

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Louis Bennett Butler, Jr.

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

United States District Judge for the Western District of Wisconsin

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: University of Wisconsin Law School
975 Bascom Mall, Room 7103
Madison, WI 53706-1399

Permanent Residence: [REDACTED]

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

1952; Chicago, Illinois

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

1973 – 1977, University of Wisconsin Law School; J.D. Degree, 1977.

1969 – 1973, Lawrence University; B.A., 1973

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

October 1, 2008 to present
University of Wisconsin Law School
975 Bascom Mall

Madison, WI 53706-1399
Justice in Residence; Senior Visiting Lecturer

1997 – Present
National Judicial College
Judicial College Building/MS 358
Reno, NV 89557
Non-paid Volunteer Faculty (Criminal Procedure)

2004 – 2008
Wisconsin Supreme Court
16 East State Capitol
Madison, WI 53701-1688
Justice (August 25, 2004 to July 31, 2008)
Reserve Judge effective August 2008 to present

2002 – 2004
State of Wisconsin
Milwaukee County Courthouse
901 N 9th St
Milwaukee, WI 53233
Circuit Court Judge

1992 – 2002
City of Milwaukee
951 N. James Lovell St.
Milwaukee, WI 53233
Presiding Judge (August 2000 to July 2002)
Municipal Court Judge (June 14, 1992 – July 31, 2002)

1991 – 1992
Marquette University Law School
Sensenbrenner Hall
1103 West Wisconsin Avenue
Milwaukee, Wisconsin 53201
Adjunct Assistant Professor of Law

1988 – 1992
Wisconsin State Public Defender, Trial Division
819 N. 6th St. - RM 908
Milwaukee, WI 53203-1606
Deputy First Assistant (March 12, 1990 to December, 1990)
Staff Supervisor (December 1989 to March 12, 1990)
Assistant State Public Defender (January 25, 1988 to December 1989; December 1990 to June 14, 1992)

1979 – 1988

Wisconsin State Public Defender, Appellate Division
735 N. Water St. - Suite 912
Milwaukee, WI 53202-4116
Assistant State Public Defender

1978 – 1979

Independence Bank of Chicago
7936 S Cottage Grove Ave
Chicago, IL 60619
Attorney

1977 - 1978

Legal Assistance Foundation of Chicago
111 West Jackson Boulevard, 3rd Floor
Chicago, IL 60604
Legal Intern, Prisoner Legal Assistance

1976 – 1977

Bureau of Mental Health, State of Wisconsin
1 West Wilson Street
Madison, WI 53703
Hearing Examiner (December 1976 – June 1977)
Patients Rights Advocate (June – December, 1976)

1975 – 1976

Judge Gordon Myse (retired)
Outagamie County Circuit Court
Justice Center
320 S Walnut St Appleton, WI 54911
Judicial Intern (May, 1975 – August, 1975 and January, 1976)

1975

Legal Assistance to Inmates Program at Waupun State Prison, University of Wisconsin
Law School
975 Bascom Mall
Madison, WI 53706-1399
Student Intern

1974 – 1976

University of Wisconsin Law School
975 Bascom Mall
Madison, WI 53706-1399
Legal Writing Teaching Assistant (November, 1974 – May, 1975; January – June, 1976)

1974
Courts Staff, Wisconsin Council on Criminal Justice
1 West Wilson Street
Madison, WI 53703
Law Clerk

1973
Gilbert Paper Co.
PO Box 260
Menasha, WI 54952-0260
General Maintenance

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 never served in the military, though I did register for selective service, and was classified 1Y by the draft board.

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.

Honorary Ph.D., Humanities; Lawrence University; June, 2007

Fellows of the Wisconsin Law Foundation; November 2008

Thomas G. Cannon Equal Justice Award from the Legal Aid Society of Milwaukee, 2008

William M. Coffey Memorial Award, "The Defender," from the Wisconsin Association of Criminal Defense Lawyers, December, 2008

2009 Heroes Among Us Community Leadership Award, conferred in Milwaukee on February 22, 2009 by Mercy Memorial Church and the Youth Ambassadors of Hope

Named "Humanitarian of the Year" by the American Federation of Teachers, Local 212, 2006

NAACP Foot Soldiers' Award, July 2005

Outstanding Citizen's Award from the Wisconsin Council of Deliberations, Prince Hall Masons, November 2005

2002 and 2004 Trail Blazer Award presented by Alpha Kappa Alpha Sorority

Panelist for the Sandra Day O'Connor Project on the State of the Judiciary, 2008
Conference: Our Courts and Corporate Citizenship, at Georgetown Law School, October 2008

Milwaukee's Top Municipal Judge, Milwaukee Magazine, 1997

Career Youth Development Judge of the Year, 2007

Milwaukee Times Black Excellence Award, February 2002

100 Black Men of Greater Milwaukee, First Annual 100 Award, January 2002

Madison Area Urban Ministry Certificate of Recognition as First African-American Justice on the Wisconsin Supreme Court, September 2004

League of Martin Sterling Award, 1994

NAACP Madison Chapter President's Service Award, February 2004

UW Badgers Then and Now Hall of Fame, 2007

Shepherd Express Reader's Choice Award for Best Judge, 2003

Shepherd Express Reader's Choice Award for Best Justice, 2004

ALFA – Recognition of Outstanding Contributions to ALFA's Client Education Programs, November 2007

Wisconsin Department of Workforce Development Certificate for Dedication to Promoting Black History Month, February 2007

Numerous other awards from Social Development Commission and Career Youth Development

Nominated for Charter Membership in the American College of Appellate Lawyers by Hon. William Moser of the Wisconsin Court of Appeals, 1987

First Wisconsin Assistant State Public Defender to argue a case before the United States Supreme Court in 1988

In 1995, I was selected as one of three finalists for appointment as a United States District Court Judge for the Eastern District of Wisconsin by Wisconsin's Federal Nominating Commission

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.

Wisconsin Bar Association (1979 – present)

Membership Committee (1989 – 92)

Government Lawyers Pro Bono Task Force (1994 – 96)

Illinois Bar association (nonresident) (1978 – present)

American Bar Association, including member on Standing Committee on Judicial Independence (2008 – 11)

Faculty Council for the National Judicial College in Reno, Nevada (2008 – present)

Permanent Faculty member of the National Judicial College (1997 – present)

Final Bench for Southwestern Law School Moot Court Competition (2005 – present)

James E. Doyle Inns of Court (2004 – present)

Milwaukee Bar Association (on and off, current now) (1992 – present), including Legal Services to Indigents Committee and Bench Bar Committee (2003 – 04)

Wisconsin Association of African-American Lawyers (including Wisconsin Black Lawyer's Association and Wisconsin Association of Minority Attorneys) (1979 – present), including President (1985 – 86), and Treasurer (1984 – 85)

Milwaukee Trial Judge's Association (2003 – 04)

Wisconsin Municipal Judge's Association (1992 – 2002), including President (1997 – 99) and Legislative Trustee (1995 – 97)

Board of Directors (1989 – 93, 2000 – 04) and Past Chair (2002 – 03) of the Individual Rights and Responsibilities Section of the State Bar of Wisconsin

Board of Directors of the Criminal Law Section of the State Bar of Wisconsin (2001 – 2003)

Criminal Benchbook Committee of the Wisconsin Supreme Court (2002)

Government Lawyers Division Task Force (1991 – 93)

Committee for Diverse Judiciary (1992 – 96)

Legal Action of Wisconsin Board of Directors (1988 – 92), including Chair of Milwaukee Area Grievance Committee (1990 – 92)

10. **Bar and Court Admission:** (none have lapsed)

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

State of Wisconsin – March 1, 1979

State of Illinois – November 3, 1978 (presently on inactive status)

There have been no lapses in membership.

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

Supreme Court of the United States – March 28, 1983

United States Court of Appeals for the Seventh Circuit – June 11, 1979

United States District Court for the Eastern District of Wisconsin – June 5, 1979

United States District Court for the Northern District of Illinois – April 9, 1979

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.

Community Brainstorming Conference Board of Directors (1993 – present), including Chair (1996 – 97)

Subscribing Life Member, National Association for the Advancement of Colored People (NAACP) (1995 – present) (a lobbying organization)

Milwaukee Area Television Access (MATA) Board of Directors, 1995 – 99,
including Chair of Protocol Committee (1996 – 99)

Community Systemwide Response on Underage Alcohol (1994 – 96)

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

None of these organizations discriminate on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

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

“Message from the Chair,” 27 Rights News, Spring 2003, pg. 1, published by the Individual Rights and Responsibilities Section of the State Bar of Wisconsin.

“Selling Location Rights May Solve Issue,” The Milwaukee Journal Sentinel, June 28, 1996, Pg. unknown

“Time to Demand Black Judge,” The Milwaukee Journal, August 19, 1994, Pg. unknown

“But They Owe the Public a Debate,” The Milwaukee Journal Sentinel, January 21, 2000, Pg. 15A

I recall having published a letter to the editor to either the Milwaukee Journal or the Milwaukee Sentinel that praised the efforts of a sheriff's deputy who was traveling with me to another city outside his jurisdiction to make a presentation at a continuing legal education seminar when we came upon a fatal accident. The deputy stopped and offered his assistance before resuming our trip. He made his portion of the presentation in blood-stained clothes. I no longer have the letter, and do not know when it was published.

"Weighing the Options," The Appleton Post Crescent, sometime in March, 2000, pg. unknown

"Supreme Court Justices' Questions and Answers," The Madison Times, Vol. 9, No. 14, March 31 - April 6, 2000, pg. unknown

2006 Course Catalog for the National Judicial College, quote on rear cover

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

On April 30, 2009, the City of Milwaukee Alcohol Beverage Licensing Task Force, which I chaired, submitted its 87 page Final Report and Recommendations to Milwaukee's Common Council.

As a member of the ABA Standing Committee on Judicial Independence, I have participated in the drafting of some resolutions that may be considered by the Board of Governors, but they are in draft stage at this time.

As a member of the Individual Rights and Responsibilities Section and the Criminal Law Section Boards of Directors of the State Bar of Wisconsin, Our boards would often vote on whether to urge the State Bar to support or oppose pending legislative proposals. I have no recollection of specific bills or votes.

- 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.

In May, 1999, I, along with a number of other public officials in two news conferences, supported the passage of the Impartial Justice Bill, which would provide full public funding of Supreme Court campaigns. Others who participated included Wisconsin Citizen Action, 3 state representatives, 1 Milwaukee alderman, and the Milwaukee president of the League of Women Voters.

On November 3, 1995, I sent a letter urging then Governor Tommy Thompson, State Senate President Brian Rude, and Assembly Speaker (now Justice) David Prosser to call a joint special session of the Wisconsin Legislature to deal with issues concerning race affecting our society in Wisconsin. I was supported in this effort by Senator Feingold, Senator Kohl, and Representative Moore (then a state senator), among others.

As Legislative Trustee and President of the Wisconsin Municipal Judge's Association between 1995 and 1999, I would sometimes testify before committees of the Wisconsin Legislature on bills having an impact on Wisconsin's court system. I have no recollection of specific bills or dates of testimony.

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

LECTURES/TEACHING:

While this list may not be exhaustive, due to the number of presentations given over the course of my career being too voluminous to catalogue in its entirety, I have been able to identify the following:

State Bar of Wisconsin Annual Convention, "Staying in Wisconsin: Best Practices for Bar Diversity," 2008

University of Wisconsin Law School Contracts Classes, "The Economic Loss Doctrine," November 17, 2008

University of Wisconsin Undergraduate Lecture, "Courtroom and the Jury," November 4, 2008

Southwestern Law School Moot Court Competition Final Bench, 2005-present:

April 4, 2009
April 12, 2008
April 14, 2007
April 1, 2006
April 2, 2005

National Judicial College, Reno, Nevada, Special Courts and Advanced Special Courts programs, Criminal Procedure, 1997-present:

June 7 – 12, 2009
April 27 – 2, 2008
May 13 – 17, 2007
April 30 – May 5, 2006
May 14 – 20, 2005
April 25 – 30, 2004

April 27 – May 3, 2003
September 15 – 20, 2002 (Stone Mountain, Georgia)
May 12 – 17, 2002
May 13 – 18, 2001
August 13 – 18, 2000
March 14 – 19, 1999
March 22 – 27, 1998
May 8 – 13, 1997

National Judicial College, Handling the Criminal Case: Nigerian Judges, May 14 – 17, 2007

State Public Defender Conference, 1986-present (on and off)

Wisconsin State Public Defender Conference, “Recent Decisions of the Wisconsin Supreme Court,” October 12, 2007

Family Court Commissioners Conference, "The Court's Administrative and Supervisory Function," 2007

“Appellate Practice Seminar,” for the Wisconsin Department of Justice in Madison, December 10, 2006

State Bar of Wisconsin Annual Convention, "A View of Law from the Bench," 2005

Wisconsin Department of Justice, "Appellate Practice for Wisconsin Prosecutors," 2004

Discussion Panel for State Bar of Wisconsin CLE, “All Deliberate Speed: Brown v. Board of Education,” moderated by Tom Boykoff, May 6, 2004

Moderated a Discussion panel, “How Can We Ensure an Adequate Education for All Wisconsin Students,” State Bar of Wisconsin CLE, May 5, 2004

Wisconsin State Public Defender Office, “Consent Searches,” February 5, 2004

Marquette Law School, Career Panel with Professor Greg O’Meara, “Why Public Interest,” January 22, 2004

Milwaukee County Sheriffs Academy, “Bill of Rights,” August 8, 2003

Wisconsin Municipal Judges Association, March 22, 2001

State Public Defender Conference, “Fourth Amendment Hot Topics,” June 18, 1999

State Public Defender Conference, "Suppression Motions," November 13, 1997

Wisconsin Municipal Judges Association, "Traffic Law Update," May 20, 1997

State Public Defender Conference, "Motion Practice," October 31, 1996

Lecture for Judicial Interns at Marquette Law School for Professor Charles Clausen, March 25, 1996

Wisconsin Municipal Judges Association, "New Laws – New Cases," and "Conducting a Mock Trial," March 21 – 22, 1996

State Public Defender Training – Milwaukee Office, "Confession Law," January 11, 1996

Lecture for Judicial Interns at Marquette Law School for Professor Charles Clausen, November 9, 1995

State Public Defender Conference, "New Lawyer Skills," October 20, 1995

Wisconsin Municipal Judges Association, July 13, 1995

State Public Defender Conference, "Preliminary Hearings," October 7, 1994

Municipal Judge Education Committee, "Presumptions in Ordinance Cases," June 24, 1994

State Public Defender New Attorney Training, "Confession Law," October 8, 1993

State Public Defender, "Trial Skills Seminar," May 13, 1993

Wisconsin Municipal Judges Association, "New Developments in the Drunk Driving Law," March 5, 1993

State Public Defender Training, "Confession Law," February 27, 1993

Marquette Law School Criminal Law Lecture for Atty. Ron Langford, February 20, 1993

University of Wisconsin Milwaukee Lecture for Atty. Nick Bokas on Criminal Law, January 28, 1993

State Public Defender Training, "Confession Law," January 14, 1993

State Public Defender New Attorney Training, "Confession Law," December 17, 1992

Marquette Law School Public Defender Clinic, "Confession Law," November 18, 1992

Mock Trial Judge at Marquette Law School, October 31, 1992

State Public Defender New Attorney Training, October 29, 1992

State Public Defender New Attorney Training, "Protecting the Record," July 10, 1992

Wisconsin Association of Criminal Defense Lawyers, "Trial of an Arson Case," April 1992

State Public Defender New Attorney Training, "Confession Law," January 23, 1992

State Public Defender, "Selected Issues in Child Sexual Assault Cases," November 14 – 16, 1991

State Public Defender New Attorney Training, October 4, 1991

Wisconsin Association of Criminal Defense Lawyers, "The Trial of a Sexual Assault Case," May 10 – 11, 1991

State Public Defender, "New Attorney Training Seminar," July and April, 1990

National Legal Aid & Defender Association in Indianapolis, Appellate Defender Training Program, April 4 – 7, 1990

State Public Defender, "Criminal Defense Conference," November 9 – 10, 1989

State Bar of Wisconsin Mock Trial at State Fair Park in Milwaukee, August 5, 1989

State Bar of Wisconsin Young Lawyers Division, "Criminal Practice," 1987-1989

State Bar – Young Lawyer's Division, "Basic Criminal Practice Course," September 22 – 23, 1988

Wisconsin Court of Appeals, "Appellate Practice Seminar," December 16, 1988

Wisconsin Supreme Court, Judicial Criminal Law and Sentencing Institute, May 16 – 17, 1988

University of Wisconsin Extension School for Seniors, "Role of the Public Defender in Helping Low-Income People," 1987

Milwaukee Bar Association, "Confession Law," 1986

SPEECHES: While this list is not exhaustive, due to the number of presentations given over the course of my career being too voluminous to catalogue in its entirety, I have identified the following. I have very few copies of any speeches.

