

**UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY**

**QUESTIONNAIRE FOR JUDICIAL NOMINEES**

**PUBLIC**

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

Gershwin Allen Drain

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

United States District Judge for the Eastern District of Michigan

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

Michigan Third Circuit Court  
1411 Coleman A. Young Municipal Center  
2 Woodward Avenue  
Detroit, Michigan 48226

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

1949; Detroit, Michigan

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

1987 – 1991, University of Nevada – Reno; Masters of Judicial Studies, 1991

1970 – 1972, University of Michigan Law School; J.D., 1972

1966 – 1970, Western Michigan University; B.S., 1970

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

1997 – Present  
Michigan Third Circuit Court  
2 Woodward Avenue  
Detroit, Michigan 48226  
Judge

1987 – 1997  
Recorders Court for the City of Detroit  
1441 St. Antoine Street  
Detroit, Michigan 48226  
Judge

1986 – 1987  
36th District Court for the City of Detroit  
421 Madison Avenue  
Detroit, Michigan 48226  
Judge

1974 – 1986  
Federal Defender Office  
613 Abbott Street, Fifth Floor  
Detroit, Michigan 48226  
Attorney

1973 – 1974  
City of Detroit, Department of Transportation  
1301 East Warren Avenue  
Detroit, Michigan 48207  
Attorney

1972 – 1973  
Michigan Third Circuit Court  
2 Woodward Avenue  
Detroit, Michigan 48226  
Legal Research Clerk

Other Affiliations (uncompensated):

1990 – 1992; 2008 – 2011  
Southfield Christian School  
28650 Lahser Road  
Southfield, Michigan 48034  
School Board

2002 – 2008  
Highland Park Baptist Church  
28600 Lahser Road  
Southfield, Michigan 48034  
Deacon Board

2002 – 2008  
InnerChange Freedom Initiative  
(A division of Prison Fellowship Ministries)  
44810 Riverside Parkway, #100  
Leesburg, Virginia 40176  
Board of Directors

2000 – 2006  
New Creations Community Outreach  
(Formerly Transition of Prisoners)  
40 Hague Street, #100  
Detroit, Michigan 48202  
Board of Directors

1992 – 1999  
Wayne County Criminal Advocacy Program  
Frank Murphy Hall of Justice  
1441 St. Antoine Street  
Detroit, Michigan 48226  
Board of Directors

1996 – 1998  
Cornerstone Schools  
6861 East Nevada Street  
Detroit, Michigan 48235  
Board of Directors

1993 – 1998  
Justice Fellowship  
(A division of Prison Fellowship Ministries)  
44810 Riverside Parkway, #100  
Leesburg, Virginia 40176  
Board of Directors

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

I did not serve in the U.S. Military. I did register for selective service.

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

Michigan Chronicle's Men of Excellence Award (2011)

Rosedale Park Baptist Church Cornelius Community Service Award (2004)

Wayne County Neighborhood Legal Services Appreciation Award (1993, 1995, 1998)

Detroit News Michiganiaan of the Year (1997)

WWJ-950 Citizen of the Week (1997)

St. Gregory High School Alumni of the Year (1993)

United Sisterhood Appreciation Award (1993)

Justice Fellowship Appreciation Award (1988)

Scholarship to the University of Michigan Law School (1970 – 1972)

Athletic Scholarship (football) to Western Michigan University  
Partial Scholarship (1966 – 1968)  
Full Scholarship (1968 – 1970)

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

American Council of Business Court Judges (2008 – 2009)

Association of Black Judges of Michigan (1986 – present)  
Co-Chair, Law Day Mock Trial (1990)  
Mock Trial Program, Judge and Coach (1993 – 1998)  
Adopt-a-School and Mentoring Program (1993 – 1998)

Michigan Bar Association (1972 – present)  
Criminal Jury Instruction Committee (mid- to late-1990s)  
Criminal Law Section (1974 – 2000)  
Prisons & Corrections Section (1998)

Michigan Judges Association (1995 – present)

National Bar Association (2011 – present)

Wayne County Criminal Advocacy Program  
Board of Directors (1992 – 1999)

Wolverine Bar Association (1980 – present)

**10. Bar and Court Admission:**

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

Michigan, 1972

There has been no lapse in membership.

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

United States Court of Appeals for the Sixth Circuit, 1973

United States District Court for the Eastern District of Michigan, 1972

There have been no lapses in membership.

**11. Memberships:**

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

Cornerstone Schools  
Board of Directors (1996 – 1998)

Highland Park Baptist Church (1980 – present)  
Deacon Board (2002 – 2008)

NAACP (1984 – present)  
Life Member since March of 1989

National Judicial College (1993 – 2003)  
Faculty Counsel (1997 – 2003)  
Faculty Advisor (1993)  
Faculty Instructor (approx. 1994 – 2002)

New Creations Community Outreach (formerly Transition of Prisoners)  
Board of Directors (2000 – 2006)

North Rosedale Park Civic Association (1980 – present)  
CB Patrol (similar to Neighborhood Watch) (1986 – 1988)  
Home & Garden Tour Committee (2010)

Prison Fellowship Ministries (1987 – 2008)  
Justice Fellowship Michigan Task Force (1987 – 1990)  
Justice Fellowship Board of Directors (1993 – 1998)  
InnerChange Freedom Initiative Board of Directors (2002 – 2008)

Southfield Christian School  
Board Member (1990 – 1992; 2008 – 2011)  
Christian Education Committee (1990 – 1992; 2008 – 2011)

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

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin.

## 12. Published Writings and Public Statements:

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

*Marijuana, 'the Gateway Drug,'* MICHIGAN CHRONICLE (June 27, 2000). Copy supplied.

*Our Judges Are Hardworking,* MICHIGAN CHRONICLE (June 13, 2000). Copy supplied.

*The Majesty of Calmness*, MICHIGAN CHRONICLE (May 16, 2000). Copy supplied.

*Prison Ministry in Uganda a Lesson for Judge, Part III*, MICHIGAN CHRONICLE (Mar. 21, 2000). Copy supplied.

*The Uganda Youth Forum and the Rev. Haman Cross Jr., Part II*, MICHIGAN CHRONICLE (Mar. 8, 2000). Copy supplied.

*Sowing the Seed: Building New Democracy in Uganda, Part I*, MICHIGAN CHRONICLE (Feb. 28, 2000). Copy supplied.

*Crime and Education*, MICHIGAN CHRONICLE (Nov. 16, 1999). Copy supplied.

*A Texas Prison Ministry Trip, Part II*, MICHIGAN CHRONICLE (Oct. 12, 1999). Copy supplied.

*A Texas Prison Ministry Trip, Part I*, MICHIGAN CHRONICLE (Oct. 5, 1999). Copy supplied.

*Judge Dalton A. Roberson Celebrates Retirement*, MICHIGAN CHRONICLE (July 20, 1999). Copy supplied.

*Legacy of Sunnie Wilson: 'Toast of the Town,'* MICHIGAN CHRONICLE (June 29, 1999). Copy supplied.

*The Judge Beverley Jasper Legacy*, MICHIGAN CHRONICLE (June 8, 1999). Copy supplied.

*Wayne County Court Helps Control Flow of Narcotics*, MICHIGAN CHRONICLE (Apr. 27, 1999). Copy supplied.

*Judge Robert Evans Receives Recognition Award*, MICHIGAN CHRONICLE (Apr. 20, 1999). Copy supplied.

*GM's Roy Roberts receives Soul and Spirit Award*, MICHIGAN CHRONICLE (Mar. 16, 1999). Copy supplied.

*SCLC Celebrated MLK Weekend*, MICHIGAN CHRONICLE (Mar. 2, 1999). Copy supplied.

*Alvin Poussaint Speaks at Wayne State Martin Luther King Celebration*, MICHIGAN CHRONICLE (Feb. 9, 1999). Copy supplied.

*Young Leaders of Legacy Associates*, MICHIGAN CHRONICLE (Jan. 26, 1999). Copy supplied.

*Last Respects to Mike Wahls, a 'Great and Good Man,'* MICHIGAN CHRONICLE (Dec. 22, 1998). Copy supplied.

*Judge Keith Receives Devitt Award,* MICHIGAN CHRONICLE (July 7, 1998). Copy supplied.

*Gospel Group with a Mission,* MICHIGAN CHRONICLE (June 9, 1998). Copy supplied.

*Religion Reduces Recidivism,* MICHIGAN CHRONICLE (Apr. 28, 1998). Copy supplied.

*Challenge of Court Consolidation,* MICHIGAN CHRONICLE (Apr. 7, 1998). Copy supplied.

*Dads and Daughters,* MICHIGAN CHRONICLE (Mar. 3, 1998). Copy supplied.

*Message from Mayor Young,* MICHIGAN CHRONICLE (Jan. 13, 1998). Copy supplied.

*Clergy, Courts, Counselors Celebrate,* MICHIGAN CHRONICLE (Nov. 11, 1997). Copy supplied.

*President Carter's Book Reveals His Faith,* MICHIGAN CHRONICLE (Oct. 28, 1997). Copy supplied.

*NLA Banquet Focuses on Help, Hope,* MICHIGAN CHRONICLE (Oct. 14, 1997). Copy supplied.

*NAACP, Detroit Tigers Pay Tribute to Jackie Robinson,* MICHIGAN CHRONICLE (Sept. 30, 1997). Copy supplied.

*Fixing Old Flaws from the Felony-Murder Rule,* MICHIGAN CHRONICLE (Sept. 2, 1997). Copy supplied.

*The Law's Great Lady,* MICHIGAN CHRONICLE (Aug. 19, 1997). Copy supplied.

*Wonderful Washington, D.C.,* MICHIGAN CHRONICLE (Aug. 5, 1997). Copy supplied.

*The Law I Love to Hate, Part II,* MICHIGAN CHRONICLE (Late Apr. 1997). Copy supplied.

*The Law I Love to Hate, Part I,* MICHIGAN CHRONICLE (Apr. 22, 1997). Copy supplied.



*Student Essayists Impress Judges and Sponsors*, MICHIGAN CHRONICLE (Mar. 25, 1997). Copy supplied.

*Judge Anna Diggs-Taylor Quietly Makes History*, MICHIGAN CHRONICLE (Feb. 25, 1997). Copy supplied.

*School Celebrates Diversity*, MICHIGAN CHRONICLE (Dec. 11, 1996). Copy supplied.

*Judges Help Students through Mentoring Program*, DETROIT LEGAL NEWS (Nov., 1996). Copy supplied.

*A 'Worthy' Prayer Breakfast*, MICHIGAN CHRONICLE (Sept., 1996). Copy supplied.

*Mentoring Banquet a Success*, MICHIGAN CHRONICLE (June 12, 1996). Copy supplied.

*Prison Ministries Rehabilitate*, MICHIGAN CHRONICLE (May, 1996). Copy supplied.

*Law Office Is a Detroit Landmark*, MICHIGAN CHRONICLE (Apr. 17, 1996). Copy supplied.

