UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Gary Stephen Katzmann

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

   Judge of the United States Court of International Trade

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

   Office: Massachusetts Appeals Court
   John Adams Courthouse
   One Pemberton Square, Suite 3500
   Boston, Massachusetts 02108

   Residence: Brookline, Massachusetts

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

   1953; New York, New York

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

   1977 – 1979, Yale School of Organization and Management; M.P.P.M., 1979

   1975 – 1979, Yale Law School; J.D., 1979

   1973 – 1975, University of Oxford; B.Litt. (now M. Litt.), 1976

   1970 – 1973, Columbia College; A.B. (*summa cum laude*), 1973

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

and address of the employer and job title or description.

2004 – Present
Massachusetts Appeals Court
John Adams Courthouse
One Pemberton Square, Suite 3500
Boston, Massachusetts 02108
Associate Justice

1983 – 2004
United States Attorney's Office
District of Massachusetts
United States Courthouse
One Courthouse Way
Boston, Massachusetts 02210
Assistant United States Attorney (1983 – 2004)
Chief Appellate Attorney (1983 – 1993, 1997 – 1998)
Chief Legal Counsel to United States Attorney (1989 – 1992)
Deputy Chief, Criminal Division (1989)

1997 – 2003
John F. Kennedy School of Government, Harvard University
Program in Criminal Justice Policy and Management
79 John F. Kennedy Street
Cambridge, Massachusetts 02138
Fellow (2002 – 2003)
Research Fellow and Project Director (1997 – 2001)

1997 – 2003
Governance Institute
1775 Massachusetts Avenue, NW
Washington, District of Columbia 20036
Fellow (2002 – 2003)
Research Fellow and Project Director (1997 – 2001)

1990 – 1994, 1997
Harvard Law School
1525 Massachusetts Avenue
Cambridge, Massachusetts 02138
Lecturer on Law

1994 – 1995
Federal Bureau of Investigation
Office of Director
935 Pennsylvania Avenue, NW
Washington, District of Columbia 20530

Special Assignment, drafter of health care fraud legislation (on detail from U.S. Attorney's Office)

1993 – 1994
United States Department of Justice
Office of Deputy Attorney General
950 Pennsylvania Avenue, NW
Washington, District of Columbia 20530
Associate Deputy Attorney General (on detail from U.S. Attorney's Office)

1981 – 1983
Harvard Law School
Center for Criminal Justice
Hauser Hall
Cambridge, Massachusetts 02138
Research Associate (1981 – 1983)
Special Investigator, Administrative Board (1982 – 1983)

1980 – 1981
The Honorable Stephen G. Breyer
United States Court of Appeals for the First Circuit
United States Courthouse
One Courthouse Way
Boston, Massachusetts 02110
Law Clerk

1979 – 1980
The Honorable Leonard B. Sand (retired)
United States District Court for the Southern District of New York
500 Pearl Street
New York, New York 10007
Law Clerk

Summer 1978
Domestic Policy Staff
Old Executive Office Building
1650 Pennsylvania Avenue, NW
Washington, District of Columbia 20502
Yale Law School Public Interest Fellow and Intern

Summer 1977
Paul Weiss Rifkind Wharton & Garrison
1285 Avenue of the Americas
New York, New York 10019
Summer Associate

Summer 1976
Proskauer Rose Goetz & Mendelsohn
Eleven Times Square
Eighth Avenue and 41st Street
New York, New York 10036
Summer Associate

Summer 1973
United States Department of Health, Education and Welfare
26 Federal Plaza
New York, New York 10278
Clerk/Administrative Aide

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

   I have not served in the military. I did timely 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.

   Commendation, Dean Camille Nelson, Suffolk University Law School, for commitment to the Thomas J. Drinan Memorial Public Interest Fellowship and "for ensuring that Suffolk University's mission of access and opportunity to justice will continue to transform the lives of countless students" (2015)

   Golden Pacifier Award, Babytalk Magazine and Parenting.com, for "notable pro-mom move of the year" (2008)

   Martindale-Hubbell Highest Professional Rating (av) (1992 – 2007)

   Commendation, United States Attorney's Office, Boston, "in recognition of your distinguished career as a federal prosecutor. You will always be remembered for your intelligence, guidance, integrity and outstanding contributions to the work of this office" (2004)

   Citation, United States Department of Health and Human Services, Office of Inspector General, "for years of outstanding prosecutorial dedication and support to the Boston Office of Inspector General" (2004)

   Citation, Director Robert Mueller III, Federal Bureau of Investigation, for "superior legal guidance regarding complex and sensitive international matters [that] was instrumental in effecting the just and successful prosecution" of Al Qaeda terrorist Richard Reid (2003)

Director's Award for Superior Performance as an Assistant United States Attorney, Executive Office of United States Attorneys, for "tireless efforts and outstanding contributions to the prosecution" of Al Qaeda terrorist Richard Reid (2003)

Award by United States Department of Labor, "in recognition of outstanding efforts in combating pension fraud and abuse" (1997)

Citation, Director Louis Freeh, Federal Bureau of Investigation, "for vital contributions to the passage of significant health care fraud legislation" and "superb work" (1997)

Commendation, United States Attorney General, for "outstanding efforts while on detail to the Deputy Attorney General's Office" and "significant contributions to the Department's work on sentencing guidelines" (1995)

Director's Award for Superior Performance as an Assistant United States Attorney, Executive of United Attorneys "in recognition . . . of skills as one of the finest appellate lawyers in the Department of Justice" (1993)

Special Achievement Award, United States Department of Justice (1991)

Award by United States Department of Labor, Office of Labor Management Standards, "in recognition of outstanding prosecutive support" (1991)

Inspector General's Integrity Award, United States Department of Health and Human Services (1991)

Citation, United States Secretary of Labor Elizabeth Dole, for an "outstanding job" in jury trial prosecutions (1990)

Inspector General's Integrity Award, United States Department of Health and Human Services, for "outstanding efforts in presenting cases involving fraud against programs of this Department, 1983 – 1988" (1988)

Finalist, Harlan Fiske Stone Moot Court Competition, Yale Law School (1979)

Editor, Yale Law Journal (1978 – 1979)

Kellett Fellowship (1973 – 1975)

New York State Regents Scholarship (1970 – 1973)

Phi Beta Kappa (1972)

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

American Bar Association
Boston Bar Association
Boston Bar Journal Board of Editors (September 2010 – Present)
Governor's Juvenile Justice Advisory Committee (2003 – 2008)
Massachusetts Bar Association
Massachusetts Supreme Judicial Court Committee on Retention of Appellate Records (2014 – 2015)
National Association of Women Judges
Suffolk County District Attorney Ralph C. Martin's Transition Committee (1992)

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.

Massachusetts, 1982
District of Columbia, 1984
New York, 1990

There have been no lapses in membership. I assumed judicial status in both Massachusetts and New York in 2005.

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

United States Court of Appeals for the First Circuit, 1983
United States Court of Appeals for the Second Circuit, 1987
United States Court of Appeals for the Federal Circuit, 1991
United States District Court for the District of Massachusetts, 1983

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.

Discovering Justice Program
Board of Visitors (2002 – 2010)

Governor's Juvenile Justice Advisory Committee (2003 – 2008)
Thomas J. Drinan Memorial Public Interest Fellowship, Suffolk University Law School
Board of Advisors (1988 – Present)
Massachusetts Judges Conference (variously since 2006)
Nisi Prius (2006 – Present)
Dwight D. Opperman Institute of Judicial Administration, New York University School of Law
Member (variously since 2006)

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.

I have never been a member of any club or organization that discriminates or formerly discriminated on the basis of race, sex, or religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

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

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

With Hon. Rudolph Kass, "General Guidelines for the Appendix and Brief," in Appellate Practice in Massachusetts, Massachusetts Continuing Legal Education (2014). Copy supplied.

Book Review, 47 New England Law Review 351 (2013) (reviewing Gordon A. Martin, Jr., "Count Them One by One, Black Mississippians Fighting for the Right to Vote"). Copy supplied.

"Thank you, Rosa Pontes," in The Appeals Court at 40 (2013). Copy supplied.

"Some Thoughts on Oliver Wendell Holmes, Jr. – A Judge's Perspective," in Supreme Court Historical Society, Volume XXVIII, No. 4 (2007). Copy supplied.

"Computer Crime: Obtaining Electronic Information and Federal Sentencing

Guidelines," in Practical Considerations in Financial and Cyber Crimes, Massachusetts Continuing Legal Education (2003). Copy supplied.

"Federal Sentencing Guidelines: Practitioner Notes and Materials," in Federal Criminal Practice, Massachusetts Continuing Legal Education (2003). Copy supplied.

Securing Our Children's Future: New Approaches to Juvenile Justice and Youth Violence, Brookings Institution Press and Governance Institute (2002) (editor and contributing author). Copy supplied.

Inside the Criminal Process, W.W. Norton (1991). Copy supplied.

"Perspectives from the United States Attorney's Office," 74 Massachusetts Law Review 288 (1989). Copy supplied.

Note, "The Proposed Court-Appointed Special Prosecutor: In Quest of a Constitutional Justification," 87 Yale Law Journal 1692 (1978). Copy supplied.

I served as recruiting and coordinator editor for the following articles appearing in the Boston Bar Journal:

Paul R. Collier, III, "*Eaton,* Title and Foreclosure: Where Is 'Here,' How We Got 'Here,' and Where We're Going," Boston Bar Journal Online, Vol. 57, No. 1 (Winter 2013). Copy supplied.

Judge Rudolph Kass, "Translation," Boston Bar Journal Online, Vol. 56, No. 4 (Fall 2012). Copy supplied.

Joshua Ruby and April Kuehnhoff, "The Massachusetts Supreme Judicial Court's Foreclosure Jurisprudence: A Review of 2011 and a Preview of 2012 and Beyond," Boston Bar Journal Online, Vol. 56, No. 1 (Winter 2012). Copy supplied.