Commencement Address, University of Wisconsin Law School, May 15, 2009

Judicial Selection Issues as a panel member for the Dane County Bar Association, May 12, 2009

Dane County Law Day Breakfast Speaker on Pro Bono Service, First United Methodist Church, May 1, 2009

"Is Dr. King's Dream Still Relevant?," University of Wisconsin Oshkosh, April 27, 2009

"Thoughts on Judicial Independence," Wisconsin Association of Criminal Defense Lawyers, December 6, 2008

"WISCONSIN'S 2008 SUPREME COURT ELECTION: DO WE HAVE THE AUDACITY TO HOPE FOR A BETTER FUTURE?" 2008 Minnesota annual conference of judges, December 3, 2008

Milwaukee County Democratic Party Meeting guest speaker, October 27, 2008

"Judicial Elections," at Madison Urban Ministry, October 23, 2008

"Judicial Elections in Wisconsin," Sandra Day O'Connor Project at Georgetown Law School, October 2, 2008

Young and Powerful for Obama Event speaker, September 25, 2008

"Judicial Elections in Wisconsin," at Bobfest in Baraboo, WI, September 6, 2008

ADA S. MCKINLEY COMMUNITY SERVICES 5TH ANNUAL CELEBRITY GOLF OUTING Keynote speaker, Tinley Park, Illinois, August 5, 2008

"Thoughts on Judicial Independence," National Association of Criminal Defense Lawyers, in Milwaukee WI August 1, 2008

Wisconsin Municipal Judges Association Luncheon Speaker and Award
Presenter, LaCrosse, WI, July 24, 2008

Keynote Address, UW-Milwaukee Multicultural Student Recognition Program,
May 4, 2008

Webcast Wispolitics Luncheon Debate for Supreme Court in Madison, March 3,
2008

Dane County Bar Association Supreme Court Candidates debate Madison,
February 25, 2008

Brown Deer Middle School, Speech for Black History Month, February 14, 2008

Election Speech to Professional Dimension's group in Milwaukee, January 23,
2008

"Is King's Dream Still Relevant Today?", Wisconsin Department of
Administration, Martin Luther King, Jr. Celebration in Madison, January 16, 2008

"Is King's Dream Still Relevant Today?", U.S. Army Garrison, Fort McCoy,
Wisconsin, Martin Luther King, Jr. Celebration, January 7, 2008

Welcome Remarks at the State Bar Pro Bono CLE Program in Madison,
December 3, 2007

Commencement Address, Wisconsin Patrol Academy, November 16, 2007

Labor and Employment Law Seminar, Ruder and Ware Law Firm in Eau Claire,
November 9, 2007

Department of Public Works Conference, Madison, November 8, 2007

LaCrosse County Bar Association, LaCrosse, October 22, 2007

WCAIO Gandhi's Birthday Celebration, October 7, 2007

NAACP Freedom Fund Banquet (brief remarks) in Madison, October 5, 2007

University of Wisconsin Madison SEALS Group, October 2, 2007

Jewish Social Services in Madison, Beth Israel Temple, October 1, 2007

Malawi Judges with U.S. Attorneys Office in Madison at Supreme Court,
September 27, 2007

Women's Court/Civic Conference in Milwaukee, September 19, 2007

Judge Tim Hinkfuss' Investiture in Green Bay, July 31, 2007

University of Wisconsin Extension High School Students, July 26, 2007

Oshkosh Rotary, July 13, 2007

Commencement Address, Lawrence University, June 10, 2007

"Thoughts on Judicial Independence," Sheboygan High School Mock Trial Awards Banquet, June 1, 2007

Dream Chasers at Solomon Community Temple UMC in Milwaukee, May 19, 2007

Commencement Address, University of Wisconsin Law School, May 18, 2007

"Behind the Bench," Milwaukee Bar Association Luncheon Speaker, March 28, 2007

"A Day in the Life of a Justice," Teachers Institute in Madison, March 3, 2007

"For the Common Good, Is King's Dream Still Relevant Today?", Milwaukee Federal Employees, Black History Month program, February 22, 2007

Leadership Fond du lac Speech at Supreme Court, February 21, 2007

"A Black Man in the Legal Field," Wisconsin Department of Workforce Development, February 21, 2007

Southwest Rotary in Oshkosh, February 7, 2007

"Is Dr. King's Dream Still Relevant," Martin Luther King Birthday Celebration at Lawrence University Chapel in Appleton, January 15, 2007

Milwaukee County District Attorney John Chisolm's Investiture, January 9, 2007

"Education vs. Corrections: Pay Me Now or Pay Me Later," Racine YWCA, February 17, 2006

"For the Common Good, Is King's Dream Still Relevant Today?", Fox Cities Martin Luther King, Jr. Celebration, January 15, 2007

"Thoughts on Judicial Independence," Wisconsin Academy of Trial Lawyers, December 1, 2006

Appleton Rotary Luncheon Speaker, November, 28, 2006

"Voting Our Values and Valuing Our Vote," Janesville NAACP Freedom Fund event, November 17, 2006

"Excellence in Education," American Federal of Teachers-Local 212, September 30, 2006

Keynote Address, Legal Aid Society of Milwaukee 91st Anniversary Celebration, September 6, 2007

Commencement Address, Wisconsin Patrol Academy, August 25, 2006

National Organization of Black Law Enforcement Officers (NOBLE) luncheon keynote speaker, Madison, May 27, 2006

"Leaders in the Law," Wisconsin Law Journal Leaders in the Law event, March 29, 2006

Keynote Address, Racine NAACP Youth Council Luncheon, February 25, 2006

Racine YWCA Luncheon Speaker, February 17, 2006

"The Tie that Binds: Identifying the Roots of Community Consciousness in the Legal Profession," National Black Law Students Association, February 4, 2006

"31 Years of Service and Counting," League of Martin Annual Banquet, December 16, 2005

"Thoughts on Judicial Independence," Junior State of America Fall Convention, November 19, 2005

"Thoughts on Judicial Independence," American Constitution Society, November 18, 2005

Keynote Address, State Council on Affirmative Action Annual Diversity Awards, October 20, 2005

"Thoughts on Judicial Independence," Ozaukee Bar Association, October 5, 2005

"Thoughts on Judicial Independence," Milwaukee Young Lawyers Association, October 21, 2005

"Education vs. Corrections: Pay Me Now or Pay Me Later," Wisconsin Department of Public Instruction, September 22, 2005

"What's on the Justice's Mind? Judicial Independence!", Midwest Regional Young Lawyers Conference, September 15, 2005

"What's on the Justice's Mind? Judicial Independence!", Rock County OIC, September 15, 2005

"Legal Ethics: A Perspective," NAACP 96th Annual Convention, July 11, 2005

Commencement Address, Madison East High School, June 10, 2005

"Diversity in the Legal Profession," Legal Education Opportunities Program (LEO) at University of Wisconsin Law School, April 9, 2005

"The Importance of Using a Juris Doctor to Benefit the Community," Marquette Black Law Students Association, February 25, 2005

"Making a Difference in Children's Lives," Dane County Court Appointed Special Advocate Program (CASA) Banquet, February 11, 2005

Keynote Address, United Auto Workers, Martin Luther King, Jr. Celebration, January 22, 2005

Keynote Address, Gateway Technical College, Martin Luther King, Jr. Celebration, January 17, 2005

Luncheon Speaker for Civil Trial Counsel of Wisconsin in Milwaukee, December 10, 2004

"First Impressions," Community Brainstorming Conference in Milwaukee, November 27, 2004

"First Impressions," Court of Appeals District II Luncheon Speaker, November 19, 2004

Keynote Address, NAACP Freedom Fund Dinner in Milwaukee, September 25, 2004

Luncheon Talk Following Supreme Court Investiture for LEO Students at the University of Wisconsin Law School, August 25, 2004

"Brown v. Board of Education," NAACP – Madison Branch, May 1, 2004

"Keeping Our Children Out of the Criminal Justice System," NAACP-Madison Branch, February 28, 2004

Felmers Chaney Anniversary Dinner, Milwaukee, November 1, 2003

"What Are Best Friends For?", Rotary Club of Madison Ethics Symposium, February 7, 2003

American Civil Liberties Union Youth in Government Keynote Speaker at the University of Wisconsin Milwaukee, January 31, 2001

United Auto Workers Martin Luther King Program Speaker in Kenosha, Wisconsin, January 22, 2000

Cluge School Graduation Speaker, Milwaukee, June 10, 1998

Milwaukee Police Academy Swearing-in Ceremony, November 17, 1997

Judge Jeffrey Conen's Investiture, August 28, 1997

Introduction of Silas Purnell for Honorary Doctorate at Chicago State University, January 18, 1997

Alverno College in Milwaukee, "The Role of A Judge – Justice as a State Public Defender," February 11, 1995

Luncheon Speaker at Gateway Technical College in Kenosha, Wisconsin, "Urban Crime," November 17, 1994

Graduation Speaker at Shalom Alternative High School, Milwaukee, June 10, 1994

York Rite Masons and Eastern Stars Banquet Speaker, November 13, 1993

Browning Elementary School in Milwaukee, March 17, 1988

- 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.

Statewide televised "We the People Debate for the Wisconsin Supreme Court Election," on Wisconsin Public Television, March 28, 2008.

FRIDAY, March 21, 2008 chat transcript, Milwaukee Journal Sentinel online, <http://www3.jsonline.com/story/index.aspx?id=730750>

Candidate questionnaire - Louis Butler, State Supreme Court Justice, Posted: March 17, 2008, Milwaukee Journal Sentinel online, <http://www3.jsonline.com/story/index.aspx?id=729074>

Supreme Court Judicial Forum for the Milwaukee Bar Assoc., March 12, 2008

Interview with Madison Isthmus Newspaper, March 3, 2008

“Here and Now” television interview during election campaign, February 29, 2008

PantherTalk Live, University of Wisconsin Milwaukee radio show, hosted by Kyle Duerstein, January 29, 2008, <http://www.blogtalkradio.com/PantherTalkLive/2008/01/29/PantherTalk-Live>

Supreme Court Debate, March 25, 2008, the State Bar of Wisconsin, http://www.wisbar.org/am/template.cfm?section=state_bar_events&template=/cm/contentdisplay.cfm&contentid=70645#

Television Interview by Mike Gousha, WTMJ Television in Milwaukee, December 20, 2004

Radio Campaign Interview from Chicago Radio Station (unknown), November 24, 2007

Radio Campaign Interview, Heart and Soul Radio in Madison, November 17, 2007

Radio Interview by Bob Burnell, WOSH Radio in Oshkosh, August 23, 2004

Radio Interview by Keith Murphy, WMCS Radio in Milwaukee, August 23, 2004

“Hear and Now” Television Interview with Fredericka Frieberg, August 20, 2004

Interview for Black Nouveau Television Show In Milwaukee, April 18, 2000

“Supreme Court Justices’ Questions and Answers,” The Madison Times, Vol. 9, No. 14, March 31 – April 6, 2000

Molly Faye Television Interview for TV6, Milwaukee, April 3, 2000

“Weighing the Options, Wisconsin Supreme Court Election,” Appleton Post-Crescent, March 19, 2000, Pg. I-1

Statewide televised “We the People Debate for the Wisconsin Supreme Court Election,” on Wisconsin Public Television, March 24, 2000.

Appleton Post-Crescent Endorsement Interview, March 23, 2000

Wisconsin Public Radio Interview, March 17, 2000

Dane County Bar Association Televised Election Debate, March 17, 2000

Dave Melnick's Radio Show, WTMJ Milwaukee, March 13, 2000

Oshkosh Northwestern Endorsement Interview, March 9, 2000

The Tom Clark interview on Wisconsin Public Radio, March 7, 2000

Green Bay Press Gazette Endorsement Interview, March 3, 2000

Wisconsin Law Journal Interview with Jane Pribek, September 20, 1999

Dave Melnick's Radio Show, WTMJ Milwaukee, January 15, 1998

Tony Aiello Television Interview for TV6, Milwaukee, November 12, 1995

Tony Aiello Television Interview for TV6, Milwaukee, July 10, 1995

WNOV Milwaukee Radio Interview, June 22, 1994

Press Conference regarding the Death Penalty in Wisconsin by a number of Elected Officials, October 18, 1993

Leonard Sykes Interview for Milwaukee Journal, October 22, 1992

Leonard Sykes Interview for Milwaukee Journal, June 18, 1992

CBN (Christian Broadcast Network) Television Interview by Joseph Helm and John McLario, March 31, 1989

MATA Community Media Broadcast Interview, March 24, 1989

Candidate Endorsement Interview for Milwaukee Sentinel, March 22, 1989

Candidate Endorsement Interview for Milwaukee Journal, March 21, 1989

Chester Sherard Interview for Milwaukee Sentinel, March 8, 1989

"Making Black History," The Capital City Hues, by Jonathan Gramling, Vol. 3, No. 4, February 21, 2008

The Joy Cardin interview on Wisconsin Public Radio, March 19, 2008,
http://www.wpr.org/webcasting/audioarchives_display.cfm?Code=jca&StartRow=961&Repeats=yes

League of Women Voters of Wisconsin Education Fund VOTERS' GUIDE, 2008 Spring Election,
https://wisemail.wisc.edu/attach/VG%20Spring%202008.pdf?sid=I7xO6Df7JJc&mbox=INBOX&charset=escaped_unicode&uid=3497&number=4&filename=VG%20Spring%202008.pdf

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.

Milwaukee Municipal Court, June 14, 1992 – July 31, 2002

This was a court of limited jurisdiction. The matters heard were civil city ordinance violations, including quasi-criminal matters, traffic matters, building code violations, and minor juvenile ordinance violations. During a ten year period, my branch heard approximately 465,000 cases total. Most were resolved by way of default judgment. All trials were to the court. I was appointed by Milwaukee's Common Council on June, 14, 1992, and elected without opposition in April 1993, April 1995, and again in April 1999. Milwaukee Municipal Court was not a court of record under Wisconsin law.

Milwaukee County Circuit Court, August 1, 2002 – August 24, 2004

This was a court of general jurisdiction, and a court of record. I was elected to the position in April, 2002, defeating the incumbent. I served first in criminal misdemeanor court, and rotated to domestic violence court on August 1, 2004. In the misdemeanor branch, I heard non-felony criminal matters, including criminal traffic matters, as well as county ordinance violations and county traffic violations. I also heard appeals of municipal ordinance matters, de novo.

Wisconsin Supreme Court, August 25, 2004 – July 31, 2008

This was a court of appellate jurisdiction, this state's court of last resort. As such, it was a law development court. Jurisdiction was statewide, and of all matters. Our jurisdiction was discretionary as well. I was appointed to the Court by Governor Jim Doyle on August 18, 2004. I was defeated in a contested election on April 1, 2008. In the Supreme Court, approximately 300 opinions were drafted by the justices during the 4 years I was there. Including Office of Lawyer Regulation cases, 569 individual cases were disposed of while I was on the Court. Between 4,000 and 5,000 petitions for review, petitions for bypass, certifications by the court of appeals and original actions were decided during that period.

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

I presided over 2500 cases in Municipal Court, and 61 in Circuit Court.