*Ship Brings Slavery to Life*, MICHIGAN CHRONICLE (Mar. 27, 1996). Copy supplied.

*Edelman Addresses Deltas on Founder's Day*, MICHIGAN CHRONICLE (Mar. 13, 1996). Copy supplied.

*Promise Keepers '96: A Refocus on Humility and Unity* (1996). MICHIGAN CHRONICLE. Copy supplied.

*Promises of a Promise Keeper*, MICHIGAN CHRONICLE (Dec. 19, 1995). Copy supplied.

*Students Celebrate Brotherhood*, MICHIGAN CHRONICLE (Dec. 12, 1995). Copy supplied.

*Judges Begin Third Year of Mentoring Program*, DETROIT LEGAL NEWS (Dec. 1, 1995). Copy supplied.

*The Mentor in Mentoring*, MICHIGAN CHRONICLE (Nov. 28, 1995). Copy supplied.

*Elderly, Infirm Expensive to House*, MICHIGAN CHRONICLE (Nov. 21, 1995). Copy supplied.

*Real Rehabilitation Is Possible*, MICHIGAN CHRONICLE (Oct. 31, 1995). Copy supplied.

*Is Mandatory Mentoring Needed?*, MICHIGAN CHRONICLE (Sept. 19, 1995). Copy supplied.

*Parents of Murdered Children Helps Family, Loved Ones Heal*, MICHIGAN CHRONICLE (Aug. 30-Sept. 5, 1995). Copy supplied.

*'As a Man Thinketh' Is Thought-Provoking*, MICHIGAN CHRONICLE (Aug. 29, 1995). Copy supplied.

*A Message to Men Who Abuse Their Mates*, MICHIGAN CHRONICLE (Aug. 22, 1995). Copy supplied.

*Local Judge Teaches College*, MICHIGAN CHRONICLE (Aug. 8, 1995). Copy supplied.

*Archer Welcomes Metro Mayors to Annual Prayer Breakfast*, MICHIGAN CHRONICLE (July 4, 1995). Copy supplied.

*Working to Sweep Detroit Clean*, MICHIGAN CHRONICLE (June 13, 1995). Copy supplied.

*African Americans Highlight Promise Keepers Conference*, MICHIGAN CHRONICLE (May 30, 1995). Copy supplied.

*Jail Tours: Positive Prevention*, MICHIGAN CHRONICLE (May 16, 1995). Copy supplied.

*Edwards Compiles Chronicle Essays*, MICHIGAN CHRONICLE (May 9, 1995). Copy supplied.

*Appointed Attorneys Get a Bad Rap*, MICHIGAN CHRONICLE (Apr. 18, 1995). Copy supplied.

*Mentors vs. Mentees*, MICHIGAN CHRONICLE (Apr. 11, 1995). Copy supplied.

*Renaissance Rules in MLK Essay Competition*, MICHIGAN CHRONICLE (Apr. 4, 1995). Copy supplied.

*Black Judges Assn. Worships at New St. Paul Tabernacle COGIC*, MICHIGAN CHRONICLE (Apr. 4, 1995). Copy supplied.

*New Book Offers Tips on Preventing Crime*, MICHIGAN CHRONICLE (Mar. 28, 1995). Copy supplied.

*A 'Review' of Life behind the Wall*, MICHIGAN CHRONICLE (Mar. 21, 1995). Copy supplied.

*What Does a Life Sentence Mean?, Part II*, MICHIGAN CHRONICLE (Mar. 8-14, 1995). Copy supplied.

*What Does a Life Sentence Mean?, Part I*, MICHIGAN CHRONICLE (Mar. 7, 1995). Copy supplied.

*The Death of Conscience*, MICHIGAN CHRONICLE (Feb. 21, 1995). Copy supplied.

*Mayor Launches MELL Program*, MICHIGAN CHRONICLE (Feb. 21, 1995). Copy supplied.

*Understanding the Man behind the City*, MICHIGAN CHRONICLE (Feb. 8-14, 1995). Copy supplied.

*Another Life Lost to AIDS*, MICHIGAN CHRONICLE (Jan. 24, 1995).

*New Autobiography Is Meaningful*, MICHIGAN CHRONICLE (Jan. 17, 1995). Copy supplied.

*Angel Tree Project Delivery Day*, MICHIGAN CHRONICLE (Jan. 10, 1995). Copy supplied.

*Judge, Mayor Honored by NBA*, MICHIGAN CHRONICLE (Jan. 3, 1995). Copy supplied.

*The Angel Tree Project*, MICHIGAN CHRONICLE (Dec. 6, 1994). Copy supplied.

*'Success Runs in our Race,'* MICHIGAN CHRONICLE (Nov. 1, 1994). Copy supplied.

*Men Need Mentors and Models Too, Part II*, MICHIGAN CHRONICLE (Oct. 19, 1994). Copy supplied.

*Men Need Mentors and Models Too, Part I*, MICHIGAN CHRONICLE (Oct. 18, 1994). Copy supplied.

*The Importance, Value of Work*, MICHIGAN CHRONICLE (Oct. 11, 1994). Copy supplied.

*Courting AIDS is 'Dancing with Death,'* MICHIGAN CHRONICLE (Sept. 13, 1994). Copy supplied.

*Purging a Larcenous Intent,* MICHIGAN CHRONICLE (Sept. 28-Oct. 4, 1994). Copy supplied.

*The ABJM Gavel Is Passed,* MICHIGAN CHRONICLE (Aug. 23, 1994). Copy supplied.

*Judge Denise Page Hood becomes Detroit's Newest Federal Judge,* MICHIGAN CHRONICLE (Aug. 16, 1994). Copy supplied.

*New Book is Spiritually Enlightening,* MICHIGAN CHRONICLE (July 5, 1994). Copy supplied.

*Engler, Archer and McKinnon Attend Mayor's Prayer Breakfast,* MICHIGAN CHRONICLE (June 28, 1994). Copy supplied.

*Gangsta Rap Has Got to Go, Part III,* MICHIGAN CHRONICLE (June 21, 1994). Copy supplied.

*Gangsta Rap Has Got to Go, Part II,* MICHIGAN CHRONICLE (June 14, 1994). Copy supplied.

*Gangsta Rap Has Got to Go, Part I,* MICHIGAN CHRONICLE (June 7, 1994). Copy supplied.

*The Difficult Duty of Parental Discipline,* MICHIGAN CHRONICLE (May 31, 1994). Copy supplied.

*Reminders to Responsible Parents,* MICHIGAN CHRONICLE (Apr. 26, 1994). Copy supplied.

*Judge Leads a 'HIP' Program,* MICHIGAN CHRONICLE (Apr. 19, 1994). Copy supplied.

*Many Turn Out for a Tremendous Tribute to Judge Myron Wahls,* MICHIGAN CHRONICLE (Apr. 12, 1994). Copy supplied.

*Dads Make a Difference,* MICHIGAN CHRONICLE (Apr. 5, 1994). Copy supplied.

*'Volunteer Slavery,'* MICHIGAN CHRONICLE (Mar. 29, 1994). Copy supplied.

*Judges Celebrate Black History Month at Little Rock Baptist,* MICHIGAN CHRONICLE (Mar. 22, 1994). Copy supplied.

*I Have a Dream of Nonviolence*, MICHIGAN CHRONICLE (Mar. 15, 1994). Copy supplied.

*Three Strikes Is Poor Policy*, MICHIGAN CHRONICLE (Mar. 8, 1994). Copy supplied.

*Myron Wahls Preaches, Prays and Plays . . . and Will Be Honored with Jazz Tribute*, MICHIGAN CHRONICLE (Mar. 8, 1994). Copy supplied.

*'Sacred Honor': An Inside Account of the Triumphs of Colin Powell*, MICHIGAN CHRONICLE (Mar. 1, 1994). Copy supplied.

*Judges Mentor Middle School Students*, MICHIGAN CHRONICLE (Feb. 15, 1994). Copy supplied.

*Detroit TOP is a Top Program*, MICHIGAN CHRONICLE (Feb. 8, 1994). Copy supplied.

*An Open Letter to Judge Keith*, MICHIGAN CHRONICLE (Jan. 26, 1994). Copy supplied.

*Commendation for Judge Crockett*, MICH. CHRONICLE (Jan. 18, 1994). Copy supplied.

*Having Lunch at the TULC*, MICHIGAN CHRONICLE (Nov. 10-16, 1993). Copy supplied.

*The Crime Was So Brutal, the Suspect So Young*, COLLEAGUE – MICHIGAN JUDICIAL INSTITUTE (May 1993) (originally printed in Detroit Free Press on Jan. 11, 1993). Copy supplied.

*"Deadly Consequences,"* COLLEAGUE – MICHIGAN JUDICIAL INSTITUTE (May 1993). Copy supplied.

*A Review of "Courts That Succeed,"* COLLEAGUE – MICHIGAN JUDICIAL INSTITUTE (May, 1991). Copy supplied.

*Remembering*, MICHIGAN CHRONICLE (Feb. 14, 1991). Copy supplied.

*Letter to the Editor: Leader Doesn't Speak for Blacks*, DETROIT NEWS (Aug. 18, 1985). Copy supplied.

*Letter to the Editor: Death Penalty Brands Society*, DETROIT NEWS (June 28, 1985). Copy Supplied.

Although the following articles were all published between 1990 and 2000, I was unable to ascertain the exact publication dates:

*Can the Blind Serve as Jurors?*, MICHIGAN CHRONICLE. Copy supplied.

*Are Michigan Judges and its Laws Soft on Crime?*, MICHIGAN CHRONICLE. Copy supplied.

*OAKS, Stokes Celebrate MLK, MMM*, MICHIGAN CHRONICLE. Copy supplied.

*Surviving a Lifetime Commitment*, MICHIGAN CHRONICLE. Copy supplied.

*Gathering for Praise in Prison*, MICHIGAN CHRONICLE. Copy supplied.

*Judge Stephens Speaks at Worship Service*, MICHIGAN CHRONICLE. Copy supplied.

*Bond Pending Sentence is Fair*, MICHIGAN CHRONICLE. Copy supplied.

*A Special Wedding Celebration*, MICHIGAN CHRONICLE. Copy supplied.

*Thanks Again, Gov. Blanchard*, MICHIGAN CHRONICLE. Copy supplied.

*An Open Letter about Friends*, MICHIGAN CHRONICLE. Copy supplied.

*Bar Honors Roberts, Roberts*, MICHIGAN CHRONICLE. Copy supplied.

*Cahalan Award to Milton Henry*, MICHIGAN CHRONICLE. Copy supplied.

*Judge Samuel Adam Turner Remembered*, MICHIGAN CHRONICLE. Copy supplied.

*The Decision to Practice Law*, MICHIGAN CHRONICLE. Copy supplied.

*Deacon Frank Drain: a Legacy of Christian Living*, MICHIGAN CHRONICLE. Copy supplied.