Judge William I. Cowin, "Reflections in Retirement," Boston Bar Journal Online, Vol. 55, No. 3 (Summer 2011). Copy supplied.

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

None.

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

Statement before the Governor's Council in Support of the Nomination of Robert L. Ullmann to the Massachusetts Superior Court, March 6, 2013. I spoke extemporaneously regarding my support for Mr. Ullmann. I have no notes, transcript or recording, however, the testimony mirrors the support that is conveyed in my March 1, 2013 letter to Councillor Devaney. Copy supplied.

Testimony, "The Humanities and Civil Society," New England Regional Forum of the American Academy of Arts and Sciences, July 17, 2012. Copy supplied.

Statement for Governor's Council in Hearing on the Nomination of Gary S. Katzmann for Associate Justice, Massachusetts Appeals Court, August 11, 2004, Boston, Massachusetts. Copy supplied.

Ex officio Member, United States Sentencing Commission, 1993 – 1994. As the Department of Justice representative to the Sentencing Commission, I responded to inquiries and requests by the voting members of the Commission at the following meetings:

United States Sentencing Commission Business Meeting, September 1, 1994. Minutes supplied.

United States Sentencing Commission Business Meeting, May 3, 1994. Minutes supplied.

United States Sentencing Commission Business Meeting, April 14, 1994. Minutes supplied.

United States Sentencing Commission Business Meeting, January 28, 1994. Minutes supplied.

United States Sentencing Commission Business Meeting, November 30, 1993. Minutes supplied.

United States Sentencing Commission Business Meeting, September 21, 1993. Minutes 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.

1998 – Present: Speaker, Discovering Justice, Boston, Massachusetts. Under the aegis of Discovering Justice, a nonprofit organization, I have spoken frequently to student groups about my work, typically in question and answer sessions. I have no notes, transcripts or recordings. The address for Discovering Justice is United States Courthouse, One Courthouse Way, Boston, Massachusetts 02210.

July 2013, July 2014 and July 2015: Teacher, New Appellate Judges Seminar, Institute for Judicial Administration, New York University School of Law, New York, New York. I co-teach this one-week course each July with various state and federal judges, (including Chief Justice Roderick Ireland of the Massachusetts Supreme Judicial Court, Judge Diarmuid O'Scannlain of the United States Court of Appeals for the Ninth Circuit and Judge Jeffrey Sutton of the United States Court of Appeals for the Sixth Circuit) as a seminar and dialogue combining practical and theoretical training for new appellate judges with some exposure to substantive law and judicial ethics. Handouts supplied.

February 4, 2015: Speaker, "Volunteering for Discovering Justice and Citizens Schools," Discovering Justice, Boston, Massachusetts. I spoke to a group of lawyer volunteers who were beginning their training in a program called "Stand-Up for Your Rights," which culminates in mock appellate arguments by middle school students. I have no notes, transcript or recording, but the substance of my remarks would have been substantially similar to the June 30, 2011 presentation below, for which a video recording is supplied. The address for Discovering Justice is United States Courthouse, One Courthouse Way, Boston, Massachusetts 02210.

January 2014: Moot Court Judge, Marshall Brennan Constitutional Literacy Challenge, Suffolk University Law School, Boston, Massachusetts. I participated as a judge in the final round of a moot court competition of regional high school students. I have no notes, transcript or recording. The address for Suffolk University Law School is 120 Tremont Street, Boston, Massachusetts 02108.

April 8, 2013: Panelist, "A View from the Bench: Career, Community and Practical Pointers," Combined Jewish Philanthropies Young Lawyers Division, Boston, Massachusetts. I was on a panel with three other judges and was asked to discuss my career and to answer questions from the audience. I have no notes, transcript, or recording. The address for the Combined Jewish Philanthropies is 126 High Street, Boston, Massachusetts 02110.

March 18, 2013: Panelist, Symposium, "Redefining Theft Law in the Information Age," New England Law School, Boston, Massachusetts. Notes supplied.

March 5, 2012: Speaker, "Investiture of Stephen A. Higginson as Circuit Judge, United States Court of Appeals for the Fifth Circuit," New Orleans, Louisiana. Remarks supplied.

June 30, 2011: Speaker, "Honorable Gary Katzmann on Volunteering," Discovering Justice, Boston, Massachusetts. Video available at https://www.facebook.com/video/video.php?v=10150226406168742.

May 31, 2011: Speaker, "In Memoriam, Richard G. Mintz: the Citizen Lawyer," Harvard Law School, Cambridge, Massachusetts. Notes supplied.

April 2008 – April 2011: Moot Court Judge, Albers Semi-Finals Moot Court Competition, Boston University Law School, Boston, Massachusetts. I participated as a judge in a moot court competition for law students. I have no notes, transcript or recording. The address for Boston University Law School is 765 Commonwealth Avenue, Boston, Massachusetts 02215.

Variously 2000 – 2008; April 2010; November 2010; April 2011: Moot Court Judge, Ames Moot Court Competition, Harvard Law School, Cambridge, Massachusetts. I participated as a judge in the first year and upper level qualifying round of a moot court competition for law students. I have no notes, transcript or recording. The address for Harvard Law School is 1563 Massachusetts Avenue, Cambridge, Massachusetts 02138.

September 9, 2008: Panelist, "New Media and the Courts," University of Arizona School of Law, Tucson, Arizona. Copy of conference publication supplied.

March 15, 2006: Panelist, "Justice Holmes and the Path of the Law in 2006," Supreme Court Fellows Program, Boston University, Boston, Massachusetts. I have no notes, transcript, or recording, but a copy of the article on which the discussion was based is supplied in response to Question 12a. The address for Boston University is One Silber Way, Boston, Massachusetts 02215.

October 27, 2004: Speaker, "Remarks On Induction as an Associate Justice," Massachusetts Appeals Court, Boston, Massachusetts. Notes supplied.

September 28, 2004: Speaker, "Farewell Remarks to the United States Attorney's Office," Boston, Massachusetts. Remarks supplied.

Variously, 1985 – 2004: Lecturer, Attorney General's Institute on Appellate Advocacy, Office of Legal Education, Washington, District of Columbia. Over the years, I spoke on appellate advocacy training during this seminar, which was offered periodically. I have no notes, transcript, or recording. The address of the Office of Legal Education is Executive Office for United States Attorneys, Main

Justice Building, Room 2244A, 950 Pennsylvania Avenue, NW, Washington, District of Columbia 20530.

May 6, 2003: Panelist, "Securing Our Children's Future: New Approaches to Juvenile Justice and Youth Violence," Harvard Kennedy School of Government, Cambridge, Massachusetts. I participated in a panel discussion of a project I directed on juvenile justice and my ensuing book. I have no notes, transcript, or recording, but a copy of the publication on which the discussion was based is supplied in response to Question 12a. The address for the Harvard Kennedy School of Government is 79 John F. Kennedy Street, Cambridge, Massachusetts 02138.

October 2000: Panelist, "Criminal Law and Sentencing," First Circuit Judicial Conference, United States Court of Appeals for the First Circuit, Martha's Vineyard, Massachusetts. I was a panelist in an unscripted conversation on the subject of criminal law and sentencing. I have no notes, transcript, or recording. The address for the United States Court of Appeals for the First Circuit is United States Courthouse, One Courthouse Way, Boston, Massachusetts 02210.

Spring 1999: Discussant, Sentencing Policy Seminar, Yale Law School, New Haven, Connecticut. At the request of Judge Nancy Gertner, I participated on a monthly basis in this seminar, discussing sentencing policy from the perspective of the United States Attorney's Office and the Department of Justice. I have no notes, transcripts, or recordings. The address for Yale Law School is 127 Wall Street, New Haven, Connecticut 06520.

September 1999: Presenter, "The American Plea Bargain and the Quest for Justice," Russian Procuracy Institute and the United States Department of Justice, Office of Overseas Prosecutorial Development, Assistance and Training, Moscow, Russia. I provided remarks regarding an abridged version of my book, Inside the Criminal Process, which was translated into Russian and used as a text for this conference with Russian judges and prosecutors. I have no notes, transcript, or recording, but a copy of the publication on which the discussion was based is supplied in response to Question 12a. The address for the Office of Overseas Prosecutorial Development, Assistance and Training is 1331 F Street, NW, Washington, District of Columbia 20530.

1999: Lecturer, Federal Criminal Practice, Massachusetts Continuing Legal Education, Boston, Massachusetts. I spoke about the United States Sentencing Guidelines and their implementation by the Department of Justice. I have no notes, transcript, or recording, but a copy of the paper on which the lecture was based is supplied in response to Question 12a. The address for Massachusetts Continuing Legal Education is Ten Winter Place, Boston, Massachusetts 02108.

January 5, 1998: Speaker, "Presentation of Portrait, Honorable Stephen G. Breyer," United States Court of Appeals for the First Circuit, Boston,

Massachusetts. Remarks supplied.

September 1997: Moderator, "A Conversation with Justice Souter and Justice Breyer," First Circuit Judicial Conference, United States Court of Appeals for the First Circuit, Providence, Rhode Island. I provided an initial introduction and moderated a panel with Supreme Court Justices Souter and Breyer. I have no notes, transcript, or recording. The address for the United States Court of Appeals for the First Circuit is United States Courthouse, One Courthouse Way, Boston Massachusetts 02210.

1996: Guest Lecturer, "Prosecutorial Ethics," Suffolk University Law School, Boston, Massachusetts. I spoke about ethical issues in prosecution in an adjunct course taught by Brackett B. Denniston, III. I have no notes, transcript or recording. The address for Suffolk University Law School is 120 Tremont Street, Boston, Massachusetts 02108.