- i. Of these, approximately what percent were:

Municipal Court

jury trials? 0%; bench trials 100% [total 100%]

civil proceedings? 100%; criminal proceedings? 0% [total 100%]

Circuit Court

jury trials? 36%; bench trials 64% [total 100%]

civil proceedings? 41%; criminal proceedings? 59% [total 100%]

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

WISCONSIN SUPREME COURT MAJORITY OPINIONS:

Mared Industries v. Mansfield, 2005 WI 5, 277 Wis. 2d 350, 690 N.W.2d 835
Petta v. ABC Ins. Co., 2005 WI 18, 278 Wis. 2d 251, 692 N.W.2d 639
Solie v. Employee Trust Funds Bd., 2005 WI 42, 279 Wis. 2d 615, 695 N.W.2d 463
State v. Reed, 2005 WI 53, 280 Wis. 2d 68, 695 N.W.2d 315
Anderson v. MSI Preferred Ins. Co., 2005 WI 62, 281 Wis. 2d 66, 697 N.W.2d 73
State v. Manuel, 2005 WI 75, 281 Wis. 2d 554, 697 N.W.2d 811
Clean Wisconsin, Inc. v. PSC, 2005 WI 93, 282 Wis. 2d 250, 700 N.W.2d 768
State v. Bush, 2005 WI 103, 283 Wis. 2d 90, 699 N.W.2d 80
State v. Denis L.R., 2005 WI 110, 283 Wis. 2d 358, 699 N.W.2d 154
Johnson v. Rogers Memorial Hosp., 2005 WI 114, 283 Wis. 2d 384, 700 N.W.2d 27
State v. Love, 2005 WI 116, 284 Wis. 2d 111, 700 N.W.2d 62
State v. Knapp, 2005 WI 127, 285 Wis. 2d 86, 700 N.W.2d 899
Thomas v. Mallett, 2005 WI 129, 285 Wis. 2d 236, 701 N.W.2d 523
State v. Armstrong, 2005 WI 199, 283 Wis. 2d 639, 700 N.W.2d 98
State v. Maloney, 2006 WI 15, 288 Wis. 2d 551, 709 N.W.2d 436
Village of Cross Plains v. Haanstad, 2006 WI 16, 288 Wis. 2d 573, 709 N.W.2d 447
Orion Flight Servs. v. Basler Flight Servs., 2006 WI 51, 290 Wis. 2d 421, 714 N.W.2d 130
Landwehr v. Landwehr, 2006 WI 64, 291 Wis. 2d 49, 715 N.W.2d 180
Affordable Erecting v. Neosho Trompler, Inc., 2006 WI 67, 291 Wis. 2d 259, 715 N.W.2d 620
Robin K. v. Lamanda M., 2006 WI 68, 291 Wis. 2d 333, 718 N.W.2d 38
Metropolitan Ventures v. GEA Assoc., 2006 WI 71, 291 Wis. 2d 393, 717 N.W.2d 58
State v. Roberson, 2006 WI 80, 292 Wis. 2d 280, 717 N.W.2d 111
Sonday v. Dave Kohel Agency, Inc., 2006 WI 92, 293 Wis. 2d 458, 718 N.W.2d 631
Kenosha County DHS v. Jodie W., 2006 WI 93, 293 Wis. 2d 530, 716 N.W.2d 895
Dairyland Greyhound Park v. Doyle, 2006 WI 107, 295 Wis. 2d 1, 719 N.W.2d 408
State v. Parent, 2006 WI 132, 298 Wis. 2d 63, 725 N.W.2d 915
State v. Johnson, 2007 WI 32, 299 Wis. 2d 675, 729 N.W.2d 182
Kasten v. Doral Dental, 2007 WI 76, 301 Wis. 2d 598, 733 N.W.2d 300
Kristi L.M. v. Dennis E.M., 2007 WI 85, 302 Wis. 2d 185, 734 N.W.2d 375
Kohupar v. Wilde Pontiac Cadillac, 2007 WI 98, 303 Wis. 2d 258, 735 N.W.2d 93

Meyers v. Bayer AG, 2007 WI 99, 303 Wis. 2d 295, 735 N.W.2d 448
City of Milwaukee v. Washington, 2007 WI 104, 304 Wis. 2d 98, 735 N.W.2d 111
Stoughton Trailers v. LIRC, 2007 WI 105, 303 Wis. 2d 514, 735 N.W.2d 477
Szleszinski v. LIRC, 2007 WI 106, 304 Wis. 2d 258, 736 N.W.2d 111
Steinmann v. Steinmann, 2008 WI 43, 309 Wis. 2d 29, 749 N.W.2d 145
Estate of Matteson v. Matteson, 2008 WI 48, 309 Wis. 2d 311, 749 N.W.2d 557
Liebovich v. Minnesota Ins. Co., 2008 WI 75, 310 Wis. 2d 751, 751 N.W.2d 764
Walgreen Co. v. City of Madison, 2008 WI 80, 311 Wis. 2d 158, 752 N.W.2d 687
Town of Madison v. County of Dane, 2008 WI 83, 311 Wis. 2d 402, 752 N.W.2d 260
Stuart v. Weisflog's Showroom Gallery, Inc., 2008 WI 86, 311 Wis. 2d 492, 753 N.W.2d 448
Sands v. Whitnall School District, 2008 WI 89, 312 Wis. 2d 1, 754 N.W.2d 439
State v. Doss, 2008 WI 93, 312 Wis. 2d 570, 754 N.W.2d 150
Hornback v. Archdiocese of Milwaukee, 2008 WI 98, 313 Wis. 2d 294, 752 N.W.2d 852

WISCONSIN SUPREME COURT CONCURRING AND DISSENTING OPINIONS:

Baumeister v. Automated Products, Inc., 2004 WI 148, 277 Wis. 2d 21, 690 N.W.2d 1
Gehin v. Wisconsin Group Ins. Bd., 2005 WI 16, 278 Wis. 2d 111, 692 N.W.2d 572
State v. Brown, 2005 WI 29, 279 Wis. 2d 102, 693 N.W.2d 715
Dane County DHS v. P.P., 2005 WI 32, 279 Wis. 2d 169, 694 N.W.2d 344
OLR v. Polich, 2005 WI 36, 279 Wis. 2d 266, 694 N.W.2d 367
State v. Trujillo, 2005 WI 45, 279 Wis. 2d 712, 694 N.W.2d 933
State v. Tucker, 2005 WI 46, 279 Wis. 2d 697, 694 N.W.2d 926
State v. Stuart, 2005 WI 47, 279 Wis. 2d 659, 695 N.W.2d 259
Everson v. Lorenz, 2005 WI 51, 280 Wis. 2d 1, 695 N.W.2d 298
State v. Anderson, 2005 WI 54, 280 Wis. 2d 104, 695 N.W.2d 731
Chen v. Warner, 2005 WI 55, 280 Wis. 2d 344, 695 N.W.2d 758
OLR v. Felli, 2005 WI 58, 281 Wis. 2d 25, 697 N.W.2d 42
OLR v. Backes, 2005 WI 59, 281 Wis. 2d 1, 697 N.W.2d 49
Gottsacker v. Monnier, 2005 WI 69, 281 Wis. 2d 361, 697 N.W.2d 436
Clean Wisconsin, Inc. v. PSC, 2005 WI 93, 282 Wis. 2d 250, 700 N.W.2d 768
Hanneman v. Boyson, 2005 WI 94, 282 Wis. 2d 664, 698 N.W.2d 714
Kohn v. Darlington Community Schools, 2005 WI 99, 283 Wis. 2d 21, 698 N.W.2d 794
State v. Smith, 2005 WI 104, 382 Wis. 2d 57, 699 N.W.2d 508
State v. Jerrell C.J., 2005 WI 105, 283 Wis. 2d 145, 699 N.W.2d 110
Carney-Hayes v. Northwest Wis. Home Care, 2005 WI 118, 284 Wis. 2d 56, 699 N.W.2d 524
John Doe 67 v. Archdiocese of Milwaukee, 2005 WI 123, 284 Wis. 2d 307, 700 N.W.2d 180
State v. Dubose, 2005 WI 126, 285 Wis. 2d 143, 699 N.W.2d 582
Dane County v. McGrew, 2005 WI 130, 285 Wis. 2d 519, 699 N.W.2d 890
Sauk County v. Aaron J.J., 2005 WI 162, 286 Wis. 2d 376, 706 N.W.2d 659
State v. Shomberg, 2006 WI 9, 288 Wis. 2d 1, 709 N.W.2d 370
Rebernick v. Wausau Gen. Ins. Co., 2006 WI 27, 289 Wis. 2d 324, 711 N.W.2d 621
OLR v. Gamino, 2006 WI 32, 290 Wis. 2d 1, 712 N.W.2d 873
Coleman v. McCaughtry, 2006 WI 49, 290 Wis. 2d 352, 714 N.W.2d 900
State v. Hibl, 2006 WI 52, 290 Wis. 2d 595, 714 N.W.2d 194
Wisconsin Auto Title Loans v. Jones, 2006 WI 53, 290 Wis. 2d 514, 714 N.W.2d 155

State v. Brockdorf, 2006 WI 76, 291 Wis. 2d 635, 717 N.W.2d 657
State v. Mark, 2006 WI 78, 292 Wis. 2d 1, 718 N.W.2d 90
Bartholomew v. Wis. Patients Comp. Fund, 2006 WI 91, 293 Wis. 2d 38, 717 N.W.2d 216
State v. Young, 2006 WI 98, 294 Wis. 2d 1, 717 N.W.2d 729
State v. Campbell, 2006 WI 99, 294 Wis. 2d 100, 718 N.W.2d 649
State v. Kelty, 2006 WI 101, 294 Wis. 2d 62, 716 N.W.2d 886
Lassa v. Rongstad, 2006 WI 105, 294 Wis. 2d 187, 718 N.W.2d 673
Acuity Mut. Ins. v. Olivas, 2007 WI 12, 298 Wis. 2d 640, 726 N.W.2d 258
Industrial Roofing v. Marquardt, 2007 WI 19, 299 Wis. 2d 81, 726 N.W.2d 898
State v. Jensen, 2007 WI 26, 299 Wis. 2d 267, 727 N.W.2d 518
Buswell v. Tomah School District, 2007 WI 71, 301 Wis. 2d 178, 732 N.W.2d 804
State v. Lackershire, 2007 WI 74, 301 Wis. 2d 418, 734 N.W.2d 23
State v. Mayo, 2007 WI 78, 301 Wis. 2d 642, 734 N.W.2d 115
State v. Bannister, 2007 WI 86, 302 Wis. 2d 158, 734 N.W.2d 892
City of Janesville v. CC Midwest, 2007 WI 93, 302 Wis. 2d 599, 734 N.W.2d 428
HSBC Realty Credit Corp. v. City of Glendale, 2007 WI 94, 303 Wis. 2d 1, 735 N.W.2d 77
State v. Jenkins, 2007 WI 96, 303 Wis. 2d 157, 736 N.W.2d 24
Milwaukee Med. Ctr. v. City of Wauwatosa, 2007 WI 101, 304 Wis. 2d 53, 735 N.W.2d 156
Frisch v. Henrichs, 2007 WI 102, 304 Wis. 2d 1, 736 N.W.2d 85
Helgeland v. Wisconsin Municipalities, 2008 WI 9, 307 Wis. 2d 1, 745 N.W.2d 1
State v. Hambly, 2008 WI 10, 307 Wis. 2d 98, 745 N.W.2d 48
Judicial Commission v. Ziegler, 2008 WI 27, 309 Wis. 2d 253, 750 N.W.2d 710
Stone v. Acuity, 2008 WI 30, 308 Wis. 2d 558, 747 N.W.2d 149
Eichenseer v. Madison-Dane County Tavern, 2008 WI 38, 308 Wis. 2d 684, 748 N.W.2d 154
State v. Plude, 2008 WI 58, 310 Wis. 2d 28, 750 N.W.2d 42
State v. Straszkowski, 2008 WI 65, 310 Wis. 2d 259, 750 N.W.2d 835
Hipp v. Circuit Court for Milwaukee County, 2008 WI 67, 310 Wis. 2d 342, 750 N.W.2d 873
Larry v. Harris, 2008 WI 81, 311 Wis. 2d 326, 752 N.W.2d 279
State v. Sanders, 2008 WI 85, 311 Wis. 2d 257, 752 N.W.2d 713
State v. Hubbard, 2008 WI 92, 313 Wis. 2d 1, 752 N.W.2d 839
J.G. v. Wangard, 2008 WI 99, 313 Wis. 2d 329, 753 N.W.2d 475

- 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).

At the municipal court level, none of these cases would be considered significant, and I have no independent recollection of any individual matter. What was of significance was the fact that almost all abortion protest cases were heard in Milwaukee Municipal Court during this period, as very few of these cases were prosecuted in Criminal Court by the then District Attorney.

At the circuit court level, I can only think of one case I would consider significant, the case of Thomas P. Vitrano, case no. 01CM7337, for retail theft. Mr. Vitrano was I believe either in federal custody, or being questioned by the FBI for something to do with the making of or threats by bombs when his case went to jury trial for retail theft. He was also under a suicide watch, and showed serious mental health issues, though he was competent to stand trial. I recall he wore a Mohawk at his trial, and had to be physically restrained by a leg iron during the proceedings. He was found guilty, and sentenced by me to serve 7 months in the House of Correction consecutive to any sentence with credit for 2 days served; straight time. For the prosecution, then ADA Eric DeFort, 608-266-8514. For the defense, Robert Webb, State Public Defender Milwaukee Trial Office, 819 N 6th St Ste 908, Milwaukee, WI 53203-1606, Phone: (414) 227-4179

The rest of the cases at circuit court were neither significant nor memorable. I will therefore provide the most recent cases that went to trial that I presided over.

1. May 10, 2004, *State v. Hernandez*, 2002CM6147, one count of criminal damage to property, contrary to sec. 943.01, Stats. After the jury was selected, the prosecutor moved to dismiss the charges, as it was unable to proceed. The court ordered the case dismissed without prejudice. For the prosecution, ADA Jennifer Rhodes, 414-278-4646. For the defense, Lori Schmitz, telephone unknown
2. April 7, 2004, *State v. King*, 2003CM8113, one count of battery, contrary to sec. 940.19(1), Stats. Defendant was found guilty by the jury following a three day trial. Sentencing was adjourned to September 16, 2004, with the case being reassigned to the Hon. Kevin Martens, and defendant was sentenced to 75 days at the House of Correction (HOC) and fined \$200 plus costs. For the prosecution, then ADA Eric DeFort, 608-266-8514. For the defense, Michael Chernin, 414-272-1234.
3. April 2, 2004, *State v. Villegas*, 2002CT12427, one count of OWI (4th) and one count of operating with a PAC .02 or more (4th), contrary to secs. 346.63(1)(a) and (1)(b), Stats. Defendant was found guilty by the jury following a three day trial, and sentenced to 11 months at the HOC on count 1 and fined \$2400 plus costs, with a suspended sentence on count 2. For the prosecution, then ADA Eric DeFort, 608-266-8514. For the defense, Richard Thomey, 414-258-7123.
4. March 17, 2004, *State v. Fuentes-Sanchez*, 2003CT10689, one count of hit and run, contrary to sec. 346.67(1), Stats. Defendant changed his plea during the second day of trial to guilty, and was sentenced to 5 days at the HOC and fined \$300 plus costs. For the prosecution, then ADA Eric DeFort, 608-266-8514. For the defense, Isa Gonzalez-Zayas, 414-257-5736.
5. February 10, 2004, *State v. Wilder*, 2003CM6645, one count of disorderly conduct, contrary to sec. 947.01, Stats. Jury found defendant not guilty after a

two day trial, and a judgment of acquittal was entered. For the prosecution, then ADA Eric DeFort, 608-266-8514. The defendant was pro se.