*Vision, Values and Vocation*, MICHIGAN CHRONICLE. Copy supplied.

*Thoughts about Bishop David Ellis*, MICHIGAN CHRONICLE. Copy supplied.

*The Greater Grace Family*, MICHIGAN CHRONICLE. Copy supplied.

*Rosey Grier Speaks Here for Prison Fellowship Ministries*, MICHIGAN CHRONICLE. Copy supplied.

*Rev. Vann Celebrates Presidency*, MICHIGAN CHRONICLE. Copy supplied.

*Dr. Frederick Sampson Leads Arthritis Awareness Project*, MICHIGAN CHRONICLE. Copy supplied.

*A Parent's Prevention Program, Parts I and II*, MICHIGAN CHRONICLE. Copies supplied.

*Middle Schoolers Enjoy Jail Tour, Mock Trial*, MICHIGAN CHRONICLE. Copy supplied.

*Refreshing to See Good Kids*, MICHIGAN CHRONICLE. Copy supplied.

*Golightly Enters 21st Century*, MICHIGAN CHRONICLE. Copy supplied.

*Archer and Northwest Optimists Encourage Youth Oratory*, MICHIGAN CHRONICLE. Copy supplied.

*Judge Worthy Shares Wisdom with Essay Winners*, MICHIGAN CHRONICLE. Copy supplied.

*Cornerstone Has a Plan, Part II*, MICHIGAN CHRONICLE. Copy supplied.

*School Offers Faith-Based Education, Part I*, MICHIGAN CHRONICLE. Copy supplied.

*'Guide My Feet' Devoted to Loving, Leading Youths*, MICHIGAN CHRONICLE. Copy supplied.

*One Woman's Journey to Power*, MICHIGAN CHRONICLE. Copy supplied.

*Novel Tackles Abortion Issue*, MICHIGAN CHRONICLE. Copy supplied.

There may be additional articles that I wrote during my time as a columnist for the *Michigan Chronicle*. I was unable to find any others through a search of my records and publicly available news databases.

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

None that I recall or have been able to identify.

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

On March 19, 1991, I testified before the State of Michigan House Judiciary Committee Hearing on House Bill 4024, which would have amended the statute providing for mandatory sentences for drug crimes. I testified along with six other judges. A copy of the transcript of the testimony is supplied.

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

May 6, 2011: I participated on a panel for the National Business Institute (NBI), entitled "What Civil Court Judges Want You to Know" where we discussed civil procedure. It was held at the St. John's Conference Center in Plymouth, Michigan. I have no notes, transcript or recording. The address of the NBI is P.O. Box 3067, Eau Claire, WI 54702.

April 23, 2011: I spoke at the Ryan Road Correctional Facility Volunteers Banquet on the qualities of a good volunteer. Outline supplied.

January 6, 2011 and Spring 2011: I participated in informal roundtable discussions with new students at Cooley Law School during the "Professionalism in Action" orientation program. The discussions were about ethics and ethical conduct. I have no notes, transcript or recording. The address of Cooley Law School is 300 South Capitol Avenue, P.O. Box 13038, Lansing, MI 48901.

October 22, 2010: I gave the invocation at the Rosedale Park Baptist Church Pastor Appreciation Event. I have no notes, transcript or recording. The address of the church is 14179 Evergreen, Detroit, MI 48223.

September 23, 2010: I served as a panelist for a "View from the Bench" program of the Young Lawyers Section of the Michigan State Bar. I have no notes, transcript or recording, but press coverage is supplied. The address of the Michigan State Bar is 306 Townsend Street, Lansing, Michigan 48933.

May 8, 2010: I spoke at the Mound Road Correctional Facility Volunteers Banquet on the qualities of a good volunteer. Outline supplied.



February 10, 2010: I taught one class at Thomas M. Cooley Law School for Professor Monica Navarro on the Top Twelve Courtroom Demeanor Items. Outline supplied.

June 16, 2009: I taught one class at Thomas M. Cooley Law School for Professor John Taylor on Discovery and Issues Surrounding Discovery. Outline supplied.

November 11, 2008: I spoke at a Gettysburg Group Meeting as a career speaker to a group of students. The Gettysburg Group is a mentoring program for needy students, with a theme of “giving back to the community.” I have no notes, transcripts, or recordings. The Gettysburg Group had no physical address.

April 26, 2008: I was one of several guest speakers at A Citizens Alliance on Prisons and Public Spending (CAPPS) Seminar. Outline supplied.

April 2007: I briefly introduced Rufus Harris at a Christian Arts & Music Project (CAMP) concert at the Mound Correctional Facility and thanked him after he had concluded his performance. I have no notes, transcript or recording. The address of CAMP is 5119 Highland Road, PMB 207, Waterford, MI 48327.

January 17, 2005: I was the guest speaker at the Redford Township Community Prayer Breakfast held at St. Valentine Catholic Church. I spoke on Martin Luther King Qualities. Outline supplied.

August 29, 2004: I spoke at Christ Presbyterian Church honoring Pastor Milton R. Henry at his birthday celebration. I spoke on “Caleb like Qualities.” Outline supplied.

August 13 – 17, 2001: I was one of three faculty members who taught a course entitled “Great Issues in Law as Reflected in Literature.” This was a course put on by the National Judicial College in Ashland Oregon. I have no notes, transcript or recording. The address of the National Judicial College is Judicial College Building/MS 358, Reno, Nevada 89557.

May, 2001: I spoke to a group of first-graders from Mount Calvary Lutheran School on becoming a lawyer and judge, and I explained the judicial system. I have no notes, transcripts, or recordings. The address of the school is 17100 Chalmers Street, Detroit, Michigan 48205.

August 7 – 11, 2000: I was one of four faculty members who taught a course entitled “Great Issues in Law as Reflected in Literature.” This course was put on by the National Judicial College in Ashland, Oregon. I have no notes, transcript or recording. The address of the National Judicial College is Judicial College Building/MS 358, Reno, Nevada 89557.

May 25, 2000: I spoke at Burton International School in Detroit, Michigan for the M.E.L.L. Program. The mission of M.E.L.L. (Medical, Educational, Legal, Law Enforcement) is to provide children with information about the medical, legal, psychological and social consequences of alcohol and other drug use and abuse. Discussion outline and notes supplied.

August 9 – 13, 1999: I was one of four faculty members who taught a course entitled “Great Issues in Law as Reflected in Literature.” This course was put on by the National Judicial College in Ashland, Oregon. I have no notes, transcript or recording. The address of the National Judicial College is Judicial College Building/MS 358, Reno, Nevada 89557.

May 22, 1999: I spoke at a Men’s Breakfast for Revival Tabernacle at Jimi’s Family Restaurant. I spoke on “Ezekiel’s Dry Bones” about the importance of maintaining good relationships. Outline supplied.

May 3, 1999: I spoke at Columbian Primary School in Detroit, Michigan for the M.E.L.L. Program. The mission of M.E.L.L. (Medical, Educational, Legal, Law Enforcement) is to provide children with information about the medical, legal, psychological and social consequences of alcohol and other drug use and abuse. I use the same materials as supplied for the May 25, 2000 event.

April 18, 1999: I was the guest speaker at the Annual Men’s Spring Banquet for King David Missionary Baptist Church. I spoke on the importance of maintaining good relationships. Outline supplied.

November 8, 1998: I was the guest speaker at the Men’s Day service for Scott Memorial United Methodist Church. I spoke on Ezekiel and the importance of maintaining good relationships. Outline supplied.

October 16, 1998: I spoke at a lecture and preaching series at True Love Missionary Baptist Church in Detroit, Michigan. I spoke on the “Importance of Repentance.” Outline supplied.

September 22, 1998: I spoke at the Northville (Michigan) Chamber of Commerce luncheon. I spoke on ministering to inmates and on the merger of the Detroit Recorder’s Court with the Michigan Third Circuit Court. I have no notes, transcripts, or recordings. The address for the Northville Chamber of Commerce is 195 South Main Street, Northville, Michigan 48167.

September 20, 1998: I was the Men’s Day speaker at Grace Community Church. I spoke on Ezekiel and the importance of maintaining good relationships. Outline supplied.

April 26, 1998: I was the guest speaker at the Annual Men’s Day Spring Banquet for King David Missionary Baptist Church held at the American Serbian

Memorial Hall. I spoke on service and mistakes. I was only able to locate a partial outline, which is supplied.

February 11, 1998: I spoke at Boynton Elementary School in Detroit, Michigan for the M.E.L.L. Program. The mission of M.E.L.L. (Medical, Educational, Legal, Law Enforcement) is to provide children with information about the medical, legal, psychological and social consequences of alcohol and other drug use and abuse. I used the same materials as supplied for the May 25, 2000 event.

July 13 – August 1, 1997: The National Judicial College has a three week course entitled “General Jurisdiction,” which covers most subjects a judge will face in court. As part of that course I taught two 2-hour segments on the Right to Counsel and Double Jeopardy, and one 1-hour segment on Guilty Pleas. Syllabi on Double Jeopardy and Guilty Pleas supplied. I was unable to locate the syllabus for Right to Counsel, but it is similar to the one supplied for the July 14-August 2, 1996 event.

April 26, 1997: I spoke at a legal seminar sponsored by the National Lifers of America, Inc. at the Ryan Road Correctional Facility about Michigan’s law requiring a mandatory sentence of life without parole for certain crimes involving 650 grams of drugs. I have no notes, transcripts, or recordings. The address for Ryan Road Correctional Facility and the National Lifers of America, Inc. (Ryan Chapter) is 17600 Ryan Road, Detroit, Michigan 48212.

February, 1997: I spoke at Golightly Elementary School in Detroit, Michigan for the M.E.L.L. Program. The mission of M.E.L.L. (Medical, Educational, Legal, Law Enforcement) is to provide children with information about the medical, legal, psychological and social consequences of alcohol and other drug use and abuse. I used the same materials as supplied for the May 25, 2000 event.

July 14 – August 2, 1996: The National Judicial College has a three week course entitled “General Jurisdiction,” which covers most subjects a judge will face in court. As part of the course I taught three criminal law subjects: Discovery, Guilty Pleas and the Right to Counsel. Syllabi supplied.

July 9, 1996: I spoke at an Eighth Grade Graduation Ceremony for Malcolm X Academy about staying in school, working hard, and hanging on to one’s dreams. It was held at the Wayne County Community College Auditorium. Speech supplied.

February 7, 1996: I spoke at Golightly Elementary School in Detroit, Michigan for the M.E.L.L. program. The mission of M.E.L.L. (Medical, Educational, Legal, Law Enforcement) is to provide children with information about the medical, legal, psychological and social consequences of alcohol and other drug use and abuse. I used the same materials as supplied for the May 25, 2000 event.

