officer  
Phoenix Association of Defense Counsel  
Phoenix, Arizona

1981 to 1982  
Director/Officer  
Volunteer Lawyers Program  
Phoenix, Arizona

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Yes. 5/14/66 to 4/1/97  
Active duty, U.S. Air Force 7/66 to 8/67  
Air National Guard, U.S. Air Force Reserve  
Colonel  
XXXXXXXXXXXX  
Present status: Retired Reserve

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Fellow, American College of Trial Lawyers

Distinguished Graduate, USAF Undergraduate Navigator Training,  
April 1967

Outstanding Deputy Liaison Officer Commander, United States Air  
Force Reserve

The Legion of Merit, United States Air Force Reserve

9. Bar Associations: List all bar associations, legal or judicial-related committees, or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

State Bar of Arizona (1966 to present)

Colorado Bar Association (1986 to present)

Maricopa County Bar Association; President (1983); Member of Board of Directors (1977-1985)

Fellow, American College of Trial Lawyers (1995 to present)

Phoenix Association of Defense Counsel; President (1982); Member of Board of Directors (1977-1984)

Delegate to the Ninth Circuit Judicial Conference (1985, 1986, 1987; Chairman, Arizona, 1987)

Maricopa County Superior Court, Civil Study Committee (1982-1985)

Maricopa County Bar Association, Medical/Legal Liaison Committee, Chairman (1970s)

Volunteer Lawyers Program; Vice President (1981 to 1982); Member of Board of Directors

Chairman, Special State Bar Disciplinary Administrative Committee (one year term, 1970s)

State Bar of Arizona, Civil Trial Practice Specialization Advisory Commission (1985 to 1988)

State Bar Committee on Uniform Jury Instructions (1985-1988)

Federalist Society (approximately 1992 to present)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Organizations That Lobby

Aircraft Owners & Pilots Association

Air Force Association

Reserve Officers Association

Other Organizations

**International Association of Defense Counsel**

**Abundant Life, Inc. (non-profit ministry)**

**Lawyer Pilots Bar Association**

**NTSB Bar Association**

**Christian Legal Society**

**American Bonanza Society**

**Experimental Aircraft Association**

11. Court Admission: List all courts in which you have been admitted or practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

**Arizona Supreme Court  
September 17, 1966**

**Colorado Supreme Court  
August 8, 1986**

**United States District Court  
District of Arizona  
September 22, 1967**

**United States Court of Appeals  
Ninth Circuit  
September 3, 1987**

**White Mountain Apache Tribal Bar Association, Arizona  
February 2, 1999**

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or

legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

**As President of the Maricopa County Bar Association I wrote a monthly column in 1983 and 1984. Copies of those articles which could be located are attached.**

**Speech/paper presented to SMU Air Law Symposium  
February 26, 1997 (attached)**

**I gave speeches at the State Bar Convention on three separate occasions: 1) Recent Legislative Enactments; 2) Construction Accidents; and 3) Time Management for Lawyers. I have been unable to find any notes concerning these. They would have been in the late 1970s and early 1980s.**

**Additionally, in approximately 1983 I gave a speech to the Legal Secretaries Association in Phoenix, Arizona, on the subject of time management. I have been unable to find any notes concerning that subject.**

13. Health: What is the present state of your health? List the date of your last physical examination.

**Excellent. Hold Class II FAA medical certificate.  
Last physical examination was January 3, 2000**

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

**None (other than unpaid service as a Judge Pro Tem, Arizona Court of Appeals, on two occasions in approximately the late 1980's and 1992)**

15. Citations: If you are or have been a judge, provide:

**I served as an unpaid Judge Pro Tem, Arizona Court of Appeals, for one term in the 1980s and for another term in 1992. I authored two unpublished opinions. I have located the 1992 opinion, which is attached, but have been unable to locate the opinion I wrote during the term in the 1980s.**

(1) citations for the ten most significant opinions you have written;



**Unpublished Opinion authored as Judge Pro Tem, Arizona Court of Appeals, December 10, 1992, Judith A. Tetreault v. Charles Leland and John Doe Leland, 1 CA-CIV 91-0463 (attached)**

(2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and

**To my knowledge, neither opinion was the subject of further appellate review.**

(3) citations for significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

**Not applicable**

If any of the opinions listed were not officially reported, please provide copies of the opinions.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

**None**

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

**I did not clerk for a judge.**

2. whether you practiced alone, and if so, the addresses and dates;

**I have never practiced alone.**

3. the dates, names and addresses of law firms or offices, companies, or governmental agencies with which you have been connected, and the nature of your connection with each;

**August 1967 to September 1972**

**Associate lawyer**

**O'Connor, Cavanagh, Anderson, Westover,  
Killingsworth & Beshears  
One East Camelback, Suite 110  
Phoenix, Arizona 85012**

**September 1972 to January 1973**

**Lawyer/Partner**

**Dunn & Teilborg  
100 West Washington  
Phoenix, Arizona 85003**

**February 1973 to present**

**Lawyer/Shareholder-Director**

**Teilborg, Sanders & Parks, P.C.  
3030 North Third Street, Suite 1300  
Phoenix, Arizona 85012**

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

**I graduated from law school and was admitted to the State Bar of Arizona in 1966. I reported for active duty with the U.S. Air Force in July of 1966 to attend undergraduate navigator training. I was released from active duty in August of 1967 and was thereafter affiliated with the Arizona Air National Guard as a navigator.**

**I joined the law firm of O'Connor, Cavanagh, Anderson, Westover, Killingsworth & Beshears as an associate in September 1967 following my release from active duty. I have practiced law continuously since that time. In September of 1972 I left that law firm and started the firm of Dunn & Teilborg. Dunn & Teilborg became Dunn, Teilborg, Sanders, Haga & Parks in February of 1973. Except for name changes,**

that law firm continues to the present day as Teilborg, Sanders & Parks.

My practice has been limited to civil litigation with an emphasis on tort litigation. While the majority of my time has been spent as an insurance defense lawyer, I have handled a number of substantial plaintiff's injury and wrongful death cases and selected commercial litigation. In late 1982 I began handling complex commercial and toxic tort litigation, and those cases occupied a significant portion of my time over the next 17 years.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My firm represents a number of liability insurance companies who hire our lawyers to represent their insureds, including both individuals and corporations. The claims typically involve automobile accidents, premises liability claims, legal and medical malpractice claims, aircraft accidents, and claims against school districts, municipalities and other corporate and governmental bodies. From time to time, I represent injured parties who have claims against the person or corporation causing the injury. These types of cases comprise 10 percent to 50 percent of my time, depending on the year.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Regularly. The frequency of court appearances was reduced as the demands from complex and class action litigation increased.

During the past five years a major portion of my time was devoted to Yslava v. Hughes Aircraft, a federal court consolidation of cases involving over 350 individual plaintiffs and a certified class, during which time I was responsible for medical discovery and medical experts located throughout the United States. In that case I argued before the Arizona Supreme Court a certified question presented by the U.S. District Court concerning an issue of joint and several liability. During this same period, I was involved in defending the City of Scottsdale in similar but separate litigation in Maricopa County Superior Court, also toxic tort individual claimants and class action

claimants. These two groups of cases were among the largest in Arizona during the 1992 to 1999 time frame.

In prior years court appearances and trials were more frequent. In recent years court appearances involved motions, good-faith hearings, status conferences, and pretrial conferences. I have tried three jury trials in the past five years.

2. What percentage of these appearances was in:

(a) federal courts;

20% to 30%

(b) state courts of record;

70% to 80%

(c) other courts.

3. What percentage of your litigation was:

(a) civil;

100%

(b) criminal.

0%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Since September 1967, I have tried 47 jury trials and 16 bench trials. Of these 63 trials, 56 were either as sole counsel or chief counsel.

5. What percentage of these trials was:

(a) jury;

74%

(b) non-jury.

26%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and 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. Frey v. Sequoia. Docket No. C-283445. I was co-counsel for a young man who was rendered a quadriplegic because a rollover protective structure (ROPS) collapsed and fell on his head due to a defective weld. He and his wife brought suit against the manufacturer and retailer. The jury awarded the plaintiffs \$4.5 million, but the trial judge reduced the award to \$3.2 million. The manufacturer and retailer appealed the verdict. The verdict and judgment were affirmed on appeal. Sequoia Mfg. Co. v. Halec Construction Company, 117 Ariz. 11, 570 P.2d 782 (App. 1977).

- a. December 1974
- b. Superior Court, Maricopa County, Arizona  
Judge Paul LaPrade (deceased)
- c. William R. Jones, Jr.  
Co-counsel for plaintiffs  
2901 N. Central, Suite 800  
Phoenix, Arizona 85012  
(602) 263 1714

Phillip R. Robbins  
Counsel for third party defendant  
3300 N. Central, Suite 1800  
Phoenix, Arizona 85012  
(602) 248 7601

Michael R. Murphy  
Counsel for third party defendant  
117 E. Gurley, 3<sup>rd</sup> Floor  
P.O. Box 591  
Prescott, Arizona 86302  
(520) 445 6860

Jack Anderson (deceased)  
Counsel for defendant retailer

Donald R. Wilson  
Counsel for defendant manufacturer  
910 E. Osborn Road  
Phoenix, Arizona 85014  
(602) 248 9222

2. Frey v. USF&G. Docket No. CIV 75-228 WEC. This was a separate and subsequent lawsuit against the insurance company for the manufacturer against which the \$3.2 million was awarded as described above in Frey v. Sequoia. Because the manufacturer's insurance company had turned down an opportunity to settle the case for its policy limits, the plaintiffs Frey agreed not to levy execution against the manufacturer in return for an assignment by the manufacturer of its cause of action for bad faith against its insurance company. This bad faith lawsuit was tried without a jury and the judge entered judgment against the defendant insurance company and in favor of the plaintiffs Frey for the full amount of the verdict in excess of the insurance company's policy limits. The defendant insurance company appealed, but the case was settled for a confidential amount while on appeal.

- a. April 1979
- b. United States District Court for the District of Arizona  
Judge Walter Craig (deceased)

- c. William R. Jones  
Co-counsel for the plaintiffs  
2901 N. Central, Suite 800  
Phoenix, Arizona 85012  
(602) 263 1714

Arthur P. Greenfield  
Counsel for defendant  
One Arizona Center  
400 East Van Buren  
Phoenix, Arizona 85004  
(602) 382 6253

3. Welch v. State of Arizona. Docket No. C 381035. I represented as sole counsel the State of Arizona and its employee-hearing officer who was flying his personal aircraft on State business. He was involved in a mid-air collision with another aircraft as a result of which the pilot was killed. The pilot's widow filed a wrongful death claim against the State and its employee. This case was tried to a jury for approximately three weeks, resulting in a defense verdict for the State and its employee. The case was appealed and the judgment was reversed in an unpublished memorandum decision. The Court of Appeals reversed because the trial court instructed the jury that it could consider whether the deceased pilot had assumed the risk of a mid-air collision by electing to pilot his aircraft in formation flight. The Court held that it was proper for the jury to consider whether or not this conduct amounted to contributory negligence, but not assumption of risk. The case was settled before retrial.

- a. April 1980
- b. Superior Court, Maricopa County, Arizona  
Judge Elizabeth Stover
- c. Paul Beer  
Co-counsel for plaintiff  
76 E. Mitchell  
Phoenix, Arizona 85012  
(602) 263 0900

Daniel J. Stoops  
Co-counsel for plaintiff  
222 East Birch, P.O. Box 10  
Flagstaff, Arizona 86002  
(520) 779 6951

4. Smith v. Woolworth. Docket number 355286. I represented as sole counsel the defendant Woolworth. The plaintiff was a Woolworth customer and was shot by another individual. As a result, the plaintiff was paralyzed from the waist down and claimed that Woolworth was negligent in the security it provided its customers. This case was tried to a jury for approximately three weeks and resulted in a verdict in favor of the defendant Woolworth.

- a. May 1980
- b. Superior Court, Maricopa County, Arizona  
Judge Morris Rozar
- c. Leonard J. Mark  
Counsel for plaintiff  
2025 N. Third Street, Suite 150  
Phoenix, Arizona 85004  
(602) 257 0200

5. Falcon v. Interstate. Docket No. CIV 77-74 PHX VAC. I was chief counsel for the defendant manufacturer/distributor of an automobile "MAG" wheel which broke causing the automobile in which plaintiff was riding to leave the road and overturn. As a result the plaintiff became a paraplegic. He sued Interstate claiming that the wheel was defectively manufactured. This case was tried to a jury for approximately two weeks resulting in a verdict for the defendant manufacturer/distributor.

- a. March 1981
- b. United States District Court for the District of Arizona  
Judge Valdamar Cordova (deceased)
- c. D. W. Grainger  
Counsel for plaintiff  
40 N. Central Avenue  
Phoenix, Arizona 85004  
(602) 262 5362

Ted A. Schmidt  
Counsel for co-defendant  
Suite 6000 West Tower  
5255 E. Williams Circle  
Tucson, Arizona 85711  
(520) 790 5600



6. Foremost v. Allied. Docket No. 184878. I was chief counsel for the defendant Allied, a manufacturer of various solvents. In an earlier trial the plaintiffs recovered a wrongful death verdict of \$450,000 against Foremost-McKesson, a distributor of the solvent, on the theory that this solvent caused the decedent's cancer. Foremost-McKesson then sued Allied in this case asking to be indemnified for the \$450,000 it paid plaintiffs. This indemnity case was tried to a jury in a three week trial. The jury found in favor of the defendant Allied. Foremost-McKesson appealed complaining that the trial judge erroneously instructed the jury that the burden of proof was on Foremost-McKesson to establish that the underlying trial was not collusive. The Court of Appeals reversed the case on the basis of that instruction and remanded it for retrial. Foremost McKesson Corp. v. Allied Chemical Co., 140 Ariz. 108, 680 P.2d 818 (App. 1983). The case was subsequently settled before retrial.