6. April 4, 2004, *State v. Santiago*, 2004CM182, one count of violation of domestic abuse injunction, contrary to sec. 813.12(8)(a), Stats. A judgment of acquittal was entered after the state notified the court that it could not proceed during the trial. For the prosecution, ADA Grant Huebner, 414-935-7459. For the defense, Nelida Cortes, 414-227-4967.
 7. July 26, 2004, *State v. Ronkiewicz*, 2001CT3750, one count of OWI (4th) contrary to secs. 346.63(1)(a), Stats. Defendant was found guilty after a three day trial, and sentenced to 10 months at the HOC and fined \$1000 plus costs. The matter was affirmed by the court of appeals December 1, 2005, following a no merit report in appeal no. 2005AP655NM. For the prosecution, then ADA Eric DeFort, 608-266-8514. For the defense, Scott Wales, 414-357-7501.
 8. May 25, 2004, *State v. Oliver*, 2003CM5323, one count of Obstructing an Officer contrary to sec. 946.41(1), Stats. Defendant was found guilty after a 2 day trial, and fined \$250 plus costs. For the prosecution, ADA Jennifer Rhodes, 414-278-4646. For the defense, Geneva McKinley, 414-278-5101.
 9. April 15, 2004, *State v. Marshall*, 2003CT14889, one count of hit and run, contrary to sec. 346.67(1), Stats. Defendant was found not guilty, and a judgment of acquittal was entered. For the prosecution, then ADA Eric DeFort, 608-266-8514. The defendant was pro se.
 10. November 25, 2003, *State v. Krueger*, 2003CT703, one count of OWI (2nd) and one count of operating with a PAC .10 or more (2nd), contrary to secs. 346.63(1)(a) and (1)(b), Stats. Defendant was found not guilty after a 2 day trial. For the prosecution, then ADA Eric DeFort, 608-266-8514. For the defense, Jonathan LaVoy , 262-796-1400.
- 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. *Thomas v. Mallett*, 2005 WI 129, 285 Wis. 2d 236, 701 N.W.2d 523 (majority). For the plaintiff-appellant-petitioner, oral argument by Peter G. Earle (Law Office of Peter Earle, 839 N Jefferson St Ste 300, Milwaukee, WI 53202-3740, Phone: (414) 276-1076) and Robert J. McConnell (Fidelma Fitzpatrick and Motley Rice, LLC, Providence, RI). For the defendants-respondents, Atlantic Richfield Company, E.I. du Pont de Nemours & Co., Con-Agra Grocery Products Company, NL Industries, Inc., American Cyanamid Co., and Millennium Inorganic Chemicals, Inc. (f/k/a SCM Chemicals, Inc.), oral argument by Bruce

Kelly (Arnold & Porter, New York)(on behalf of American Cyanamid Co., et al.). For the Sherwin-Williams Company, oral argument by Charles H. Moellenberg, Jr. (Paul Michael Pohl, Charles H. Moellenberg, Jennifer B. Flannery and Jones Day, Pittsburgh, PA).

2. *Clean Wisconsin, Inc. v. PSC*, 2005 WI 93, 282 Wis. 2d 250, 700 N.W.2d 768 (majority and concurring opinions). For the respondents-co-appellants-cross-respondents, Public Service Commission of Wisconsin and Wisconsin Department of Natural Resources, oral argument by Edward S. Marion (716 Ottawa Trl, Madison, WI 53711, Phone: (608) 334-9741). For the petitioners-respondents-cross-appellants-cross-respondents, Clean Wisconsin, Inc. and S.C. Johnson & Son, Inc., oral argument by Carl A. Sinderbrand (Axley Brynerson LLP, 2 E Mifflin St # 200, PO Box 1767, Madison, WI 53701-1767, Phone: (608) 260-2472). For the interested parties-co-appellants-cross-respondents, Wisconsin Public Power, Inc. and Madison Gas & Electric Company, oral argument by Richard K. Nordeng (222 W Washington Ave # 900, PO Box 1784 Madison, WI 53701-1784, Phone: (608) 259-2612). For the interested parties-appellants-cross-respondents, Wisconsin Electric Power Company, W.E. Power, LLC and Wisconsin Energy Corporation, oral argument by R. Ryan Stoll. For the interested party-respondent-cross-appellant, City of Oak Creek, oral argument by William J. Mulligan (Davis & Kuelthau SC 111 E Kilbourn Ave # 1400, Milwaukee, WI 53202-6677, Phone: (414) 225-1429).
3. *Dairyland Greyhound Park v. Doyle*, 2006 WI 107, 295 Wis. 2d 1, 719 N.W.2d 408 (majority). For the plaintiff-appellant, oral argument by Stephen L. Morgan (Murphy Desmond SC, 33 E Main St Ste 500, PO Box 2038, Madison, WI 53701-2038, Phone: (608) 268-5572). For the defendants-respondents the cause was argued by Thomas C. Bellavia, Maura FJ Whelan, John S. Greene, Charles D. Hoornstra, assistant attorneys general (Wisconsin Department of Justice, 17 W Main St, PO Box 7857, Madison, WI 53707-7857).
4. *State v. Knapp*, 2005 WI 127, 285 Wis. 2d 86, 700 N.W.2d 899 (majority). For the plaintiff-appellant-cross-respondent the cause was argued by William L. Gansner, assistant attorney general (Wisconsin Department of Justice, 17 W Main St, PO Box 7857, Madison, WI 53707-7857, Phone: (608) 266-3539). For the defendant-respondent-cross-appellant, oral argument by Robert G. LeBell (LeBell, Dobroski & Morgan LLP, 309 N, Water St # 350, Milwaukee, WI 53202-5772, Phone: (414) 276-1233).
5. *State v. Jensen*, 2007 WI 26, 299 Wis. 2d 267, 727 N.W.2d 518 (concurring in part, dissenting in part). For the plaintiff-appellant-cross-respondent the cause was argued by Marguerite M. Moeller (Wisconsin Department of Justice, 17 W Main St, PO Box 7857, Madison, WI 53707-7857, Phone: (608) 266-8556). For the defendant-respondent-cross-appellant, oral argument by Craig W. Albee,

Glynn, Fitzgerald & Albee SC, 526 E Wisconsin Ave, Milwaukee, WI 53202-4503, Phone: (414) 221-9600).

6. *City of Milwaukee v. Washington*, 2007 WI 104, 304 Wis. 2d 98, 735 N.W.2d 111 (majority). For the respondent-appellant-petitioner, oral argument by William J. Tyroler (State Public Defenders Office Appellate Division, 735 N Water St # 912, Milwaukee, WI 53202-4105, Phone: (414) 227-4134). For the petitioner-respondent there was a brief and oral argument by Stuart S. Mukamal (Milwaukee City Attorneys Office, 200 E Wells St Rm 800, Milwaukee, WI 53202-3515, Phone: (414) 286-2601), assistant city attorney.
7. *State v. Jerrell C.J.*, 2005 WI 105, 283 Wis. 2d 145, 699 N.W.2d 110 (concurring). For the respondent-appellant-petitioner there were briefs and oral argument by Eileen A. Hirsch (State Public Defenders Office Appellate Division, 17 S Fairchild St 3rd Fl, PO Box 7862, Madison, WI 53707-7862, Phone: (608) 264-8566), assistant state public defender. For the petitioner-respondent the cause was argued by Gregory M. Weber, (Wisconsin Department of Justice, 17 W Main St, PO Box 7857, Madison, WI 53707-7857, Phone: 266-3935) assistant attorney general.
8. *State v. Sanders*, 2008 WI 85, 311 Wis. 2d 257, 752 N.W.2d 713 (concurring). For the plaintiff-respondent-petitioner the cause was argued by Anne C. Murphy, (Wisconsin Department of Justice, 17 W Main St, PO Box 7857, Madison, WI 53707-7857, Phone: 266-9224) assistant attorney general. For the defendant-appellant there was a brief and oral argument by Patrick M. Donnelly, (State Public Defenders Office Appellate Division, 17 S Fairchild St 3rd Fl, PO Box 7862, Madison, WI 53707-7862, Phone: (608) 266-7092) assistant state public defender.
9. *State v. Reed*, 2005 WI 53, 280 Wis. 2d 68, 695 N.W.2d 315 (majority). For the defendant-appellant-petitioner, oral argument by David H. Weber (Liebmann, Conway, Olejniczak & Jerry SC, 231 S Adams St, PO Box 23200, Green Bay, WI 54305-3200, Phone: (920) 437-0476 x235). For the plaintiff-respondent the cause was argued by David J. Becker, assistant attorney general (Wisconsin Department of Justice, 17 W Main St, PO Box 7857, Madison, WI 53707-7857, Phone: (608) 266-7447).
10. *Walgreen Co. v. City of Madison*, 2008 WI 80, 311 Wis. 2d 158, 752 N.W.2d 687 (majority). For the plaintiff-appellant-petitioner, oral argument by Robert A. Hill (Robert Hill & Associates, Eden Prairie, Minn). For the defendant-respondent there was a brief and the cause was argued by Larry W. O'Brien, assistant city attorney, Madison (Madison City Attorneys Office, 210 Martin Luther King Jr Blvd # 401, Madison, WI 53703-3345, Phone: (608) 266-4511).

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

State v. Moeck, 2005 WI 57, 280 Wis. 2d 277, 695 N.W.2d 783 (denied).
I did not write the opinion.

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

I know that I had 3 municipal court decisions that were reversed in Milwaukee County Circuit Court involving individuals who were incarcerated for unreasonable periods of time without being brought to court for a determination of probable cause on non-criminal matters. A pattern had emerged at the Milwaukee County jail where individuals who did not speak English were being lost in the system, and incarcerated for as long as 7 days without being brought to court on ordinance violations. I eventually dismissed the three matters with prejudice, and each was appealed to circuit court. One judge ruled that while dismissal may have been appropriate, the dismissal had to be without prejudice. One judge ruled that the only remedy available to the defendant was a lawsuit. One judge ruled that the defendant had no remedy. In any instance, all three cases were reversed. I do not know the names of the cases or who the attorneys were, but one of the judges was the Hon John Dimotto, 414-278-4366, and I believe a second judge was the Hon. Tim Dugan, 414-278-4496. I do not recall the third judge. I also do not have copies of the circuit court decisions overturning my decisions.

I had no decisions reversed as a circuit court judge, and the Supreme Court of the United States did not accept certiorari on any cases arising out of the Wisconsin Supreme Court while I was there.

- 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.

At the Supreme Court, almost all of our opinions were published. The only non-published I recall was in 2004, when the court in an original action allowed Ralph Nader's name to be placed on the ballot for the 2004 presidential election. I wrote a concurring opinion, disagreeing with the court's decision to treat the matter as an original action, as there had been a previous ruling in the circuit court. I concurred with the ultimate result allowing his name to be placed on the ballot.

- 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.

Please see 13b., above.

- 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.

None.

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.

Over the last 17 years, I have assessed the necessity and propriety of recusal and disqualification by following the Wisconsin Statute for mandatory disqualification, sec. 757.19, as well as the Supreme Court Rules that apply in other non-mandatory situations, pursuant to WI SCR 60.04 and 60.05.

Disqualification is required whenever the judge is related to a party or counsel, is a party or material witness, acted previously as counsel in the same proceeding, prepared a document whose validity is at issue, previously handled a motion in an inferior court, has a financial or personal interest in the outcome, or can't be impartial. In non-mandatory situations, the SCR's provide for disclosure to the parties, and recusal where appropriate.

Wisconsin also has an automatic substitution of judge procedure in the trial courts, pursuant to sec. 801.58. A party may, in a timely fashion, substitute a trial judge out of the case without alleging prejudice or stating any reason for the request. As a Supreme Court Justice, I also followed the requirements of Internal Operating Procedure (IOP) 2L. Under that provision, justices do not disclose reasons for their disqualification decisions. The following are my recusals and substitutions as a judicial officer in Wisconsin.

Wisconsin Supreme Court Recusals, 2004 – 08 (no substitutions at this level)

Opinions

Rechsteiner v. Hazelden, 313 Wis.2d 542, 753 N.W.2d 496, 2008 WL 2745132, 2008 WI 97, July 16, 2008 (No. 2006AP1521.)

WIREData, Inc. v. Village of Sussex, 310 Wis.2d 397, 751 N.W.2d 736, 2008 WL 2512963, 36 Media L. Rep. 2414, 2008 WI 69, June 25, 2008 (Nos. 2005AP1473, 2006AP174, 2006AP175.)

State v. Chvala, 279 Wis.2d 216, 693 N.W.2d 747, 2005 WL 659193, 2005 WI 30, March 23, 2005 (No. 03-0442-CR.)

State v. Jensen, 279 Wis.2d 220, 694 N.W.2d 56, 2005 WL 659203, 2005 WI 31, March 23, 2005 (No. 03-0106-CR.)

Pierce v. Physicians Ins. Co. of Wisconsin, Inc., 278 Wis.2d 82, 692 N.W.2d 558, 2005 WL 368591, 2005 WI 14, February 17, 2005 (No. 01-2710.)

Petitions for Review

State v. Tody, 314 Wis.2d 69, 758 N.W.2d 90 (Table), 2008 WL 4976225, 2008 WI 122, July 28, 2008 (No. 2007AP0400-CR)

State v. Alexander, 314 Wis.2d 71, 758 N.W.2d 91 (Table), 2008 WL 5111391, 2008 WI 122, July 28, 2008 (No. 2007AP0740-CR)

Estate of Weidner v. General Motors Corp., 314 Wis.2d 71, 758 N.W.2d 91 (Table), 2008 WL 5128551, 2008 WI 122, July 28, 2008 (No. 2007AP1642)

Blunt v. Medtronic, Inc., 308 Wis.2d 609, 749 N.W.2d 661 (Table), 2008 WL 2102332, 2008 WI 40, April 15, 2008 (No. 2006AP1506)

State v. Santiago, 306 Wis.2d 47, 744 N.W.2d 296 (Table), 2007 WL 4896231, 2008 WI 6, November 05, 2007 (No. 2006AP1696)

Riley v. Giombi, 304 Wis.2d 610, 741 N.W.2d 240 (Table), 2007 WL 2834107, 2007 WI 120, August 14, 2007 (No. 2006AP0801)

Riley v. Giombi, 304 Wis.2d 611, 741 N.W.2d 240 (Table), 2007 WL 2834149, 2007 WI 120, August 14, 2007 (No. 2006AP0802)

State v. Anzualda, 304 Wis.2d 611, 741 N.W.2d 241 (Table), 2007 WL 2835733, 2007 WI 120, July 17, 2007 (No. 2006AP1665)

State v. Hendricks, 302 Wis.2d 106, 737 N.W.2d 432 (Table), 2007 WL 2351543, 2007 WI 114, June 12, 2007 (No. 2006AP0055-CRNM)

Tallmadge v. Boyle, 302 Wis.2d 107, 737 N.W.2d 433 (Table), 2007 WL 2353365, 2007 WI 114, May 22, 2007 (No. 2006AP1075)

Rintelman v. Boys & Girls Clubs of Greater Milwaukee, Inc., 289 Wis.2d 11, 712 N.W.2d 35 (Table), 2006 WL 980317, 2006 WI 23, January 20, 2006 (No. 2004AP2669)

State v. Hendricks, 286 Wis.2d 661, 708 N.W.2d 692 (Table), 2005 WL 3708499, 2006 WI 3, November 11, 2005 (No. 2004AP0348)

State v. Nunn, 286 Wis.2d 662, 708 N.W.2d 693 (Table), 2005 WL 3708546, 2006 WI 3, November 11, 2005 (No. 2004AP2263-CR)

State v. Smith, 285 Wis.2d 628, 703 N.W.2d 378 (Table), 2005 WL 2206601, 2005 WI 136, August 25, 2005 (No. 2004AP1077-CR)

Advantage Leasing Corp. v. Novatech Solutions, Inc., 282 Wis.2d 720, 700 N.W.2d 271 (Table), 2005 WL 1712201, 2005 WI 134, June 01, 2005 (No. 2003AP1216)

Dunn v. Milwaukee County, 282 Wis.2d 720, 700 N.W.2d 272 (Table), 2005 WL 1712978, 2005 WI 134, May 11, 2005 (No. 2003AP3525)

State v. Lopez, 277 Wis.2d 154, 691 N.W.2d 356 (Table), 2004 WL 3105704, 2005 WI 1, December 27, 2004 (No. 04-0972-CRNM)

State v. Lopez, 277 Wis.2d 154, 691 N.W.2d 356 (Table), 2004 WL 3105705, 2005 WI 1, December 27, 2004 (No. 04-0973-CRNM)

Lakefront Neighborhood Coalition v. City of Milwaukee, 277 Wis.2d 152, 691 N.W.2d 354 (Table), 2004 WL 3091967, 2005 WI 1, November 17, 2004 (No. 03-1818)

Disciplinary Cases

In re Disciplinary Proceedings Against McNeely, 313 Wis.2d 283, 752 N.W.2d 857, 2008 WL 2747505, 2008 WI 91, July 15, 2008 (No. 2007AP208-D.)