August 7, 1993: Panelist, "Sentencing Policy," Annual Meeting, American Bar Association, New York, New York. As a panel member, I described relevant Department of Justice policies. I have no notes, transcript or recording. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

July 8, 1993: Presenter, "Department of Justice Sentencing Policy," National Conference for Chief Probation & Pretrial Services Officers, Federal Judicial Center, Baltimore, Maryland. I described Department of Justice sentencing policy. I have no notes, transcript, or recording. The address for the Federal Judicial Center is One Columbus Circle NE, Washington, District of Columbia 20544.

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

I have done my best to identify all items called for in this question, by searching electronic databases as well as my personal files. What follows is a list of all occasions, to the best I have been able to recover them, on which I have been quoted in the press as the result of such an interview or inquiry.

John O. Harney, *Humanitarian Efforts*, The New England Journal of Higher Education, July 30, 2012. Copy supplied.

Discovering Justice and Malden's Citizen Schools Host Evening of Mock Trials, wickedlocal.com, May 13, 2011. Copy supplied.

Glen Johnson, *Governor Patrick Picks Duffly for Massachusetts Supreme Court*,

Associated Press, December 21, 2010. Copy supplied (reprinted in multiple outlets).

Denise Lavoie, *Leone Faces High-Profile Cases as New Middlesex District Attorney*, Associated Press, January 7, 2007. Copy supplied (reprinted in multiple outlets).

Ben McGrath, *Time Served*, The New Yorker, June 28, 2004. Copy supplied.

Dianne Williamson, *Bully Uses His Brother as Fall Guy; Dead Sibling Blamed for Computer Crime*, Worcester Telegram & Gazette, April 22, 2004. Copy supplied.

Thanassis Cambanis, *E-mail Can Be Used in Shoe Bomb Case*, Boston Globe, September 26, 2002. Copy supplied.

J.M. Lawrence, *Judge Denies Bid to Exclude Reid E-mails*, Boston Herald, September 26, 2002. Copy supplied (reprinted in multiple outlets).

Tom Brune, *Marine-Tough Public Servant*, Newsday, July 6, 2001. Copy supplied.

Charles Choi, *Former Nurse Pleads Guilty to "Robin Hood" House Calls*, UCG, June 19, 2000. Copy supplied.

Cosmo Macero Jr., *Roofer Sentenced to a Year in Prison*, Boston Herald, September 20, 1997. Copy supplied.

Stephen G. Breyer, 108th Member of the Supreme Court, Supreme Court Historical Society, Vol. XV, No. 3, 1994. Copy supplied.

America and the Courts, *Judge Breyer Nomination*, C-SPAN, May 20, 1994. Video available at www.c-span.org/video/?56920-1/judge-breyer-nomination.

Jewish Groups Positive on Breyer, but Not Much Known About His Views, Jewish Telegraphic Agency, May 17, 1994. Copy supplied.

Naftali Bendavid, *Breyer's Role as Sentencing Pioneer Still Rankles*, Legal Times, May 14, 1994. Copy supplied (reprinted in multiple outlets).

Reactions to the Breyer Appointment, Legal Times, Week of May 16, 1994. Copy supplied.

Matthew Brelis, *A Reputation for Legal and Listening Skills*, Boston Globe, May 14, 1994. Copy supplied (reprinted in multiple outlets).

Bill Rankin, *Prison Sentences Set in Stone: A Deterrent or an Injustice?*, Atlanta Journal and Constitution, October 17, 1993. Copy supplied.

Phil Primack, *Union Official to Serve Eight Months in Jail*, Boston Herald, September 24, 1991. Copy supplied.

Bruce Butterfield, *Convictions Upheld Against Ex-Union Boss*, Boston Globe, March 14, 1991. Copy supplied.

An Interview with Gary S. Katzmann, Bimonthly Review of Law Books, Volume 2, No. 1, Jan. – Feb. 1991. Copy supplied.

Frederic M. Biddle, *Walsh Gets Three Years in Labor Convictions*, Boston Globe, May 16, 1990. Copy supplied.

Frederic M. Biddle, *Labor Official Is Found Guilty on Six Charges*, Boston Globe, March 7, 1990. Copy supplied.

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

In 2004, after recommendation by a merit nonpartisan judicial nominating commission, Governor Romney submitted my nomination to the Governor's Council. The Governor's Council is a body of eight councillors, elected in districts, and provides advice and consent for judicial nominations. After my nomination was unanimously confirmed by the council, I was appointed on August 18, 2004, by the governor to be an associate justice of the Massachusetts Appeals Court. I entered duty on October 27, 2004, and have served to the present date. The Massachusetts Appeals Court is the intermediate appellate court in Massachusetts, and as a court of general jurisdiction, it hears appeals in civil and criminal matters arising from all of the trial courts, including the district court, superior court, land court, juvenile court, probate and family court, and appeals from administrative agencies. The Massachusetts Appeals Court sits in panels of three judges. An associate justice also sits from time to time as a single justice, entertaining emergency and interlocutory appeals.

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

As an associate justice of the Massachusetts Appeals Court, I have not presided over cases that have gone to verdict or judgment. I have sat on three judge panels that have issued 1,545 decisions; I have authored 614 decisions.

i. Of these, approximately what percent were:

jury trials: ___%

bench trials:	___%
civil proceedings:	52%
criminal proceedings:	48%

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

See attached list.

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

1. *Baby Furniture Warehouse Store, Inc. v. Meubles D & F Lee*, 75 Mass. App. Ct. 27, 911 N.E.2d 800 (2009).

This case, involving a retailer's fraud claims against a furniture manufacturer, dealt with the application and interpretation of a choice of law and forum selection clause in a trade dispute implicating the laws of the United States and Canada. The appeals court held that the clause, requiring resolution of disputes in Canadian courts, was not limited to disputes under the agreement but included all disputes arising out of or related to the policy or the relationship between the furniture manufacturer and retailer. A forum selection clause in a freely negotiated international commercial transaction will be invalidated where the party who seeks to escape its consequences will be effectively deprived of his day in court. But in this case, the retailer had the opportunity to bring unfair business practices claims against the furniture manufacturer in a prior Canadian action. Under the Canadian Civil Code, a Canadian court can take judicial notice of the law of the United States where it has been pleaded. An exception to res judicata was not appropriate where it was not certain that a Canadian court would have declined jurisdiction of the retailer's claim. Moreover, the claim preclusion doctrine applied to all of the retailer's claims set forth in the Massachusetts complaint. In sum, the appeals court concluded that the fraud claims in issue were required to be litigated in Canada.

Counsel: For the plaintiff:
John Hause
Hause Law Office
Seven Foster Street
Quincy, Massachusetts 02169
617-770-5700

For the defendant:
Joseph Lange

Weiner & Lange, P.C.
95 State Street, Room 918
Springfield, Massachusetts 01103
413-732-6840

2. *Buchanan v. Contributory Retirement Appeal Board*, 65 Mass. App. Ct. 244, 839 N.E.2d 338 (2005).

In this case, the plaintiff employee contested a decision of the retirement board that she did not qualify for superannuation retirement. Informed by the reviewing standard of abuse of discretion of agency action and consideration of the substantial evidence doctrine, the appeals court concluded that the board properly determined that the lump sum settlement that the plaintiff had received in lieu of partial disability payments was not to be counted as service credit toward superannuation retirement. The court stated that looking at the agreement as a whole confirmed the board's determination that it was not the parties' intention that the lump sum was given in place of total disability benefits. Moreover, the court held that the plaintiff's reliance on a single sentence in the lump sum settlement agreement ignored the governing statute.

Counsel: For the plaintiff:
Thomas F. Gibson
Solo Practitioner
2400 Massachusetts Avenue
Cambridge, Massachusetts 02140
617-576-2400

For the defendant:
Susan Riedel
Solo Practitioner
Two Ringbold Road
Hingham, Massachusetts 02043
617-842-2718

3. *Commonwealth v. Feeney*, 84 Mass. App. Ct. 124, 994 N.E.2d 803 (2013).

The defendant filed a motion to suppress his incriminating statements to police (acknowledging ownership of a cell phone that linked him to a car crash under investigation and an inventory sheet that he signed). The trial judge ruled that the police had obtained the evidence in violation of the defendant's rights under the Fifth Amendment and allowed the motion to suppress. Reversing the motion judge, the appeals court found that the police did not use or pretend to have false evidence that suggested the defendant's guilt, and did not overbear the defendant's free will and lead him to incriminate himself. Moreover, viewed under the totality of the circumstances, the defendant's statements to the police and waiver of his *Miranda* rights were knowing, intelligent and voluntary.

Counsel: For the Commonwealth:
Donna J. Patalano
Suffolk County District Attorney's Office
Appeals Division
One Bulfinch Place, Fourth Floor
Boston, Massachusetts 02114
617-619-4081

For the defendant:
Krista M. Larsen
Law Offices of Krista M. Larsen
21 Cummings Park, Suite 280
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4. *Commonwealth v. Luthy*, 69 Mass. App. Ct.102, 866 N.E.2d 930 (2007).

In a case presenting the question of the quantum of evidence sufficient to search the residence of a principal of a delivery service, the defendants, charged with trafficking in cocaine and conspiracy to violate drug laws, filed motions to suppress evidence. The trial judge allowed the motions. The appeals court noted that an affidavit should be read as a whole and not subjected to hypercritical analysis, and that the question of whether the affidavit was adequate to establish a timely nexus between the defendant and the location to be searched was governed by reasonable inferences under a broad range of circumstances. Reversing the trial judge, the appeals court held that where the defendant was known to be a convicted drug dealer and where controlled buys confirmed his usual method of operation, the affidavit accompanying the search warrant set forth probable cause to believe that drugs or related evidence could be found at the residence.

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5. *Fraco Products, Ltd. v. Bostonian Masonry Corporation*, 84 Mass. App. Ct. 296, 995 N.E.2d 1125 (2013).