- a. February 1982
- b. Superior Court, Pima County, Arizona  
Judge Phillip Fahringer
- c. William H. Tinney (deceased)  
Counsel for plaintiff

7. Ryan v. State of Arizona. Docket No. C-357384. I was chief counsel defending the State of Arizona, Department of Youth Corrections, at the request of its liability insurance carrier, against a claim by a convenience store clerk for injuries he suffered when shot in the stomach by an escaped youth offender. This case was tried for approximately two weeks to a jury and resulted in a defense verdict for State of Arizona. The plaintiff appealed but the jury verdict was upheld. Ryan v. State, 150 Ariz. 549, 724 P.2d 1218 (App. 1986). I assisted in preparation of the briefs on appeal which was argued by my partner, Robert J. Bruno.

This trial followed the decision of the Arizona Supreme Court in Ryan v. State, 134 Ariz. 308, 656 P.2d 597 (1982) which rejected the last vestige of governmental immunity in Arizona. The trial court had granted summary judgment for the State. Plaintiff appealed and in a two-to-one decision the summary judgment was affirmed. Ryan v. State, 134 Ariz. 327, 656 P.2d 616 (App. 1982). I assisted in preparation of the briefs for that appeal. Plaintiff petitioned the Arizona Supreme Court for review which was granted. The Supreme Court reversed and remanded the case for trial. Ryan v. State, 134 Ariz. 308, 656 P.2d 597 (Approximately 1982). I assisted in drafting the

response to the petition for review. The case was argued by my partner, William R. Jones, Jr.

- a. September 1983
- b. Superior Court, Maricopa County, Arizona  
Judge David Derickson
- c. Frank Lewis  
Counsel for plaintiff  
111 W. Monroe, Suite 1400  
Phoenix, Arizona 85003  
(602) 254 6071

8. United Engineers v. A&MC. Docket No. CIV 82-1014 PHX PGR. I represented as chief counsel the defendant/counterclaimant, United Engineers and Constructors, a large national engineering/construction company specializing in the construction of power plants, including the one located near Farmington, New Mexico. A&MC was the electrical subcontractor whose contract was terminated by UE&C. A&MC sued for breach of contract. UE&C counterclaimed on grounds that A&MC was several months behind schedule as a result of which a replacement electrical subcontractor had to be substituted. As a result, UE&C incurred substantial losses plus the prospect of fines for not finishing the contract on time. The case consumed most of my time from the fall of 1982 until March of 1984, involved thousands of documents, and 75 to 100 witnesses. It was tried as a bench trial in the United States District Court for the District of Arizona over a period of approximately eight weeks. The trial judge entered judgment in favor of UE&C and against the plaintiff on plaintiff's complaint, and judgment in favor of UE&C and against A&MC on the counterclaim for damages and for an award of attorneys' fees. A&MC appealed and I argued the case before the United States Court of Appeals for the Ninth Circuit, Judges Hug, Tang and Boochever presiding. The trial court's judgment was upheld. L.K. Comstock and Co. v. United Engineers & Constructors, Inc., 880 F.2d 219 (9<sup>th</sup> Cir. 1989).

- a. March to May 1984
- b. United States District Court for the District of Arizona  
Judge Paul Rosenblatt

- c. Michael J. LaVelle  
Counsel for plaintiff/counterdefendant  
100 W. Clarendon, Suite 2100  
Phoenix, Arizona 85013  
(602) 279 5900

9. U.S. Fire v. CNA. Docket No. CV 90-26527. I was chief counsel for U.S. Fire in a third-party bad faith action against CNA. In an earlier trial CNA insured a trucking company for \$1 million and had an opportunity to settle with the plaintiffs for policy limits. CNA refused and the jury awarded the plaintiff \$10.6 million. U.S. Fire provided the next layer of excess insurance in the amount of \$5 million. U.S. Fire settled with the plaintiff for \$5 million, plus CNA's \$1 million and sued CNA to recover what U. S. Fire was required to pay. The trial to the jury lasted approximately six weeks and resulted in a verdict in favor of U.S. Fire in the amount of \$5 million in compensatory damages and \$1 million in punitive damages. This was the first excess-versus-primary case tried in Arizona since the law had changed permitting such a suit two years earlier. This case was settled for a confidential amount while on appeal.

- a. June to July 1992
- b. Superior Court, Maricopa County, Arizona  
Judge Brian Hauser
- c. Donald L. Myles  
Counsel for defendant  
2901 N. Central, Suite 800  
Phoenix, Arizona 85012  
(602) 263 1743

10. Emmons v. Warner Lambert. Docket No. CV 93-06088. I was chief counsel for the plaintiff who was injured when a drunk driver struck her car. The drunk was an employee of Warner Lambert and returning home following a company sponsored event. The case was tried to a jury in a trial lasting approximately two weeks and resulted in a \$2.5 million verdict in favor of the plaintiff and against Warner Lambert and its employee. A major issue in the trial was whether or not the employee was still in the course and scope of his employment at the time of the accident. Normally an employee who is either going to or coming from work is not considered in the course and scope of his employment. However, we successfully argued that since this employee's office was in his home the so-called "going and coming rule" did not apply. The jury agreed. The case was scheduled to

resume four day's later to consider whether punitive damages should be awarded against the employee and his employer. In the interim the employer and its insurance company agreed to settle for \$5 million and the jury was dismissed. Within a few days the defendant announced it was refusing to honor the settlement because it had discovered that the judge's clerk erroneously sent an exhibit to the jury which had been ruled inadmissible. The trial judge set the settlement aside. We successfully invoked special action jurisdiction of the Court of Appeals, Judges Fidel, Patterson, and Sult presiding. The Court of Appeals reversed the decision of the trial court and ordered the settlement reinstated. Since neither the plaintiff nor the defendant knew that the clerk had erroneously submitted an exhibit to the jury, the defendant argued that the settlement contract should be rescinded on the grounds of mutual mistake of fact. The Court of Appeals held that such a fact was not a material component of the settlement and therefore the doctrine did not apply. Emmons v. Superior Court, 192 Ariz. 509, 958 P.2d 582 (App. 1998). I authored major portions of the briefs and edited portions authored by my co-counsel, Alison Lewis. The case was decided without oral argument.

- a. September 1996
- b. Superior Court, Maricopa County, Arizona  
Judge Paul Katz
- c. Myles P. Hassett  
Counsel for defendant Warner Lambert  
3030 N. Central Avenue, Suite 1002  
Phoenix, Arizona 85012  
(602) 264 7474

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

From approximately 1987 through the present, I have served as lead counsel for the City of Tucson in toxic tort litigation arising from the discovery of trichloroethylene in Tucson's underground water supply. In the first phase of this litigation there were approximately 2,500 individuals to whom the industrial defendant paid a reported \$85 million in settlement. We successfully extricated the third party defendant, City of Tucson, through a settlement. The City paid no

money and assigned to the plaintiffs its claims, if any, against its insurance carriers.

The second phase of this litigation involved claims of over 350 individual claimants and a certified class action against the industrial defendant which in turn third-partied the City of Tucson into the litigation. This litigation has recently been settled, but not before I spent a significant amount of my time locating and preparing medical experts from throughout the country on the complex issues of medical causation. I argued before the Arizona Supreme Court a question certified by the U.S. District Court concerning the interpretation of Arizona's statute abolishing joint and several liability.

I had the privilege of serving on the Board of Directors of the Maricopa County Bar Association from 1977 to 1984, and as its President in 1983. During that interval the Maricopa County Volunteer Lawyers Program came into being. I was a member of that Board of Directors and Vice-President from 1981 to 1982. This program mobilized and coordinated the efforts of lawyers volunteering to assist disadvantaged persons.

I was also honored to be invited into the fellowship of the American College of Trial Lawyers. I serve on the State Committee and also as Arizona Chairman of the Access to Justice Committee. This committee functions in conjunction with the national committee of the same name to look for opportunities to utilize the skills and experience of members of the College in public interest litigation.

From the standpoint of touching people's lives and personal satisfaction, the most significant legal activity is described in response to Part III. 1. involving the "elderly newlyweds."

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stocks, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

The only deferred income arrangement I would anticipate would be with regard to fees received after withdrawing from my law firm. These would represent my pre-withdrawal efforts and activities. This figure will be approximately \$100,000. I am also entitled to be compensated for the stock I hold in our law firm professional corporation and this is valued at \$125,000. The firm, at its option, may extend payment over 36 months. I also have invested a substantial amount of time in a Federal Tort Claims Act wrongful death case being handled on a contingent fee basis. It is impossible to estimate when or how much of a fee I might be entitled to. That case would likely be settled or resolved in two or three years. The amount of fee to which I would be entitled would depend on the amount of settlement and the ratio my time and responsibility bears to the total time and responsibility of all the lawyers working on the case.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will follow the Code of Judicial Conduct with regard to any conflict of interest. I will abide by the appropriate length of time during which I am precluded from handling matters involving my former law firm.

Most of my investments are in mutual funds held through annuities. I would expect to utilize a system which cross-referenced my interests with pending matters so that potential conflicts are identified. If necessary, I will consolidate my investments to reduce the risk of conflict. I will confer with veteran members of the bench in order to devise the most workable system. I will follow the Code of Judicial Conduct with regard to these matters.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

**No**

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

**See attached Financial Disclosure Statement.**

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for).

**See attached Net Worth Statement.**

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

**I assisted in the judicial campaigns of Charles Roush (committee member and chairman, approximately 1971) and Marilyn Riddel (committee member, 1970); the congressional campaigns of Jon Kyl (committee member 1986, 1988, 1990 and 1992); and John Shadegg in 1994; the Arizona Attorney General primary campaign of Steve Twist (co-chairman 1990); and U.S. Senate Campaign for Jon Kyl (committee member 1994). In each of the above campaigns my principal involvement was fund raising.**

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I serve as the Arizona Chairman of the Access to Justice Committee for the American College of Trial Lawyers. This Committee is charged with identifying public interest litigation which needs the services of a seasoned litigator who is a Fellow of the American College of Trial Lawyers.

My pro bono activities typically involve providing counsel to various disadvantaged members of my church and providing to the bar unpaid services as a single arbitrator. I would estimate these activities involve 100 to 200 hours per year. Examples of the former include my representation of an elderly African American man (in his 80's) who had fallen in love with an elderly widow also in her 80's. They very much wanted to marry but he would not hear of it unless he was sure her pension benefits from the State of Kansas would be unaffected. Officials in Kansas assured the couple such would be the case. They married. After submitting her change-of-name to Kansas officials, her pension benefits were promptly terminated. They, and especially he, were heartbroken. They contacted me and I was successful in getting her benefits restored. I have never represented happier or more thankful clients. This matter took between 10 to 15 hours.

In another pro bono case I represented a husband and wife who were injured in a multi-car automobile accident for which there was inadequate insurance and multiple claims. I was ultimately successful in sorting through these claims and maximizing the amount payable to them.

In another pro bono case I represented a family whose son allegedly damaged a utility power pole while operating the family automobile. The utility sought damages from the boy's father, notwithstanding the fact that the accident occurred because the utility had inadequately marked the guy wire with which the vehicle collided. I was ultimately able to convince the utility company it had no claim and the matter was dropped. This took 4-5 hours.



2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

**There is no selection committee in this jurisdiction. I indicated my interest in a federal court nomination to Senator Jon Kyl who submitted my name to the White House after consultation with Congressman Ed Pastor. I was interviewed by the Department of Justice and White House Counsel. I have also been interviewed by the FBI and American Bar Association.**

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue or question? If so, please explain fully.

No

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

**The role of the judiciary is to interpret and apply the Constitution, treaties and statutes fairly and dispassionately. Because federal courts are courts of limited jurisdiction, it is essential for a judge to adhere closely to jurisdictional limitations as well as prudential limitations such as standing and ripeness. It is also critical that judges respect the constitutional separation of powers and, accordingly, the policy choices of the political branches. It is imperative that judges operate within the boundaries of *stare decisis* and faithfully follow the precedent of higher courts.**

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	143,000		Notes payable to banks—secured		
U.S. Government securities—add schedule			Notes payable to banks—unsecured		
Listed securities—add schedule	376,947		Notes payable to relatives		
Unlisted securities—add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due		
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid tax and interest		
Doubtful			Real estate mortgages payable—add schedule	112,307	
Real estate owned—add schedule	1,091,775		Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts—itemize:		
Autos and other personal property	250,000				
Cash value—life insurance <i>See Schedule</i>	973,603				
Other assets—itemize:					
Law Firm Stock	125,000				
401(K) & IRA - See Schedule	1,330,949				
Annuities - See Schedule	1,548,521		Total Liabilities	112,307	
			Net Worth	5,727,488	
Total Assets	5,839,795		Total Liabilities and net worth	5,839,795	
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, comaker or guarantor	NONE		Are any assets pledged? (Add schedule.)	NO	
On leases or contracts	NONE		Are you defendant in any suits or legal actions?	NO	
Legal Claims	NONE		Have you ever taken bankruptcy?	NO	
Provision for Federal Income Tax	NONE				
Other special debt	NONE				

JAMES A. TEILBORG

ATTACHMENT TO FINANCIAL STATEMENT

<u>Listed Securities:</u>		
Janus Fund	\$ 28,750	
Lindner Asset Allocation	90,350	
PBHG Growth Fund	12,577	
Paine Webber Selections Account	<u>245,270</u>	<u>\$ 376,947</u>
<u>Real Estate Owned:</u>		
Mountain Lot	\$ 79,000	
Limited Partnerships	357,775	
Rental Property	125,000	
Phoenix Residence	180,000	
Greer Cabin	<u>350,000</u>	<u>\$1,091,775</u>
<u>Cash Value - Life Insurance:</u>		
Guardian Life #1	\$340,509	
Guardian Life #2	503,050	
Great West #1	84,598	
Great West #2	<u>45,446</u>	<u>\$ 973,603</u>
<u>401(K) &amp; IRA Accounts:</u>		
Paine Webber Accounts		
• Managed by Brandes	\$224,571	
• Managed by Furman Selz	137,574	
• Managed by Rittenhouse	276,671	
• Trust Account	626	
• IRA Account	201,041	
Putnam 401K Plan	<u>490,466</u>	<u>\$1,330,949</u>
<u>Annuities:</u>		
Lincoln National	\$196,082	
Pacific Life	27,737	
G.E. Life #1	26,804	
G.E. Life #2	747,801	
Hartford	61,006	
American Skandia	<u>489,091</u>	<u>\$1,548,521</u>