In re Disciplinary Proceedings Against Washington, 310 Wis.2d 377, 750 N.W.2d 891, 2008 WL 2474649, 2008 WI 66, June 20, 2008 (No. 2006AP578-D.)

In re Disciplinary Proceedings Against Jones, 309 Wis.2d 585, 749 N.W.2d 603, 2008 WL 2245865, 2008 WI 53, June 03, 2008 (No. 2007AP1004-D.)

In re Disciplinary Proceedings Against George, 308 Wis.2d 50, 746 N.W.2d 236, 2008 WL 786798, 2008 WI 21, March 26, 2008 (No. 2005AP1978-D.)

In re Disciplinary Proceedings Against Berlin, 306 Wis.2d 288, 743 N.W.2d 683, 2008 WL 151822, 2008 WI 4, January 17, 2008 (No. 2007AP180-D.)

In re Disciplinary Proceedings Against Steinberg, 304 Wis.2d 577, 735 N.W.2d 527, 2007 WL 2141812, 2007 WI 113, July 27, 2007 (No. 2006AP794-D.)

In re Disciplinary Proceedings Against Washington, 301 Wis.2d 47, 732 N.W.2d 24, 2007 WL 1544581, 2007 WI 65, May 30, 2007 (No. 2006AP578-D.)

In re Disciplinary Proceedings Against Chvala, 300 Wis.2d 206, 730 N.W.2d 648, 2007 WL 1264108, 2007 WI 47, May 02, 2007 (No. 2006AP1423-D.)

In re Disciplinary Proceedings Against Nunnery, 298 Wis.2d 289, 725 N.W.2d 613, 2007 WL 18810, 2007 WI 1, January 04, 2007 (No. 2004AP2542-D.)

In re Disciplinary Proceedings Against Sostarich, 289 Wis.2d 286, 710 N.W.2d 904, 2006 WL 659499, 2006 WI 24, March 17, 2006 (No. 2004AP1911-D.)

In re Disciplinary Proceedings Against Hartigan, 286 Wis.2d 546, 706 N.W.2d 818, 2005 WL 3370465, 2005 WI 164, December 13, 2005 (No. 2005AP1017-D.)

In re Disciplinary Proceedings Against Hendree, 286 Wis.2d 34, 705 N.W.2d 84, 2005 WL 2679603, 2005 WI 142, October 19, 2005 (No. 1997AP1746-D.)

In re Disciplinary Proceedings Against Sostarich, 282 Wis.2d 712, 698 N.W.2d 711, 2005 WL 1522615, 2005 WI 97, June 29, 2005 (No. 2004AP1911-D.)

In re Disciplinary Proceedings Against Kostich, 282 Wis.2d 206, 700 N.W.2d 763, 2005 WL 1492007, 2005 WI 90, June 24, 2005 (No. 2003AP2950-D.)

In re Disciplinary Proceedings Against Hartigan, 277 Wis.2d 341, 690 N.W.2d 831, 2005 WL 97724, 2005 WI 3, January 19, 2005 (No. 03-2118-D.)

In re Disciplinary Proceedings Against Birdsall, 276 Wis.2d 385, 689 N.W.2d 46, 2004 WL 2659018, 2004 WI 143, November 23, 2004 (No. 03-0086-D.)

In re Christnot, 275 Wis.2d 289, 685 N.W.2d 788, 2004 WL 1908238, 2004 WI 120, August 27, 2004 (No. 04-0481-D.)

Medical Incapacity Proceeding

In re Hurt, 749 N.W.2d 925, 2008 WL 2380045, 2008 WI 61, June 11, 2008 (No. 2008AP1159-D.)

Pursuant to WI IOP 2L, I have never disclosed the reasons for disqualifying myself from these cases. To the best of my recollection, I was not asked to recuse myself on any of these cases. The only time such a request came in was in the following matters:

Donohoo v. Action Wisconsin, 314 Wis.2d 74, 758 N.W.2d 93 (Table), 2008 WL 5197371, 2008 WI 122, July 30, 2008 (No. 2006AP0396), motion for reconsideration, and the related opinion of Storms v. Action Wisconsin Inc., 754 N.W.2d 480, 2008 WL 2908867, 2008 WI 110, July 30, 2008 (No. 2006AP396.)

With respect to the following motions for reconsideration, because I did not sit on the original decisions, court practice dictated that I not sit on the reconsideration requests.

Motions for Reconsideration

In re Doe Proceeding Commenced by Affidavit Dated July 25, 2001, 277 Wis.2d 75, 689 N.W.2d 908, 2004 WL 2903893, 2004 WI 149, December 15, 2004 (No. 02-3063-W.)

Donaldson v. Board of Com'rs of Rock-Koshkonong Lake Dist., 276 Wis.2d 20, 688 N.W.2d 653, 2004 WL 2423534, 2004 WI 130, October 29, 2004 (No. 01-3396.)

Hutchinson Technology, Inc. v. Labor and Industry Review Com'n, 276 Wis.2d 23, 688 N.W.2d 654, 2004 WL 2423548, 2004 WI 132, October 29, 2004 (No. 02-3328.)

State ex rel. Thorson v. Schwarz, 276 Wis.2d 24, 688 N.W.2d 654, 2004 WL 2423553, 2004 WI 133, October 29, 2004 (No. 02-3380.)

Beecher v. Labor & Industry Review Com'n, 276 Wis.2d 21, 688 N.W.2d 654, 2004 WL 2423846, 2004 WI 131, October 29, 2004 (No. 02-1582.)

Maurin v. Hall, 276 Wis.2d 18, 688 N.W.2d 655, 2004 WL 2423848, 2004 WI 129, October 29, 2004 (No. 00-0072.)

Village of Trempealeau v. Mikrut, 276 Wis.2d 25, 688 N.W.2d 656, 2004 WL 2554873, 2004 WI 135, October 29, 2004 (Nos. 03-0534, 03-0535, 03-0536, 03-0537, 03-0538, 03-0539, 03-0540, 03-0541, 03-0542, 03-0543, 03-0544, 03-0545, 03-0546, 03-0547, 03-0548, 03-0549, 03-0550, 03-0551, 03-0552, 03-0553.)

State v. Jackson, 276 Wis.2d 32, 689 N.W.2d 59 (Table), 2004 WL 2577547, 2004 WI 138, October 29, 2004 (No. 02-0947-CR)

Milwaukee County Circuit Court, 2002 – 04

As a circuit court judge, a total of 2 substitutions and 10 recusals were filed against me.

Substitutions were filed in State v. Theodore Kinski, No. 03CT014748, and State v. Michael Hendricks, 04CM001379.

I recused myself in the following cases:

State v. Steve Johnson, 02CM009008 (do not recall why);
State v. Charles F. Weso, 02CM010320 (I was previously his lawyer);
State v. Jorje Bolas-Martinez, 02CM010321 (codefendant in previous case);
State v. Tadeusz Wyluda, 02CT007232 (court interpreter);
City of Milwaukee v. Inez Griffin, 02TR027796 (sat on cases at municipal court);
City of Milwaukee v. Inez Griffin, 02TR027797 (sat on cases at municipal ct);
State of Wisconsin v. Wendell L. Langston, 03CM002377 (do not recall why);
State of Wisconsin v. Ivan Jerome Stanfield, 03CM003874 (do not recall why);
State of Wisconsin v. Will J. Sherard, 03CM006215 (sat on cases at municipal ct);
State of Wisconsin v. Natasha L. Guard, 04CM000140 (knew victim).
[*Except for the last case, the reason for recusal was not listed on CCAP.*]

City of Milwaukee Municipal Court, 1992 – 2002

During my 10 year stint in municipal court, out of app. 466,000 total case filings, a total of 39 substitutions were filed against me, and I recused myself from a total of 135 cases. I do not have case names or case numbers for these matters.

15. Public Office, Political Activities and Affiliations:

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

I have held no public offices, other than judicial offices.

I have had no unsuccessful nominations for appointed office.

I was an unsuccessful candidate for the following elective offices:

- Defeated for retention on the Wisconsin Supreme Court on April 1, 2008
- Defeated for election to the Wisconsin Supreme Court in April, 2000
- Defeated for election to Milwaukee County Circuit Court in April, 1989

- 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.

During the 1984 presidential election, Wisconsin had an open primary system. In order to vote in the Democratic primary for candidate Jesse Jackson, I had to register as a Democrat. To the best of my knowledge, that is the only time I ever joined a political party.

During the 2008 campaign for president, I gave a speech on behalf of then Senator Barack Obama in Madison, Wisconsin on September, 25, 2008.

During the 1980 presidential election, I supported the John Anderson/Patrick Lucey ticket, and spoke on behalf of their campaign in a couple of forums against then-Senator Gary George (on behalf of President Jimmy Carter) and Joe Gold (on behalf of Candidate Ronald Reagan). I held no formal position with the campaign.

In addition, while I have supported a number of judicial candidates for election to various courts, I have held no formal roles in any other campaigns.

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

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

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

I did not serve as a clerk to a judge.

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

I have not practiced alone.

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

1978 – 1979
Independence Bank of Chicago
7936 S Cottage Grove Ave
Chicago, IL 60619
Attorney

1979 – 1988

Wisconsin State Public Defender, Appellate Division
735 N. Water St. - Suite 912
Milwaukee, WI 53202-4116
Assistant State Public Defender

1988 – 1992

Wisconsin State Public Defender, Trial Division
819 N. 6th St. - RM 908
Milwaukee, WI 53203-1606
Deputy First Assistant (March 12, 1990 to December, 1990)
Staff Supervisor (December 1989 to March 12, 1990)
Assistant State Public Defender (1/88 – 12/89; 12/90 – 6/92)

1991 – 1992

Marquette University Law School
1103 West Wisconsin Avenue
Milwaukee, Wisconsin 53201
Adjunct Assistant Professor of Law

1997 – Present

National Judicial College
Judicial College Building/MS 358
Reno, NV 89557
Non-paid Volunteer Faculty (Criminal Procedure)

October 1, 2008 to present

University of Wisconsin Law School
975 Bascom Mall
Madison, WI 53706-1399
Justice in Residence; Senior Visiting Lecturer

- 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.

No.

b. Describe:

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

I was basically a criminal practitioner during my legal career, prior to becoming a judge. From 1979 to 1988, my practice was exclusively appellate in nature at the State Public Defender's Office, Appellate Division. I argued approximately 20 cases in the Wisconsin Supreme Court, handled hundreds of cases in the Wisconsin Court of Appeals, and argued one case in the United States Supreme Court. In 1988, I transferred to the Trial Division, where I worked until I was appointed to the Municipal Court Bench in 1992. While in the Trial Division, I was appointed to serve as a staff supervisor, and then appointed as a deputy first assistant, for approximately one year between December 1989 and December 1990. In addition to handling a full trial load, I supervised 14 attorneys and 3 clerical staff members during that period. From 1991 – 92, I was also hired as an adjunct assistant professor of law at Marquette Law School, in charge of the State Public Defender Clinic.

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

I represented indigent criminal defendants convicted of major felonies, misdemeanors, juvenile violations, and termination of parental rights cases during the years I worked in the appellate division. After my transfer to the trial division, I represented indigent defendants charged with major felonies and criminal misdemeanors prior to and during trial.

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

- i. Indicate the percentage of your practice in:

- 1. Federal courts: 5%
- 2. state courts of record: 90%
- 3. other courts:
- 4. administrative agencies: 5%

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 10%
- 2. criminal proceedings: 90%

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

In the trial division, I represented hundreds of individuals charged with a variety of crimes, including homicides. I tried over 25 criminal cases as either sole or

lead counsel in Milwaukee County Circuit Court. I also second-chaired 2 trials while I was still in the appellate division after winning those cases on appeal.

i. What percentage of these trials were:

1. jury: 80%
2. non-jury: 20%

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

I handled the appeal of Ellis T. McCoy before the Court in 1988 in *McCoy v. Wisconsin Court of Appeals*, 486 U.S. 489 (1988). I drafted and filed the briefs in that matter, and then argued the case before the court in January, 1988. We lost the appeal 5 – 3, in an opinion written by Justice Stevens, with a dissent authored by Justice Brennan, joined by Justices Marshall and Blackmun.

In 2008, I was one of 27 former State Supreme Court Justices that signed an amicus brief in *Caperton v. A.T. Massey Coal Co.*, No. 08 – 22, decided June 8, 2009.

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. One of the most significant cases that I handled on appeal was *McCoy v. Court of Appeals*, 486 U.S. 489 (1988), affirming *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90 (1987). I was appointed to represent Ellis T. McCoy for purposes of appeal on January 24, 1984, following his conviction for second degree sexual assault and abduction. Following my review of the record, I determined that any appeal would be frivolous and lack arguable merit and that a No Merit brief should be filed on behalf of Mr. McCoy as part of my motion to withdraw, and if my request was granted, the conviction would be affirmed on the merits. My client authorized me to challenge the constitutionality of the Wisconsin Rule, and the rule was upheld in a 4-3

decision of the Wisconsin Supreme Court after an original action was filed. The United States Supreme Court affirmed the ruling in a 5-3 decision, authored by Justice John Paul Stevens, who incidentally created the Wisconsin Rule being challenged when he sat on the Seventh Circuit Court of Appeals. The principal counsel for the State of Wisconsin was then Attorney General and former Judge Donald J. Hanaway, Brown County Circuit Court, 100 South Jefferson Street, P.O. Box 23600, Green Bay, Wisconsin 54350, (414) 448-4116 (now deceased). Assistant Attorney General Stephen W. Kleinmaier, 17 West Main St., P.O. Box 7857, Madison, Wisconsin 53707 (608) 266-8908, argued the case on behalf of the State.

2. Perhaps the most satisfying case I handled on appeal was *State v. Ronald Fillyaw*, 1977 CF 9490. Mr. Fillyaw was convicted of First Degree Murder following a trial by jury in 1977. Attorney Jack Schairer of the Appellate Division of the State Public Defender's Office handled the direct appeal of the conviction through federal habeas corpus, and in 1986 asked me to take over the case. On December 8, 1986, I filed a motion for a new trial alleging newly discovered evidence that was granted following a lengthy evidentiary hearing on March 3, 1987. The new evidence established that blood found at the scene of the offense and previously linked to the defendant was not his. In addition, I found an underground switchboard operator who had taken a call from the killer that described the crime scene on the night of the murder, and the switchboard operator indicated that the killer's voice did not match my client's voice. After the new trial motion was granted, I kept the case in order to retry it in Circuit Court. Ultimately, all charges were dismissed by the judge granting the new trial motion on January 14, 1989, former judge, the Honorable Gary A. Gerlach, Gunta & Reak SC, 219 N Milwaukee St Fl 5, Milwaukee, WI 53202-5818, Phone: (414) 291-7979. Ronald Fillyaw was released after ten years in prison. The prosecutor who took the case for post-conviction purposes was Douglas J. Simpson, 821 West State Street, #412, Milwaukee, Wisconsin 53233, (414) 278-5268. Mr. Simpson was supervised on this case by E. Michael McCann, former District Attorney for Milwaukee County.
3. In *Shaffer v. Clusen*, 518 F. Supp. 963 (E.D. Wis. 1981), reversing sub nom *State v. Shaffer*, 96 Wis 2d 531, 292 N.W.2d 370 (Ct. App. 1980), the Honorable Myron Gordon granted defendant's petition for habeas corpus relief, holding that a confession obtained nine minutes after defendant invoked his right to remain silent violated his Fifth Amendment privilege against self-incrimination. Defendant was convicted in 1978 of second-degree murder, and after relief was granted, I negotiated a reduction of the charge to a lesser form of homicide. The attorney representing the State of Wisconsin was Sally Wellman, Assistant Attorney General, 17 West Main St., P.O. Box 7857, Madison, Wisconsin 53707 (608) 266-1677.
4. The most bizarre case I handled on appeal was *State v. Gustafson*, 121 Wis. 2d 459, 359 N.W.2d 920 (1985), reversing 119 Wis. 2d 676, 350 N.W.2d 653 (1984) which reversed 112 Wis. 2d 369, 332 N.W.2d 848 (Ct. App. 1983). The defendant, along with his son, was convicted of two counts of second-degree sexual assault following the sexual assault of two fourteen year old girls in 1980. I was appointed to handle defendant's appeal, and after the conviction was affirmed in a published decision by the Court of Appeals, things

got interesting in the State Supreme Court. Three of the Justices: Heffernan, Abrahamson, and Bablitch, agreed that Mr. Gustafson's right to a unanimous verdict had been violated by the trial court's failure to instruct the jury that it had to unanimously agree on the specific act committed in order to reach a verdict. The rest of the Court disagreed. Justice Ceci, however, felt that the trial court erred in admitting into evidence the son's juvenile adjudication and no contest plea and voted to reverse on that basis. Because a majority of the court agreed that the case should be reversed, a new trial was ordered. On rehearing, the Court reversed itself and reinstated the conviction. The court joined with Indiana's Supreme Court as the only courts in the nation to rule that a majority must agree not only on a mandate, but also on the reasoning in order to reverse a judgment. Handling the case for the State of Wisconsin, Assistant Attorney General Stephen W. Kleinmaier, 17 West Main St., P.O. Box 7857, Madison, Wisconsin 53707 (608) 266-8908.