July 9-28, 1995: The National Judicial College has a three week course entitled "General Jurisdiction," which covers most subjects a judge will face in court. I taught four subjects: Right to Counsel, Guilty Pleas, Discovery and Confrontation. Syllabi on Discovery, Guilty Pleas, and Confrontation supplied. I was unable to locate the syllabus on Right to Counsel, but it was similar to that supplied for the July 14-Aug. 2, 1996 event.

June 13, 1995: I spoke at a Fifth Grade Promotional Ceremony at Chrysler Elementary School. I spoke about staying in school, working hard, and being careful about who to follow and whose advice to take. Speech supplied.

June 2, 1995: I gave the Immaculate Heart of Mary Eighth Grade Commencement speech. I spoke about staying in school, working hard, and being careful about who to follow and whose advice to take. Speech supplied.

May 1, 1995; May 2, 1994; April 30, 1993: I was a Law Day speaker at Redford High School in Detroit, Michigan. I spoke on the law, being a lawyer, being a judge and various legal topics. Outline for 1995 supplied. I have no notes, transcripts or recordings for 1993 or 1994.

February 1, 1995: I spoke at Chrysler Elementary School in Detroit, Michigan for the M.E.L.L. Program. The mission of M.E.L.L. (Medical, Educational, Legal, Law Enforcement) is to provide children with information about the medical, legal, psychological and social consequences of alcohol and other drug use and abuse. I used the same materials as supplied for the May 25, 2000 event.

July 10-29, 1994: The National Judicial College has a three week course entitled "General Jurisdiction," which covers most subjects a judge will face in court. As part of the course I taught criminal law subjects: Right to Counsel, Confrontation, Criminal Discovery, Double Jeopardy and Guilty Pleas. Syllabi for Criminal Discovery and Guilty Pleas supplied; I was unable to locate the syllabi for Right to Counsel, Confrontation, or Double Jeopardy, but they were similar to those supplied for the July 13-Aug. 1, 1997, July 14-Aug. 2, 1996, and July 9-28, 1995 events.

July 10 – 22, 1994: I co-taught a segment entitled "Fairness and Equity in the Courts" that lasted three hours. It was part of a two week course entitled: "The Decision Making Process" taught at the National Judicial College at Reno, Nevada. Materials supplied.

October 28, 1993: I participated in a Career Day and spoke to classes at Southfield Christian School. I spoke about the legal and judicial professions. Outline supplied.

July 11 – August 6, 1993: I served as a discussion group leader for the National Judicial College's "General Jurisdiction" course. We typically had two

discussion group sessions per day, three to four days per week. The discussion group had 10-12 judges in it. I have no notes, transcript or recording. The address of the National Judicial College is Judicial College Building/MS 358, Reno, Nevada 89557.

March 13, 1993: I spoke to a group of high school juniors and seniors for "The Institute for Black Family Development." My topic was "Understanding Civic Responsibility." The address of the Institute is 928 East Ten Mile Road, Ferndale, Michigan 48220. Seminar objectives supplied.

1989 – 1992: I taught a weekly sixth grade Sunday school class at Highland Park Baptist Church. I have no notes, transcripts, or recordings. The address of the church is 28600 Lahser Road, Southfield, Michigan 48034.

September 25, 1991: I spoke at a parent-teacher meeting at East Bethlehem Lutheran Church and School in Detroit. I spoke primarily on parents' responsibilities to their children, especially in terms of what should be taught at home as opposed to in school. Outline supplied.

April 10, 1991: I participated in a Career Day and spoke to classes at Southfield Christian School. I spoke about the legal and judicial professions. I have no notes, transcripts, or recordings. The address of Southfield Christian School is 28650 Lahser Road, Southfield, Michigan 48034.

August 9, 1989: I was the speaker at the Graduation Exercises at Wayne County Regional Police Training Center, Schoolcraft College – Radcliff. I spoke about the high calling of public service and the importance of following the rules, not cutting corners, and doing things by the book. Notes supplied.

1989: I taught a class on Fourth, Fifth, and Sixth Amendment Rights of a Defendant at the Police Training Center at Schoolcraft College. I have no notes, transcripts, or recordings. The address of the Training Center is Schoolcraft College – Radcliff, 1751 Radcliff Street, Garden City, Michigan 48135.

May 7, 1988: I spoke at the Alabama State University Alumni Association Regional Conference held in Detroit, Michigan about excellence in education. Handwritten outline supplied.

May 29, 1987: I gave the high school commencement address for Evangel Christian Academy. I spoke on persistence and perseverance. Handwritten outline supplied.

September 27, 1986: I spoke at a pre-game service for the University of Michigan football team in Ann Arbor, Michigan. I spoke about the importance of persistence, perseverance and not quitting. Outline supplied.

August 17, 1986: I spoke at the Murdock's 20th Biennial Family Reunion held at the Westin Hotel in the Renaissance Center in Detroit. I spoke on reducing family relationship tension. Outline supplied.

June 10, 1986: I gave comments at the National Summit on Black Church Development about progress and changes since the 1984 summit. Video supplied.

January 22, 1984: As an attorney I spoke at a rally to generate support and funds for the defense of a man that many believed had been wrongly convicted. I spoke about why people should get involved in his defense and government issues in general, especially elections. Outline supplied.

November 5, 1983: I spoke at a pre-game service for the University of Michigan football team in Ann Arbor, Michigan. I spoke about three ways to win: being strong and courageous; being obedient and following the rules; and having faith in oneself. I have no notes, transcripts, or recordings. The address for the Athletic Department of the University of Michigan is 1000 South State Street, Ann Arbor, Michigan 48109.

I have spoken at Sunday morning worship services (1997 – 2007) and Bible studies (2007 – present) to inmates at the Mound Road Correctional Facility on a monthly basis about different books of the Bible. The address of the Mound Road Correctional Facility is 17601 Mound Road Detroit, Michigan 48212. All of the message outlines I could find are supplied.

In January 1991; February 1992; January 1993; January 1995 and January 1997, I taught Sentencing at the Michigan Judicial Institute. I have no notes, transcripts, or recordings. The address for the Michigan Judicial Institute is 925 West Ottawa Street, Lansing, Michigan 48913.

During my election and re-election campaigns for judicial office in 1984, 1992, 1998, and 2010, I gave many speeches off the cuff discussing why I should be elected and re-elected. Those speeches generally discussed my qualifications, my experience, my professional ratings by groups like the Detroit Bar Association, and why I deserved to be elected or re-elected. I have no notes, transcripts or recordings.

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

*Obama Nominates Drain for Federal Bench*, DETROIT LEGAL NEWS, Nov. 21, 2011 (reprinting quotes from May 13, 2009 article listed below). Copy supplied.

Kenneth Sasse, *The Detroit Federal Defender Office: An Early History*, THE COURT LEGACY (Historical Society for the United States District Court for the Eastern District of Michigan), May 2010. Copy supplied.

League of Women Voters candidate questionnaire, 2010. Copy supplied.

Detroit Free Press candidate questionnaire, 2010. Copy supplied.

John Minnis, *One Judge's Testimony*, DETROIT LEGAL NEWS, May 13, 2009. Copy supplied.

Candice Cunningham, *Lawyers, Judges Honored*, DETROIT NEWS (Jan. 14, 2004). Copy supplied.

Charles Osgood, *Judge Visits Prisons To Help Convicts Find Religion*, CBS NEWS (July 15, 1998). Copy supplied.

Chuck Colson, *Visiting Those in Prison: Judge Gershwin Drain*, BREAKPOINT.ORG (July 10, 1998). Copy supplied.

David Ashenfelter, *Black Judges Secure in Circuit Court Race*, DETROIT FREE PRESS (June 1, 1998). Copy supplied.

David Crumm, *Freedom To Worship: Judge Shares His Spiritual Conviction with Prisoners*, DETROIT FREE PRESS (Nov. 9, 1997) (re-printed in multiple outlets). Copy supplied.

Sharon Cohen, *Prisoner Hopes for Drug Law Change*, ASSOCIATED PRESS (Sept. 6, 1997) (re-printed in multiple outlets). Copy supplied.

Cecil Angel, *Recorder's Court Judges Are Topic of Turf Battle*, DETROIT FREE PRESS (May 11, 1995). Copy supplied.

Jack Kersnak and Janet Wilson, *13-Year-Old Forgotten After Mutilation Ordeal*, DETROIT FREE PRESS (Apr. 21, 1994). Copy supplied.

Tom Henderson, *Sedentary Judge Finds Marathons Apt Remedy*, DETROIT NEWS (Sept. 11, 1990). Copy supplied.

I am also quoted on the New Creations Community Outreach web site about TOP, its prisoner re-entry program. Copy of the site supplied.

I have responded to a number of candidate surveys during my judicial election campaigns, but I have been unable to obtain or recall any other than what is listed above.

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

36th District Court for the City of Detroit – appointed first, then elected (1986 – 1987); jurisdiction over traffic and ordinance violations, landlord-tenant disputes, misdemeanors, and civil cases where the amount in controversy was less than \$25,000.

Recorder’s Court for the City of Detroit – appointed first, then elected (1987 – 1997); jurisdiction over felony prosecutions in the City of Detroit, Michigan.

Michigan Third Circuit Court – elected; Criminal Division (1997 – 2000): jurisdiction over felony prosecutions in Wayne County, Michigan; Civil Division (2000 – Present): jurisdiction over state civil cases where the amount in controversy exceeded \$25,000 in Wayne County, Michigan.

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

I have presided over approximately 600 cases that have gone to verdict or judgment after trial. This does not include cases where summary judgment has been granted.

- i. Of these, approximately what percent were:

jury trials:	55%
bench trials:	45%
civil proceedings:	30%
criminal proceedings:	70%

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

My trial court opinions were never published. In the vast majority of the decisions I made, I ruled from the bench. I never kept a separate file of the opinions I did write. They are scattered throughout the thousands of case files for matters before me over the last 25 years. Sitting by assignment on the Michigan Court of Appeals, I wrote the following published opinions:

*Lehmann v. State Employees’ Retirement System*, 207 Mich. App. 453 (1994) (per curiam)

*Michigan v. Morton*, 175 Mich. App. 1 (1989) (Drain, J., dissenting)

*Auto-Owners Ins. Co. v. Farm Bureau Mut. Ins. Co.*, 171 Mich. App. 46 (1988)



*Boyd v. Layher*, 170 Mich. App. 93 (1988)

*Sargent v. A.M. Eckhouse, D.O., P.C.*, 171 Mich. App. 703 (1988) (per curiam)

*Wilkerson v. Jackson Public Schools*, 170 Mich. App. 133 (1988) (per curiam)

*Ingham County Employees' Ass'n v. Ingham Circuit Court*, 170 Mich. App. 118 (1988) (per curiam)

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

1. *Johnston v. Royal American Mortgage*, Docket No. 08-113688-CZ; *Hartzler v. Royal American Mortgage*, Docket No. 09-013768-CZ, Wayne County Circuit Court, Civil Division. Opinion supplied.