## 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.

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Listed securities—add schedule	376,947		Notes payable to relatives		
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Accounts and notes receivable:			Accounts and bills due		
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Due from others			Other unpaid tax and interest		
Doubtful			Real estate mortgages payable—add schedule	112,307	
Real estate owned—add schedule	1,091,775		Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts—itemize:		
Autos and other personal property	250,000				
Cash value—life insurance <i>See Schedule</i>	973,603				
Other assets—itemize:					
Law Firm Stock	125,000				
401(K) & IRA - See Schedule	1,330,949				
Annuities - See Schedule	1,548,521		Total liabilities	112,307	
			Net Worth	5,727,488	
Total Assets	5,839,795		Total liabilities and net worth	5,839,795	
<b>CONTINGENT LIABILITIES</b>			<b>GENERAL INFORMATION</b>		
As endorser, cosigner or guarantor	NONE		Are any assets pledged? (Add schedule.)	NO	
On leases or contracts	NONE		Are you defendant in any suits or legal actions?	NO	
Legal Claims	NONE		Have you ever taken bankruptcy?	NO	
Provision for Federal Income Tax	NONE				
Other special debt	NONE				

JAMES A. TEILBORG

ATTACHMENT TO FINANCIAL STATEMENTListed Securities:

Janus Fund	\$ 28,750	
Lindner Asset Allocation	90,350	
PBHG Growth Fund	12,577	
Paine Webber Selections Account	<u>245,270</u>	<u>\$ 376,947</u>

Real Estate Owned:

Mountain Lot	\$ 79,000	
Limited Partnerships	357,775	
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Phoenix Residence	180,000	
Greer Cabin	<u>350,000</u>	<u>\$1,091,775</u>

Cash Value - Life Insurance:

Guardian Life #1	\$340,509	
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Paine Webber Accounts		
• Managed by Brandes	\$224,571	
• Managed by Furman Selz	137,574	
• Managed by Rittenhouse	276,671	
• Trust Account	626	
• IRA Account	201,041	
Putnam 401K Plan	<u>490,466</u>	<u>\$1,330,949</u>

Annuities:

Lincoln National	\$196,082	
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G.E. Life #1	26,804	
G.E. Life #2	747,801	
Hartford	61,006	
American Skandia	<u>489,091</u>	<u>\$1,548,521</u>

AO-10 (w)  
Rev. 1/2000

**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**

Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4, Sec. 101-112)

<b>1. Person Reporting</b> (Last name, first, middle initial) TEILBORG, JAMES A.		<b>2. Court or Organization</b> U.S. DISTRICT COURT, ARIZONA	<b>3. Date of Report</b> 07/21/2000
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. DISTRICT JUDGE (NOMINEE)		<b>5. Report Type (check type)</b> X Nomination, Date 07/21/2000 Initial _____ Annual _____ Final _____	<b>6. Reporting Period</b> 01/01/1999 to 06/26/2000
<b>7. Chambers or Office Address</b> TEILBORG, SANDERS & PARKS, P.C. 3030 N. 3RD STREET, SUITE 1300 PHOENIX, AZ 85012-3039		<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	

*IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.*

**I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 DIRECTOR/OFFICER: 1998, 1999, 2000	ABUNDANT LIFE, INC.
2 DIRECTOR: 1998, 1999, 2000	TEILBORG, SANDERS & PARKS, P.C.
3	

**II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 1997	METROPOLITAN LIFE #1 (STRUCTURED SETTLEMENT - COMPENSATION FOR PRIOR SERVICES)
2 1997	METROPOLITAN LIFE #2 (STRUCTURED SETTLEMENT - COMPENSATION FOR PRIOR SERVICES)
3	

**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (year, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1999	TEILBORG, SANDERS & PARKS, P.C. (COMPENSATION FOR SERVICES)	355,679.
2 1999	TEILBORG, SANDERS & PARKS (DIRECTOR FEES)	3,350.
3 1999	METROPOLITAN LIFE (STRUCTURED SETTLEMENT - COMPENSATION FOR PRIOR SERVICES)	5,888.
4 1999	METROPOLITAN LIFE (STRUCTURED SETTLEMENT - COMPENSATION FOR PRIOR SERVICES)	13,000.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	TELLBORG, JAMES A.	07/23/2000

**V. REIMBURSEMENTS – transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
<input type="checkbox"/>	NONE	
1	EXEMPT	
2		
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
<input type="checkbox"/>	NONE		
1	EXEMPT		
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
<input checked="" type="checkbox"/>	NONE		
1			
2			
3			
4			
5			
6			

\* VAL CODES: J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001 to \$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more



<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting TEILBORG, JAMES A.	Date of Report 07/21/2000
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**VII. Page 1 INVESTMENTS and TRUSTS— income, value, transactions** *(includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)  <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
					If not exempt from disclosure				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)									
1 TEILBORG, SANDERS & PARKS, P.C. COMMON		None	M	W	EXEMPT				
2 RENTAL PROPERTY #1 ASPEN, CO.	E	Rent	M	W	EXEMPT				
3 RENTAL AIRCRAFT 1968 BEECHCRAFT BONANZA	A	Rent	M	W	EXEMPT				
4 RAW LAND GREER, AZ (2000 \$79,000.)		None	L	R	EXEMPT				
5 GUARDIAN LIFE POLICY #1		None	N	T	EXEMPT				
6 GUARDIAN LIFE POLICY #2		None	O	T	EXEMPT				
7 GREAT WEST LIFE POLICY #1		None	L	T	EXEMPT				
8 GREAT WEST LIFE POLICY #2		None	K	T	EXEMPT				
9 LINCOLN NATIONAL ANNUITY		None	M	T	EXEMPT				
10 AMERICAN SKANDIA ANNUITY		None	N	T	EXEMPT				
11 G.E. ANNUITY POLICY #1		None	K	T	EXEMPT				
12 G.E. ANNUITY POLICY #2		None	O	T	EXEMPT				
13 HARTFORD LIFE ANNUITY		None	L	T	EXEMPT				
14 PACIFIC LIFE ANNUITY		None	K	T	EXEMPT				
15 PUTNAM OTC EMERGING GROWTH	D	Dividend	M	T	EXEMPT				
16 PUTNAM VOYAGER FUND	D	Dividend	M	T	EXEMPT				
17 PUTNAM INTERNATIONAL GROWTH	C	Dividend	M	T	EXEMPT				
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 HI=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 H2=\$5,000,001 or more 2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000 L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more 3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting TEILBOG, JAMES A.	Date of Report 07/21/2000
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*(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

**VL Page 2 INVESTMENTS and TRUSTS— income, value, transactions**

A Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period					
										(1) Amount Code (A-I)
	(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)						
NONE (No reportable income, assets, or transactions.)										
18 PUTNAM GROWTH & INCOME	D	Dividend	L	T	EXEMPT					
19 PUTNAM NEW VALUE	D	Dividend	L	T	EXEMPT					
20 LAKE PLEASANT 241 LIMITED PARTNERSHIP		None	K	U	EXEMPT					
21 BRITTANY SQUARE SHOPPING CENTER, LIMITED PARTNERSHIP	B	Distribution	K	U	EXEMPT					
22 MCRAY PLAZA INVESTORS, LIMITED PARTNERSHIP	B	Distribution	K	U	EXEMPT					
23 MESA RETAIL INCOME INVESTORS, LIMITED PARTNERSHIP	C	Distribution	K	U	EXEMPT					
24 FIESTA PLAZA INCOME INVESTORS, LIMITED PARTNERSHIP	D	Distribution	J	U	EXEMPT					
25 COLE ARIZONA RETAIL INCOME INVESTORS, LTD. PARTNERSHIP	B	Distribution	K	U	EXEMPT					
26 BELL PARK SHOPPING CENTER, LLC	D	Distribution	K	U	EXEMPT					
27 BILTMORE EL DORADO, LLC	A	Distribution	J	U	EXEMPT					
28 EL DORADO TECH CENTER INVESTORS, LLC	A	Distribution	K	U	EXEMPT					
29 PORTA BELLA LENDER, LLC	D	Distribution	K	U	EXEMPT					
30 NORTH PHOENIX VALUE ENHANCEMENT INVESTORS, L.P.	C	Distribution	K	U	EXEMPT					
31 SAN CARLOS HOTEL BILTMORE HOLDINGS X, LLC	A	Distribution	K	U	EXEMPT					
32 CHANDLER REGIONAL CENTER, LIMITED PARTNERSHIP	A	Distribution	J	U	EXEMPT					
33 CHANDLER REGIONAL CENTER II, LIMITED PARTNERSHIP	A	Distribution	J	U	EXEMPT					
34 NICHOLAS II, INC.		None			EXEMPT					

1 Int/Gain Codes: A=\$1,000 or less (Col. B1, D4)	F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 I=\$5,000,001 or more	E=\$15,001-\$50,000
2 Val Codes: J=\$15,000 or less (Col. C1, D3)	O=\$500,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more
3 Val Mth Codes: Q=Appraisal (Col. C2)	U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

**FINANCIAL DISCLOSURE REPORT** Name of Person Reporting: TELLSBORG, JAMES A. Date of Report: 07/21/2000

**VII. Page 3 INVESTMENTS and TRUSTS-- income, value, transactions** (Include those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (I-P)	(2) Value Code (Q,W)	(1) Type (e.g., buy, sell, partial sale, merger, redemptions)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, asset, or transactions.)									
35 EVERGREEN STRATEGIC INCOME FUND	A	Dividend			EXEMPT				
36 EVERGREEN INTERMEDIATE TERM BOND FUND	A	Dividend			EXEMPT				
37 GABELLI MATHERS FUND		None			EXEMPT				
38 JANUS FUND	D	Dividend	K	T	EXEMPT				
39 LINDNER ASSET ALLOCATION FUND	D	Dividend	L	T	EXEMPT				
40 PBHG GROWTH FUND	A	Dividend	J	T	EXEMPT				
41 SCHWAB VALUE ADVANTAGE MMF	C	Dividend	K	T	EXEMPT				
42 SCHWAB MUNICIPAL MONEY FUND	A	Dividend	K	T	EXEMPT				
43 LINDNER LARGE CAP FUND	B	Dividend			EXEMPT				
44 BANK OF AMERICA, N.T. & S.A.	A	Interest	J	T	EXEMPT				
45 BANK ONE	A	Interest	J	T	EXEMPT				
46 FAINE WEBBER MONEY MARKET FUND	B	Dividend	L	T	EXEMPT				
47 ABGENIX INC. COMMON		None	J	T	EXEMPT				
48 ACLARA BIOSCIENCES, INC COMMON		None	J	T	EXEMPT				
49 ACHEILSEN CORP. COMMON		None	J	T	EXEMPT				
50 ACKION CORP. COMMON		None	J	T	EXEMPT				
51 ADVENT SOFTWARE COMMON		None	J	T	EXEMPT				
1 Net/Gain Codes: A=\$1,000 or less (Col. B, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 H2=\$5,000,001 or more 2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more 3 Val Mth Codes: Q=Appraisal U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market (Col. C2)									

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting TEILBORG, JAMES A.	Date of Report 07/21/2000
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**VII. Page 4 INVESTMENTS and TRUSTS— income, value, transactions** *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)  <i>Place "03" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (I-F)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
		(2) Date Month- Day	(3) Value Code (I-F)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)				
NONE (No reportable income, assets, or transactions.)									
52 ALCATEL ALSTROM COMMON	A	Dividend	J	T	EXEMPT				
53 ALLIED IRISH BKS COMMON		None	J	T	EXEMPT				
54 ALLIED ZURICH PLC COMMON	A	Dividend	J	T	EXEMPT				
55 AMCOR LTD COMMON	A	Dividend	J	T	EXEMPT				
56 AMERICA ONLINE INC COMMON	A	Dividend	J	T	EXEMPT				
57 AMERICREDIT CORP		None	J	T	EXEMPT				
58 AMER CLASSIC VOYAGES COMMON		None	J	T	EXEMPT				
59 AMER HOME PRODUCTS COMMON	A	Dividend	J	T	EXEMPT				
60 AMERI FREIGHNAYS CORP COMMON		None	J	T	EXEMPT				
61 AMER INTERNATIONAL GROUPE INC COMMON	A	Dividend	J	T	EXEMPT				
62 AMGEN INC	A	Dividend	J	T	EXEMPT				
63 ANSWERTHINK INC COMMON		None	J	T	EXEMPT				
64 APPLIED POWER INC COMMON	A	Dividend	J	T	EXEMPT				
65 AT & T CORP COMMON	A	Dividend	J	T	EXEMPT				
66 AT & T CORP LIBERTY MEDIA COMMON		None	J	T	EXEMPT				
67 AURORA BIOSCIENCES CORP COMMON		None	J	T	EXEMPT				
68 AUTOMATIC DATA PROC COMMON	A	Dividend	J	T	EXEMPT				

1 Inco/Gain Codes: A=\$1,000 or less (Col. B1, D4) B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000  
 F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 I2=\$5,000,001 or more