5. In *State v. Ruiz*, 118 Wis. 2d 177, 347 N.W.2d 352 (1984), reversing 113 Wis. 2d 273, 335 N.W.2d 892 (Ct. App. 1983), I was appointed to represent co-defendant Antonio Servantez, who had been convicted of first-degree murder in 1981. The Court of Appeals agreed that the conviction had to be reversed in order to stop a continuing pattern of non-disclosure of evidence by the Kenosha County District Attorney's Office. 113 Wis. 2d at 286. The Wisconsin Supreme Court disagreed and reinstated the conviction, ruling that while the prosecutor did breach his duty to disclose evidence, the error did not deprive the defendant of a fair trial. Representing the State of Wisconsin was then Assistant Attorney General James H. McDermott, 17 West Main St., P.O. Box 7857, Madison, Wisconsin 53707, (608) 266-3859, now deceased.
6. In *State v. Billings*, 110 Wis. 2d 661, 329 N.W.2d 192 (1983), I was appointed to represent the defendant following his convictions for second-degree sexual assault and trespassing. The case was certified to the Supreme Court, and in a 4-3 ruling, the conviction was reversed. The defendant had invoked his right to counsel during interrogation, but was not provided one. The confession was introduced at trial, and the defendant was convicted. The question certified by the Court of Appeals was whether the harmless error standard can apply where a statement is taken after a defendant's right to counsel under *Miranda* was disregarded. Because the Court ruled that the error in this case was not harmless, it declined to reach the question, and a new trial was ordered. Representing the State of Wisconsin was Assistant Attorney General Kirbie Knutson, 2731 Park Pl, Evanston, IL 60201-1336, now suspended.
7. In *State v. Harvey*, 139 Wis. 2d 353, 407 N.W.2d 235 (1987), I was appointed to represent the defendant on appeal following his conviction in 1985 for kidnapping while armed, three counts of armed robbery and seven counts of first-degree sexual assault. The defendant pled guilty to four counts and entered an *Alford* plea to seven counts, even though he did not have the benefit of a plea bargain. Assistant District Attorney Daniel Blinka recommended 100 years, regardless of whether the case went to trial or not. Defense Attorney Alan Eisenberg showed defendant a slip of paper with the number 75 on it and said it came from the judge. Following his pleas, the Court sentenced the defendant to 100 years. The Court of Appeals reversed the conviction, but the Supreme

Court reinstated the conviction, ruling that any misrepresentations made by counsel did not induce the plea. In a habeas corpus proceeding, District Court Judge Terence Evans ruled that defendant's right to counsel had been violated because his lawyer had lied to him, but refused to grant the petition because any error was harmless. Then Assistant Attorney General Michael R. Klos represented the State of Wisconsin on appeal, 17 West Main St., P.O. Box 7857, Madison, Wisconsin 53707 (608) 266-1684, now deceased.

8. In *State v. McCrossen*, 129 Wis. 2d 277, 385 N.W.2d 161 (1986), I was appointed to represent the defendant following her 1984 conviction for operating under the influence of an intoxicant. In affirming the conviction, the Court ruled that suppression of blood alcohol tests was a proper sanction for violation of defendant's statutory right to an alternative blood test. The Court, however, ruled that dismissal was not a proper sanction. Representing the State of Wisconsin were Kirbie Knutson (suspended) and Daniel J. O'Brien, 17 West Main St., P.O. Box 7857, Madison, Wisconsin 53707 (608) 266-9620.
9. In *State v. Cartagena*, 99 Wis. 2d 657, 299 N.W.2d 872 (1982), the Supreme Court unanimously reversed defendant's conviction for attempted first-degree murder in 1978. The Court found three errors in reaching its conclusion. To begin with, the trial court erred in failing to submit jury instructions on the lesser included offense of endangering safety. Other wrongs evidence was wrongly introduced against the defendant. And finally, another jury instruction misstated the law. Representing the State of Wisconsin was then Assistant Attorney General Jerome Schmidt, 20 Hickory Forest Dr, Hilton Head Island, SC 29926-2669, Phone: (843) 342-5761.
10. I also represented Carlton Pugh, 1979CF6615, who sat in prison for 1 ½ years for a crime he did not commit. He was originally charged with an armed robbery in Shorewood, but cleared of a homicide in Milwaukee that occurred the same night. Ultimately, I located a look-alike, Eugene Brown, who was later charged and convicted of both offenses. I do not recall who handled the case for the State. The case was dismissed on April 30, 1981.
18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In addition to the items described above having to do with my activities at the ABA, Southwestern Law School's Moot Court Competition, and the National Judicial College, I am the former President and former Legislative Trustee of the Wisconsin Municipal Judges Association. As Legislative Trustee for the Wisconsin Municipal Judges Association, I testified before various legislative committees on behalf of the association when matters were scheduled that affected the municipal court system statewide.

I am a former member of the Board of Directors for Legal Action of Wisconsin. I also served as Chair of the Individual Rights and Responsibilities Section of the State Bar of Wisconsin, served on the Board of the Criminal Law Section for the State Bar, and served on the Criminal Benchbook Committee for the Wisconsin Supreme Court as a circuit court judge.

I participate in activities for improving the law, the legal system and the profession. Specifically, I serve on the American Bar Association Standing Committee on Judicial Independence, with a term that ends in 2011. We meet at least 4 times a year, and have been involved with a number of issues that would protect judicial independence and the integrity of the justice system.

In October, 2008, I was a panelist for Sandra Day O'Connor Project at Georgetown Law School with respect to Corporate Citizenship and the Courts. In December, 2008, I was on a panel at the Minnesota Judicial Conference that addressed judicial elections. I also recently chaired the Alcohol and Beverage Licensing Task Force for the Common Council for the City of Milwaukee. The Task Force was created to make recommendations in response to abuses that took place with respect to aldermanic privilege and the licensing process for the City. I also serve on the Board of Directors for Community Brainstorming Conference, an organization which holds monthly forums that address issues of relevance to the African-American Community in Milwaukee, and many of those issues concern improving the legal system. I also speak at a number of churches and community organizations on issues of justice and the legal system. I serve on the final bench of Southwestern Law School's Moot Court Competition.

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 currently teach full time at the University of Wisconsin Law School. My title is Justice in Residence, and my rank is Senior Visiting Lecturer. I am in my second year of a two year appointment, where I teach one course in Selected Problems in Constitutional Law, Fourth, Fifth and Sixth Amendments, and one course in Appellate Advocacy. I also gave 4 lectures in the Law in Action Series to app. 50 undergraduates concerning the topics of judging and judicial review. I also gave one undergraduate lecture on the court system to assist a professor who was seriously ill during the fall semester of 2008. I finally teamed with Justice N. Patrick Crooks of the Wisconsin Supreme Court to present a lecture to all of the law school's contracts classes last semester about the Economic Loss Doctrine.

I am currently a permanent volunteer faculty member at the National Judicial College in Reno, Nevada, where I have taught Criminal Procedure and Criminal Procedure – advanced since 1997 in the Special Courts Program. From approximately 1999 to 2002, I also taught a class in Judicial Philosophy in the same program. In 2008, I was appointed to serve on the Faculty Council for NJC, with a term that ends December 31, 2009. I also

taught criminal procedure, guilty pleas, and confession law to a group of Nigerian Judges in 2006 or 2007.

From 1991 – 92, I directed the State Public Defender Clinic at Marquette Law School, where my official rank was assistant adjunct professor of law. I taught Criminal Procedure.

I have also conducted many lectures and programs in Criminal Law and Procedure, Appellate Practice, and Municipal Law (see 12d.).

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.

Future benefits I expect to receive are my retirement benefits from the State of Wisconsin. I have 19.88 years of service, with a balance of Employee Required Contributions totaling \$279,508.67 as of January 1, 2009.

I also expect to receive retirement benefits from the City of Milwaukee. I have 10.1083 years of service, with a balance of \$108,666.91 as of December 31, 2008. I am not eligible to retire until February 14, 2014.

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 anticipate continuing as a volunteer faculty member at the National Judicial College member unless the law or code of ethics precludes my doing so. I have no other plans for any outside employment.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. Potential Conflicts of Interest:

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

My oldest daughter, Jessica M. Butler, just graduated from the University of Wisconsin Law School on May 15, 2009. She works in the Milwaukee office of Peterson, Johnson & Murray. I would disqualify myself from any matter handled by her, should she appear in the District Court for the Western District of Wisconsin. I own no stocks or bonds (other than 3 U.S. Treasury bonds), so I expect no likely conflict issues to arise in that regard. I would, of course, be mindful of any matter in which an acquaintance or friend were appearing as a party to the action, provide full disclosure to all parties, determine whether the parties were seeking recusal, and determine whether I could be fair in handling the matter. I foresee no other likely areas of concern.

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

Should an issue arise that does not require automatic disqualification or recusal, I would disclose any potential concerns to the parties of the matter that is pending before the court, and after hearing from the parties, determine whether the potential conflict is one that could, and should be waived. In all cases I will follow the Code of Conduct for United States Judges.

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

I am not currently engaged in the practice of law, as I teach full time at the University of Wisconsin Law School.

I do participate in activities for improving the law, the legal system and the profession. Specifically, I serve on the American Bar Association Standing Committee on Judicial Independence, with a term that ends in 2011. We meet at least 4 times a year, and have been involved with a number of issues that would protect judicial independence and the integrity of the justice system. In October, I was a panelist for Sandra Day O'Connor Project at Georgetown Law School with respect to Corporate Citizenship and the Courts. In December, I was on a panel at the Minnesota Judicial Conference that addressed judicial elections. I recently chaired the Alcohol and Beverage Licensing Task Force for the Common Council for the City of Milwaukee. The Task Force was created to make recommendations in response to abuses that took place with respect to aldermanic

privilege and the licensing process for the City. I also serve on the Board of Directors for Community Brainstorming Conference, an organization which holds monthly forums that address issues of relevance to the African-American Community in Milwaukee, and many of those issues concern improving the legal system. I also speak at a number of churches and community organizations on issues of justice and the legal system. I serve on the final bench of Southwestern Law School's Moot Court Competition. Finally, I serve as volunteer faculty at the National Judicial College, where I teach criminal procedure to judges from across the country and around the world.

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.

A total of 13 people applied for the vacancy created by the retirement of District Court Judge John Shabaz. I filed my application with the Wisconsin Federal Nominating Commission on Friday, February 27, 2009. The eleven-member commission, which has been making recommendations since 1979, screened applicants and interviewed potential candidates before submitting its final recommendations to the state's two U.S. Senators, Herb Kohl and Russ Feingold. Senators Kohl and Feingold appointed 4 members each to the commission, 2 members were selected by the State Bar, and it was chaired by the Dean of UW Law School. I was interviewed by the Commission on March 29, 2009, and my name was ultimately forwarded as one of 4 finalists to the Senators on March 30, 2009. I was interviewed by Senator Kohl in Milwaukee on April 13, 2009, and by Senator Feingold in Madison on April 15, 2009. My name was one of two forwarded by the Senators to the President on May 20, 2009. Thereafter, I was contacted by staff from the Department of Justice regarding nomination paperwork. I have had subsequent conversations with staff from the Department regarding that paperwork and the nomination process. I was formally interviewed at the Department of Justice on August 31, 2009. The interview was chaired by Thomas Perrelli, with staff from the Department of Justice and from the White House Counsel's Office. My nomination was submitted to the Senate on September 30, 2009.

- 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. I was asked questions by each Senator that asked about my personal views concerning a number of issues, but it was understood by me and by them that as a District Court Judge, any personal views that I might have would not control my decisions on the bench. My job would be to interpret and apply the law, not make it. I would look to the Constitution of the United States and the legislation enacted by Congress, based upon prior precedent established by the United States Supreme Court and the Seventh Circuit Court of Appeals.

AFFIDAVIT

I, Louis Bennett Butler, Jr., do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

October 9, 2009
(DATE)


(NAME)

Diana A. Hegyeli
(NOTARY)



January 18, 2010

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

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on September 30, 2009 as a United States District Judge for the Western District of Wisconsin. With the following exceptions, I certify that the information contained in that document is, to the best of my knowledge, true and accurate. I am forwarding the updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire.

Q. 8 – Honors and Awards – I was elected to the Fellows of the American Bar Foundation, January, 2010.

Q. 9 – Bar Associations – Faculty Council for the National Judicial College in Reno, Nevada (2008 – 09).

Q. 21 – Outside Commitments During Court Service – In addition to my previous response, if I am confirmed by the Senate and appointed by the President, I would in all likelihood have to finish teaching the Appellate Advocacy Class this semester at UW Law School as an adjunct assistant professor. No one else has taught this course in years.

Q. 26a – Selection Process – In addition to my previous response, my nomination was reported by the Committee to the Senate on December 3, 2009, and my nomination was returned to the President on December 24, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read 'Louis B. Butler, Jr.', with a long, sweeping flourish extending to the right.

Louis B. Butler, Jr.

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

Louis B. Butler, Jr.
Justice in Residence



September 13, 2010

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

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on September 30, 2009, to be United States District Judge for the Western District of Wisconsin, and I also have reviewed my updated responses in my January 18, 2010 letter to you. Incorporating the additional information listed below, I certify that the information contained in those documents is, to the best of my knowledge, true and accurate.

Question 12d. I have given the following talks that I am supplying as updated responses:

I was a judge at the Southwestern Law School Moot Court Competition Final Bench on March 28, 2010. I have no notes, transcript or recording.

I was an instructor at the National Judicial College in Reno, Nevada, from August 8 – 13, 2010, for the program on Advanced Special Courts. I used the same outline I used in previous years for this series, which I supplied to the Committee with my initial Questionnaire. The 2010 update is attached.

I was a judge at the University of Wisconsin Law School Evans Moot Court Competition Final Bench on March 28 & 29, 2010. I have no notes, transcript, or recording.

Question 13. I was appointed by the Chief Justice of Wisconsin to serve as a Circuit Court Reserve Judge on December 15, 2008, a position I continue to hold. I have heard no cases in this capacity.

Question 19. In January 2010, I gave 3 lectures as part of the Law in Action Series to undergraduate students at the University of Wisconsin in my capacity as Justice in Residence at the University of Wisconsin Law School. I delivered the same presentation I used in previous years for this series, which I supplied to the Committee with my initial Questionnaire. I also participated in an Appellate Practice Seminar at the University of Wisconsin Law School on March 16, 2010. I have no notes transcript, or recording.

Louis B. Butler, Jr.
Justice in Residence

University of Wisconsin Law School • 275 Bascom Mall, Room 7103 • Madison, Wisconsin 53706-1399



I also am forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,

A handwritten signature in black ink, appearing to read 'Louis B. Butler, Jr.', written over a horizontal line.

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

Louis B. Butler, Jr.
Justice in Residence

University of Wisconsin Law School • 975 Bascom Mall, Room 7103 • Madison, Wisconsin 53706-1399

CRIMINAL LAW AND PROCEDURE
UPDATE 2010
Efrain Alvarado
Louis Butler, Jr.