These two cases involved approximately 50 plaintiffs. There were originally about 10 defendants in the case, all employees, managers or owners of Royal American Mortgage. Six of the ten defendants either settled their claims before trial or were dismissed. Essentially, this was a mortgage fraud case that had elements of a ponzi scheme to it. The manager and his wife ran the company. The manager filed for bankruptcy the day before trial and his wife filed for bankruptcy the day of trial. The owner of the company and his wife went to trial on the case and most of the 50 plaintiffs testified as to their losses on the mortgages that they financed. The jury found the owner (but not his wife) liable and assessed damages of approximately \$9 million. The trial lasted about two weeks.

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Thomas D. Pigott for the Plaintiff  
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Matthew P. Allen for the Defendant  
Miller Canfield  
840 West Long Lake Road, Suite 200  
Troy, MI 48098  
248-267-3381

2. *Michigan v. Magana*, Docket No. 90-11712, Records Court for the City of Detroit

Magana was convicted in my courtroom of being in possession of over 650 grams of a powder containing cocaine. Michigan law at the time required that I give him a natural life sentence without the possibility of parole, which I did. The Michigan Supreme Court subsequently struck down the portion of the statute disallowing the possibility of parole in *Michigan v. Bullock*, 440 Mich. 15 (1992). Following that decision, I resentenced Magana to a life sentence with the possibility of parole. In May of 2000 he had a hearing and was given parole after serving about 10 years in prison.

Robert East Slameka for the Defendant  
163 Madison Street, Suite 101  
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313-961-5011

Paul A. Bernier for the Prosecution  
Currently with Flood Lanctot Connor Sablein PLLC  
401 North Main Street  
Royal Oak, MI 48067  
248-547-1032

3. *Wilcoxson-Bey v. Providence Hosp. & Med. Ctrs., Inc.*, Docket No. 05-524008-NH, Michigan Third Circuit Court, Civil Division

Plaintiff was diagnosed with a monoamniotic-monochorionic twin pregnancy, a rare, high-risk pregnancy in which both fetuses share a single amniotic sac. A monoamniotic twin pregnancy involves increased risk of complication. In this case, one twin died and the other was born with a severe brain injury and is extremely mentally disabled. The plaintiff brought a medical malpractice suit against the hospital and doctors who provided her care. At issue was whether the defendants provided an adequate standard of care in prescribing twice-weekly rather than daily monitoring of the fetuses. In a bench trial, I awarded the plaintiff \$3 million.

The defendants appealed my decision to the Michigan Court of Appeals, which ruled that I should have granted summary judgment in defendants' favor. The plaintiff then appealed to the Michigan Supreme Court, which reversed and remanded for consideration of issues that had not been decided in the initial

decision. *Wilcoxson-Bey v. Providence Hosp. & Med. Ctrs., Inc.*, 483 Mich. 1023 (2009). The Court of Appeals then affirmed.

Melissa Z. El for Plaintiff  
65 Cadillac Square, Suite 2205  
Detroit, MI 48226  
313-963-1049

Bruce M. Maston for Plaintiff  
216 Van Rensselaer Boulevard  
Alabany, NY 12204  
518-426-3789

Donald B. Lenderman for Defendant  
Kitch, Drutchas, Wagner, Valitutti, & Sherbrook  
1 Woodward Avenue, Suite 2400  
Detroit, MI 48226  
313-965-6718

4. *Michigan v. Cato-Riggs*, Docket No. 95-014094, Records Court for the City of Detroit. Opinion supplied.

In this case, a jury convicted Cato-Riggs of the first degree premeditated murder of her husband. The case drew national attention because he was shot to death in front of his house just 10 days after his return from the Persian Gulf War, where he had served as a Patriot Missile crewman. The prosecutor on the case showed that Cato-Riggs decided to arrange her husband's death after he survived the war in order to collect \$150,000 in life insurance money. I sentenced Cato-Riggs to a natural life sentence without the possibility of parole.

On appeal, the defendant raised two issues relating to the admission of evidence against her and the Sixth Amendment right to counsel. The Court of Appeals affirmed the conviction. *Michigan v. Riggs*, 223 Mich. App. 662 (1997). The Michigan Supreme Court denied a delayed application for leave to appeal.

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313-224-5777

Athina Siringas for Defendant  
Currently with Wayne County Prosecutor's Office  
1441 St. Antoine Street, 12th Floor  
Detroit, MI 48226  
313-224-6642

5. *Diamond v. Witherspoon*, Docket No. 01-133307-NO; *Moody v. Witherspoon*, Docket No. 01-118433-CZ, Michigan Third Circuit Court, Civil Division

Three plaintiffs brought tort suits against former Detroit Police Sergeant Witherspoon and the City of Detroit. The action arose out of the criminal sexual conduct committed against the plaintiffs by Witherspoon during traffic stops in 1999 and 2000.

At the civil trial, it was undisputed that Witherspoon had pleaded guilty to three counts of extortion and three counts of criminal sexual conduct in connection with the plaintiffs' assaults. The City of Detroit was also a defendant in the case because of evidence that Witherspoon's superiors were on notice that he was breaking the law but nevertheless continued to allow him to work and patrol the streets. A jury found Witherspoon and Detroit both liable, with the city 35% at fault and Witherspoon 65% at fault. The total judgment in the case for all three plaintiffs was \$7.5 million. The City appealed the judgment and the case was affirmed on appeal in *Diamond v. Witherspoon*, 265 Mich. App. 673 (2005). The trial lasted about a week.

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313-963-5222

David A. Robinson for Plaintiff  
Robinson & Associates, P.C.  
28145 Greenfield Road, Suite 100  
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248-423-7234

Paula Cole for Defendant City of Detroit  
City of Detroit Law Department  
660 Woodward Avenue, Suite 1650  
Detroit, Michigan 48226  
313-237-3017

Timothy P. Timmony for Defendant Witherspoon  
VanOverbeke, Michaud & Timmony, P.C.  
79 Alfred Street  
Detroit, Michigan 48201  
313-578-1200

6. *Detroit Medical Center (DMC) v. Karmanos Cancer Institute*, Docket No. 07-712136-CK, Michigan Third Circuit Court, Civil Division

The DMC brought suit against the Karmanos Cancer Institute seeking injunctive relief to permanently prohibit the Center from moving out of the DMC to a new location in Detroit based on the terms of their contract. The DMC is a complex of hospitals situated in midtown Detroit that serves much of Detroit's indigent population, yet has a national reputation for the services that it provides. The Karmanos Cancer Institute was on the campus of the DMC and consisted of several floors in one of the hospitals on campus. At the time Karmanos was one of 39 National Cancer Institute-designated comprehensive cancer centers in the United States and among the nation's best cancer centers.

After several days of testimony and site visits to the involved facilities, I applied the test for injunctive relief and ordered the Karmanos Cancer Institute to stay on the campus of the DMC. Karmanos did not appeal my decision.

Charles N. Raimi for the DMC  
4707 St. Antoine Street, Suite W514  
Detroit, MI 48201  
313-966-2226

Robert G. Brower for the DMC  
Dennis J. Levasseur, Esquire for the DMC  
Bodman, PLC  
1901 St. Antoine Street, 6th Floor  
313-393-7533  
313-393-7596

Jon G. March for Karmanos Cancer Institute  
Miller, Johnson, Snell, & Cummiskey, PLC  
250 Monroe Avenue, NW, Suite 800  
Grand Rapids, MI 49501  
616-831-1729

7. *Gen. Motors Corp. v. Alumi-Bunk, Inc.*, Docket No. 04-422587-CB, Michigan Third Circuit Court, Civil Division

Defendants, Alumi-Bunk, Inc. and an individual defendant, had a contract with General Motors Corporation, plaintiff, to purchase a fleet of cars. General Motors alleged that Alumi-Bunk, Inc. promised to "upfit" (modify) the vehicles it purchased from General Motors in exchange for a significant discount on the price of the vehicles. General Motors claimed that Alumi made this promise during contract negotiations, but it was never made a part of the contract. General Motors argued that Alumi breached its promise to "upfit" the vehicles it purchased and that Alumi never intended to fulfill its promise to do so. The

promise was thus the basis for breach of contract claim and fraudulent inducement claims. I granted summary disposition in favor of defendants on both claims and dismissed General Motors' case.

The Court of Appeals reversed my decision on the fraudulent inducement claim, holding that there was adequate evidence to support such a claim. Defendants appealed that decision to the Michigan Supreme Court, and it reversed the Court of Appeals decision and affirmed my ruling in all respects. *Gen. Motors Corp. v. Alumi-Bunk, Inc.*, 482 Mich. 1080 (2008).

Ruben Acosta for General Motors Corporation  
Williams Acosta, PLLC  
535 Griswold Street, Suite 1000  
Detroit, MI 48226  
313-963-3873

Dean M. Googasian for Alumi-Bunk, Incorporated  
Googasian Firm PC  
6895 Telegraph Road  
Bloomfield Hills, MI 48301  
248-540-3333

8. *Michigan v. Djordjevic*, Docket No. 96-003784, Recorder's Court for the City of Detroit

The defendants, Djordjevic and Savich, owned a bar in Detroit, which was insured against fire loss. In December, 1995, the defendants offered to pay another man, Lowery, to burn down the bar. During the early morning hours of December 31, 1995, Lowery did so. During the fire he had set, Lowery died from soot and smoke inhalation.

The defendants were charged with arson, conspiracy to commit arson, and second degree murder. This case presented an issue of first impression in Michigan regarding the murder charge. I researched the issue and found a split of authority across the country. I followed the decisions holding that a defendant lacked the requisite malice in this type of situation and dismissed the murder charge. The Court of Appeals found the opposing line of authority more persuasive and reversed my decision. *Michigan v. Djordjevic*, 230 Mich. App. 459 (1998), *application for leave to appeal denied*, 459 Mich. 956 (1999). The murder charge was reinstated and defendants pled guilty to a lesser charge.

Cornelius Pitts for Djordjevic  
535 Griswold Street, Suite 1630  
Detroit, MI 48226  
313-964-0066

John F. Royal for Savich  
615 Griswold Street, Suite 1724  
Detroit, MI 48226  
313-962-3738

Michael Cox for the Prosecution  
Currently with Dykema Gossett PLLC  
400 Renaissance Center  
Detroit, MI 48243  
313-568-5484

9. *Mackie v. Bollore, S.A.*, Docket No. 07-704897-CZ, Michigan Third Circuit Court, Civil Division

This case arose from a dispute between Ali Mackie and the trademark holders of Zig-Zag cigarette papers – Bollore, North Atlantic Trading Company (NATC), and North Atlantic Operating Company (NAOC). In March of 1999, Bollore, NATC, and NAOC obtained an \$11 million contempt judgment in the U.S. District Court for the Northern District of Texas for violations of copyright and trademark laws. Seeking to collect on the contempt judgment, Bollore, NATC, and NAOC obtained orders from the Texas court declaring plaintiffs in this case – Mackie’s mother and the Freetown Mini Mart – to be alter egos of Mackie. That court added those parties as co-judgment debtors to the contempt judgment, pierced the corporate veil of Freetown, appointed a receiver, and ordered them to turn over all non-exempt property to the receiver for satisfaction of the contempt judgment debt. Mackie and Freetown appealed to the Fifth Circuit Court of Appeals, but while the case was pending there, Bollore, NATC and NAOC seized and sold their personal property. After the seizure and sale, the Fifth Circuit reversed the District Court findings and orders.