A construction worker was killed when a platform collapsed. In a negligence action by the estate of the worker, the defendant manufacturer of the platform filed a third-party complaint against the worker's employer on a theory of common law indemnity, where the employer had paid workers' compensation to the estate of its employee. Ruling that the manufacturer was not entitled to common law indemnity or contractual indemnity, the trial judge entered summary judgment in favor of the employer. The manufacturer appealed. The appeals court affirmed, noting that the legislature had left intact the exclusivity provision of the workers' compensation law, and that the terms of the sales contract created no clear or discernible indemnity obligation between the employer and the manufacturer.

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6. *Frishman et. al. v. Maginn*, 75 Mass. App. Ct. 103, 912 N.E.2d 468 (2009).

This case considered the applicability of a regulation issued pursuant to the Securities Act of 1933, prohibiting the sale of unregistered securities in nonpublic offerings to unaccredited investors. In a civil action, the plaintiffs alleged that the defendant had committed a breach of contract in which he purportedly agreed to assign certain shares of stock of a privately held company to the plaintiffs, who were known to be acting as part of an investment group that included unaccredited investors. The central question was whether the contract violated public policy and was void and unenforceable. Affirming the trial judge's allowance of summary judgment dismissing the breach of contract claim, the appeals court held that the relevant remedial purpose of the Securities Act of 1933

in the case at bar was the protection of unsophisticated investors in nonpublic offerings. Where the illegality was not incidental but permeated the parties' transaction, the appeals court upheld the trial judge's determination that the contract violated the federal regulation prohibiting sale of unregistered securities in nonpublic offerings to unaccredited investors. Because the contract violated public policy, it was void and unenforceable.

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7. *Gordon v. Registry of Motor Vehicles*, 75 Mass. App. Ct. 47, 912 N.E.2d 9 (2009).

The plaintiff raised constitutional challenges to a statute ("Melanie's Law") enacted to protect the public from drunk drivers. The statute requires that drivers with two or more convictions for operating a motor vehicle while under the influence of alcohol install an ignition interlock device (IID) before a new license could be reissued or reinstated. The plaintiff contended that the IID requirement was punitive and violated his constitutional right to be free from ex post facto law. Rejecting this claim, the appeals court noted that statutes imposing conditions on eligibility for continued licensure are remedial and nonpunitive in nature, and that the IID restriction, with its goal of public safety, was not punitive. While the requirement might be burdensome on the plaintiff, that did not transform the statutory sanction into punishment. In sum, upholding the constitutionality of the statute, the appeals court rejected the plaintiff's claims that the statute violated his constitutional rights to be free from ex post facto laws and double jeopardy, and that it impermissibly deprived him of his due process rights.

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8. *Gore v. Arbella Mutual Insurance Company*, 77 Mass. App. Ct. 518, 932 N.E.2d 837 (2009).

An automobile insurer's insured was clearly responsible for the injuries suffered by a motorist who had been struck by the insured's car. The motorist filed a demand letter with the insurer detailing her injuries and the insured's liability, and demanded that the insurer tender the policy limits within 30 days. The insurer, however, waited five months to respond to the letter and seven months to propose a settlement. Following a bench trial, a judge found that the defendant automobile insurer had committed unfair insurance practices. The insurer appealed. Noting that the statutory scheme protects the interests of both claimants and insureds against unfair insurance claim settlement practices, the appeals court concluded that the insurer's tactic of delays constituted a violation of its obligation to effectuate prompt, fair and equitable settlements, and subjected the insured to a possible excess judgment. Because the record was clear that the insurer knowingly acted in an unfair and deceptive manner amounting to a willful and knowing violation of a state consumer protection statute, there was a sound basis for at least double damages. Moreover, there was no error in the trial judge's award of prejudgment interest on the assigned claim damages.

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9. *Walker v. Collyer*, 85 Mass. App. Ct. 311, 9 N.E.3d 854 (2014).

Pursuant to an arbitration agreement signed by a patient and a rehabilitation facility covering disputes arising from the patient's treatment, the patient's widow

brought an arbitration proceeding against the facility and a treating physician, alleging medical malpractice. The physician then brought an action challenging the arbitrator's order compelling him to participate in arbitration of the claim. Reversing the trial judge, the appeals court held that in this case, the physician had not personally signed the agreement, nor was there clear and unmistakable evidence that he intended to delegate questions of arbitrability to the arbitrator. The appeals court concluded that the physician could not be compelled to arbitrate.

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10. *Zang v. NRT New England, Inc.*, 77 Mass. App. Ct. 665, 933 N.E.2d 665 (2010).

This case concerned the fiduciary obligations of an escrow agent arising out of a condominium purchase and sale agreement. The seller's agent did not sign the agreement. The agreement provided that the buyer would make a deposit of ten percent of the purchase price, to be held in escrow by the seller's agent. A fee-splitting provision provided that a broker's fee for professional services would be split evenly between the seller's agent and the buyer's agent, and would be paid at closing. After the closing, however, the seller's agent refused to split the broker's fee, claiming that the buyer's agent had not procured the sale. The buyer filed a complaint against the seller's agent, alleging breach of fiduciary duty and unfair business practice. Both parties moved for summary judgment, and the trial judge allowed summary judgment for the seller's agent. Reversing the trial judge, the appeals court ruled that when the seller's agent accepted the ten percent deposit from the buyer and deposited that sum in its escrow account, it became an escrow agent owing a fiduciary duty to both parties to the agreement. In that capacity, though it did not sign the purchase and sale agreement, it was required to act in accordance with the parties unambiguous fee-splitting instructions. The appeals court determined that summary judgment should enter in favor of the buyer.

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

1. *Baby Furniture Warehouse Store, Inc. v. Meubles D & F Lee*, 75 Mass. App. Ct. 27, 911 N.E.2d 800 (2009).

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2. *In re Care and Prot. of Orazio*, 68 Mass. App. Ct. 213, 861 N.E.2d 476 (2007).

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3. *Commonwealth v. Feeney*, 84 Mass. App. Ct. 124, 994 N.E.2d 803 (2013).

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4. *Commonwealth v. Luthy*, 69 Mass. App. Ct. 102, 866 N.E.2d 930 (2007).

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5. *Fraco Products, Ltd. v. Bostonian Masonry Corporation*, 84 Mass. App. Ct. 296, 995 N.E.2d 1125 (2013).

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6. *Frishman et. al. v. Maginn*, 75 Mass. App. Ct. 103, 912 N.E.2d 468 (2009).

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7. *Gordon v. Registry of Motor Vehicles*, 75 Mass. App. Ct. 47, 912 N.E.2d 9 (2009).

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8. *Gore v. Arbella Mutual Insurance Company*, 77 Mass. App. Ct. 518, 932 N.E.2d 837 (2009).

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9. *Trs. of Health & Hosps. of Boston v. Mass. Comm'n Against Discrimination* 65 Mass. App. Ct. 329, 839 N.E.2d 861 (2005), *aff'd*, 449 Mass. 675, 871 N.E.2d 444 (2007).

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10. *Zang v. NRT New England, Inc.*, 77 Mass. App. Ct. 665, 933 N.E.2d 994 (2010).

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

Certiorari was requested and denied in the following unpublished decision I authored: *Commonwealth v. Flannery*, No. 13-P-77, 2014 Mass. App. Unpub. LEXIS 162 (Feb. 10, 2014), *rev. denied*, 2014 Mass. LEXIS 251, 6 N.E.3d 547 (2014), *cert. denied*, *Flannery v. Mass.*, 2014 U.S. LEXIS 6378 (Oct. 6, 2014).

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.

Out of the 614 opinions I have authored, the Massachusetts Supreme Judicial Court has reversed in five cases, and in another case affirmed but on different grounds.

Chapman v. Katz, 65 Mass. App. Ct. 826, 844 N.E.2d 270 (2006), *aff'd on other grounds*, 448 Mass. 519, 862 N.E.2d 735 (2007). This case involved a lease dispute concerning whether a bank's erection of an automated teller machine kiosk on the property required the prior consent of the owners. The appeals court ruled that because the ATM kiosk was a trade fixture as a matter of law, it could not be a structure as that term was used in the lease, and the judge erred in submitting the definitional question to the jury. The Massachusetts Supreme Judicial Court agreed with the appeals court that there was no breach of the lease, but stated that it was permissible for the judge to allow the jury to consider whether the ATM was a structure. On other issues, the court affirmed the judgment in favor the defendants for essentially the same reasons as the appeals court.

Indeck Maine Energy, LLC v. Comm'r of Div. of Energy, 72 Mass. App. Ct. 92, 888 N.E.2d 994 (2007), *rev'd*, 454 Mass. 511, 911 N.E.2d 149 (2009). The appeals court held that facilities participating in a state renewable energy program created by statute have standing to challenge governmental actions permitting other facilities to participate in the program. The Massachusetts Supreme Judicial Court disagreed, holding that the purpose of the statutory scheme did not contemplate protection of competitive interests.

Commonwealth v. Brown, 05-P-971, 2007 Mass. App. Unpub. LEXIS 84 (Mar. 28, 2007), *rev'd*, 451 Mass. 200, 884 N.E.2d 488 (2008). Affirming the defendant's conviction for receiving a stolen motor vehicle, a panel of the appeals court reversed a home invasion conviction, where the trial judge had permitted introduction of fourteen prior convictions. While noting that the admission of the fourteen convictions did not, in and of itself, amount to an abuse of discretion, the panel ruled that five of the convictions amounted to impermissible propensity evidence that created a substantial risk of a miscarriage of justice under governing precedent. The Supreme Judicial Court reversed, ruling that the judge had not abused his discretion and had also issued an appropriate instruction in the final charge limiting the jury's consideration of that evidence.