1) *BERGHUIS, WARDEN v. THOMPCKINS*, 560 U.S. ____ (2010)

Facts: After advising respondent Thompkins of his rights, in full compliance with *Miranda v. Arizona*, Detective Helgert and another Michigan officer interrogated him about a shooting in which one victim died. At no point did Thompkins say that he wanted to remain silent, that he did not want to talk with the police, or that he wanted an attorney. He was largely silent during the 3-hour interrogation, but near the end, he answered “yes” when asked if he prayed to God to forgive him for the shooting. He moved to suppress his statements, claiming that he had invoked his Fifth Amendment right to remain silent, that he had not waived that right, and that his inculpatory statements were involuntary. The trial court denied the motion.

Decision: Thompkins’ silence during the interrogation did not invoke his right to remain silent. A suspect’s *Miranda* rights must be invoked “unambiguously.” Thompkins waived his right to remain silent when he knowingly and voluntarily made a statement to police. Such a waiver may be “implied” through a “defendant’s silence, coupled with an understanding of his rights and a course of conduct indicating waiver.” (Note: The “exercise” of the right to remain silent is not the same as “invoking” the right.)

2) *GRAHAM v. FLORIDA*, 560 U.S. ____ (2010)

Facts: Petitioner Graham was 16 when he committed armed burglary and another crime. Under a plea agreement, the Florida trial court sentenced Graham to probation and withheld adjudication of guilt. Subsequently, the trial court found that Graham had violated the terms of his probation by committing additional crimes. The trial court adjudicated Graham guilty of the earlier charges, revoked his probation, and sentenced him to life in prison for the burglary. Because Florida has abolished its parole system, the life sentence left Graham no possibility of release except executive clemency. He challenged his sentence under the Eighth Amendment’s Cruel and Unusual Punishments Clause, but the State First District Court of Appeal affirmed.

Decision: The Clause does not permit a juvenile offender to be sentenced to life in prison without parole for a nonhomicide crime.

3) *PADILLA v. KENTUCKY*, 559 U.S. ____ (2010)

Facts: Petitioner Padilla, a lawful permanent resident of the United States for over 40 years, faces deportation after pleading guilty to drug-distribution charges in Kentucky. In postconviction proceedings, he claims that his counsel not only failed to advise him of this consequence before he entered the plea, but also told him not to worry about deportation since he had lived in this country so long. He alleges that he would have gone to trial had he not received this incorrect advice. The Kentucky Supreme Court denied

Padilla postconviction relief on the ground that the Sixth Amendment's effective-assistance-of-counsel guarantee does not protect defendants from erroneous deportation advice because deportation is merely a "collateral" consequence of a conviction.

Decision: Because counsel must inform a client whether his plea carries a risk of deportation, Padilla has sufficiently alleged that his counsel was constitutionally deficient. Whether he is entitled to relief depends on whether he has been prejudiced, a matter not addressed by the Court.

4) *MARYLAND v. SHATZER*, 559 U.S. ____ (2010)

Facts: In 2003, a police detective tried to question respondent Shatzer, who was incarcerated at a Maryland prison pursuant to a prior conviction, about allegations that he had sexually abused his son. Shatzer invoked his *Miranda* right to have counsel present during interrogation, so the detective terminated the interview. Shatzer was released back into the general prison population, and the investigation was closed. Another detective reopened the investigation in 2006 and attempted to interrogate Shatzer, who was still incarcerated. Shatzer waived his *Miranda* rights and made inculpatory statements. The trial court refused to suppress those statements, reasoning that *Edwards v. Arizona*, 451 U. S. 477, did not apply because Shatzer had experienced a break in *Miranda* custody prior to the 2006 interrogation. Shatzer was convicted of sexual child abuse. The Court of Appeals of Maryland reversed, holding that the mere passage of time does not end the *Edwards* protections, and that, assuming, *arguendo*, a break-in-custody exception to *Edwards* existed, Shatzer's release back into the general prison population did not constitute such a break.

Decision: Because Shatzer experienced a break in *Miranda* custody lasting more than two weeks between the first and second attempts at interrogation, *Edwards* does not mandate suppression of his 2006 statements. *Edwards* created a presumption that once a suspect invokes the *Miranda* right to the presence of counsel, any waiver of that right in response to a subsequent police attempt at custodial interrogation is involuntary. But where a suspect has been released from custody and returned to his normal life (in custody) for some time before the later attempted interrogation, there is little reason to think that his change of heart has been coerced. Because the *Edwards* presumption has been established by opinion of the Court, it is appropriate for the Court to specify the period of release from custody that will terminate its application. The Court concluded that the appropriate period is 14 days, which provides ample time for the suspect to get reacclimated to his normal life, consult with friends and counsel, and shake off any residual coercive effects of prior custody. Shatzer's release back into the general prison population constitutes a break in *Miranda* custody. Lawful imprisonment imposed upon conviction does not create the coercive pressures produced by "investigative" custody that justify *Edwards*.

5) *PRESLEY v. GEORGIA*, 558 U.S. ____ (2010)

Facts: After a jury trial, petitioner Eric Presley was convicted of a cocaine trafficking offense. The conviction was affirmed by the Supreme Court of Georgia. Before selecting a jury in Presley's trial, the trial court noticed a lone courtroom observer. The court

explained that prospective jurors were about to enter and instructed the man that he was not allowed in the courtroom and had to leave that floor of the courthouse entirely. The court then questioned the man and learned he was Presley's uncle. Presley's counsel objected to "the exclusion of the public from the courtroom," but the court explained, "[t]here just isn't space for them to sit in the audience." Presley claimed his Sixth and Fourteenth Amendment right to a public trial was violated when the trial court excluded the public from the *voir dire* of prospective jurors.

Decision: The conclusion that trial courts are required to consider alternatives to closure even when they are not offered by the parties is clear not only from the Court's precedents but also from the premise that "[t]he process of juror selection is itself a matter of importance, not simply to the adversaries but to the criminal justice system." The public has a right to be present whether or not any party has asserted the right. Trial courts are obligated to take every reasonable measure to accommodate public attendance at criminal trials. Nothing in the record shows that the trial court could not have accommodated the public at Presley's trial.

6) *MELLENDEZ-DIAZ v. MASSACHUSETTS*, 129 S.Ct. 2527 (2009)

Facts: At petitioner's state-court drug trial, the prosecution introduced certificates of state laboratory analysts stating that material seized by police and connected to petitioner was cocaine of a certain quantity. As required by Massachusetts law, the certificates were sworn to before a notary public and were submitted as *prima facie* evidence of what they asserted. Petitioner objected, asserting that *Crawford v. Washington*, required the analysts to testify in person. The trial court disagreed, the certificates were admitted, and petitioner was convicted. The Massachusetts Appeals Court affirmed, rejecting petitioner's claim that the certificates' admission violated the Sixth Amendment.

Decision: The admission of the certificates violated petitioner's Sixth Amendment right to confront the witnesses against him. The certificates here are affidavits, which fall within the "core class of testimonial statements" covered by the Confrontation Clause. They asserted that the substance found in petitioner's possession was, as the prosecution claimed, cocaine of a certain weight—the precise testimony the analysts would be expected to provide if called at trial. Not only were the certificates made, as *Crawford* required for testimonial statements, "under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial," but under the relevant Massachusetts law their *sole purpose* was to provide *prima facie* evidence of the substance's composition, quality, and net weight. Petitioner was entitled to "be confronted with" the persons giving this testimony at trial.

7) *MONTEJO v. LOUISIANA*, 129 S.Ct. 2079 (2009)

Facts: At a preliminary hearing required by Louisiana law, petitioner Montejó was charged with first-degree murder, and the court ordered the appointment of counsel. Later that day, the police read Montejó his rights under *Miranda v. Arizona*, and he agreed to go along on a trip to locate the murder weapon. During the excursion, he wrote an inculpatory letter of apology to the victim's widow. Upon returning, he finally met his court-appointed attorney. At trial, his letter was admitted over defense objection, and he

was convicted and sentenced to death. Affirming, the State Supreme Court rejected his claim that the letter should have been suppressed under the rule of *Michigan v. Jackson*, 475 U. S. 625, which forbids police to initiate interrogation of a criminal defendant once he has invoked his right to counsel at an arraignment or similar proceeding. The court reasoned that *Jackson*'s prophylactic protection is not triggered unless the defendant has actually requested a lawyer or has otherwise asserted his Sixth Amendment right to counsel; and that, since Montejo stood mute at his hearing while the judge ordered the appointment of counsel, he had made no such request or assertion.

Decision: *Michigan v. Jackson* is overruled. Under *Miranda*, any suspect subject to custodial interrogation must be advised of his right to have a lawyer present. Under *Edwards*, once such a defendant "has invoked his [*Miranda*] right," interrogation must stop. And under *Minnick v. Mississippi*, no subsequent interrogation may take place until counsel is present. These three layers of prophylaxis are sufficient. On the other side of the equation, the principal cost of applying *Jackson*'s rule is that crimes can go unsolved and criminals unpunished when uncoerced confessions are excluded and when officers are deterred from even trying to obtain confessions. Montejo was nonetheless given an opportunity to contend that his letter of apology should have been suppressed under the *Edwards* rule. He did not pursue an *Edwards* objection, because *Jackson* offered broader protections, but the decision here changed the legal landscape.



5 January 2011

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

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on September 30, 2009, to be United States District Judge for the Western District of Wisconsin, and I also have reviewed my updated responses in my January 18, 2010 and September 13, 2010 letters to you. Incorporating the additional information listed below, I certify that the information contained in those documents is, to the best of my knowledge, true and accurate.

Question 12d. On November 17, 2010, I served on a discussion panel regarding the University of Wisconsin Law School's Appellate Practice Clerkship Program. I have no notes, transcript, or recording of the panel discussion.

Question 19a. In my original questionnaire response, I stated that I teach full time at UW, teaching classes in both Appellate Advocacy and Selected Problems in Constitutional Law, Fourth, Fifth and Sixth Amendments. That has not changed during the nomination process. I taught both classes in each of the following semesters: Spring 2009; Fall 2009; Spring 2010; Fall 2010; and I will be teaching in the Spring 2011 semester. I also taught the Constitutional Law class during the summer of 2010. I have attached the most recent syllabus updates for each class that I have used and have not, since their preparation, updated them. In addition, on November 18, 2010, I gave a one hour lecture to all of the Law School's Contracts Classes concerning the Economic Loss Doctrine. Except for minor edits, I used the same materials that were previously referenced in 19a when I gave this lecture with Justice N. Patrick Crooks, and have attached a copy of my PowerPoint presentation. Justice Crooks did not participate this time, and Retired Wisconsin Court of Appeals Judge Charles Dykman joined me in the presentation.

I also am forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Louis B. Butler, Jr.
Justice in Residence

University of Wisconsin Law School • 975 Bascom Mall, Room 7103 • Madison, Wisconsin 53706-1399



Sincerely,

A handwritten signature in black ink, appearing to read 'Louis B. Butler, Jr.', with a large, sweeping flourish extending to the right.

Louis B. Butler, Jr.

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

Louis B. Butler, Jr.
Justice in Residence

University of Wisconsin Law School • 975 Bascom Mall, Room 7103 • Madison, Wisconsin 53706-1399

**APPELLATE ADVOCACY I
FALL SEMESTER 2010
COURSE SYLLABUS**

- 1) Trial Court Preparation – 15 Tips for Protecting the Record; Berry, Ch. 1
- 2) Decision to Appeal and Technicalities of Appeal – Berry, Chs. 1-2; Scalia, Chs. 22-27
- 3) Ethical Considerations – Berry, Ch. 3
- 4) Art of Persuasion – Scalia, Chs. 1-21; Berry, Ch. 4
- 5) Preparation for Brief Writing – Scalia, Chs. 28-32; Berry, Ch. 5
- 6) Writing Opening Brief – Scalia, Chs. 33-54; Berry, Ch. 6
- 7) Response and Reply Briefs – Berry, Ch. 7
- 8) Preparation for Oral Argument – Scalia, Chs. 55-71, Berry, Ch. 7
- 9) Oral Argument Presentation – Scalia, Chs. 72-111, Berry, Chs. 8-9
- 10) Taking it to a Higher Court (Petitions for Review and Cert.) – Berry, Ch. 11; Scalia, Chs. 112-115
- 11) Visit Supreme Court to View Live Oral Argument, and then Classroom Discussion about the Argument
- 12) Guest Lecturers – Practitioners; Greg Weber, AAG; Marla Stephens, ASPD; Colleen Ball, ASPD (Dates TBD)
- 13) Guest Lecturers – Court of Appeals Judges; Paul Higginbotham and Charles Dykman; (Dates TBD)
- 14) Guest Lecturers – Supreme Court Commissioners; Nancy Kopp and Coleen Kennedy (Dates TBD)
- 15) Review Record of Pending Supreme Court Case, and Draft a Court of Appeals Brief Based on Issues You Identify from the Record in the Case (Brief Due December 2, 2010)

***CONSTITUTIONAL LAW: FOURTH, FIFTH AND SIXTH
AMENDMENTS***

Justice Louis Butler
Summer 2010

COURSE OUTLINE

I. INTRODUCTION

- A. Course Overview
- B. Requirements

II. FIFTH AMENDMENT

- A. Privilege against self-incrimination: The Fifth Amendment guarantees that "no person shall be compelled in any criminal case to be a witness against himself..."
- B. Voluntariness
 - 1. Defendant's statements
 - a. *Brown v. Mississippi*, 297 U.S. 278 (1936).
 - b. *Mincey v. Arizona*, 437 U.S. 385 (1978) (skip Part I and the Marshall concurrence)
 - c. *Rogers v. Richmond*, 365 U.S. 534 (1961)
 - d. *Colorado v. Connelly*, 479 U.S. 157 (1986)
 - e. *State v. Jerrell C.J.*, 2005 WI 105, 283 Wis. 2d 145, 699 N.W.2d 110 (skip Part V of the majority, Part I

of the Abrahamson concurrence, and the concurring/dissenting opinions of Prosser and Roggensack)

C. Right to Counsel: Before Charging

1. Pre-*Miranda* cases

a. *Crooker v. California*, 357 U.S. 433 (1958)

b. *Cicenia v. Lagay*, 357 U.S. 504 (1958)

2. The law changes

a. *Escobedo v. Illinois*, 378 U.S. 478 (1964)

(invocation)

b. *Miranda v. Arizona*, 384 U.S. 436 (1966)

(warnings)

c. *Johnson v. New Jersey*, 384 U.S. 719 (1966)

(*Miranda* and *Escobedo* explained)

d. *Berghuis v. Thompkins*, ___ U.S. ___,

[http://www.supremecourt.gov/opinions/09pdf/08-](http://www.supremecourt.gov/opinions/09pdf/08-1470.pdf)

[1470.pdf](http://www.supremecourt.gov/opinions/09pdf/08-1470.pdf) (2010) (invocation of right to remain

silent)

3. Right to counsel post-*Miranda*

a. Custody

i. *Yarborough v. Alvarado*, 541 U.S. 652

(2004)

b. Interrogation

- i. *Rhode Island v. Innis*, 446 U.S. 291 (1980)
 - c. Invocation of Right
 - i. *Davis v. United States*, 512 U.S. 452 (1994)
(skip Scalia concurrence)
 - ii. *Edwards v. Arizona*, 451 U.S. 477 (1981)
 - iii. *Arizona v. Roberson*, 486 U.S. 675 (1988)
 - iv. *State v. Hambly*, 2008 WI 10, 307 Wis. 2d 98, 745 N.W.2d 48
 - d. Constitutional or Prophylactic?
 - i. *Michigan v. Tucker*, 417 U.S. 433 (1974)
(please skip Stewart and Brennan concurrences)
 - ii. *Dickerson v. United States*, 530 U.S. 428 (2000) (please skip Part III of Scalia's dissent)
 - iii. Fn 48
 - e. Fruit of the Poisonous Tree
 - i. *United States v. Patane*, 542 U.S. 630 (2004)
 - ii. *Missouri v. Seibert*, 542 U.S. 600 (2004)

III. SIXTH AMENDMENT

A. Right to Counsel

1. Initiation of Court Proceedings

- a. *Brewer v. Williams*, 430 U.S. 387 (1977)
- b. *Massiah v. United States*, 377 U.S. 201 (1964)
- c. *McNeil v. Wisconsin*, 501 U.S. 171 (1991)
- d. *Rothgery v. Gillespie County, Texas*, 128 S.Ct. 2578 (2008)
- e. *Texas v. Cobb*, 532 U.S. 162 (2001)
- f. *Montejo v. Louisiana*, 129 S.Ct. 2079 (2009)