2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

3 Val Mt: Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market  
 (Col. C2) U=Book Value V=Other W=Estimated

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting TELLBORG, JAMES A.	Date of Report 07/21/2000
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**VII. Page 5 INVESTMENTS and TRUSTS-- income, value, transactions** *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month-Day	(3) Value Code (J-F)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
69 AXA FINANCIAL INC COMMON	A	Dividend	J	T	EXEMPT				
70 BAE SYSTEMS PLC ADR		None	J	T	EXEMPT				
71 BANCO BILBAO VIZCAYA ADR	A	Dividend	J	T	EXEMPT				
72 BANK OF AMERICA CORP COMMON	A	Dividend	J	T	EXEMPT				
73 BANK OF IRELAND ADR	A	Dividend	J	T	EXEMPT				
74 BANK OF NEW YORK CO INC COMMON	A	Dividend	J	T	EXEMPT				
75 BANK ONE COMMON	A	Dividend	J	T	EXEMPT				
76 BASF AG ADR	A	Dividend	J	T	EXEMPT				
77 BED BATH & BEYOND COMMON		None	J	T	EXEMPT				
78 BESTFOODS COMMON	A	Dividend	J	T	EXEMPT				
79 BOC GROUP PLC ADR	A	Dividend	J	T	EXEMPT				
80 BRISTOL MYERS SQUIBB COMMON		None	J	T	EXEMPT				
81 BRITISH AMER TOBACCO ADR	A	Dividend	J	T	EXEMPT				
82 BRITISH TELECOMMUNICATION ADR		None	J	T	EXEMPT				
83 BROWN & BROWN INC COMMON	A	Dividend	J	T	EXEMPT				
84 CABLETRON SYSTEMS COMMON		None	J	T	EXEMPT				
85 CADBURY SCHWEPPE'S ADR	A	Dividend	J	T	EXEMPT				
1 Ino/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$50,001-\$1,000,000 K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting TELLBORG, JAMES A.	Date of Report 07/21/2000
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**VII. Page 6 INVESTMENTS and TRUSTS-- income, value, transactions** *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	Place "00" after each asset exempt from prior disclosure.					(2) Date: Month/Day	(3) Value Code (J-F)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
86 CENTRAIS ELECTRICAS BRASIL ADR		None	J	T	EXEMPT				
87 CDN COMPUTER CENTERS ADR		None	J	T	EXEMPT				
88 CHOICE ONE COMMUNICATION		None	J	T	EXEMPT				
89 CHOICEPOINT INC COMMON		None	J	T	EXEMPT				
90 CISCO SYSTEMS INC COMMON		None	K	T	EXEMPT				
91 CITIGROUP INC COMMON	A	Dividend	J	T	EXEMPT				
92 CLEAR CHANNEL COMMUNICATIONS COMMON		None	J	T	EXEMPT				
93 CLP HOLDINGS ADR	A	Dividend	J	T	EXEMPT				
94 COCA COLA CO COMMON	A	Dividend	J	T	EXEMPT				
95 COLGATE PALMOLIVE CO COMMON	A	Dividend	J	T	EXEMPT				
96 COMPANHIA CERVEJARIA ADR	A	Dividend	J	T	EXEMPT				
97 COMPANIA ANON TELEFONOS ADR	A	Dividend	J	T	EXEMPT				
98 CONTL AG ADR	A	Dividend	J	T	EXEMPT				
99 CORUS GROUP PLC ADR		None	J	T	EXEMPT				
100 COASTAL CORP DEL COMMON	A	Dividend	J	T	EXEMPT				
101 COSTCO WHSL CORP COMMON		None	J	T	EXEMPT				
102 CRITICAL PATH INC COMMON		None	J	T	EXEMPT				

1 Inco/Gain Codes: A=\$1,000 or less (Col. B1, D4)	B=\$1,001-\$2,500	C=\$2,501-\$5,000	D=\$5,001-\$15,000	E=\$15,001-\$50,000
F=\$50,001-\$100,000	G=\$100,001-\$1,000,000	H1=\$1,000,001-\$5,000,000	H2=\$5,000,001 or more	
2 Val Codes: J=\$15,000 or less (Col. C1, D3)	K=\$15,001-\$50,000	L=\$50,001-\$100,000	M=\$100,001-\$250,000	N=\$250,001-\$500,000
O=\$500,001-\$1,000,000	P1=\$1,000,001-\$5,000,000	P2=\$5,000,001-\$25,000,000	P3=\$25,000,001-\$50,000,000	P4=\$50,000,001 or more
3 Val Mth Codes: Q=Appraisal (Col. C2)	R=Cost (real estate only)	S=Assessment	T=Cash/Market	
U=Book Value	V=Other	W=Estimated		

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting TEILBORG, JAMES A.	Date of Report 07/21/2000
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**VII Page 7 INVESTMENTS and TRUSTS— income, value, transactions** *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period																																		
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-T)	(2) Value Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure																																	
						(2) Date: Month Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)																														
NONE (No reportable income, assets, or transactions.)																																							
103 CSG SYSTEMS INTL ADR	A	Dividend	J	T	EXEMPT																																		
104 CYBEROPTICS CORP COMMON		None	J	T	EXEMPT																																		
105 DAISYTEK INTL CORE ADR		None	J	T	EXEMPT																																		
106 DBS GROUP HLDGS LTD ADR	A	Dividend	J	T	EXEMPT																																		
107 DEBEERS CONS MNS ADR	A	Dividend	J	T	EXEMPT																																		
108 DEN DANSKE BANK ADR	A	Dividend	J	T	EXEMPT																																		
109 DEUTSCHE TELEKOM ADR	A	Dividend	J	T	EXEMPT																																		
110 DEVON ENERGY CORP COMMON	A	Dividend	J	T	EXEMPT																																		
111 DIAGEO PLC NEW SPON ADR	A	Dividend	J	T	EXEMPT																																		
112 DIGITAL ISLAND ADR		None	J	T	EXEMPT																																		
113 WALT DISNEY CO COMMON	A	Dividend	J	T	EXEMPT																																		
114 EMC CORP MASS COMMON		None	K	T	EXEMPT																																		
115 EXPEDITORS INTL WASH INC COMMON	A	Dividend	J	T	EXEMPT																																		
116 FANNIE MAE COMMON	A	Dividend	J	T	EXEMPT																																		
117 FIRST PAC CO LTD ADR		None	J	T	EXEMPT																																		
118 FIRST UNION CORP COMMON	A	Dividend	J	T	EXEMPT																																		
119 GANNETT CO COMMON	A	Dividend	J	T	EXEMPT																																		
<table style="width:100%; font-size: small;"> <tr> <td>1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4)</td> <td>F=\$50,001-\$100,000</td> <td>B=\$1,001-\$2,500 G=\$100,001-\$1,000,000</td> <td>C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000</td> <td>D=\$5,001-\$15,000 H2=\$5,000,001 or more</td> <td>E=\$15,001-\$50,000</td> <td colspan="4"></td> </tr> <tr> <td>2 Val Codes: J=\$15,000 or less (Col. C1, D3)</td> <td>O=\$100,001-\$1,000,000</td> <td>K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000</td> <td>L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000</td> <td>M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000</td> <td>N=\$250,001-\$500,000 P4=\$50,000,001 or more</td> <td colspan="4"></td> </tr> <tr> <td>3 Val Mth Codes: Q=Appraisal (Col. C2)</td> <td>U=Book Value</td> <td>R=Cost (real estate only) V=Other</td> <td>S=Assessment W=Estimated</td> <td>T=Cash/Market</td> <td colspan="5"></td> </tr> </table>										1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4)	F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000					2 Val Codes: J=\$15,000 or less (Col. C1, D3)	O=\$100,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more					3 Val Mth Codes: Q=Appraisal (Col. C2)	U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market					
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4)	F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000																																		
2 Val Codes: J=\$15,000 or less (Col. C1, D3)	O=\$100,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more																																		
3 Val Mth Codes: Q=Appraisal (Col. C2)	U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market																																			

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting TEILBORG, JAMES A.	Date of Report 07/21/2000
	<i>(Includes those of spouse and dependent children. See pp. 36-34 of Instructions.)</i>	

**VII. Page 8 INVESTMENTS and TRUSTS— income, value, transactions**

A Description of Assets (including trust assets)  <i>Place "D" after each asset exempt from prior disclosure.</i>	H Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month Day	(3) Value Code (F-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
20 GAP INC COMMON	A	Dividend	J	T	EXEMPT				
21 GATEWAY INC COMMON		None	J	T	EXEMPT				
22 GENL MOTORS CORP COMMON		None	J	T	EXEMPT				
23 GENL ELECTRIC CO COMMON	A	Dividend	K	T	EXEMPT				
124 GENZYME TRANSGENICS CORP ADR		None	J	T	EXEMPT				
125 GRUBB & ELLIS CO COMMON		None	J	T	EXEMPT				
126 HEINE H J CO COMMON	A	Dividend	J	T	EXEMPT				
127 HEWLETT PACKARD CO COMMON	A	Dividend	J	T	EXEMPT				
128 HITACHI ADR	A	Dividend	J	T	EXEMPT				
129 HOLLYWOOD.COM INC COMMON		None	J	T	EXEMPT				
130 HOME DEPOT INC COMMON	A	Dividend	J	T	EXEMPT				
131 HONEYWELL INTL INC COMMON	A	Dividend	J	T	EXEMPT				
132 HSBC HOLDINGS ADR	A	Dividend	J	T	EXEMPT				
33 IMPERIAL CHEM IND ADR	A	Dividend	J	T	EXEMPT				
34 INFORMATION HOLDINGS INC COMMON		None	J	T	EXEMPT				
35 ING GROUP ADR		None	J	T	EXEMPT				
36 INTEL COMMON	A	Dividend	K	T	EXEMPT				
1 Val Codes: A=\$1,000 or less; B=\$1,001-\$1,500; C=\$1,501-\$5,000; D=\$5,001-\$15,000; E=\$15,001-\$50,000 (Col. H, D4) F=\$50,001-\$100,000; G=\$100,001-\$1,000,000; H1=\$1,000,001-\$5,000,000; H2=\$5,000,001 or more									
2 Val Codes: J=\$15,000 or less; K=\$15,001-\$50,000; L=\$50,001-\$100,000; M=\$100,001-\$250,000; N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000; P1=\$1,000,001-\$5,000,000; P2=\$5,000,001-\$25,000,000; P3=\$25,000,001-\$50,000,000; P4=\$50,000,001 or more									
3 Val Meth Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market (Col. C2) U=Book Value; V=Other; W=Estimated									



FINANCIAL DISCLOSURE REPORT Name of Person Reporting  
TELLBORG, JAMES A. Date of Report  
07/21/2000

VII Page 9 INVESTMENTS and TRUSTS— income, value, transactions (Includes those of spouse and dependent children. See pp. 16-14 of Instructions.)

A Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (I-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)									
137 INTERIM SERVICES INC COMMON		None	J	T	EXEMPT				
138 INTL BUSINESS MACHINES COMMON	A	Dividend	K	T	EXEMPT				
139 INVENSYS PLC ADR	A	Dividend	J	T	EXEMPT				
140 INVESTORS FINCL SVCS COMMON	A	Dividend	J	T	EXEMPT				
141 IRON MTN INC NEW COMMON		None	J	T	EXEMPT				
142 JABIL CIRCUIT INC COMMON		None	J	T	EXEMPT				
143 JARDINE MATHESON HLDGS ADR	A	Dividend	J	T	EXEMPT				
144 JOHNSON & JOHNSON COMMON	A	Dividend	J	T	EXEMPT				
145 J SAINSBURY PLC ADR		None	J	T	EXEMPT				
146 KANA COMMUNICATIONS COMMON		None	J	T	EXEMPT				
147 KEMET CORP COMMON		None	J	T	EXEMPT				
148 KIMBERLY CLARK CORP COMMON	A	Dividend	J	T	EXEMPT				
149 KOMATSU LTD ADR	A	Dividend	J	T	EXEMPT				
150 KOREA ELECTRIC POWER ADR	A	Dividend	J	T	EXEMPT				
151 LEXICON GENETICS COMMON		None	J	T	EXEMPT				
152 LIT CLAIRBORNE INC COMMON	A	Dividend	J	T	EXEMPT				
153 LUCENT TECHNOLOGIES COMMON	A	Dividend	K	T	EXEMPT				

1 Inp/Gain Codes: A=\$1,000 or less; B=\$1,001-\$2,500; C=\$2,501-\$5,000; D=\$5,001-\$15,000; E=\$15,001-\$50,000; F=\$50,001-\$100,000; G=\$100,001-\$1,000,000; H1=\$1,000,001-\$5,000,000; H2=\$5,000,001 or more

2 Val Codes: J=\$15,000 or less; K=\$15,001-\$50,000; L=\$50,001-\$100,000; M=\$100,001-\$250,000; N=\$250,001-\$500,000; O=\$500,001-\$1,000,000; P1=\$1,000,001-\$5,000,000; P2=\$5,000,001-\$25,000,000; P3=\$25,000,001-\$50,000,000; P4=\$50,000,001 or more

3 Val Mth Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market; U=Book Value; V=Other; W=Estimated

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting TEILBORG, JAMES A.	Date of Report 07/21/2000
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**VII Page 10 INVESTMENTS and TRUSTS— income, value, transactions** (Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A Description of Assets (including trust assets)  <small>Place "X" after each asset exempt from prior disclosure.</small>	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (I-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if previous transaction)
NONE (No reportable income, assets, or transactions.)									
54 H & T BANK CORP COMMON	A	Dividend	J	T	EXEMPT				
155 MARKS & SPENCER ADR	B	Dividend	J	T	EXEMPT				
156 MATSUSHITA ELECT INC ADR	A	Dividend	J	T	EXEMPT				
157 MBNA CORP COMMON		None	J	T	EXEMPT				
158 MCAFEE.COM INC COMMON		None	J	T	EXEMPT				
159 MEDIACOM GROUP COMMON		None	J	T	EXEMPT				
160 MEDTRONIC INC COMMON	A	Dividend	J	T	EXEMPT				
161 MERCK & CO COMMON	A	Dividend	J	T	EXEMPT				
162 MERRILL LYNCH & CO COMMON		None	J	T	EXEMPT				
163 METTLER-TOLEDO INC COMMON		None	J	T	EXEMPT				
164 MICROSOFT CORP COMMON		None	J	T	EXEMPT				
165 MOTOROLA INC COMMON	A	Dividend	J	T	EXEMPT				
166 MYRIAD GENETICS COMMON		None	J	T	EXEMPT				
167 NATL POWER PLC ADR	A	Dividend	J	T	EXEMPT				
68 NESTLE S.A. ADR	A	Dividend	J	T	EXEMPT				
69 NET.GENESIS CORP COMMON		None	J	T	EXEMPT				
70 NEWFIELD EXPLORATION COS ADR		None	J	T	EXEMPT				

I=Intr/Day Codes: A=\$1,000 or less      B=\$1,001-\$2,500      C=\$2,501-\$5,000      D=\$5,001-\$15,000      E=\$15,001-\$50,000  
 (Col. B1, D4)      F=\$50,001-\$100,000      G=\$100,001-\$1,000,000      H=\$1,000,001-\$3,000,000      I2=\$3,000,001 or more