Commonwealth v. Porter P., 73 Mass. App. Ct. 85, 895 N.E.2d 775 (2008), *rev'd*, 456 Mass. 254, 923 N.E.2d 36 (2010). In this case, the appeals court overturned the suppression of evidence that a juvenile in a homeless shelter had a gun, noting that he had agreed to live in a regulated environment, and that it was appropriate for the shelter officials to take steps to provide a safe environment. The Supreme Judicial Court reversed, ruling that the juvenile had a constitutionally protected reasonable expectation of privacy.

Commonwealth v. Hubbard, 08-P-414, 2009 Mass. App. Unpub. LEXIS 989 (June 24, 2009), *rev'd*, 457 Mass. 24, 926 N.E.2d 1178 (2010). A panel of the appeals court allowed the defendant's motion to vacate his guilty plea, holding that the convictions were invalid because of the failure to obtain a written jury trial waiver by the defendant. The Massachusetts Supreme Judicial Court disagreed, ruling that such written waiver was not required by statute or the Rules of Criminal Procedure.

Adoption of Quan, 14-P-487, 2014 Mass. App. Unpub. LEXIS 847 (July 9, 2014), *rev'd*, 470 Mass. 1013, 21 N.E.2d 182 (2014). A panel of the appeals court reversed a juvenile judge's order vacating decrees terminating the parental rights of the child's biological mother and father. Both parents had a history of substance abuse and mental illness and the child had lived with a preadoptive family for half of his lifetime. The appeals court concluded that reopening the adoption was not in the child's best interest, that the parents had stipulated to the termination of parental rights and that the record supported a determination that the stipulations were knowing and voluntary. While not expressing a view on the panel's underlying determination, the Supreme Judicial Court ruled that the appellate record was inadequate regarding knowing and voluntariness of stipulation, and that the appellants had thus not demonstrated an abuse of discretion in the judge's order vacating the termination decrees.

Regarding panel decisions of which I have been a member, though not the author of the decision (numbering some 931 decisions), the following are cases where the Supreme Judicial Court has reversed or been critical of the panel decision:

Sommer v. Maharaj, 65 Mass. App. Ct. 657, 843 N.E.2d 649 (2006), *rev'd*, 888 N.E.2d 891 (Mass. 2008). A shareholder sued a decedent and his companies after he terminated his business relationship. A jury found in favor of the shareholder and entered a judgment for him. A superior court judge issued an injunction preventing the widow and decedent from transferring or alienating funds but they did so, mingling assets and transferring them out of reach of the shareholder. Although retirement funds are generally protected from creditors, the widow and decedent's retirement accounts were seized, and the trial judge held that they forfeited their right to challenge the seizure by disobeying earlier orders to turn over the accounts. The appeals court determined this was in error because the widow had the right to challenge the seizure. The Supreme Judicial Court agreed with the appeals court regarding the exempt status of the IRA accounts, but concluded that the conduct in this case was so egregious that it warranted the rare penalty that the right to be heard was forfeited.

Gen. Convention of the New Jerusalem in the U.S.A., Inc. v. MacKenzie, 66 Mass. App. Ct. 836, 851 N.E.2d 455 (2006), *rev'd*, 874 N.E.2d 1084 (Mass. 2007). The appeals court reversed dismissal of two counts, finding that an amended complaint stated a claim cognizable under the local church's by-laws and that a

suit seeking recovery of assets could proceed. The Supreme Judicial Court affirmed the dismissal of those counts for failure to state a claim upon which relief can be granted.

Commonwealth v. McCoy, No. 08-P-539, 2009 Mass. App. Unpub. LEXIS 303 (Mar. 18, 2009), *rev'd*, 926 N.E.2d 1143 (Mass. 2010). A panel of the appeals court reversed the defendant's kidnapping, rape, and assault and battery convictions because we concluded that the testimony of the complainant's mother and nurse constituted improper first complaint testimony and created a substantial risk of a miscarriage of justice. The Supreme Judicial Court also concluded that certain testimony from the mother and nurse was improper but that there was no substantial risk of miscarriage of justice and therefore affirmed the convictions.

Commonwealth v. Robinson, 69 Mass. App. Ct. 576, 870 N.E.2d 102 (2007), *rev'd,* 888 N.E.2d 926 (Mass. 2008). The appeals court reversed the defendant's convictions of unarmed robbery and assault and battery on the basis that prior recorded testimony should not have been admitted where the commonwealth had not established the unavailability of the witness. The Supreme Judicial Court disagreed, stating the commonwealth made a reasonable effort to find the witness.

Howell v. Enterprise Pub. Co., LLC, 72 Mass. App. Ct. 739, 893 N.E.2d 1270 (2008), *rev'd*, 455 Mass. 641, 920 N.E.2d 1 (2009). A fired town official brought an action alleging various claims against a newspaper publisher and reporters. The appeals court held that the articles concerned matters of legitimate public interest, and thus the official was precluded from bringing an action for invasion of privacy. The court further ruled that genuine issues of material fact precluded summary judgment on the official's defamation claims and claim for intentional infliction of emotional distress. With respect to the fair report privilege, the court stated that where there is a basis for divergent views regarding fairness and accuracy, the matter was for the jury. The Supreme Judicial Court considered only the defamation and emotional stress claims and determined that summary judgment was appropriate.

Commonwealth v. Perry, No. 08-P-1017, 2009 Mass. App. Unpub. LEXIS 465 (Feb. 18, 2009), *rev'd,* 916 N.E.2d 762 (Mass. 2009). A panel of the appeals court affirmed the defendant's conviction of carrying a dangerous weapon in violation of a statute, concluding that the expandable baton that the defendant was found to possess was the functional equivalent of a blackjack and thus there was sufficient evidence to uphold the conviction. The Supreme Judicial Court disagreed, holding that the statute's list of weapons was exhaustive and did not encompass weapons similar to those listed.

Commonwealth v. Lee, No. 09-P-276, 2010 Mass. App. Unpub. LEXIS 458 (Apr. 28, 2010), *rev'd and remanded*, 948 N.E.2d 1223 (Mass. 2011). The defendant appealed his convictions after a bench trial on the charge of breaking and entering in the nighttime within intent to commit a felony. A panel of the appeals court

affirmed, concluding that a rational fact-finder could infer that the defendant's companion was armed with a knife, and the defendant was so aware, at the time of the breaking and entering. While agreeing that the evidence was sufficient to support breaking and entering, the Supreme Judicial Court disagreed with the determination that the evidence was sufficient to establish that the defendant's intent was also to use a dangerous weapon.

Commonwealth v. McDonald, No. 10-P-804, 2011 Mass. App. Unpub. LEXIS 114 (Jan. 26, 2011), *rev'd*, 967 N.E.2d 1101 (Mass. 2012). Determining that the evidence was sufficient, a panel of the appeals court affirmed the defendant's conviction for criminal harassment, in violation of a state statute, for repeatedly driving past complainant's house at the same time each day and staring in her direction when she was waiting for her children from the school bus, aiming a camera at her house, and continuing his actions after a police officer warned him that residents were worried and it would be best to stay away. The Supreme Judicial Court disagreed, stating there was no evidence the defendant focused on the complainant specifically or that he harbored an unlawful motive.

Wadsworth's Case, 78 Mass. App. Ct. 101, 935 N.E.2d 333 (2010), *rev'd*, 963 N.E.2d 1181 (Mass. 2012). In a workers' compensation case, the employee had been awarded benefits and the insurer appealed to the reviewing board of the Department of Industrial Accidents. The appeals court affirmed the board's decision, disallowing two statutory enhancements based on loss of expected income and a recurrence of injury after a return to work. The Supreme Judicial Court affirmed in part and reversed in part the board's decision.

Commonwealth v. Mendes, 78 Mass. App. Ct. 474, 940 N.E.2d 467 (2010), *rev'd*, 974 N.E.2d 606 (Mass. 2012). The appeals court reversed the defendant's convictions based on improperly admitted drug certificates, reasoning that under governing precedent, the defendant's testimony about the drugs could not be considered when evaluating harmlessness of the admission error because the admission tainted the testimony and it would be impossible to determine whether or how the defendant would have testified if the admission had not occurred. Discussing the precedent upon which the appeals court relied, the Supreme Judicial Court disagreed and ruled that the defendant's testimony, considered with the totality of the record, supported a determination that the admission of the drug certificate was harmless beyond a reasonable doubt.

Bd. of Assessors v. Bridgewater State Univ. Found., 79 Mass. App. Ct. 637, 948 N.E.2d 903 (2011), *rev'd*, 972 N.E.2d 1016 (Mass. 2012). Pointing to the terms of a statutory exemption, the appeals court reversed the appellate tax board's determination that the Bridgewater State University Foundation was entitled to an exemption from local property taxes for charitable organizations pursuant to the statute. Noting that the foundation's argument that this interpretation was contrary to the intent of the legislature, the panel ruled that it was for the legislature to address by statutory amendment. The Supreme Judicial Court ruled

that the statute should be construed so that the foundation was entitled to the exemption.

Commonwealth v. Lee, No. 11-P-80, 2013 Mass. App. Unpub. LEXIS 103 (Jan. 30, 2013), *rev'd*, 998 N.E.2d 768 (Mass. 2013). A panel of the appeals court affirmed the defendant's conviction for operating a motor vehicle after his license had been suspended for operating while under the influence of alcohol. The panel determined that a statement by defense counsel could have been interpreted to mean that he was conceding notice of the suspension and therefore that the commonwealth did not need to support that element with live testimony. The panel also determined that the defendant's out-of-state conviction for operating under the influence of alcohol could have served as one of the two predicate offenses triggering an underlying suspension. The Supreme Judicial Court disagreed, concluding that there was no concession by defense counsel and also ruling that the defendant's out-of-state conviction could not constitute a predicate because the statute was to be read as limited to enumerated Massachusetts operating under the influence offenses.