Mackie and Freetown filed a complaint in the Michigan Third Circuit Court in 2007 against Bollore, NATC and NAOC alleging, among other things, malicious prosecution, abuse of process, intentional infliction of emotional distress, conversion, negligence, and unjust enrichment. Defendants moved for summary judgment based on the fact that at the time of the seizures, the Texas District Court orders were in effect and the conduct was not tortious. I granted summary judgment for the defendants on all the claims except the unjust enrichment claim, which was effectively settled. Plaintiffs appealed my dismissal of the other counts, and my decision was affirmed on appeal.

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Youngstown, OH 44503  
330-743-6300

John E. Benko for Defendant Ballore  
McDonald Hopkins LLC  
39533 Woodward Avenue, Suite 318  
Bloomfield Hills, MI 48304  
248-220-1352

David C. Anderson for Defendant Tardie & Associates  
Collins, Einhorn, Farrell, & Ulanoff, P.C.  
4000 Town Center, Suite 909  
Southfield, MI 48075  
248-355-4141

J. Michael Huget for Defendant NATC and NAOC  
Honigman Miller Schwartz and Cohn LLP  
130 South First Street, 4th Floor  
Ann Arbor, MI 48104  
734-418-4254

10. *Michigan v. Williams*, Docket No. 92-008593-FC, Recorder's Court for the City of Detroit

This was a first degree murder case. The deceased was a middle school teacher who was gunned down outside the school where she taught. She was killed in a plot participated in by three people. The shooter was hired by the victim's husband's girlfriend, and they were assisted by a third defendant. When arrested, all three defendants made statements implicating one or both of their co-defendants. Because none of the three planned to testify and could not be cross-examined by co-defendants' counsel, each was entitled to a separate jury for their individual case. I had the option of conducting three separate back-to-back jury trials, one for each defendant, or seating three separate juries and having all three hear all of the common testimony together and having separate opening statements, closing arguments and testimony about their statements. I chose the latter. All three defendants were convicted and their convictions were affirmed on appeal.

Kym Worthy for the Prosecution  
Wayne County Prosecutor's Office  
1441 St. Antoine Street, 12th Floor  
Detroit, MI 48226  
313-224-5777

Dawn Ison for Defendant Williams  
Currently Assistant U.S. Attorney  
211 West Fort Street, Suite 2001  
Detroit, MI 48226  
313-226-9100



Kermit Bailer for Defendant Starks  
Mr. Bailer is now deceased

Robert Mann for Defendant Harris  
Mr. Mann is now deceased

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *Michigan v. Morton*, 175 Mich. App. 1 (1989) (Drain, J., dissenting).

Paul J. Fischer for the Prosecution  
Currently with the Attorney Grievance Commission  
3034 West Grand Boulevard, Suite 8-450  
Detroit, MI 48202  
313-875-5110

Robert Slameka for Defendant  
163 Madison Street, Suite 101  
Detroit, MI 48226  
313-961-5011

2. *Boyd v. Layher*, 170 Mich. App. 93 (1988) (Court of Appeals opinion).

Brian E. Thiede for Plaintiff  
400 East Elm Street  
Big Rapids, MI 49307  
231-592-0141

Chad C. Schmucker for Defendant  
Currently State Court Administrator  
P.O. Box 48909  
Lansing, MI 48909

3. *Johnston v. Royal American Mortgage*, Docket No. 08-113688-CZ (Opinion on a Motion for Summary Judgment). Opinion supplied in response to 13(c).

Peter S. Tangelos for the Plaintiff  
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248-541-5161

Thomas D. Pigott for the Plaintiff  
Pigott, Ltd.  
2620 North Centennial, Unit H  
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Matthew P. Allen for the Defendant  
Miller Canfield  
840 West Long Lake Road, Suite 200  
Troy, MI 48098  
248-267-3381

4. *Hartzler v. Royal American Mortgage*, No. 09-013768-CZ (Opinion on a Motion for Partial Summary Judgment). Opinion supplied.

Peter S. Tangelos for the Plaintiff  
1111 West Long Lake Road, Suite 101  
Troy, MI 48098  
248-541-5161

Thomas D. Pigott for the Plaintiff  
Pigott, Ltd.  
2620 North Centennial, Unit H  
Toledo, OH 43617  
419-776-4567

Matthew P. Allen for the Defendant  
Miller Canfield  
840 West Long Lake Road, Suite 200  
Troy, MI 48098  
248-267-3381

5. *Auto-Owners Ins. Co. v. Farm Bureau Mut. Ins. Co.*, 171 Mich. App. 46 (1988) (Court of Appeals opinion).

Edward B. Davison for the Defendant  
Gault Davison, P.C.  
8455 South Saginaw Street, Suite 2  
Grand Blanc, MI 48439  
810-234-3633

Charles F. Filipiak for Plaintiff  
360 St. Andrews Road, Suite 302  
P.O. Box 1966  
Saginaw, MI 48605  
989-790-0960

6. *Michigan v. Cato-Riggs*, Docket No. 93-104094 (Opinion on a Motion to Suppress Statements). Opinion supplied in response to 13(c).

Kym Worthy for the Prosecution  
Wayne County Prosecutor's Office  
1441 St. Antoine Street  
Detroit, MI 48226  
313-224-5777

Athina Siringas for the Defendant  
Currently with Wayne County Prosecutor's Office  
1441 St. Antoine Street, 12th Floor  
Detroit, MI 48226  
313-224-6642

7. *Merlo Constr. Co., Inc. v. Citizens Ins. Co. of America*, Docket No. 10-000814 (Opinion on a Motion for Summary Judgment). Opinion supplied.

Edward Miller for the Plaintiff  
32100 Telegraph Road, Suite 200  
Bingham Farms, MI 48025  
248-593-6225

Kurt D. Meyer for the Defendant  
Gregory and Meyer, P.C.  
340 East Big Beaver Road, Suite 520  
Troy, MI 48083  
248-689-3920

8. *Michigan v. Washington*, Docket No. 90-009459 (Opinion on a Motion for Relief from Judgment). Opinion supplied.

Ronald Washington pro se

The state was not required to respond to this motion. I wrote an opinion denying the motion without requiring a response.

9. *Tohme v. Trans Meditterian Agency*, Docket No. 04-505308-AE (Opinion and Order Affirming the Decision of Administrative Law Judge and Board of Review and Dismissing Appeal). Opinion supplied.

David E. Ghannam for the Defendant  
15900 Michigan Avenue, Suite 1  
Dearborn, MI 48126  
313-945-0088

Gary Miotke for the Plaintiff  
6828 Park Avenue  
Allen Park, MI 48101  
313-388-4809

10. *Karr v. Mich. Basic Property Ins. Ass'n*, Docket No. 08-014192-AV (Opinion and Order Affirming Trial Court's Rulings Below and Dismissing Plaintiff-Appellant's Claim of Appeal). Opinion supplied.

Ernest Karr, pro se, Plaintiff  
14825 Grand River Avenue  
Detroit, Michigan 48227  
313-202-6003

John Honeyman for the Defendant  
Patrick, Johnson & Mott, P.C.  
27777 Franklin Road  
Southfield, MI 48034  
248-356-8590

- e. Provide a list of all cases in which certiorari was requested or granted.

*Michigan v. Moore*, Michigan Court of Appeals, Docket No. 130516 (1988), *granted, vacated, and remanded*, 496 U.S. 933 (1990).

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

*Bullington v. Corbell*, 2011 Mich. App. LEXIS 1481, No. 297665 (Aug. 16, 2011). I allowed the plaintiff to serve the defendants by alternate service, and I later entered a default judgment as to all defendants. The Court of Appeals held that the service was inadequate to provide notice to all defendants and the default judgments should not have been entered, so it reversed.

*AFSCME Council 25 v. County of Wayne*, 290 Mich. App. 348 (2010). I ruled that the defendant County of Wayne was required to arbitrate a dispute over retiree health benefits even though the Collective Bargaining Agreement had expired. The Court of Appeals reversed, holding that defendants did not have to arbitrate the dispute under the terms of the agreement itself.

*Truel v. City of Dearborn*, 291 Mich. App. 125 (2010). I ordered the Wayne County Prosecutor's Office to turn over most of its investigative file regarding

alleged police misconduct, including a final report, in a civil suit filed by a plaintiff who had participated in the investigation. The Court of Appeals found that I erred in finding that the defendants demonstrated a sufficient showing of need to overcome the deliberative-process privilege, and reversed.

*Shaw v. City of Ecorse*, 283 Mich. App. 1 (2009). This appeal involved two consolidated cases. I was affirmed in *Shaw* and reversed in *Bedo*. In *Bedo*, I granted summary disposition to the defendant, ruling that he had not established a prima facie case under MCL 15.362. The Court of Appeals reversed, holding that a prima facie case had been established and that material questions of fact required further proceedings.

*Special Property VI LLC v. Woodruff*, 273 Mich. App. 586 (2007). This was a quiet title action brought by the plaintiff against a number of defendants to clear the title to property. I granted summary disposition for the plaintiff and the Court of Appeals reversed, holding that plaintiff failed to meet its burden to establish its title in the subject property by admissible evidence.

*Bennett v. Detroit Police Chief*, 274 Mich. App. 307 (2006). The plaintiff was a City of Detroit police officer who brought a wrongful discharge action against the City of Detroit, the Mayor, and the Police Chief. The plaintiff had been discharged for maintaining a website that contained criticism of the Police Chief. All three defendants moved for summary disposition on governmental immunity grounds. I granted the motion as to the Mayor and that was affirmed on appeal. I denied it as to the City and Police Chief and that was reversed.

*City of Detroit v. State of Michigan*, 262 Mich. App. 542 (2004). The State owned approximately 36 acres of land adjacent to the state fairgrounds. The State was in the process of leasing and/or selling this adjacent property to a private entity for the building and development of a race track and amphitheater. I denied the State's motion for summary disposition, holding that in the context of this case, the State had to comply with the City's zoning ordinances. The Court of Appeals held that the State did not have to comply.

*Hayley v. Allstate Ins. Co.*, 262 Mich. App. 571 (2004). The plaintiffs filed suit regarding toxic mold they discovered in their home a year after an ice dam caused water damage. I denied the defendant's motion for summary disposition. The Court of Appeals reversed, holding that plaintiffs' coverage excluded loss caused by mold, even when the mold grew out of a covered event.