J=Val Codes: J=\$15,000 or less      K=\$15,001-\$50,000      L=\$50,001-\$100,000      M=\$100,001-\$250,000      N=\$250,001-\$500,000  
 (Col. C1, D3)      O=\$500,001-\$1,000,000      P1=\$1,000,001-\$5,000,000      P2=\$5,000,001-\$25,000,000      P3=\$25,000,001-\$50,000,000      P4=\$50,000,001 or more

Val Meth Codes: Q=Appraisal      R=Cost (real estate only)      S=Assessment      T=Cash/Market  
 (Col. C2)      U=Book Value      V=Other      W=Estimated

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting TEILBORG, JAMES A.	Date of Report 07/21/2000
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**VII. Page 11 INVESTMENTS and TRUSTS— income, value, transactions** (Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure				
					(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)		
NONE (No reportable income, assets, or transactions.)										
171 NEXTEL COMMON COMMON		None	K	T	EXEMPT					
172 NOKIA CORE ADR		None	J	T	EXEMPT					
173 NORTHEAST OPTIC NETWORK COMMON		None	J	T	EXEMPT					
174 ON COMMAND CORP COMMON		None	J	T	EXEMPT					
175 ORACLE CORP COMMON		None	J	T	EXEMPT					
176 OSHKOSH TRUCK CORP COMMON	A	Dividend	J	T	EXEMPT					
177 PEGASUS SOLUTIONS INC COMMON		None	J	T	EXEMPT					
178 PENTON MEDIA COMMON	A	Dividend	J	T	EXEMPT					
179 PEPSICO INC COMMON	A	Dividend	J	T	EXEMPT					
180 PETROLEO BRASILEIRO ADR	A	Dividend	J	T	EXEMPT					
181 PETZER INC COMMON	A	Dividend	K	T	EXEMPT					
182 PHILLIPS PETROLEUM COMMON	A	Dividend	J	T	EXEMPT					
183 POWDERGEN PLC ADR	A	Dividend	J	T	EXEMPT					
184 PRICE T RONE & ASSOC COMMON		None	J	T	EXEMPT					
185 PRIMEDIA INC COMMON		None	J	T	EXEMPT					
186 PROBUBUSINESS SERVICES COMMON		None	J	T	EXEMPT					
187 RAINBOW TECH INC COMMON		None	J	T	EXEMPT					
1 Inc/Gain Codes: A=\$1,000 or less    B=\$1,001-\$2,500    C=\$2,501-\$5,000    D=\$5,001-\$15,000    E=\$15,001-\$50,000 (Col. B1, D4)    F=\$50,001-\$100,000    G=\$100,001-\$1,000,000    H=\$1,000,001-\$5,000,000    I2=\$5,000,001 or more										
2 Val Codes: J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001-\$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000 (Col. C1, D3)    O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more										
3 Val Mth Codes: Q=Appraisal    R=Cost (real estate only)    S=Assessment    T=Cash/Market (Col. C2)    U=Book Value    V=Other    W=Estimated										

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting TELLBORG, JAMES A.	Date of Report 07/21/2000
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**VII. Page 12 INVESTMENTS and TRUSTS-- income, value, transactions** *(Includes those of spouse and dependent children. See pp. 36-54 of instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
										(1) Amount Code (A-H)
Place "X" after each asset exempt from prior disclosure.	(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)						
NONE (No reportable income, assets, or transactions.)										
88 NATIONAL SOFTWARE CORP COMMON	None	J	T	EXEMPT						
89 RITCHIE BROG. AUCTIONEERS ADR	None	J	T	EXEMPT						
90 ROLLS ROYCE PLC ADR	None	J	T	EXEMPT						
91 SCHERING PLOUGH CORP COMMON	A	Dividend	J	T	EXEMPT					
92 SCOTTS CO CL A COMMON	None	J	T	EXEMPT						
93 SL GREEN REALTY COMMON	A	Dividend	J	T	EXEMPT					
94 SHUREIT STONE CONTAINER COMMON	None	J	T	EXEMPT						
95 SOUTHWEST AIRLINES COMMON	A	Dividend	J	T	EXEMPT					
96 SPRINT CORP COMMON	None	J	T	EXEMPT						
97 SPAR SURGICAL CO NEW COMMON	None	J	T	EXEMPT						
98 STATE STREET CORP COMMON	None	J	T	EXEMPT						
99 SUN MICROSYSTEMS COMMON	None	J	T	EXEMPT						
00 SWIFT TRANSPORTATION CO COMMON	None	J	T	EXEMPT						
01 SWIRE PAC LTD CLASS A COMMON	A	Dividend	J	T	EXEMPT					
02 SWISSCOM AG ADR	None	J	T	EXEMPT						
03 SYLVAN LEARNING SYSTEMS COMMON	None	J	T	EXEMPT						
04 TATE & LYLE PLC ADR	A	Dividend	J	T	EXEMPT					

Int/Gain Codes: A=\$1,000 or less    B=\$1,001-\$1,500    C=\$2,501-\$5,000    D=\$5,001-\$15,000    E=\$15,001-\$50,000  
 Cal. B1, D4)    F=\$50,001-\$100,000    G=\$100,001-\$1,000,000    H1=\$1,000,001-\$5,000,000    H2=\$5,000,001 or more

Val Codes:    J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001-\$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000  
 Cal. C1, D3)    O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more

Val Mth Codes: Q=Appraisal    R=Cost (real estate only)    S=Assessment    T=Cash/Market  
 Cal. C2)    U=Book Value    V=Other    W=Estimated

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting TELLBORG, JAMES A.	Date of Report 07/21/2000
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**VII. Page 13 INVESTMENTS and TRUSTS— income, value, transactions** *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
					(1) Amount Code (A-H)	(2) Type (e.g., dividend, stock or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure
(2) Date: Month Day	(3) Value Code (I-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)							
NONE (No reportable income, assets, or transactions.)										
225 TECH DATA CORP COMMON		None	J	T	EXEMPT					
206 TELEBRAS TELECOMM BRAS ADR	A	Dividend	J	T	EXEMPT					
207 TELECOM ARGENTINA ADR	A	Dividend	J	T	EXEMPT					
208 TELECOM CORP NEW ZEALAND ADR	A	Dividend	J	T	EXEMPT					
209 TELECOM ITALIA SPA ADR		None	J	T	EXEMPT					
210 TELEFONOS DE MEXICO ADR	A	Dividend	J	T	EXEMPT					
211 TEXAS INSTRUMENTS COMMON	A	Dividend	J	T	EXEMPT					
212 TEXAS REGIONAL BANCSHRS CL A COMMON	A	Dividend	J	T	EXEMPT					
213 TIFFANY & CO COMMON	A	Dividend	J	T	EXEMPT					
214 TIME WARNER INC COMMON	A	Dividend	K	T	EXEMPT					
215 TOKIO MARINE & FIRE ADR		None	J	T	EXEMPT					
216 TOMKINS PLC ADR	A	Interest	J	T	EXEMPT					
217 TOTAL FINA ELF S.A. ADR		None	J	T	EXEMPT					
218 TRUMBULL CRON CO COMMON		None	J	T	EXEMPT					
219 TRANSOCEAN SEDCO COMMON	A	Dividend	J	T	EXEMPT					
220 TRACTOR SUPPLY CO COMMON		None	J	T	EXEMPT					
221 TWISTER HOME ENTERTAINMENT COMMON		None	J	T	EXEMPT					

Iso/Gain Codes: A=\$1,000 or less      B=\$1,001-\$2,500      C=\$2,501-\$5,000      D=\$5,001-\$15,000      E=\$15,001-\$50,000  
 (Col. B1, D4)      F=\$50,001-\$100,000      G=\$100,001-\$1,000,000      H=\$1,000,001-\$5,000,000      I2=\$5,000,001 or more

Val Codes: J=\$15,000 or less      K=\$15,001-\$50,000      L=\$50,001-\$100,000      M=\$100,001-\$250,000      N=\$250,001-\$500,000  
 (Col. C1, D3)      O=\$500,001-\$1,000,000      P1=\$1,000,001-\$5,000,000      P2=\$5,000,001-\$25,000,000      P3=\$25,000,001-\$50,000,000      P4=\$50,000,001 or more

Val Mth Codes: Q=Appraisal      R=Cost (real estate only)      S=Assessment      T=Cash/Market  
 (Col. C2)      U=Book Value      V=Other      W=Estimated

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting TEILBORG, JAMES A.	Date of Report 07/21/2000
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**VII Page 14 INVESTMENTS and TRUSTS-- income, value, transactions** *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)  <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
			(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(2) Date: Month/Day	(3) Value Code (J-P)		(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)		
NONE (No reportable income, assets, or transactions.)									
222 TYCO INTL LTD FOREIGN ORDINARY	A	Dividend	J	T	EXEMPT				
223 UNILEVER PLC ADR	A	Dividend	J	T	EXEMPT				
224 USX-MARATHON GROUP COMMON	A	Dividend	J	T	EXEMPT				
225 VERTEX COMMON		None	J	T	EXEMPT				
226 VIDOR CORP COMMON		None	J	T	EXEMPT				
227 WAL-HART COMMON	A	Dividend	K	T	EXEMPT				
228 WALGREEN CO COMMON	A	Dividend	J	T	EXEMPT				
229 WELLS FARGO & CO COMMON	A	Dividend	J	T	EXEMPT				
230 MEYERHAUSER CO COMMON	A	Dividend	J	T	EXEMPT				
231 WIND RIVER SYSTEM COMMON		None	J	T	EXEMPT				
232 WORLDWIDE COMMON	A	Dividend	J	T	EXEMPT				
233									
234									
235									
236									
237									
238									
<b>1</b> Inc./Gain Codes: A=\$1,000 or less (Col. B1, D4) B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 I2=\$5,000,001 or more									
<b>2</b> Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more									
<b>3</b> Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated									

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting TEILBORG, JAMES A.	Date of Report 07/21/2000
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.  
*(Indicate part of report.)*

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**SECTION HEADING.** (Indicate part of report)  
Information continued from Parts I through VI, inclusive.  
PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	2000	TEILBORG, SANDERS & PARKS, P.C. COMPENSATION FOR SERVICES	37,263.
6	2000	METROPOLITAN LIFE (STRUCTURED SETTLEMENT - COMPENSATION FOR PRIOR SERVICES)	3,435.
7	2000	METROPOLITAN LIFE (STRUCTURED SETTLEMENT - COMPENSATION FOR PRIOR SERVICES)	7,583.



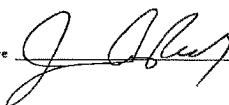
FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	TEILBORG, JAMES A.	07/21/2000

**C. CERTIFICATION**

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. App. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date July 21, 2000

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 106).

**FILING INSTRUCTIONS**

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

Senator KYL. Thank you all for being here.  
[Whereupon, at 2:46 p.m., the committee was adjourned.]

## QUESTIONS AND ANSWERS

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### RESPONSE OF MICHAEL JOSEPH REAGAN TO QUESTIONS FROM SENATOR SESSIONS

*Question 1.* 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?

Answer 1. Yes, it is incumbent upon district court judges to follow the precedent from the Supreme Court of the United States, as well as applicable precedent from the circuit court of appeals in which they sit. I would follow these precedents even if I personally disagreed with them.

*Question 2.* How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision or your own best judgment of the merits? Take, for example, the Supreme Court's recent decision in the *City of Boerne v. Flores*<sup>1</sup> where the Court struck down the Religious Freedom Restoration Act.

Answer 2. Under the doctrine of stare decisis, I would follow the precedent of the Supreme Court of the United States and the Court of Appeals even if I believed they had seriously erred on the merits of the relevant decisions. Because *City of Boerne* is now the law of the land, I would follow it. Judicial activism occurs when a judge disregards precedents, imposes his own judgments in lieu of those precedents and therefore legislates from the bench.

*Question 3.* Please state in detail your best independent legal judgment, irrespective of existing judicial precedent, on the lawfulness, under the Equal Protection Clause of the 14th Amendment and federal civil rights laws, of the use of race, gender or national origin-based preferences in such areas as employment decisions (hiring, promotion, or layoffs), college admissions, and scholarship awards and the awarding of government contracts.

Answer 3. I would follow existing Supreme Court and Circuit Court precedent on any question concerning the lawfulness, under the Equal Protection Clause of the 14th Amendment and federal civil rights laws, of the use of race or national origin-based preferences in such areas as employment decisions (hiring, promotion, or layoffs), college admissions, and scholarship awards and the awarding of government contracts. As I understand it, that precedent calls for the strict scrutiny standard. As to preferences based on gender, I would similarly follow existing precedent, which calls for a heightened scrutiny standard.

*Question 4.* Are you aware of the Supreme Court's decision in *Adarand v. Peña*<sup>2</sup> and the Court's earlier decision in *Richmond v. J.A. Croson Co.*?<sup>3</sup> If so, please explain to the Committee your understandings of those decisions, and their holdings concerning the use of race to distribute government benefits, or to make government contracting or hiring decisions.

Answer 4. *Richmond v. J.A. Croson Co.* 488 U.S. 469 (1989), was a precursor to the *Adarand* case. *Croson* settled the uncertainty that persisted through the 1980s regarding the level of scrutiny to be applied in cases of laws designed to aid racial minorities. The Supreme Court in *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978), had been unable to agree upon the level of scrutiny to apply to a state law which set aside a certain number of seats in the entering class at Berkeley's medical school for minority students. *Croson* clarified that uncertainty, holding that state laws giving minorities preferential treatment to the detriment of whites would be reviewed under "strict scrutiny."

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<sup>1</sup> 521 U.S. 507 (1997).

<sup>2</sup> 515 U.S. 200 (1995).

<sup>3</sup> 488 U.S. 469 (1989).

*Adarand v. Peña*, decided in 1995, overruled *Metro Broadcasting v. FCC*, 497 U.S. 547 (1990). *Metro Broadcasting* held that, when a racial preference was given to a group by Congress (as opposed to the states), the appropriate Equal Protection standard would be intermediate scrutiny. *Adarand* overruled *Metro Broadcasting* by ruling that the appropriate standard for Congressionally enacted affirmative action programs would be “strict scrutiny.” After *Adarand*, affirmative action programs can survive judicial review only if they are the least restrictive means of serving a compelling governmental interest.

*Question 5.* Regardless of your personal feelings on these issues, are you committed to following precedent of high courts on equal protection issues?