Commonwealth v. Pike, No. 12-P-858, 2013 Mass. App. Unpub. LEXIS 504 (May 3, 2013), *rev'd*, 5 N.E.3d 1204 (Mass. 2014). A panel of the appeals court affirmed the defendant's conviction for failure to register as a sex offender with the sex offender board. The court concluded that there was sufficient evidence to support the defendant's conviction, specifically the testimony of the defendant's probation officer that the defendant left her a voicemail indicating that he had relocated to an unidentified address. The Supreme Judicial Court disagreed that this evidence showed that the defendant had changed his address and had failed to notify the board.

Commonwealth v. Oyewole, 84 Mass. App. Ct. 669, 2 N.E.3d 189 (2014), *rev'd,* 21 N.E.3d 179 (Mass. 2014). The appeals court affirmed the defendant's conviction for operating a motor vehicle after his license had been suspended for operating while under the influence of alcohol. The appeals court ruled that evidence of a docket entry which stated that the defendant's sentence for operating under the influence included a 60-day loss of license, with evidence that the defendant was present in court, was sufficient to show that the defendant had notice that his license was suspended and that the suspension was effective immediately. The Supreme Judicial Court disagreed, ruling that the evidence did not demonstrate that the suspension had been communicated to the defendant.

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.

Pursuant to Massachusetts Appeals Court Rule 1:28, I have issued unpublished opinions in 484 cases, or in about 79% of the decisions authored by me. The unpublished decisions are filed with the Reporter of Decisions and are available

generally online in databases such as Westlaw and LexisNexis.

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.

Commonwealth v. Watkins, 63 Mass. App. Ct. 69, 823 N.E.2d 404 (2005), *rev. denied*, 444 Mass. 1102, 826 N.E.2d 202 (2005)

Commonwealth v. Righini, 64 Mass. App. Ct. 19, 831 N.E.2d 332 (2005), *rev. denied,* 445 Mass. 1104, 831 N.E.2d 332 (2005)

Kramer v. Somerville, 65 Mass. App. Ct. 186, 837 N.E.2d 1147 (2005)

Health & Hospitals v. Massachusetts Commission Against Discrimination, 65 Mass. App. Ct. 329, 839 N.E.2d 861 (2005), *aff'd*, 449 Mass. 675, 871 N.E.2d 444 (2007)

Commonwealth v. Zorn, 66 Mass. App. Ct. 228, 846 N.E.2d 423 (2006)

Care and Protection of Orazio, 68 Mass. App. Ct. 213, 861 N.E.2d 476 (2007)

Commonwealth v. Cabral, 69 Mass. App. Ct. 68, 866 N.E.2d 429 (2007)

Commonwealth v. Luthy, 69 Mass. App. Ct. 102, 866 N.E.2d 930 (2007), *rev. denied*, 449 Mass. 1108, 871 N.E.2d 491 (2007)

Commonwealth v. Cataldo, 69 Mass. App. Ct. 465, 868 N.E.2d 936 (2007)

Commonwealth v. Wooden, 70 Mass. App. Ct. 185, 873 N.E.2d 764 (2007), *rev. denied*, 450 Mass. 1103, 877 N.E.2d 599 (2007)

Commonwealth v. Rabb, 70 Mass. App Ct. 839, 873 N.E.2d 778 (2007), *rev. denied*, 450 Mass. 1108, 880 N.E.2d 413 (2008)

Currier v. National Board of Medical Examiners, Case No. 07-J-434 (September 26, 2007) (opinion as single justice, copy supplied), *aff'd*, 462 Mass. 1, 965 N.E.2d 829 (2012)

Commonwealth v. Williams, 71 Mass. App. Ct. 348, 881 N.E.2d 1148 (2008), *rev. denied*, 451 Mass. 1105, 885 N.E.2d 835 (2008)

In re Miller, 71 Mass. App. Ct. 743, 885 N.E.2d 148 (2008), *rev. denied*, 452 Mass. 1104, 893 N.E.2d 1238 (2008)

Commonwealth v. Irwin, 72 Mass. App. Ct. 643, 893 N.E.2d 414 (2008)

Commonwealth v. Porter P., 73 Mass. App. Ct. 85, 895 N.E.2d 775 (2008), *rev'd*, 456 Mass. 254, 923 N.E.2d 36 (2010)

Gordon v. Registry of Motor Vehicles, 75 Mass. App. Ct. 47, 912 N.E.2d 9 (2009), *rev. denied*, 455 Mass. 1104, 916 N.E.2d 767 (2009)

Commonwealth v. Ware, 75 Mass. App. Ct. 220, 913 N.E.2d 869 (2009), *rev. denied*, 455 Mass. 1106, 918 N.E.2d 91 (2009)

Commonwealth v. Weeks, 77 Mass. App. Ct. 1, 927 N.E.2d 1023 (2010), *rev. denied*, 458 Mass. 1107, 936 N.E.2d 435 (2010)

Commonwealth v. Wolcott, 77 Mass. App. Ct. 457, 931 N.E.2d 1025 (2010), *rev. denied*, 455 Mass. 1109, 938 N.E.2d 891 (2010)

Commonwealth v. Grant, 78 Mass. App. Ct. 450, 940 N.E.2d 448 (2011)

Commonwealth v. Lima, 80 Mass. App. Ct. 114, 951 N.E.2d 952 (2011)

Commonwealth v. Perez, 80 Mass. App. Ct. 271, 952 N.E.2d 441 (2011)

Commonwealth v. McGrail, 80 Mass. App. Ct. 528, 952 N.E.2d 969 (2011), *rev. denied*, 461 Mass. 1106, 961 N.E.2d 589 (2012)

Commonwealth v. Callender, 81 Mass. App. Ct. 261, 960 N.E.2d 910 (2012)

Commonwealth v. Renaud, 81 Mass. App. Ct. 261, 961 N.E.2d 1102 (2012)

Commonwealth v. Charlton, 81 Mass. App. Ct. 294, 962 N.E.2d 203 (2012), *rev. denied*, 461 Mass. 1111, 964 N.E.2d 985 (2012)

Doe v. Sex Offender Registry Board, 82 Mass. App. Ct. 67, 970 N.E.2d 345 (2012)

Commonwealth v. Sayyid, 86 Mass. App. Ct. 479, 17 N.E.3d 469 (2014), *rev. denied*, 470 Mass. 1103, 23 N.E.3d 105 (Nov. 26, 2014)

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

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

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

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

In the Massachusetts Appeals Court, each sitting judge presents to the court administrator a list of individuals or firms whose appearance would result in recusal, taking into account personal and professional associations and relationships. Through this filtering process, barring inadvertent omission, cases are assigned such that, as a general matter, sitting judges are not assigned cases involving parties on the list, thus obviating case-by-case recusal issues.

My recusal has not been requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested. To the best of my memory, on four occasions, well before argument, I recused myself sua sponte where a party in a case was on my recusal list and the case inadvertently was not filtered; on another occasion, I recused myself because the list had not been updated to include a law firm whose services I had retained and who was appearing in the matter before the panel. There was no reason or requirement to create or retain a record of the names of those few cases where there was sua sponte recusal and no involvement by me in any way in the decisions. I have sought to identify those cases but am unable to do so.

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

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

In 2003, I was appointed by then-Governor of Massachusetts Mitt Romney to serve on the Governor's Juvenile Justice Advisory Committee, and I continued to serve on that Committee until 2008. I have never been a candidate for elected public office and have had no unsuccessful nominations for appointed office.

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

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

I have held no office and rendered no services, compensated or uncompensated, to any political party or election committee, nor have I held a position or played a role in any political campaign.

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

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

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

I served as a judicial law clerk from 1979 to 1980 to Judge Leonard B. Sand of the United States District Court for the Southern District of New York. I served as a judicial law clerk from 1980 to 1981 to then-Judge Stephen G. Breyer of the United States Court of Appeals for the First Circuit.

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

I have not practiced law alone.

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

1983 – 2004
United States Department of Justice
Office of United States Attorney
United States Courthouse
One Courthouse Way
Boston, Massachusetts 02210
Assistant United States Attorney (1983 – 2004)
Chief Appellate Attorney (1983 – 1993, 1997 – 1998)
Chief Legal Counsel to United States Attorney (1989 – 1992)
Deputy Chief, Criminal Division (1989)

1993 – 1994
United States Department of Justice
Office of Deputy Attorney General
950 Pennsylvania Avenue, NW
Washington, District of Columbia 20530
Associate Deputy Attorney General (on detail from U.S. Attorney's

Office)

1994 – 1995
Federal Bureau of Investigation
Office of Director
935 Pennsylvania Avenue, NW
Washington, District of Columbia 20530
Special Assignment, drafter of health care fraud legislation (on detail from U.S. Attorney's Office)

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

I have not served as a mediator or arbitrator.

b. Describe:

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

I joined the United States Attorney's Office for the District of Massachusetts in October 1983, and continued my association with that office until October 1, 2004. During that time, as an Assistant United States Attorney, I held a variety of line and supervisory positions (including chief appellate attorney and chief legal counsel for much of that period); handled an array of criminal and civil matters; and as a career professional, served on detail in Washington, D.C. as an associate deputy attorney general, as the United States Department of Justice representative to the United States Sentencing Commission, and on special assignment to the director of the FBI. From 1997 to 2001, I divided my time between the United States Attorney's Office and the Kennedy School of Government, where I was a research fellow and director for a governance institute project on juvenile justice and youth violence. Beginning in 2001, I returned to full-time status at the United States Attorney's (while also retaining a fellowship affiliation with the Kennedy School of Government). Further description of those assignments follows.