*Hojeije v. Dep't of Treasury*, 263 Mich. App. 295 (2004). This involved two consolidated cases bringing tort claims against the Department of Treasury and its agents, arising from their execution of search warrants. The defendants filed a motion for summary judgment based on governmental immunity. I denied the motion. The Court of Appeals reversed the denials of summary judgment.

*Jenkins v. Patel*, 256 Mich. App. 111 (2003). Judge Marianne Battani presided over a medical malpractice/wrongful death case where the plaintiff died from the malpractice and was awarded \$10 million. After taking over her docket in 2000, I denied two post-trial motions filed by the defendant. One sought to apply the medical malpractice cap to the wrongful death and one sought remittitur. The Court of Appeals affirmed my decision holding that the medical malpractice caps did not apply to this wrongful death case, but it reversed my ruling on the remittitur issue. The Michigan Supreme Court reversed the Court of Appeals, holding that the medical malpractice caps applied to wrongful death cases where the underlying cause of death was medical malpractice. *Jenkins v. Patel*, 471 Mich. 158 (2004).

*Michigan v. Chavis*, 246 Mich. App. 741 (2001). The Court of Appeals reversed the defendant's bench trial conviction for making a false robbery police report. I found that defendant lied about the location and other details of the robbery and thus made a false robbery report. The Court of Appeals held that the offense required the defendant to lie about whether he was in fact robbed. In *Michigan v. Chavis*, 468 Mich. 84 (2003), the Michigan Supreme Court agreed with me, reversed the Court of Appeals, and reinstated the defendant's conviction.

*Michigan v. Adams*, 233 Mich. App. 652 (1999). I dismissed criminal charges against the defendant because the complainant failed to appear for trial. The prosecution argued that she was unavailable and that I should allow them to use the transcript of her preliminary examination. I found that the prosecution had not adequately demonstrated her unavailability; the Court of Appeals disagreed and reversed.

*Michigan v. Djordjevic*, 230 Mich. App. 459 (1998). The defendants were charged with arson, conspiracy to commit arson, and second-degree murder. The defendants hired an individual to commit the arson, and in the course of setting the fire, the house blew up, killing that individual. Finding a split of authority across the country, I dismissed the murder charge, finding that the defendants lacked the requisite malice to support the charge. The Court of Appeals found contrary authority more persuasive and reversed the murder dismissal. After the murder charge was reinstated the defendants pled guilty to manslaughter and received prison sentences.

*Michigan v. Brown*, 220 Mich. App. 680 (1996). The Court of Appeals reversed a sentence that I imposed based on an issue that was not raised before me at the trial court level. The defendant was convicted of felonious assault and use of a firearm during the commission of a felony. I sentenced him to two years on the gun conviction and a five year consecutive probationary sentence on the assault conviction. The Court of Appeals held that the probationary sentence ran concurrently with the prison sentence for the felony-firearm conviction.

*Michigan v. Vann*, 448 Mich. 47 (1995). The Court of Appeals decided that I had received evidence in violation of the spousal privilege statute. The Michigan Supreme Court reversed the Court of Appeals, agreeing with me that the evidence was admissible in this case pursuant to an exception to that privilege.

*Michigan v. Thomas*, 201 Mich. App. 111 (1993). I granted a motion to suppress evidence because the searching officers were acting pursuant to a defective search warrant. The prosecution conceded that the warrant was defective, but argued that the officers had independent authority to search the premises under the State Liquor Control Act, MCL 436.1 et. seq. The Court of Appeals reversed, holding that under the “pervasively regulated industry doctrine,” a balance must be struck between enforcement needs and privacy rights and here the enforcement needs trumped.

*Michigan v. Spearman*, 195 Mich. App. 434 (1992). Two defendants were on trial – one had a bench trial and the other a jury trial. Both defendants were convicted of second degree murder. In my findings of fact in the trial of Spearman (who had the bench trial), I erroneously used some statements from Rush’s confession that were only to be used against her. The Court of Appeals found that this error was not harmless beyond a reasonable doubt and reversed the Spearman conviction.

*Michigan v. Brooks*, 184 Mich. App. 793 (1990). This case dealt with the new juvenile automatic waiver statute. Defendant Brooks, age sixteen, was charged in Recorder’s Court as an adult waived juvenile. Following a motion to suppress his confession, I dismissed the case because he was not immediately taken upon arrest to the juvenile division of the probate court as required by MCL 764.27. The Court of Appeals reversed, holding that the new juvenile waiver statute made compliance with MCL 764.27 unnecessary.

*Dep’t of Social Services v. American Commercial Liability Ins. Co.*, 435 Mich. 508 (1990). Although it did not directly consider an opinion I wrote in this case, the Michigan Supreme Court reversed an opinion of the Court of Appeals that directly relied on my opinion in *Auto-Owners Ins. Co. v. Farm Bureau Mut. Ins. Co.*, 171 Mich. App. 46 (1988).

There are other cases in which I ruled from the bench and the Michigan Court of Appeals reversed, reversed in part, or remanded the case in an unpublished opinion available only in hard copy in the clerk’s office of the Michigan Court of Appeals. While there is no comprehensive way to collect all of these cases, I obtained a partial list of such cases from the clerk’s office, which represents all of the unpublished reversals I could find from the 25 years I have been a judge. See attached list.

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

In the large majority of cases before me, I ruled from the bench without writing. I wrote an opinion in approximately 2% of my cases. These opinions can be found at the clerks' offices in the files for cases I have handled.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

*Michigan v. Cancel*, Docket No. 88-010682.

*Michigan v. Cato-Riggs*, Docket No. 95-014094. Opinion supplied in response to 13(c).

*Michigan v. Thomas*, 201 Mich. App. 111 (1993).

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

I have never sat by designation on a federal court of appeals.

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

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

On each court in which I have served, when a party seeks my recusal I would consider the merits of it with reference to Michigan Court Rule 2.003 regarding disqualification of judges. Where such a motion is denied, the party seeking recusal has an automatic appeal of the decision to the Chief Judge of the court.



The following two cases are the only ones that I can recall in which my recusal was requested. There may have been others, but I did not keep a record of requests for recusal and there is no way to determine other cases in which my recusal was requested without doing a manual search through thousands of files I have handled over the last 25 years.

In *Bogert v. Sibley Limestone Quarry*, No. 07-716657, the plaintiffs sought my recusal by motion because I handled a prior matter involving Sibley Limestone Quarry. Because I had prior knowledge of the defendant, the plaintiffs felt I should be recused. I conducted a hearing on the motion to recuse and denied it. Plaintiffs appealed my denial to Chief Judge William Giovan, who affirmed my denial, and I continued to handle the case.

In *Tedders v. Tedders*, No. 01-130788, later consolidated with *Tedders v. Tedders*, 02-202503, Tedders (an attorney) was suing a number of her relatives and a bank in regard to some family financial matters. She initially sought my recusal by motion because I did not grant the requested continuance she wanted. I denied the request and was upheld by then-Chief Judge Mary Beth Kelly. I later recused myself after Tedders named me and many other judges as defendants in a lawsuit alleging that the courthouse was not in compliance with the Americans with Disabilities Act.

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

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

I have never held any public office other than judicial offices. In 1984, I ran unsuccessfully for Judge of the 36th District Court for the City of Detroit.

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

I have not held office in or rendered services to any political party or election committee. I have not held a position or played a role in a political campaign, except that I have occasionally lent my name for use by other judicial candidates solely as an endorser and supporter. I estimate that I may have done this a dozen times in the 25 years I have been on the bench. The only specific instance I can

recall is that I endorsed Judge Edward Nykiel in 2010, when he was the incumbent candidate for the 33rd District Court.

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

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

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

I served as a law clerk in a pool of seven law clerks who did research and writing for all 28 Michigan Third Circuit Court Judges from 1972 to 1973.

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

I never practiced law alone.

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

1973 – 1974

City of Detroit, Department of Transportation  
1301 East Warren Avenue  
Detroit, Michigan 48207  
Attorney

1974 – 1986

Federal Defender Office  
613 Abbott Street, Fifth Floor  
Detroit, Michigan 48226  
Attorney

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

I served as an arbitrator with the American Arbitration Association only a couple of times during the early 1990's. The records of these arbitrations are no longer available because of the American Arbitration Association's ten year retention policy.

b. Describe:

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

From 1973 to 1974, at the Detroit Department of Transportation, I handled property damage and minor personal injury cases regarding the city's buses. From 1974 to 1986, at the Federal Defender Office, I represented indigent defendants who were charged with criminal felonies.

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

During my one year with the City of Detroit Department of Transportation, I represented the City of Detroit when it was sued for incidents arising from its provision of public transportation.

During my 12 years with the Federal Defender Office, I represented indigent criminal defendants in federal court who were charged with a variety of crimes such as drug violations, bank robberies, counterfeiting, mail theft, interstate transportation of stolen property, and gun charges.

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

My practice was exclusively in litigation. When I worked at the Federal Defender Office from 1974 to 1986, I was in court daily and tried numerous cases in federal court.

- i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 95% |
| 2. state courts of record:  | 5%  |
| 3. other courts:            | 0%  |
| 4. administrative agencies: | 0%  |

- ii. Indicate the percentage of your practice in:

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

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

From 1974 to 1986, while at the Federal Defender Office, I tried, as sole counsel, approximately one case a month on average. Over 12 years, that is approximately 144 cases. While working for the City of Detroit Department of Transportation from 1973 to 1974, I tried three or four cases as sole counsel.

- i. What percentage of these trials were:
  1. jury: 98%
  2. non-jury: 2%

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

I have never practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
  - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
  - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. *U.S. v. Louzon*, 392 F. Supp. 1220 (E.D. Mich. 1975). When Louzon violated his probation by committing a new crime, the probation department waited until he had finished serving all of his prison time for the new crime before taking any action on the probation violation charge. I moved for dismissal of the probation violation charge on speedy trial grounds. Judge Charles Joiner held that Louzon had a constitutional right to a speedy disposition on the probation violation and that the probation department should have taken some action as soon as they learned of the new offense. Because of the lengthy delay, Judge Joiner dismissed the violation on Sixth Amendment, speedy trial grounds.

I was the sole attorney representing Louzon.

Former Assistant United States Attorney William D. Richards (Prosecutor)  
Currently Judge of 46th District Court  
26000 Evergreen Road  
Southfield, Michigan 48037  
248-796-5815

2. *U.S. v. Chamblis*, 425 F. Supp. 1330 (E.D. Mich. 1977). In this case, I represented a defendant charged with possession of heroin. Upon disembarking from a plane at the Detroit airport, the defendant was stopped by a Drug Enforcement Administration agent, who then took the defendant downstairs, searched him, and found heroin. I moved to suppress the heroin. Judge James P. Churchill granted my motion to suppress because the agent lacked probable cause to search the defendant. After suppressing the evidence, the Judge dismissed the case.

I was the sole attorney representing Chamblis.