Answer 5. Irrespective of my personal feelings, I would follow the precedent of the Supreme Court of the United States and the Seventh Circuit Court of Appeals regarding equal protection issues.

*Question 6.* Do you have any legal or moral beliefs which would inhibit or prevent you from imposing or upholding a death sentence in any criminal case that might come before you as a federal judge?

Answer 6. There is nothing in my background, education, training or experience—nor do I harbor any personal belief—which would prevent me from imposing or upholding a death sentence in any criminal case that might come before me as a federal judge.

*Question 7.* Do you believe that 10, 15, or even 20-year delays between conviction of a capital offender and execution is too long? Do you believe that once Congress or a state legislature has made the policy decision that capital punishment is appropriate that the federal courts should focus their resources on resolving capital cases fairly and expeditiously?

Answer 7. A delay of 10 or 15, or even 20 years between conviction of a capital offender and execution is too long. Delays are unfair to the defendant, victims’ families and society in general. The federal courts should resolve capital cases fairly and expeditiously.

*Question 8.* What authorities may a federal judge legitimately use in determining the legal effect of a statute or constitutional provision? Discuss how the use of these authorities is consistent with the exercise of the Article III judicial power.

Answer 8. Federal judges should give constitutional provisions and statutes their plain and ordinary meanings. If an ambiguity is apparent, controlling United States Supreme Court and Circuit precedents should be consulted for guidance as to appropriate authorities for resolving the ambiguity.

*Question 9.* Please assess the legitimacy of the following three approaches to establishing a constitutional right not previously upheld by a court: (1) interpretation of the plain meaning of the text and original intent of the Framers of the Constitution; (2) discernment of the “community’s interpretation” of constitutional text, see William J. Brennan, *The Constitution of the United States: Contemporary Ratification*, Text and Teaching Symposium, Georgetown University (October 12, 1985); and (3) ratification of an amendment under Article V of the Constitution. Assess the impact of each approach on the judicial power established by Article III of the Constitution.

Answer 9. Although district courts should be extremely reticent to establish a constitutional right not previously upheld by a court, the interpretation of the plain meaning of the text and original intent of the framers of the Constitution may be appropriate tools to use when relevant Supreme Court precedent so dictates. The utilization of the “community’s interpretation” of constitutional text as discussed by justice Brennan should not be considered by a court. Judges must decide cases based upon the doctrine of state decisions and must interpret statutes according to their plain meaning and should not be influenced by public opinion. An appropriate method for the establishment of a constitutional right not previously upheld by a court would be through the ratification of an amendment under Article V of the Constitution.

*Question 10.* How would you, if confirmed, analyze a challenge to the constitutionality of a statute in a case that was not one of first impression? In a case of first impression?

Answer 10. If confronted with a challenge to the constitutionality of a statute in a case that was not one of first impression, I would follow the precedent of the Supreme Court of the United States, or if none existed, the circuit courts.

If confronted with a challenge to the constitutionality of a statute in a case of first impression, I would bear in mind that there is a presumption of constitutionality. Further, I would also consider that, wherever possible, constitutional issues should be reached only if no other grounds for resolving the case are available. I would

search for analogous United States Supreme Court precedent or analogous circuit court precedent in the absence of direct United States Supreme Court guidance.

*Question 11.* In your view, what are the sources of law and methods of interpretation used in reaching the Court's judgment in the following cases? How does the use of sources of law impact the scope of the judicial power and the federal government's power under Article III?

A. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

Answer 11A. In *Griswold v. Connecticut*, 381 U.S. 479 (1965), the Court held that the substantive due process component of the due process clause of the Fourteenth Amendment protected the right of married couples to obtain contraceptives and invalidated a Connecticut law restricting access to birth control.

B. *Alden v. Maine*, 119 S. Ct. 2240 (1999).

Answer 11B. In *Alden v. Maine*, 119 S. Ct. 2240 (1999), the Court dismissed a lawsuit brought by state employees under the Fair Labor Standards Act. In so doing, the Court construed the Eleventh Amendment to bar lawsuits against states in state courts, even though the amendment's text clearly refers only to "[t]he judicial power of the United States." The *Alden* court held that the plain text of the amendment did not completely embody the "sovereign immunity [that] derives \* \* \* from the structure of the original Constitution itself."

*Griswold* and *Alden* are both examples of cases in which the Supreme Court looked to purported sources of constitutional law beyond the actual text of the Constitution.

*Question 12.* Compare the following cases with respect to their fidelity to the text and original intent of the Constitution. Also assess their impact on the judicial power compared with Congress's power and on the federal government's power compared with the power of state governments.

A. *Wickard v. Filburn*, 317 U.S. 111 (1942).

Answer 12A. In *Wickard v. Filburn*, 317 U.S. 111 (1942), Supreme Court of the United States permitted legislation enacted pursuant to the Commerce Clause to pass constitutional muster so long as, in the aggregate, the activity substantially affected interstate commerce. In *Wickard*, the Supreme Court upheld a federal law that prevented individual farmers from growing more than a predetermined amount of wheat because overproduction by individual farmers, in the aggregate, could affect the interstate wheat market.

B. *United States v. Lopez*, 514 U.S. 549 (1995).

Answer 12B. *Lopez* involved the Federal Gun-Free School Zones Act, which made it a crime to knowingly carry a firearm within a "school zone." The Court, in striking down this law, held that the activities regulated by the statute did not by definition have an effect on interstate commerce, and that the Act did not require a jurisdictional nexus (e.g., that the firearm in issue crossed state lines).

Together, *Wickard* and *Lopez* define the boundaries of the Commerce Clause.

*Question 13.* What does the division of power between the national government and state governments play in our federal system? What impact does this division have on the liberty of the individual and the power of federal judges? Assess the impact of the following cases on the division of power between the national and state governments.

A. *United States v. Lopez*, 514 U.S. 549 (1995).

Answer 13A. *United States v. Lopez*, 514 U.S. 549 (1995), illustrates the trend of the Supreme Court of United States in interpreting the Constitution to enhance the autonomy and independence of the states vis-a-vis Congress. By striking down the Federal Gun-Free School Zones Act after concluding that the law did not have a substantial effect on interstate commerce, the Court in *Lopez* reaffirmed that there are limits on Article I "commerce power."

B. *Printz v. United States*, 521 U.S. 898 (1997).

Answer 13B. In *Printz v. United States*, 521 U.S. 898 (1997), the Court reaffirmed that the Tenth Amendment is a real limitation on Congressional power to enact legislation affecting the states. The *Printz* Court reviewed the interim provisions of the Brady Handgun Violence Prevention Act, which required state law enforcement officers to perform background checks on prospective gun buyers and perform other related duties. The Court held that Congress had no greater power under the Tenth Amendment to require a state's executive officer to carry out federal law than it did to mandate state legislatures to enact legislation to effectuate federal law.

C. *Alden v. Maine*, 119 S. Ct. 2240 (1999).

Answer 13C. In *Alden v. Maine*, 119 S. Ct. 2240 (1999), the Court construed the Eleventh Amendment to bar lawsuits against states in state court, even though the amendment's text clearly refers only to "[t]he judicial power of the United States."

*Lopez, Printz, and Alden*, represent three different limits on Congress' power vis-a-vis the states.

D. *Baker v. Carr*, 369 U.S. 186 (1962).

Answer 13D. In *Baker v. Carr*, 369 U.S. (1962), the Court considered the question whether malapportionment of legislative districts was justiciable and concluded that it was, agreeing with the plaintiffs that the case raised a Fourteenth Amendment equal protection issue. The Court held that state actions that impinge on federal constitutional rights are issues that may be reviewed by the federal courts.

E. *Shaw v. Reno* 509 U.S. 630 (1993).

Answer 13E. In *Shaw v. Reno*, 590 U.S. 630 (1993), the Court held that an allegation that North Carolina's redistricting legislation was an effort to segregate races for voting purposes, without regard for traditional districting principles and without sufficiently compelling justification, was a justiciable issue under the Equal Protection Clause.

Together, *Baker* and *Shaw* stand for the proposition that claims of discrimination protected by the federal Constitution and aimed at securing individual rights apply to state actions.

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RESPONSES OF MARY H. MURGUIA TO QUESTIONS FROM SENATOR GRASSLEY

*Question 1.* What role did you play in the decision of the United States Attorney's office in Arizona not to authorize an application for a search warrant for James Moore? Who was targeted during Operation Special Delivery?

Answer 1. I was the Deputy Chief of the Criminal Division of the United States Attorney's Office for the District of Arizona during this time period. I supervised the Violent Crime Section which prosecuted, among other things, sexual crimes against children, including child pornography. As such, I supervised the Assistant U.S. Attorney (AUSA) assigned to the Moore case. When an AUSA whom I supervised had a question regarding the validity of a search warrant or any legal concerns, it was my job to review the search warrant and provide my guidance and opinion.

"Operation Special Delivery" was designed to target for prosecution those who possessed, produced and trafficked in child pornography. In the Moore case, along with the line AUSA and the Criminal Chief, I provided my judgment to the United States Attorney that, in my view (and in view of the line AUSA and Criminal Chief) the proposed warrant as then developed provided at best a questionable basis for a successful child pornography prosecution of Mr. Moore—and that it would be best, *i.e.*, more likely to result in a sustainable conviction, if the Postal Inspector could obtain additional evidence. When the Postal Inspector refused to do so and demanded a declination in writing, I signed and approved the requested letter.

*Question 2.* Did you ever, at any time, in discussions with Postal Inspection Agent Karyn Cassatt make reference to James Moore's sexual orientation or the sexual orientation of those targeted by government in Operation Special Delivery?

Answer 2. Yes, I did make reference to Mr. Moore's sexual orientation and the sexual orientation of those targeted by the government in Operation Special Delivery in discussions with Postal Inspector Karyn Cassatt. I did so in the context of a conversation in which we discussed the sufficiency of the evidence that had been provided to the United States Attorney's Office by the Postal Inspector in an effort to obtain approval for a search warrant. One of the pieces of information that the Postal Inspector provided us was Mr. Moore's sexual orientation. However, it was my view, and the view of the United States Attorney's Office for the District of Arizona, that the Postal Inspector had not provided sufficient evidence to establish that Mr. Moore had a predilection for child pornography and, thus, at that time, the Postal Inspector had not provided sufficient evidence to support a warrant that would lead to a successful conviction. Accordingly, it was my judgment, and the judgment of the United States Attorney's Office for the District of Arizona, that the information provided to us by the Postal Inspector was not yet sufficient under the controlling legal precedent to withstand legal challenge and result in a successful prosecution.

Although I may have stated it inartfully at times, the reference to Mr. Moore's sexual orientation was intended to address the sufficiency of the evidence presented by the Postal Inspector and not to suggest that such orientation should be used as a criterion either for or against prosecution. To the contrary, I firmly believe that those who exploit or abuse children should be vigorously prosecuted regardless of their sexual orientation.

*Question 3.* What role did you play in the decision of the United States Attorney's office in Arizona not to permit prosecutors from the Child Exploitation and Obscen-

ity Section to seek an application for a search warrant or to otherwise direct the investigation and prosecution of James Moore, who was targeted during Operation Special Delivery?

Answer 3. As Deputy Chief of the Criminal Section, I participated in formulating the position of the United States Attorney's Office that the Child Exploitation and Obscenity Section (CEOS) of the Department of Justice's Criminal Division should neither assume responsibility for the investigation nor seek a search warrant based on the information provided by the Postal Inspector as of the time the warrant was sought. For the reasons stated above, we believed that the case should have been developed further prior to seeking a search warrant. At the time, I understood that any disagreement between the U.S. Attorney's Office and the CEOS would be resolved by higher ranking officials within the Department. As it developed, the matter was taken to state authorities by the Postal Inspector before the matter was resolved within the Department.

*Question 4.* Did United States Attorney Janet Napolitano, or any person employed by Ms. Napolitano, make reference to James Moore's sexual orientation or the sexual orientation of those targeted by government in Operation Special Delivery at any time during the consideration of the Postal Inspection Service's request that the United States Attorney's office to seek a search warrant for James Moore?

Answer 4. As discussed above, I did refer to Mr. Moore's sexual orientation and the sexual orientation of those targeted by the government in Operation Special Delivery in discussions about the Moore search warrant. Although I do not specifically recall any particular reference by United States Attorney Napolitano or any other employee of the United States Attorney's Office to Mr. Moore's sexual orientation or the sexual orientation of those targeted by the government in Operation Special Delivery, I believe that such references must have occurred during the course of the investigation. As I have described in my answer to Question 2 above, my reference was in the context of a conversation in which we articulated our view that the Postal Inspector had not provided sufficient evidence to establish that Mr. Moore had a predilection for child pornography and, thus, at that time, the Postal Inspector had not provided sufficient evidence to support a warrant that would lead to a successful conviction. In addition, I am confident that in any reference by the United States Attorney or any other employee of the United States Attorney's Office for the District of Arizona to Mr. Moore's sexual orientation or the sexual orientation of those targeted by the government in Operation Special Delivery, the principal focus was always to obtain sufficient evidence to obtain sustainable convictions under the child pornography statutes.

My record as both a state and federal prosecutor conclusively demonstrates that I have aggressively prosecuted persons committing crimes against children without regard to their sexual orientation.

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#### RESPONSES OF MARY H. MURGUIA TO QUESTIONS FROM SENATOR SESSIONS

*Question 1.* 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?

Answer 1. Yes. I understand I am bound by the precedent set forth by the Supreme Court and the Court of Appeals. My personal views would not interfere or influence my ability to follow the law. If I am fortunate enough to be confirmed, I will faithfully give the Constitution and decisions of the Supreme Court of the United States and the Court of Appeals for the Ninth Circuit full force and effect.

*Question 2.* How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision or your own best judgment of the merits? Take, for example, the Supreme Court's recent decision in the *City of Boerne v. Flores*<sup>1</sup> where the Court struck down the Religious Freedom Restoration Act.

Answer 2. As a federal district court judge, it would be my job to apply the relevant legal precedent whether or not I personally agreed with it. In *City of Boerne v. Flores*, the Supreme Court declared the Religious Freedom Restoration Act unconstitutional and beyond Congress' authority to enact under section 5 of the Fourteenth Amendment. I would follow this binding precedent as I would any other precedent.