<u>1983 – 1993</u>:

From nearly the outset of my tenure as an Assistant United States Attorney, I was charged with supervising all of the criminal appellate work in the District of Massachusetts. I was the first Assistant United States Attorney in the district to be specifically assigned the supervisory appellate role, and for a decade, was the only prosecutor to hold that responsibility. In this role, initially reporting to Robert S. Mueller, III,

then-chief of the criminal division, I briefed and argued a wide range of cases before the First Circuit, and was charged with clearing up the criminal appellate caseload. As chief appellate attorney, I was responsible for the supervision of all criminal appellate matters in over 1,000 cases in total, including the review and approval of all briefs and other pleadings by Assistant United States Attorneys before filing in the First Circuit. I was also responsible for apprising the attorneys in the office of developments in the law, and was also charged with providing legal advice as matters arose during the course of litigation, ranging from the investigation stage through collateral proceedings. In this vein, I wrote a manual, Topics in Prosecutorial Ethics (in its tenth edition and 150 pages). This manual covers such areas as grand jury, discovery, opening statement, witnesses, closing argument, jurors and the media. Other duties included serving as liaison with the Department of Justice and serving as office liaison with the First Circuit Court of Appeals for administrative matters.

In 1989, I was appointed to the supervisory position of chief legal counsel to United States Attorney Wayne Budd. This expanded position included the position of chief appellate attorney for all criminal matters, with the additional responsibility of coordinating a mandatory moot court program for all United States Attorney's Office cases – criminal and civil – in preparation for First Circuit appearances. In this additional role, I was designated to serve as the chief judge on the three-judge moot court panels (comprised of representatives from the criminal and civil divisions of the office).

1993 – 1995:

From June 1993 to January 1995, I served on detail from the United States Attorney's Office in Boston to the Office of the Deputy Attorney General at the U.S. Department of Justice in Washington, D.C. As an associate deputy attorney general, I dealt as a career professional with a variety of criminal justice issues, and worked with United States Attorneys, judges, and litigators across the nation. My work included service as liaison to the Attorney General's Advisory Committee of U.S. Attorneys, then chaired by Mary Jo White of the Southern District of New York. I also served as the Department of Justice representative to the United States Sentencing Commission.

In 1994, I served on detail to the Office of the Director of the FBI. In that capacity, I drafted health care fraud legislation which was ultimately enacted as part of the Health Insurance Portability and Accountability Act.

1995 – 2004:

Upon returning to the United States Attorney's Office in 1995, I focused on white collar litigation, appellate supervisory work, directing an independent project on juvenile justice and youth violence, and terrorism prosecutions. The white collar litigation centered on problems of pension fraud and abuse, and health care fraud in Massachusetts. My work on health care fraud involved a range of criminal and civil allegations, with a heavy emphasis on complex investigation. Moreover, from late 1997 until July 1998, I returned to the appellate supervisory role as acting chief of appeals. From July 1997 through June 2003, I also directed for the Governance Institute a project on juvenile justice and youth violence based at the Kennedy School of Government at Harvard, where I was a research fellow.

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

My work has been for the United States in criminal prosecutions and civil matters, with a focus on criminal cases. Apart from my appellate work, my most complex cases involved terrorism, labor union corruption, cybercrime, and health care fraud.

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 work always involved litigation. I appeared in court on a daily, weekly or monthly basis during my litigation career. My appellate responsibilities involved me extensively in litigation in the federal district courts.

i. Indicate the percentage of your practice in:
   1. federal courts: 100%
   2. state courts of record: 0%
   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.

Acting as sole trial counsel, I tried to verdict and judgment about ten federal jury trials, ranging in length from four days to two weeks. I also litigated numerous

pretrial motions and sentencing hearings, and made numerous appearances in the grand jury.

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

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

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

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

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

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

(1) *United States v. O'Brien*, Cr. 03-40005-NMG (D. Mass. 2004) (Judge Nathanial Gorton)

In one of the first computer crime trials in the District of Massachusetts, the defendant, who disrupted airline reservations in a scheme of vengeance, was convicted by a jury in 2004 of intentionally causing damage to a computer used in interstate commerce. This seven-day trial was one of the first computer intrusion cases in the country to go to verdict. The defendant was sentenced to 15 months' imprisonment. I represented the United States in this litigation in 2004 and was sole government counsel at trial.

For the defendant:
Joseph Brennan
Fisher Foley Brennan & Sousa
285 Main Street
Worcester, Massachusetts 01608
508-791-8585

(2) *United States v. Reid*, 214 F. Supp. 2d 84 (D. Mass. 2002) (Judge William G. Young), *aff'd*, 369 F.3d 619 (1st Cir. 2004) (Judges Boudin, Lynch, & Howard)

The defendant was the Al Qaeda terrorist ("the shoebomber") who sought unsuccessfully to blow up a plane over the Atlantic Ocean and was prosecuted for terrorism offenses. From 2002 to 2003, I was a member of the prosecution team in the district court proceedings. In the pretrial litigation, I worked on various motions and successfully argued in opposition to a motion to suppress evidence. Ultimately, the defendant pleaded guilty to eight terrorism-related offenses and was sentenced to life imprisonment. In his interlocutory appeal, he unsuccessfully challenged the conditions of his pre-sentence confinement. On appeal, I was lead counsel for the government from 2003 to 2004. The team received a Director's award for those efforts from the Director of the Executive Office of United States Attorneys, and I received a 2003 individual citation from Robert S. Mueller, III, Director of the FBI, for my work on this case.

Co-counsel:
Michael J. Sullivan
Ashcroft Sullivan (formerly at United States Attorney's Office)
200 State Street, Seventh Floor
Boston, Massachusetts 02108
617-573-9400

Gerard T. Leone, Jr.
Nixon & Peabody (formerly at United States Attorney's Office)
100 Summer Street
Boston, Massachusetts 02110
617-345-6036

Judge Timothy Q. Feeley
Massachusetts Superior Court Judge (formerly at United States Attorney's Office)
Suffolk County Courthouse, 13th Floor
Three Pemberton Square
Boston, Massachusetts 02108
617-788-8130

Colin Owyang
Massachusetts Attorney General's Office (formerly at United States Attorney's Office)
One Ashburton Place
Boston, Massachusetts 02108
617-727-2200

For the defendant-appellant:
Owen Walker (retired)
Boston, Massachusetts 02210

Elizabeth Prevett
Federal Public Defender's Office
51 Sleeper Street, Fifth Floor
Boston, Massachusetts 02210
617-223-8061

(3) *DePietro v. United States*, Civ. A. 91-11506-T (D. Mass. 1992) (Judge Joseph L. Tauro)

Plaintiff brought suit in 1991 under the Federal Tort Claims Act in the United States District Court for the District of Massachusetts. Seeking damages, he alleged that he had sustained injuries as the direct and proximate result of the carelessness, unskillfulness, negligence and improper care and treatment which he claimed to have suffered at a Veterans' Administration Medical Center. After extensive discovery, the filing of pretrial memoranda by both parties, and a status conference with the court, the action was brought to a conclusion in 1992 by a compromise settlement. I was sole counsel for the government.

For the plaintiff:
Judge Thomas Drechsler
Massachusetts Superior Court (formerly at Finneran, Byrne, Drechsler & O'Brien)
Suffolk County Courthouse, 13th Floor
Three Pemberton Square
Boston, Massachusetts 02108
617-788-8130

(4) *Sibley v. Ball*, 924 F.2d 25 (1st Cir. 1991) (Campbell, Cyr and Pollak, JJ); 944 F.2d 913 (Fed. Cir. 1991) (Newman, Bennett and Clevenger, JJ).

Plaintiff Mr. Sibley, a Marine Corps Officer, brought suit in the United States District Court in Boston against defendant Mr. Ball, the Secretary of the Navy, challenging his discharge under other than honorable conditions. Plaintiff's complaint sought restoration of his commission as well as the awarding of back pay within the jurisdiction of the district court. The district court granted the defendant's motion for summary judgment, thereby upholding the discharge. Plaintiff then took an appeal to the United States Court of Appeals for the First Circuit. On behalf of the defendant Secretary, I argued before the First Circuit that it lacked jurisdiction because the suit had arisen under the Little Tucker Act, over which the Federal Circuit had exclusive jurisdiction. Hence, I urged that the appeal be transferred to the Federal Circuit for a consideration of the merits. The First Circuit accepted the government's reasoning, and transferred the appeal to the Federal Circuit in Washington, D.C. I then argued the merits before the Federal Circuit, which ultimately upheld the government's position that the District Court had been correct in sustaining plaintiff's discharge. I was not counsel in the district court but represented the United States in 1990 and 1991 as appellate counsel before the First Circuit and Federal Circuit.

Associate counsel:
Captain R.C. Barber
Department of the Navy (contact information not known)

For the plaintiff:
Peter Staiti
Solo Practitioner
320 Gold Avenue, SW #1400
Albuqurque, New Mexico 87102
505-243-9290

(5) *United States v. IncomRx Systems Inc.*, 89-282-MA-01 (D. Mass. 1991) (Judge A. David Mazzone)

Defendant was a Massachusetts health care billing company which had also operated in four other states. The defendant was charged with submitting false, duplicative claims on behalf of an ophthalmology group practice and receiving reimbursement under the Medicare program. After a jury had been sworn and just as opening statements were set to begin, defendant pleaded guilty to defrauding the Medicare program by making false claims and representations in the recovery billing scheme. Contemporaneous with the criminal case, I initiated separate, parallel administrative proceedings – novel at the time – against the ophthalmology group, which were handled by a civil division Assistant United States Attorney, culminating after the criminal proceedings in a $2.5 million settlement agreement against the health care provider under the civil provisions of the False Claims Act. I was sole government counsel for the criminal investigation, trial preparation and guilty plea in 1991. Largely for this case, I was presented with the Inspector General's Integrity Award in 1991.

For the defendant:
Stanley Greenidge (retired)
(formerly at Federal Public Defender's Office)
Boston Massachusetts 02210

(6) *United States v. Walsh*, Cr. 89-239-MA (D. Mass 1990) (Judge A. David Mazzone); *aff'd,* 928 F.2d 7 (1st Cir. 1991) (Tourrella, Selya, and Pollak, JJ).