Former Assistant United States Attorney Victoria L. Toensing (Prosecutor)  
Currently with diGenova & Toensing, LLP  
1776 K Street, NW, Suite 739  
Washington, DC 20006  
202-289-7701

3. *U.S. v. Mendenhall*, 596 F.2d 706 (6th Cir. 1979), *rev'd*, 446 U.S. 544 (1980). In this case, I represented at trial a defendant who was profiled, stopped, and then searched by federal agents at an airport, who found drugs upon the defendant. I moved to suppress the drugs, asserting that the agents lacked probable cause and that the defendant had not consented to the search. Judge Robert DeMascio denied the motion to suppress the evidence, but the Sixth Circuit reversed. The Supreme Court granted certiorari and reversed the Court of Appeals, though the majority was divided in its reasoning.

In addition to handling the case at trial, I assisted in the preparation of the case for appeal to the Sixth Circuit. I was not involved at the Supreme Court.

Renee S. Siegan for Defendant (Ms. Siegan left the Defender Office and I took over the case)  
Currently with Saurbier & Siegan, P.C.  
400 Maple Park Boulevard, Suite 402  
Saint Clair Shores, Michigan 48081  
586-447-3738

Former Assistant United States Attorney Victoria L. Toensing (Prosecutor)  
Currently with diGenova & Toensing, LLP  
1776 K Street, NW, Suite 739  
Washington, DC 20006  
202-289-7701

4. *U.S. v. Emler*, 423 F. Supp. 86 (E.D. Mich. 1976), *aff'd*, 570 F.2d 584 (6th Cir. 1977). In this case the defendant was charged with interstate transportation of stolen property, and I challenged the sufficiency of the indictment, asserting that it did not sufficiently plead the intent requirement for the offense. Judge Robert DeMascio denied my motion, and the Sixth Circuit affirmed. Emler was convicted and sentenced.

At the trial, I handled this case alone. I assisted in the preparation of the case for appeal to the Sixth Circuit.

Former Assistant United States Attorney Gordon Gold (Prosecutor)  
Currently with Seyburn, Kahn, Ginn, Bess and Serlin, P.C.  
2000 Town Center, Suite 1500  
Southfield, Michigan 48075  
248-353-7620

5. *U.S. v. McGraw*, 420 F. Supp. 443 (E.D. Mich. 1976). Defendant McGraw was convicted of possession of heroin, and the court imposed a suspended sentence and placed him on probation. When McGraw later violated his probation, he was sentenced to a term of imprisonment. At that point, I filed a motion under Rule 35 of the Federal Rules of Criminal Procedure to reduce McGraw's sentence. Judge Cornelia Kennedy denied the motion, holding that a Rule 35 motion can only be used to challenge the original sentence, not to challenge resentencing following a violation of probation

I handled this case alone.

Former United States Attorney Phillip Van Dam (emeritus) (Prosecutor)  
Contact information unknown.

6. *U.S. v. Cooper*, 682 F.2d 114 (6th Cir. 1982). The issue in this case was whether there was sufficient probable cause in a warrant affidavit filed by the FBI to place a beeper in a package that the defendant, a UPS driver, then stole. I filed a motion to suppress the evidence before Judge Charles Joiner, who held that there was adequate probable cause to place the beeper. The Sixth Circuit affirmed, and Cooper was convicted and sentenced.

In this case I handled the trial and appeal alone.

Assistant United States Attorney John N. Thompson (Deceased) (Prosecutor)

7. *U.S. v. Ayotte*, 741 F.2d 865 (6th Cir. 1984). In this case I represented a defendant, Ayotte, who was on trial with two other defendants in a drug conspiracy case before Judge Horace Gilmore. During the trial, Judge Gilmore limited my cross-examination of an informant about things that he had written in a report and said before the grand jury. The Sixth Circuit held that it was reversible error to limit my cross-examination, and it reversed the defendant's conviction and remanded her case alone for a new trial.

I handled this case alone at trial and assisted in the appeal.

Assistant United States Attorney Elizabeth A. Wild (Prosecutor)  
Currently with Berrien County Prosecuting Attorney's Office  
811 Port Street  
Saint Joseph, Michigan 49085  
269-983-7111

Frederick Finn represented a Co-Defendant  
615 Griswold Street, Suite 1616  
Detroit, Michigan 48226  
313-964-1383

8. *U.S. v. Cox*, 593 F.2d 46 (6th Cir. 1979). In this case I represented a defendant who was charged with making a false statement in an application for a passport. The defendant executed the application for a passport under a name he had assumed in accordance with Michigan common law. At the conclusion of all of the evidence, I moved for a judgment of acquittal based on the fact that the defendant had not made a material false statement because he had in fact assumed a new name. Judge Ralph Guy denied the motion and the jury convicted the defendant, but the Sixth Circuit reversed, holding that the motion for judgment of acquittal should have been granted. The case was remanded with direction to dismiss the indictment.

I handled this case alone at trial and assisted on the appeal.

Assistant United States Attorney Kenneth J. Haber (Prosecutor)  
Currently with Law Offices of Kenneth Joel Haber, P.C.  
15879 Crabbs Branch Way  
Rockville, Maryland 40855  
301-670-0016

9. *U.S. v. Leja*, 568 F.2d 493 (6th Cir. 1977). Defendant Leja was charged with possession, manufacture and distribution of phencyclidine. In my cross-examination of the government's informant, Judge Charles Joiner would not permit me to ask how much the informant was paid for his work on cases other than the one that was being tried. The Sixth Circuit reversed the conviction

because the cross-examination was limited and what the informant was paid in other matters went to his bias and motive to fabricate and distort his testimony.

I handled the trial alone at trial and assisted on the appeal.

Former Assistant United States Attorney Ronald W. Mellish (emeritus)  
(Prosecutor)  
Currently at 41155 Belvidere Street  
Macomb, Michigan 48045  
586-954-3777

10. *U.S. v. Touchstone*, 726 F.2d 1116 (6th Cir. 1984). In this case I represented Touchstone, who was a defendant in a large drug conspiracy case. Twenty-five people were indicted, and, when the trial started, there were approximately twelve defendants. By the end of the six-week trial, only about six defendants' cases went to the jury, with the other defendants having accepted plea bargains. My client, Touchstone, and one of his co-defendants, Godwin (represented by now-District Judge David Lawson), failed to appear for trial after the third day. Lawson and I asked Judge Philip Pratt to sever our clients from the trial. Touchstone was convicted in his absence and was later sentenced to four years imprisonment after his arrest. I also raised a Fourth Amendment objection to a government search, objected to both the evidence of and the district court's jury instructions on flight, and challenged the district court's limitation of cross-examination. The Sixth Circuit affirmed the convictions.

I represented Touchstone at trial alone and assisted with the appeal.

Former Assistant United States Attorney Christopher Andreoff (Prosecutor)  
Currently with Jaffe Raitt Heuer & Weiss  
27777 Franklin Road, Suite 2500  
Southfield, Michigan 48034  
248-351-3000

Former Assistant United States Attorney Robert M. Morgan (Prosecutor)  
Currently at 615 Griswold Street, Suite 1125  
Detroit, Michigan 48226  
313-961-7070

The following attorneys represented co-defendants at trial:

Milton Henry (Deceased)

Lester Hudson  
Contact information unknown



Daryle G. Salisbury  
42400 Grand River Avenue, Suite 106  
Novi, Michigan 48375  
248-348-6820

(Hon.) David M. Lawson  
Now United States District Judge  
231 West Lafayette Boulevard, Room 802  
Detroit, Michigan 48226  
313-234-2660

Leonard A. Henk  
Kallas & Henk, P.C.  
43902 Woodward Avenue, Suite 200  
Bloomfield Hills, Michigan 48302  
248-335-5450

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

Throughout my career, I have been actively involved in the Association of Black Judges of Michigan. Over the years, I have participated in the mock trial program (as both a judge and a coach) as well as various mentoring programs involving local students. I have been involved in the Adopt-a-School program and hosted students for visits to the courthouse. I was also active in the National Judicial College. I taught courses for the college for about ten years, including courses on criminal law and one titled "Great Issues of Law as Reflected in Literature." I also served as a liaison between the administration and the volunteer judges who taught for the college.

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

Criminal Law (Undergraduate Course); Wayne State University; Fall 1989. I taught the steps in the criminal process, from arraignments to sentencing. I have been unable to locate the syllabus.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business

relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I will receive payments upon retirement from the Wayne County (Michigan) Retirement System.

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

I have no plans to pursue outside employment if appointed as a District Judge other than to serve on appropriate non-profit boards and to remain active with my neighborhood and church.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

Other than my wife and two daughters, I cannot think of any family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present any conflicts-of-interest if I am confirmed. If, by chance, my wife and two daughters appeared in a case before me I would recuse myself. I would review each case assigned to me to determine whether any potential conflict existed, and handle any potential conflicts in accordance with the recusal statutes and the Code of Conduct for United States Judges.

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

I would follow the recusal statutes and the Code of Conduct for United States Judges.

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

I have been involved in a prison ministry with Rosedale Park Baptist Church since 1997. Through this ministry, for several years, I led the Sunday morning worship service at the Mound Road Correctional Facility twice a month and then, more recently, once a month. For the last three or four years I have been leading a monthly Bible study. This amounted to 15 to 30 hours a month (including preparation time). I also spoke on occasion at the prison on issues such as parole.

From 2000 to 2006 I was on the Board of Directors of New Creations Community Outreach, formerly called Transition of Prisoners (TOP). This organization was involved in helping men coming out of prison with issues such as education, employment, social skills, and family issues. I devoted approximately four hours a month to this project.

I am annually involved with my church in a program called "Angel Tree." The program arranges for the purchase and delivery of Christmas gifts to the children of inmates. I have devoted approximately eight hours a year to this project.

I have also gone on mission trips to Texas (one week), Uganda (ten days), and Jamaica (one week), working with youth and/or inmates.

From 1993 to 1998 I was involved with the Association of Black Judges adopt-a-school and mentoring program, working with at-risk youths. When I was involved in this program, I spent five hours a month on it.

26. **Selection Process:**

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

In December 2010, an announcement was made that applications were being accepted by the Judicial Advisory Committee for the United States District Court

for the Eastern District of Michigan, which is appointed by U.S. Senators Carl Levin and Debbie Stabenow, for two open federal judgeships in the Eastern District of Michigan. I submitted my application in late January 2011. On March 14, 2011, I received a letter from Senators Levin and Stabenow indicating that my name, along with four others, was sent to the White House for possible nomination for the two vacancies. Since May 31, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 28, 2011, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On November 17, 2011, the President submitted my nomination to the Senate.

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

No.

AFFIDAVIT

I, Gershwin Allen Drain, do swear  
that the information provided in this statement is, to the best  
of my knowledge, true and accurate.

November 10, 2011  
(DATE)

Gershwin A. Drain  
(NAME)

Shannan M. Doyle  
(NOTARY)

SWANNAN M. DOYLE  
Notary Public, State of Michigan  
County of Oakland  
My Commission Expires 09-02-2012  
Acting in the county of Wayne.