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<sup>1</sup>521 U.S. 507 (1997).

*Question 3.* Please state in detail your best independent legal judgment, irrespective of existing judicial precedent, on the lawfulness, under the Equal Protection Clause of the 14th Amendment and federal civil rights laws, of the use of race, gender or national origin-based preferences in such areas employment decisions (hiring, promotion, or layoffs), college admissions, and scholarship awards and the awarding of governmental contracts.

*Answer 3.* If I were fortunate to be confirmed as a federal district court judge, I would follow the relevant Equal Protection Clause precedent that governs the constitutionality of affirmative action programs. *Adarand Constructors v. Peña*, 515 U.S. 200 (1995), holds that racial preferences are to be subject to “strict scrutiny.” Gender preferences, by contrast, are to be evaluated under “intermediate scrutiny” under *United States v. Virginia*. My independent legal judgment would not factor in to any decision I would make regarding the application of this standard.

*Question 4.* Are you aware of the Supreme Court’s decision in *Adarand v. Peña*<sup>2</sup> and the Court’s earlier decision in *Richmond v. J.A. Croson Co.*<sup>3</sup> If so, please explain to the Committee your understandings of those decisions, and their holdings concerning the use of race to distribute government benefits, or to make government contracting or hiring decisions.

*Answer 4.* Yes. Both decisions hold that racial classifications warrant heightened scrutiny under the Equal Protection Clause. In *Croson*, the Court held that state affirmative action programs must satisfy “strict scrutiny” under the Equal Protection Clause, and would generally be upheld only if necessary to remedy past discrimination by the State agency at issue. *Adarand*, as noted above, held that strict scrutiny also applies to Congressionally enacted affirmative action programs.

*Question 5.* Regardless of your personal feelings on these issues, are you committed to following precedent of higher courts on equal protection issues?

*Answer 5.* Yes. I am committed to following the precedent of the higher courts on equal protection issues.

*Question 6.* Do you have any legal or moral beliefs which would inhibit or prevent you from imposing or upholding a death sentence in any criminal case that might come before you as a federal judge?

*Answer 6.* No. The Supreme Court has made it clear that the death penalty is constitutional. Nothing regarding my views would prevent me from following the law.

*Question 7.* Do you believe that 10-, 15-, or even 20-year delays between conviction of a capital offender and execution is too long? Do you believe that once Congress or a state legislature has made the policy decision that capital punishment is appropriate that the federal courts should focus their resources on resolving capital cases fairly and expeditiously?

*Answer 7.* Yes, delays of 10, 15, or 20 years are too long. Federal courts should endeavor to resolve all cases fairly and expeditiously, and capital cases should be no exception.

*Question 8.* What authorities may a federal judge legitimately use in determining the legal effect of a statute or constitutional provision? Discuss how the use of these authorities is consistent with the exercise of the Article III judicial power.

*Answer 8.* Federal judges are bound by the plain language of the Constitution or the statutory provision at issue, controlling precedent of the Supreme Court of the United States and any superior federal courts. Federal statutes are presumed to be constitutional. A federal judge may also look to the plain meaning of the statute and when appropriate seek guidance from the legislative history.

*Question 9.* Please assess the legitimacy of the following three approaches to upholding a claim based on a constitutional right not previously upheld by a court: (1) interpretation of the plain meaning of the text and original intent of the Framers of the Constitution; (2) discernment of the “community’s interpretation” of constitutional text, see William J. Brennan, *The Constitution of the United States: Contemporary Ratification, Text and Teaching Symposium*, Georgetown University (October 12, 1985); and (3) ratification of an amendment under Article V of the Constitution. Assess the impact of each approach on the judicial power provided by Article III of the Constitution.

*Answer 9.* As a district court judge, I would adhere to the plain meaning of the text of the Constitution and, where that does not resolve a question and Supreme Court precedent dictates, I would look to the Framers’ intent and to other sources. The second approach, looking to the “community’s interpretation” of constitutional

<sup>2</sup> 515 U.S. 200 (1995).

<sup>3</sup> 488 U.S. 469 (1989).



text, has never been adopted by the Supreme Court. The third approach is the proper method of amending the Constitution.

*Question 10.* How would you, if confirmed, analyze a challenge to the constitutionality of a statute in a case that was not one of first impression? In a case of first impression?

Answer 10. When confronted with a case that is not of first impression, I would look to the controlling legal precedent. In a case of first impression, which is rare, I would bear in mind the presumption that legislation is constitutionally valid. My subsequent analysis would look to any existing analogous precedent, and would begin—and frequently end—with the plain language of the statute and the jurisprudence governing the relevant constitutional provision. I would, of course, construe a statute in a constitutional manner if at all possible.

*Question 11.* In your view, what are the sources of law and methods of interpretation used in reaching the Court's judgment in the following cases? How does the use of sources of law impact the scope of the judicial power and the federal government's power under Article III?

A. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

B. *Alden v. Maine*, 119 S. Ct. 2240 (1999).

Answer 11. In *Griswold*, the Court held that a Connecticut law barring the use of contraceptives by married couples violated the substantive component of the Due Process Clause. In *Alden*, the Court dismissed a lawsuit brought by state employees against Maine in state court under the Fair Labor Standards Act, reasoning that the state sovereign immunity embodied by the Eleventh Amendment prohibited Congress from subjecting States to lawsuits without their consent. In both of these cases, the Supreme Court looked to sources other than the plain text of the Constitution in rendering its decision.

*Question 12.* Compare the following cases with respect to their fidelity to the text and original intent of the Constitution. Also assess their impact on the judicial power compared with Congress's power and on the federal government power compared with the power of state governments.

A. *Wickard v. Filburn*, 317 U.S. 111 (1942).

B. *United States v. Lopez*, 514 U.S. 549 (1995).

Answer 12. In *Wickard*, the Supreme Court held that the Congress could regulate the wheat production of individual farmers under the Commerce Clause because individual production, in the aggregate, had a "substantial effect" on interstate commerce. *Lopez* reaffirmed limits on the Commerce Clause by striking down the Gun-Free School Zones Act on the grounds that the wholly intrastate possession of guns did not, without more, substantially affect interstate commerce. Together, these cases reflect the Supreme Court's assessment of Congress' power to regulate commerce vis-a-vis the States.

*Question 13.* What role does the division of power between the national government and state governments play in our federal system? What impact does this division have on the liberty of the individual and the power of federal judges? Assess the impact of the following cases on the division of power between the national and state governments.

A. *United States v. Lopez*, 514 U.S. 549 (1995).

B. *Printz v. United States*, 521 U.S. 898 (1997).

C. *Alden v. Maine*, 119 S. Ct. 2240 (1999).

D. *Baker v. Carr*, 369 U.S. 186 (1962).

E. *Shaw v. Reno*, 509 U.S. 630 (1993).

Answer 13. In *Lopez*, as noted above, the Supreme Court concluded that the Gun-Free School Zones Act violated the Commerce Clause because the activity it regulated—possession of a firearm within a school zone—did not "substantially affect" interstate commerce. In *Printz*, the Court held that the interim provisions of the Brady Handgun Act violated the Tenth Amendment by forcing state law enforcement officials to perform background checks on prospective gun buyers. In *Alden*, the Court held that Congress could not, consistent with the Eleventh Amendment, subject States to lawsuits in state courts against their will. All three of these cases reflect the Supreme Court's view of the limits of Congressional power.

In *Baker*, the Court held that a lawsuit alleging that state reapportionment of voting districts violated the Equal Protection Clause did not constitute a "political question," and would therefore be entertained by the federal courts. In *Shaw*, the Court held that an equal protection challenge to another state's reapportionment could be brought in federal court. Both of these cases reflect the Supreme Court's view of the supremacy of federal constitutional law against state action in lawsuits involving the protection of individual rights.

## RESPONSE OF SUSAN RITCHIE BOLTON TO QUESTIONS FROM SENATOR SESSIONS

*Question 1.* 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?

Answer 1. I am committed to faithfully following the precedents of higher courts and giving them full force and effect. Any personal views I may hold will not affect my ability to follow precedent.

*Question 2.* How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision or your own best judgment of the merits? Take for example, the Supreme Court's recent decision in the *City of Boerne v. Flores*<sup>1</sup> where the Court struck down the Religious Freedom Restoration Act.

Answer 2. I would apply the decision of the Supreme Court of the United States or the Court of Appeals whether I agreed with it or not. I would not apply my own judgment and ignore precedent.

*Question 3.* Please state in detail your best independent legal judgment, irrespective of existing judicial precedent, on the lawfulness, under the Equal Protection Clause of the 14th Amendment and federal civil rights laws, of the use of race, gender or national origin-based preferences in such areas as employment decisions (hiring, promotion, or layoffs), college admissions, and scholarship awards and the awarding of government contracts.

Answer 3. As established by the United States Supreme Court in *Adarand v. Peña*, any race or national origin-based preferences must be subjected to a strict scrutiny analysis; that is, the preference must serve a compelling state interest and the preference must be narrowly tailored to advance that compelling interest. If confirmed as a district judge, I would follow this precedent.

While *Adarand* does not address this issue in the context of gender, the Supreme Court has made clear in the Virginia Military Institute case and others that at least a heightened scrutiny is the appropriate standard. I would also follow this precedent.

*Question 4.* Are you aware of the Supreme Court's decision in *Adarand v. Peña*<sup>2</sup> and the Court's earlier decision in *Richmond v. J.A. Croson Co.*<sup>3</sup>? If so, please explain to the Committee your understandings of those decisions, and their holdings concerning the use of race to distribute government benefits, or to make government contracting or hiring decisions.

Answer 4. Both *Adarand v. Peña* and *Richmond v. J.A. Croson Co.* require the application of a strict scrutiny analysis whether the law is designed to benefit historically disadvantaged minority groups or provide a preference in business to minorities. This strict scrutiny standard is applicable to federal, state and local government benefits and preferences. I would follow these precedents.

*Question 5.* Regardless of your personal feelings on these issues, are you committed to following precedent of high courts on equal protection issues?

Answer 5. Regardless of personal views, I am committed to following precedents of higher courts.

*Question 6.* Do you have any legal or moral beliefs which would inhibit or prevent you from imposing or upholding a death sentence in any criminal case that might come before you as a federal judge?

Answer 6. I do not have any legal or moral views which would inhibit or prevent me from imposing or upholding a death sentence.

*Question 7.* Do you believe that 10, 15, or even 20-year delays between conviction of a capital offender and execution is too long? Do you believe that once Congress or a state legislature has made the policy decision that capital punishment is appropriate that the federal courts should focus their resources on resolving capital cases fairly and expeditiously?

Answer 7. Delays of a decade or more between conviction and final resolution of death penalty appeals are too long. Sufficient resources of courts, prosecuting agencies and defense counsel must be focused on resolving these cases fairly and expeditiously.

<sup>1</sup> 521 U.S. 507 (1997).

<sup>2</sup> 515 U.S. 200 (1995).

<sup>3</sup> 488 U.S. 469 (1989).

*Question 8.* What authorities may a federal judge legitimately use in determining the legal effect of a statute or constitutional provision? Discuss how the use of these authorities is consistent with the exercise of the Article III judicial power.

*Answer 8.* Article III judicial power requires federal judges to follow precedent in determining the legal effect of a statute or constitutional provision. Statutes must be presumed to be constitutional and interpreted to be constitutional whenever possible. Statutes should also be interpreted to give effect to the plain meaning of the statute and the intent of the legislature.

*Question 9.* Please assess the legitimacy of the following three approaches to establishing a constitutional right not previously upheld by a court: (1) interpretation of the plain meaning of the text and original intent of the Framers of the Constitution; (2) discernment of the “community’s interpretation” of constitutional text, see William J. Brennan. *The Constitution of the United States: Contemporary Ratification Text and Teaching Symposium*, Georgetown University (October 12, 1985); and (3) ratification of an amendment under Article V of the Constitution. Assess the impact of each approach on the judicial power established by Article III of the Constitution.

*Answer 9.* Federal district court judges should only uphold constitutional rights previously upheld by a higher court and not create new rights. The district court is bound by the plain meaning of the text of the Constitution, any amendments thereto and the interpretation of the United States Supreme Court and the Court of Appeals. The first approach is consistent with Supreme Court precedent. The second approach has never been accepted by the Supreme Court. The third approach is the one established in the Constitution.

*Question 10.* How would you, if confirmed, analyze a challenge to the constitutionality of a statute in a case that was not one of first impression? In a case of first impression?

*Answer 10.* If the case is not one of first impression, prior precedent would govern any question of the constitutionality of the statute. In the unusual circumstance of a case of first impression, my analysis would begin with the presumption of constitutionality of the statute. If at all possible, the case should be decided on grounds of statutory interpretation or analysis of prior precedent, rather than on constitutional grounds. If it is necessary to decide a statute’s constitutionality, I would rule the statute constitutional whenever possible. Only if it were plain and unavoidable that the statute was unconstitutional would I so rule. In addition, any ruling of unconstitutionality should be stated as narrowly as possible.

*Question 11.* In your view, what are the sources of law and methods of interpretation used in reaching the Court’s judgment in the following cases? How does the use of sources of law impact the scope of the judicial power and the federal government’s power under Article III?

A. *Griswold v. Connecticut*, 381 U.S. 479 (1955).

B. *Alden v. Maine*, 119 S. Ct. 2240 (1999).

*Answer 11.* In *Griswold v. Connecticut*, the Supreme Court held that the substantive component of the Due Process Clause secured a right of married couples to obtain contraceptives. In *Alden v. Maine*, the Supreme Court held that a state’s sovereign immunity guaranteed by the Eleventh Amendment prohibited a lawsuit brought by state employees against the state in state court for alleged violations of the Fair Labor Standards Act. The use of substantive due process and sovereign immunity by the Supreme Court demonstrates the Supreme Court’s views on the limits imposed by the Constitution on state governments’ powers over individuals and on the federal government’s power over the states.

*Question 12.* Compare the following cases with respect to their fidelity to the text and original intent of the Constitution. Also assess their impact on the judicial power compared with Congress’s power and on the federal government’s power compared with the power of state governments.