Allegations by labor union members in the construction trades of corruption by union officers led to a grand jury investigation, which culminated in the return of a multi-count indictment against lead defendant Mr. Walsh (a carpenters' union business agent, former AFL-CIO vice president and ERISA fund trustee). The indictment was severed into two trials in 1990 in the federal district court in Boston. In the first trial, lasting two weeks, Walsh was convicted of violating the Taft-Hartley Act. In the second trial, also lasting two weeks, Walsh was the sole defendant and was convicted of racketeering, labor union embezzlement, making false statements, and employee benefit plan embezzlement. The defendant was sentenced to three years' imprisonment and barred from holding union

offices and trusteeships of union and health and welfare funds. The convictions arising from the two trials were affirmed in 1991 by the First Circuit. I was sole government counsel in the investigation beginning in 1989 and in both trials in 1990. I was also sole counsel on appeal in 1991, and argued the case before the First Circuit.

For the defendant-appellant:
George C. McMahon
McMahon Law Offices
332 Victory Road
North Quincy, Massachusetts 02171
617-770-0600

(7) *United States v. McInnis*, Cr. 91-10080-WD (D. Mass 1991) & *United States v. Bryant & Weatherbee*, Cr. 92-10275-WD (D. Mass. 1992) (Judge Douglas Woodlock).

In *McInnis*, the defendant (the business agent of a Lowell carpenters' union and ERISA fund trustee) was charged with four counts of embezzlement from the Boston and Eastern Massachusetts Carpenters Health and Welfare Fund, five counts of causing false statements on ERISA documents, and one count of perjury before a federal grand jury. After a seven-day jury trial in 1991, he was convicted on all counts. The defendant was sentenced to eight months' incarceration, followed by eight months of confinement in a community residential facility, and 1,500 hours of community service. He was also debarred from holding union or ERISA fund offices. The defendant did not appeal his convictions. In 1990 and 1991, I was sole government counsel from investigation, through trial and sentencing. I was also the prosecutor in a related case, *Bryant & Weatherbee*. The defendants were two Cambridge carpenters' union officials who pleaded guilty in 1992 to the charge of conspiracy to embezzle $68,961 in union funds. In their scheme, the defendants falsely represented that they were entitled to severance payments. Bryant was sentenced to six months in a community confinement center, and Weatherbee was sentenced to six months' house arrest. I was sole government counsel in 1991 from investigation through sentencing. For the labor union prosecutions, I received citations from United States Secretary of Labor Elizabeth Dole and from the United States Department of Labor, Office of Labor Management Standards.

For the defendant McGinnis:
William H. Kettlewell
Collora, LLP (formerly Dwyer, Collora & Gertner)
100 High Street, 20th Floor
Boston, Massachusetts 02110
617-371-1005

For the defendants Bryant & Weatherbee:
Thomas E. Dwyer, Jr.
Dwyer, LLC (formerly Dwyer, Collora & Gertner)
Ten Derne Street

Boston, Massachusetts 02114
617-227-6000

Kathy Weinman
Collora LLP (formerly Dwyer, Collora & Gertner)
100 High Street, 20th Floor
Boston, Massachusetts 02110
617-371-1004

(8) *United States v. Perednia*, Cr. 87-48 Mc & *United States v. Garner Medical Centre*, Cr. 87-48-Mc (D. Mass. 1987) (Judge John J. McNaught)

After a ten-day jury trial in federal district court in Boston, a former pharmacist and his durable medical equipment company were convicted in 1987 on 48 counts of defrauding the Medicare program by submitting false claims which inflated the number of oxygen tanks delivered to elderly home health care patients. The defendants were also convicted of mail fraud and making false statements. The defendant pharmacist was sentenced to six months' incarceration. The case marked the first successful federal Medicare fraud trial in Massachusetts undertaken by the Office of Inspector General of the Department of Health and Human Services. The defendants did not appeal their convictions. I was sole government counsel in 1987 and 1988, from investigation, through trial and sentencing. In recognition of the litigation and other cases, the Department of Health and Human Services honored me with the Inspector General's Integrity Award in 1988.

For the defendant:
Barry M. Haight
Richard S. Fagone & Associates (formerly at Buckley, Haight, Muldoon, Jubinville & Gilligan)
Seven Cabot Place
Stoughton, Massachusetts 02072
781-341-9111

(9) *United States v. Starr*, Cr. 88-48-Mc (D. Mass. 1988) (Judge John J. McNaught)

The defendant was a nursing home operator who, using false pretenses, induced eleven young nurses' aides and orderlies, citizens of Ireland, to leave their employment in the health care industry in Ireland, to come to the United States to staff his Hingham nursing home. The defendant had represented to these nurses' aides and orderlies that he had secured working visas for them, when in fact, no such visas had been obtained. Once in the United States, they lived in uncertainty and labored under substandard conditions. After indictment brought in federal district court in Boston, the defendant pleaded guilty in 1988 to violating United States immigration laws. The defendant was sentenced to a suspended prison term, a three-year term of probation during which he was ordered to provide 900 hours of community service, a $40,000 fine, and forfeiture of the Mercedes Benz automobile he had used to transport the nurses' aides and orderlies. I was sole government counsel in this case in 1988.

For the defendant:
Stephen R. Delinsky
Clark, Hunt, Ahern & Embry (formerly at Fine & Ambrogne)
150 Cambridgepark Drive
Cambridge, Massachusetts 02140
617-494-1920

(10) *United States v. Rock*, Cr. 86-378-01-Z (D. Mass. 1987) (Judge Rya W. Zobel)

In the second Armed Career Criminal prosecution pursued in the District of Massachusetts, in 1987 the defendant was found guilty after a jury trial of being a felon in possession of a firearm, and of having committed three prior qualifying predicate offenses. Accordingly, he was sentenced to a minimum mandatory term of 15 years' imprisonment. I represented the United States in the trial phase in 1987 and was sole government counsel at trial.

For the defendant:
Judge Kevin J. O'Dea
Massachusetts District Court (former Solo Practitioner)
Edward W. Brooke Courthouse
24 New Chardon Street
Boston, Massachusetts 02114
617-788-8810

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.)

Policy initiatives. In addition to prosecuting Medicare fraud and pension fraud cases, I encouraged the development of cases to address the issue of vulnerabilities in the areas of health care and retirement and pension systems. In an effort to address a void in the existing statutory scheme specific to the challenges of health care fraud, while on detail as a career professional from the United States Attorney's Office in Boston to the Office of the Director of the FBI in 1994, I helped draft the Health Insurance Portability and Accountability Act of 1996. This legislation created a new health care fraud statute, defined "federal health care offense," and created new false statement, anti-kickback and embezzlement health care offenses. I also created a 1996 proposal for a national action plan to combat pension fraud submitted at the request of the Attorney General. This action plan was adopted by the Attorney General and the Attorney General's Advisory Committee of United States Attorneys.

Director, Juvenile Justice Project and Book. As the Director of a juvenile justice and youth violence project based at the Kennedy School of Government, I sought to bring together a wide range of skilled professionals and academics across disciplines to focus on the coordination and implementation of youth anti-violence strategies. That project produced a book, Securing Our Children's Future: New Approaches to Juvenile Justice and Youth Violence, for which I was editor and contributing author. The book seeks to challenge the way we think about youth violence and collaborative initiatives, providing a pragmatic road map for constructive institutional change. In my volunteer efforts over several years on the Juvenile Justice Advisory Committee, I endeavored to bring to our discussions the central themes of the project and book – including building bridges between the juvenile justice system and the child welfare and protection system; enhancing mental health outreach programs; developing a better understanding of collaboration and partnership in youth violence strategies; and strengthening the research mission and the integration of research with action.

I have performed no lobbying activities on behalf of any client or organization.

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

    I taught the course Government Lawyer as a lecturer on law at Harvard Law School from 1990 to 1994 and in 1997 (in Spring 1991, I co-taught with James Vorenberg). The principal focus of the course was to analyze the way the law is applied and modified in the day-to-day work of government lawyers. Representative syllabus supplied.

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

    At some future date, I will be able to collect a pension based on my service on the Massachusetts Appeals Court. I will continue to be the beneficiary of a pension based on my federal government service.

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 during my service with the court.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries,

fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

I am not aware of any persons, parties, categories of litigation or financial arrangements that are likely to present potential conflicts-of-interest. However, if one were to arise, I would be governed by the Code of Conduct for United States Judges and 28 U.S.C. Section 455. I would also consult with other judges and persons designated by the court to advise in such matters.

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

In resolving any potential conflict of interest, I would adhere to all judicial rules and guidelines, including the Code of Conduct for United States Judges. I would also adhere to all statutory rules, including 28 U.S.C. § 455(a), disqualifying myself in cases in which my impartiality might reasonably be questioned, as well as in the specific instances set forth in § 455(b).

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

In addition to my work as a career public servant, I have volunteered in several organizations, averaging several hours each month. These include membership on the Governor's Juvenile Justice Advisory Committee (including, at various times the grants review, school-based programs, and alternatives to detention subcommittees); directing a project at the Kennedy School of Government on juvenile justice and youth violence; serving on the Board of the Thomas J. Drinan Memorial Public Interest Fellowship at Suffolk University Law School; serving as a judge for law school moot courts and for the

Marshall Brennan Constitutional Literacy Project at Suffolk University Law School; and serving as judge in the "Do the 'Write' Thing" competition, reviewing essays on violence submitted by Boston students in grades six through nine.

I have also been a volunteer and serve on the Board of Visitors for Discovering Justice, a non-profit organization dedicated to educating for democracy by teaching about justice. It has been truly fulfilling to participate in the various programs by which Discovering Justice brings children into the courthouse, and engages them in a meaningful way on the path to becoming responsible, knowledgeable citizens.

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 September 2014, I submitted a resume to the Department of Justice for consideration for a vacancy on the Court of International Trade. Since February 13, 2015, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 17, 2015, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On July 30, 2015, 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.