A. *Wickard v. Filburn*, 317 U.S. 111(1942).

B. *United States v. Lopez*, 514 U.S. 549 (1995).

*Answer 12.* *Wickard v. Filburn* upheld a federal law limiting farmers from growing more than a predetermined amount of wheat because of the cumulative effect overproduction could have on interstate commerce. *United States v. Lopez* struck down a federal law which made it a crime to knowingly carry a firearm in a school zone because the law did not affect interstate commerce. These cases illustrate the breadth and limitation of the federal government’s power to enact legislation and the power reserved to the states to legislate intrastate matters. These cases are another illustration of the limits on federal power over the states contained in the Constitution.

*Question 13.* What role does the division of power between the national government and state governments play in our federal system? What impact does this division have on the liberty of the individual and the power of federal judges? Assess the impact of the following cases on the division of power between the national and state governments.

- A. *United States v. Lopez*, 514 U.S. 549 (1995).
- B. *Printz v. United States*, 521 U.S. 898 (1997).
- C. *Alden v. Maine*, 119 S. Ct. 2240 (1999).
- D. *Baker v. Carr*, 369 U.S. 186 (1962).
- E. *Shaw v. Reno*, 509 U.S. 630 (1993).

Answer 13. Our Constitution reserves to the states all powers not specifically granted to the federal government in the Constitution. Regulation of local matters is for the states and to be constitutional federal enactments must serve a national interest. In *United States v. Lopez*, the Supreme Court reaffirmed the reach of the Commerce Clause in holding that a law making it a crime to carry a gun in a school zone is a local matter reserved to the states because it has no substantial impact on interstate commerce. In *Printz v. United States*, the Supreme Court also limited the power of the federal government to enact legislation that imposed obligations on state officers to execute federal laws by declaring unconstitutional that part of the Brady Act that imposed on state law enforcement officers the obligation to conduct background checks under this federal law. *Alden v. Maine* is a reaffirmation of the sovereign immunity of the states.

In contrast to these cases illustrating the limitations on federal power, *Baker v. Carr* and *Shaw v. Reno* are cases in which the Supreme Court upheld the power of the federal courts to protect individual rights guaranteed by the Constitution. In *Baker v. Carr*, a state statute that established an apportionment of legislative representation that deprived plaintiffs of equal protection in violation of the Fourteenth Amendment was found by the Supreme Court to present a justiciable question over which the federal courts had jurisdiction. Similarly, in *Shaw v. Reno*, the allegation that redistricting legislation was so irregular that it could only be rationally viewed as an effort to segregate races for voting purposes was held to state a claim under the equal protection clause of the Fourteenth Amendment.

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RESPONSES OF JAMES A. TEILBORG TO QUESTIONS FROM SENATOR SESSIONS

*Question 1.* 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?

Answer 1. I am committed to following all Supreme Court and Circuit Court precedents.

*Question 2.* How would you rule if you believed the Supreme Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision or your own best judgment of the merits? Take, for example, the Supreme Court's recent decision in the *City of Boerne v. Flores*<sup>1</sup> where the Court struck down the Religious Freedom Restoration Act.

Answer 2. Even if I disagreed with a decision of a higher court, I would apply that decision to the best of my ability.

*Question 3.* Please state in detail your best independent legal judgment, irrespective of existing judicial precedent, on the lawfulness, under the Equal Protection Clause of the 14th Amendment and federal civil rights laws, of the use of race, gender or national origin-based preferences in such areas as employment decisions (hiring, promotion, or layoffs), college admissions, and scholarship awards and the awarding of government contracts.

Answer 3. In *Adarand v. Peña*, the Supreme Court made it clear that any law using race or national origin-based preferences is subject to a strict scrutiny standard requiring a showing of a compelling government interest and narrowly tailored remedy. I would follow this precedent if I am fortunate enough to be confirmed as a district judge. *Adarand* does not address this issue in the context of gender. However, in other cases, the Supreme Court has made it clear that at least a heightened scrutiny is the appropriate standard. I would also follow this precedent.

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<sup>1</sup>521 U.S. 507 (1997).

*Question 4.* Are you aware of the Supreme Court's decision in *Adarand v. Peña*<sup>2</sup> and the Court's earlier decision in *Richmond v. J.A. Croson Co.*?<sup>3</sup> If so, please explain to the Committee your understandings of those decisions, and their holdings concerning the use of race to distribute government benefits, or to make government contracting or hiring decisions.

Answer 4. I am aware of these decisions and their requirements of the strict scrutiny test called for by *Croson* with regard to state and local enactments and *Adarand* with regard to federal enactments. I would follow these precedents if I am fortunate enough to be confirmed as a district judge.

*Question 5.* Regardless of your personal feelings on these issues, are you committed to following precedent of high courts on Equal Protection issues?

Answer 5. Nothing about my personal feelings will prevent me from, and I am committed to following, precedent on Equal Protection issues.

*Question 6.* Do you have any legal or moral beliefs which would inhibit or prevent you from imposing or upholding a death sentence in any criminal case that might come before you as a federal judge?

Answer 6. I have no legal or moral beliefs which would prevent me from imposing or upholding a death sentence in any appropriate case.

*Question 7.* Do you believe that 10, 15, or even 20-year delays between conviction of a capital offender and execution is too long? Do you believe that once Congress or a state legislature has made the policy decision that capital punishment is appropriate that the federal courts should focus their resources on resolving capital cases fairly and expeditiously?

Answer 7. I believe delays of this magnitude should be a concern to all branches of government and those involved in the criminal justice system. If I am fortunate enough to be confirmed as a district judge, I am committed to resolving capital cases fairly and expeditiously within the confines of the district courts jurisdiction.

*Question 8.* What authorities may a federal judge legitimately use in determining the legal effect of a statute or constitutional provision? Discuss how the use of these authorities is consistent with the exercise of the Article III judicial power.

Answer 8. In determining the legal effect of a statute or constitutional provision, a district judge should always follow relevant precedent from the circuit and Supreme Court. In any statutory challenge, the court should start with the plain language of the enactment and presume it to be constitutional. The court should also attempt resolution of the case without reaching a constitutional question if possible. It should look to legislative intent carefully, giving more weight to formal committee reports than comments by individual members. This restrained approach is consistent with the limited jurisdiction and scope of the district court.

*Question 9.* Please assess the legitimacy of the following three approaches to establishing a constitutional right not previously upheld by a court: (1) interpretation of the plain meaning of the text and original intent of the Framers of the Constitution; (2) discernment of the "community's interpretation" of constitutional text, see William J. Brennan, *The Constitution of the United States: Contemporary Ratification, Text and Teaching Symposium*, Georgetown University (October 12, 1985); and (3) ratification of an amendment under Article V of the Constitution. Assess the impact of each approach on the judicial power established by Article III of the Constitution.

Answer 9. The first approach has been accepted by the Supreme Court. It is the legitimate role and should be the function of an Article III court to first seek to determine the plain meaning of the text of the Constitution. If the court has determined a constitutional issue is presented and there is no controlling precedent, it should seek to determine the original intent of the framers of the Constitution. This approach is manifestly at odds with the second listed approach, a so-called "community interpretation" approach. As for the third approach, ratification of an amendment is the constitutionally provided method for establishing a new right if one is to be established.

*Question 10.* How would you, if confirmed, analyze a challenge to the constitutionality of a statute in a case that was not one of first impression? In a case of first impression?

Answer 10. In either case, I would first determine that it is indeed a case requiring a constitutional decision. If not a case of first impression, I would look to precedent in the U.S. Supreme Court and the Ninth Circuit and follow that precedent. If it is truly a case of first impression, I would begin by presuming the statute to

<sup>2</sup> 515 U.S. 200 (1995).

<sup>3</sup> 488 U.S. 469 (1989).

be constitutional and seek a construction that is constitutional. I would seek to resolve the case by looking to the plain language of the statute and the plain language of the Constitution. I would also look at analogous cases and analogous areas of law.

*Question 11.* In your view, what are the sources of law and methods of interpretation used in reaching the Court's judgment in the following cases? How does the use of sources of law impact the scope of the judicial power and the federal government's power under Article III?

A. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

Answer 11A. In *Griswold*, the Court found a penumbra of rights in the Constitution though not so stated, and found a right of privacy which was violated by Connecticut Statute forbidding use of contraceptives. The Court also relied on the Ninth Amendment providing that the enumeration of certain rights shall not deny others retained by the people.

B. *Alden v. Maine*, 119 S. Ct. 2240 (1999).

Answer 11B. *Alden* dismissed a suit brought by state employees under the federal Fair Labor Standards Act holding that sovereign immunity derives from the structure of the original Constitution, not the plain language of the Eleventh Amendment.

Commentators have noted that, in both cases, the Court based its ruling not solely on the express text of the Constitution. If I am confirmed as a district judge, I would follow these precedents to the extent they remain good law.

*Question 12.* Compare the following cases with respect to their fidelity to the text and original intent of the Constitution. Also assess their impact on the judicial power compared with Congress's power and on the federal government's power compared with the power of state governments.

A. *Wickard v. Filburn*, 317 U.S. 111 (1942).

Answer 12A. In *Wickard*, the Court upheld a federal law limiting the amount of wheat a farmer could grow, holding that the right of Congress to regulate commerce includes regulations having an indirect effect by virtue of regulating a local activity. This decision obviously affirmed the power of Congress in the area of economic regulation.

B. *United States v. Lopez*, 514 U.S. 549 (1995).

Answer 12B. In *Lopez*, the Court limited Congress's power by holding unconstitutional a law establishing gun-free zones around schools, as not having a sufficient effect on interstate commerce. The Court found that the act did not deal with economic activity, just criminal activity, limiting the reach of the interstate commerce clause.

*Question 13.* What role does the division of power between the national government and state governments play in our federal system? What impact does this division have on the liberty of the individual and the power of federal judges? Assess the impact of the following cases on the division of power between the national and state governments.

A. *United States v. Lopez*, 514 U.S. 549 (1995).

Answer 13A. As discussed above, *Lopez* struck down the Gun-Free School Zones Act. The Court made clear that a law based on the commerce clause can not be sustained solely on such an indirect connection to interstate commerce as the costs of crime. The Court reaffirmed a limit on the reach of the commerce clause.

B. *Printz v. United States*, 521 U.S. 898 (1997).

Answer 13B. *Printz* dealt with interim provisions of the Brady Handgun Violence Prevention Act which required local government officials to do background checks. The Court found the law violates the Constitution by conscripting local government officials to carry out provisions of a federal law.

C. *Alder v. Maine*, 119 S. Ct. 2240 (1999).

Answer 13C. *Alden*, as discussed earlier, involved a suit by state employees under the FLSA. The Court held that the Eleventh Amendment prohibits Congress from subjecting non-consenting states to lawsuits, unless the law is enacted pursuant to Section 5 of the Fourteenth Amendment.

These three cases are examples in which the Supreme Court articulated the limitations of federal power.

D. *Baker v. Carr*, 369 U.S. 186 (1962).

Answer 13D. *Baker* was a voting apportionment case involving state voters. The Court held that reviewing the state appointment actions was not a political question and could therefore be entertained by federal courts.

E. *Shaw v. Reno*, 509 U.S. 630 (1993).

Answer 13E. In *Shaw*, the Court held that it was possible to bring an Equal Protection challenge to a particular voting apportionment scheme.

These cases are examples in which the Supreme Court recognized the power of the federal courts to entertain constitutional challenges, including those involving the protection of individual rights.

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RESPONSES OF JAMES A. TEILBORG TO QUESTIONS FROM SENATOR LEAHY

*Question 1.* In 1980, in a case called *Stone v. Graham*, the Supreme Court held that posting the Ten Commandments in public schools violates the Establishment Clause. Do you agree with that decision? How would you have analyzed it as a case of first impression? Would you follow it if a similar case came before you?

Answer 1. Last year, the U.S. House of Representatives passed a bill that purported to allow the Ten Commandments to be displayed on any property owned or administered by a State. How would you analyze the constitutionality of such a law?

I will follow the precedent of *Stone* if I am fortunate enough to be confirmed as a district court judge. Had it come before me as a case of first impression I would have utilized the three-part test of *Lemon v. Kurtzman*, 403 US 602 (1971) that controlled in 1980, and would have determined whether the law has a secular legislative purpose, whether it neither advances nor inhibits religion, and whether it fosters an excessive government entanglement with religion.

If I were presented with a constitutional challenge to any bill purporting to allow the Ten Commandments to be displayed on state property, I would look to prevailing Supreme Court precedent including *Stone* and more recent Establishment Clause precedents such as *Agostini v. Felton* and *Mitchell v. Helms*. I can assure you that I would follow prevailing Supreme Court precedent with respect to this or any other issue.

*Question 2.* In the 1992 case, *Lee v. Weissman*, the Supreme Court held that the Establishment Clause prohibits members of the clergy from offering prayers as part of an official public school graduation ceremony. This year, the Court held that the Establishment Clause prohibits a public school from allowing students to deliver prayers over the public address system at home football games. Do you agree with these decisions? How would you have analyzed each as a matter of first impression? Would you follow them?

Answer 2. As a district court judge, if I am fortunate enough to be confirmed, my oath would compel me to follow and I would apply *Lee v. Weissman* and *Sante Fe Independent School District v. Doe*, both of which are binding precedent. Were these cases before me today as cases of first impression I would look to relevant First Amendment Establishment Clauses precedents, and allow them.

*Question 3.* Justice Scalia and Justice Thomas have taken the position that the government may give tax dollars to religious schools to further a secular purpose, so long as it also gives aid to nonreligious schools on the same terms. In other words, these Justices believe that government aid to religious schools is permissible as long as it is offered on a neutral basis, and the aid is secular in content. Do you think the Establishment Clause allows tax dollars to be spent on religious schools in this way?

As a sitting district court judge, I would look to the relevant precedent of the Supreme Court and not the individual opinions of individual justices. As you alluded to in your question, the plurality opinion of *Mitchell v. Helms* held that an aid program offering secular aid on a neutral basis to religious and nonreligious schools was likely to be constitutional because of its neutrality. I would follow the holding of the majority of the court (not the opinions of dissenting judges) when applying this precedent to future cases.

In this and all matters I can assure the Committee that if I am confirmed as a district judge I will follow all relevant Supreme Court and Ninth Circuit decisions.