2. Public Expense

- a. *Gideon v. Wainwright*, 372 U.S. 335 (1963)

3. Ineffective Assistance of Counsel/Conflicts

- a. *Strickland v. Washington*, 466 U.S. 668 (1984)
- b. *United States v. Cronic*, 466 U.S. 648 (1984)
- c. *Wheat v. United States*, 486 U.S. 153 (1988)
- d. *State v. Machner*, 92 Wis.2d 797, 804, 285 N.W.2d 905, 908 (Ct.App.1979)
- e. SPD system
 - i. Caseload
 - ii. \$40 per hour for appointments
 - iii. Contracting
 - iv. County Appointments for those who do not meet the SPD indigency standards

B. Guilty Pleas

1. *Boykin v. Alabama*, 395 U.S. 238 (1969)
2. *State v. Lackershire*, 2007 WI 74, 301 Wis. 2d 418, 734 N.W.2d 23 (2007)
3. *North Carolina v. Alford*, 400 U.S. 25 (1970)

C. Trial Rights

1. Confrontation

a. Cross-examination

b. Hearsay

- i. *Mattox v. United States*, 156 U.S. 237 (1895)

- ii. *Dutton v. Evans*, 400 U.S. 74 (1970)

c. Face-to-face

- i. *Ohio v. Roberts*, 448 U.S. 56 (1980)

- ii. *Crawford v. Washington*, 541 U.S. 36 (2004)

- iii. *Davis v. Washington*, 547 U.S. 813 (2006)

- iv. *Giles v. California*, 128 S.Ct. 2678 (2008)

- v. *Melendez-Diaz v. Massachusetts*, 129 S.Ct. 2527 (2009)

2. Jury Trial

a. When

b. Where

- i. Venue

ii. Vicinage

c. Speedy

i. Trial

ii. Prosecution

d. Juveniles

i. *McKeiver v. Pennsylvania*, 403 U.S. 528

(1973)

3. Complete Defense/Compulsory Process

a. *Washington v. Texas*, 388 U.S. 14 (1967)

b. *Rock v. Arkansas*, 483 U.S. 44 (1987)

c. *Ake v. Oklahoma*, 470 U.S. 68 (1985)

4. Public Trial

IV. FOURTH AMENDMENT

A. Government Action

1. *State v. Payano-Roman*, 2006 WI 47, 290 Wis.2d 380, 714
N.W.2d 548 (2006)

B. Reasonable Expectation of Privacy (standing)

1. *Rakas v. Illinois*, 439 U.S. 128 (1978)

2. *Minnesota v. Olson*, 495 U.S. 91 (1990)

3. *Minnesota v. Carter*, 525 U.S. 83 (1998)

4. *Brendlin v. California*, 551 U.S. 249 (2007)

5. *Simmons v. United States*, 390 U.S. 377 (1968)

C. Exclusionary Rule

1. *Weeks v. United States*, 232 U.S. 383 (1914) (basic rule)
 - a. *Hoyer v. State*, 180 Wis. 407, 193 N.W. 89 (1923)
(Wisconsin basic rule, no need to read for class)
2. *Mapp v. Ohio*, 367 U.S. 643 (1961) (applied to states)
3. *Wong Sun v. United States*, 371 U.S. 471 (1963) (derivative evidence or “fruit of the poisonous tree”)
4. *Leon v. United States*, 468 U.S. 897 (1984) (good faith)
5. *Murray v. United States*, 487 U.S. 533 (1988) (independent source)
6. *Nix v. Williams*, 467 U.S. 431 (1984) (inevitable discovery)
7. *Herring v. United States*, 129 S.Ct. 695 (2009) (police negligence, good faith)

D. Scope

1. Defined concepts
 - a. “Search:” privacy interest
 - i. *Kyllo v. United States*, 533 U.S. 27 (2001)
 - b. “Seizure:” possessory interest
 - i. *Katz v. United States*, 389 U.S. 347 (1967)
 - ii. *United States v. Mendenhall*, 446 U.S. 544 (1980)
 - iii. *Florida v. Royer*, 460 U.S. 491 (1983)
 - c. “Probable Cause:” warrant
 - i. *Illinois v. Gates*, 462 U.S. 213 (1983)

- d. "Probable Cause:" without warrant
 - i. *Whitely v. Warden*, 401 U.S. 560 (1971)
- e. "Reasonable"
 - i. *Whren v. United States*, 517 U.S. 806 (1996)
 - ii. *Safford Unified School District #1 v. Redding*, 129 S. Ct. 2633 (2009)

2. Searches

- a. With a warrant
 - i. When required
 - 1. *Payton v. New York*, 445 U.S. 573 (1980)
 - 2. *Welsh v. Wisconsin*, 466 U.S. 740 (1984)
 - ii. Reliability of informants
 - 1. *Franks v. Delaware*, 438 U.S. 154 (1978)
 - iii. Breadth and intensity
 - 1. *Ybarra v. Illinois*, 444 U.S. 85 (1979)
 - 2. *Arizona v. Hicks*, 480 U.S. 321 (1987)
 - iv. Knock/no knock

1. *Richards v. Wisconsin*, 520 U.S. 385
(1997)

2. *Hudson v. Michigan*, 547 U.S. 586
(2006)

v. Anticipatory

1. *United States v. Grubbs*, 547 U.S. 90
(2006)

b. Without a warrant

i. Reasonableness

1. *Chimel v. California*, 395 U.S. 752
(1969)

ii. Cars

1. *California v. Acevedo*, 500 U.S. 565
(1991)

iii. Garbage

1. *California v. Greenwood*, 486 U.S.
35 (1988)

iv. Open fields/cartilage

1. *Oliver v. United States*, 466 U.S. 170
(1984)

2. *United States v. Dunn*, 480 U.S. 294
(1987)

3. *Florida v. Riley*, 488 U.S. 445 (1989)

v. Plain View

1. *Coolidge v. New Hampshire*, 403 U.S. 443 (1971)
2. *Horton v. California*, 496 U.S. 128 (1990)
3. *Arizona v. Hicks*, *supra*

vi. Incident to arrest

1. *New York v. Belton* 453 U.S. 454 (1981)
2. *Knowles v. Iowa*, 525 U.S. 113 (1998)
3. *Arizona v. Gant*, 129 S.Ct. 1710 (2009)

vii. Inventory

1. *Illinois v. Lafayette*, 462 U.S. 640 (1983)

viii. Consent

1. *Matlock v. United States*, 415 U.S. 164 (1974)
2. *Illinois v. Rodriguez*, 497 U.S. 177 (1990)
3. *Georgia v. Randolph*, 547 U.S. 103 (2006)

4. *Bumper v. North Carolina*, 391 U.S. 543 (1968)

ix. Exigent Circumstances

1. *Mincey v. Arizona*, *supra*
2. *Payton v. New York*, *supra*
3. *Brigham City, Utah, v. Stuart*, 547 U.S. 398 (2006)
4. *State v. Sanders*, 2008 WI 85, 311 Wis.2d 257, 752 N.W.2d 713 (Wis. 2008).

x. Borders

1. *United States v. Flores-Montano*, 541 U.S. 149 (2004)

3. Seizures

a. Stops

i. Articulate suspicion

1. *Terry v. Ohio*, 392 U.S. 1 (1968)
2. *Florida v. Bostick*, 501 U.S. 429 (1991)
3. *Arizona v. Johnson*, 129 S.Ct. 781 (2009)

ii. Profiling/pretext

1. *Whren v. United States*, 517 U.S. 806
(1996)

iii. Plain feel

1. *Terry v. Ohio*, *supra*
2. *Minnesota v. Dickerson*, 508 U.S.
366 (1993)
3. *State v. Sumner*, 2008 WI 94, 312
Wis.2d 292, 752 N.W.2d 783, 794
(Wis. Jul 15, 2008)

iv. Duration

1. *United States v. Place*, 462 U.S. 696
(1983)

v. Dogs

1. *Illinois v. Caballes*, 543 U.S. 405
(2005)
2. *State v. Arias*, 2008 WI 84, 311
Wis.2d 358, 752 N.W.2d 748 (July
9, 2008)

vi. No *Miranda* warning

1. *Brown v. Illinois*, 422 U.S. 590
(1975)
2. *Berkemer v. McCarty*, 468 U.S. 420
(1984)

vii. Flight

1. *California v. Hodari D.*, 499 U.S. 621 (1991)
2. *Illinois v. Wardlow*, 528 U.S. 119 (2000)

viii. Anonymous tips

1. *Alabama v. White*, 496 U.S. 325 (1989)
2. *Florida v. J.L.*, 529 U.S. 266 (2000)

ix. Roadblocks

1. *Michigan Dept. of Police v. Sitz*, 496 U.S. 444 (1990)
2. *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000)
3. *Illinois v. Lidster*, 540 U.S. 419 (2004)

x. Common carriers

1. *Florida v. Bostick*, *supra*,
2. *United States v. Drayton*, 536 U.S. 194 (2002)

b. Arrests

i. Probable cause

1. *Devenpeck v. Alford*, 543 U.S. 146
(2004)
2. *Gerstein v. Pugh*, 420 U.S. 103
(1975)
3. *County of Riverside v. McGlaughlin*,
500 U.S. 44 (1991)

ii. Non-jail offenses

1. *Knowles v. Iowa*, *supra*
2. *Atwater v. City of Lago Vista*, 532
U.S. 318 (2001)
3. *Virginia v. Moore*, 128 S.Ct. 1598
(2008)

iii. Status offenses

1. *Robinson v. California*, 370 U.S. 660
(1962)

iv. Body invasion

1. *Schmerber v. California*, 384 U.S.
757 (1966)
2. *Winston v. Lee*, 470 U.S. 753 (1985)
3. *Ferguson v. City of Charleston*, 532
U.S. 67 (2001)
4. *State v. Payano-Roman*, *supra*

EVERYTHING YOU DIDN'T WANT TO KNOW ABOUT THE ECONOMIC LOSS DOCTRINE

Justice Louis Butler (ret.)
Justice N. Patrick Crooks

1

Chief Justice Shirley Abrahamson

- “Like the ever-expanding, all-consuming alien life form portrayed in the 1958 B-movie classic *The Blob*, the economic loss doctrine seems to be a swelling globule on the legal landscape of this state. . . .
- “At the current pace, the economic loss doctrine may consume much of tort law if left unchecked.”

2

*SUNNYSLOPE GRADING, INC. V. MILLER,
BRADFORD AND RISBERG, INC.*, 148 Wis. 2d
910, 437 N.W.2d 213 (1978)

- Whether a commercial purchaser of construction equipment, which is covered by a manufacturer's warranty, has a cause of action against the manufacturer in negligence or strict liability to recover lost profits and the costs of repairing the equipment when the manufacturer did not breach its warranty and the equipment failure did not cause personal injury or damage to other property.

3

SUNNYSLOPE

- Ch. 402 of the UCC sets forth the rights and remedies between two commercial parties of equal bargaining power.
- Court adopts sec. 402.719(3):
Consequential damages may be limited or excluded unless unconscionable
Limitation of consequential damages for personal injury is prima facie unconscionable

4

SUNNYSLOPE

- The question of product value and quality is intended to be addressed by warranties and the Uniform Commercial Code. Contract law, the law of warranty and the Uniform Commercial Code are designed to allow the parties to allocate the risk of product failure.

5

SUNNYSLOPE

- “We hold that a commercial purchaser of a product cannot recover solely economic losses from the manufacturer under negligence or strict liability theories, particularly, as here, where the warranty given by the manufacturer specifically precludes the recovery of such damages.”

6

SUNNYSLOPE

- Products liability cases
- Commercial transactions under UCC
- Commercial parties of equal bargaining power bound by warranty (contract)
- Privity of Contract
- Limitation or exclusion of negligence or strict liability claims for pure economic loss where parties both agree

7

DAANEN & JANSSEN, INC., v. CEDARAPIDS, INC., 216 Wis.2d 395, 573 N.W.2d 842 (1998)

- In absence of privity, does ELD bar remote commercial purchaser from recovering economic losses from manufacturer under theories of strict liability and negligence?

8

DAANEN RULING

- ELD is judicially created doctrine that commercial purchaser of a product cannot recover from manufacturer under tort theories of negligence or strict products liability
- Includes direct and consequential economic loss

9

DAANEN Ruling

- ELD does not include commercial purchaser's claims based on:
 - personal injury
 - damage to property other than the product
 - Economic loss claims in combination with noneconomic losses

10

DAANEN Ruling

- Policies underlying ELD
 - 1) Maintain distinction between tort law and contract law
 - 2) Protect commercial parties' freedom to allocate economic risk by contract
 - 3) Encourage the party best situated to assess the economic loss, the commercial purchaser, to assume, allocate or insure against that risk

11

DAANEN Ruling

- Contract law—duties depend on terms of agreement
- Tort law—depends on obligations imposed by law
 - Designed to protect society from physical harm to person or property
 - Society's interest in human life health and safety demands protections from defective products and imposes duty on manufacturers

12

DAANEN Ruling

- Manufacturer bargains with distributor
- Distributor bargains with purchaser
- Each agreement takes into account risks to be allocated between each party with respect to that agreement
- Daanen could have bargained for warranty against manufacturer
- Ruling limited to purely economic loss

13

DAANEN Ruling

- “We conclude that the economic loss doctrine precludes a commercial purchaser from recovering in tort from a manufacturer for solely economic losses, regardless of whether privity of contract exists between the parties.” (Par. 28)
- “The economic loss doctrine bars a remote commercial purchaser from recovering economic losses from a manufacturer under tort theories of strict liability and negligence, even in the absence of privity.” (Par. 38)

14

FROM *SUNNYSLOPE* TO *DAANEN*

- Products liability cases (same)
- Commercial transactions (same)
- Commercial parties (same)
- Privity of Contract not required or necessary (new)
- No tort liability for pure economic loss? (new, no longer limited to negligence or strict liability?)

15

STATE FARM INS. v. FORD MOTOR CO., 225 Wis.2d 305, 592 N.W.2d 201 (1999)

- ELD expanded to cover consumer goods (defective ignition switch in auto purchased “as is” that caused a fire)—Commercial parties and transactions no longer required
- ELD applies to exclude all tort liability—No longer limited to negligence and strict liability theories of tort
- Equal bargaining power no longer necessary
- Dissent by two justices (would not extend to consumer groups)

16

WAUSAU TILE v. COUNTY CONCRETE CORP., 226 Wis.2d 235, 593 N.W.2d 445 (1999)

- Duty to defend insurance case
- Warranty to repair or replace defective cement—No other liability
- Defective cement caused personal injury and property damage to third parties
- Court states that when product is deemed to be an integrated whole, damage is to product itself

17

INS. CO. OF NORTH AMERICA v. CEASE ELECTRIC, 276 Wis.2d 361, 688 N.W.2d 462 (2004)

- ELD does not apply to claims for negligent supervision of services
- Contract to repair ventilation system was one for services, not product
- UCC does not apply to service contracts, so ELD does not apply

18

JULY 8, 2005
THE ELD EXPLOSION

- *Kaloti v. Kellogg Sales Co.*, 283 Wis.2d 555, 699 N.W.2d 205 (2005)
- *Grams v. Milk Products, Inc.*, 283 Wis.2d 511, 699 N.W.2d 167 (2005)
- *Linden v. Cascade Stone Co.*, 283 Wis.2d 606, 699 N.W.2d 189 (2005)

19

***Kaloti v. Kellogg Sales Co.*, 283
Wis.2d 555, 699 N.W.2d 205
(2005)**

- Is there a duty to disclose facts between sophisticated parties to a commercial transaction when past practice materially changes?
- Are intentional misrepresentations barred under the ELD?

20

Kaloti v. Kellogg Sales Co., 283
Wis.2d 555, 699 N.W.2d 205
(2005)

- Duty to disclose in business transaction
 - 1) fact is material to transaction
 - 2) party with knowledge of fact knows other party to enter transaction with mistake as to that fact
 - 3) fact within knowledge of one party
 - 4) mistaken party would reasonably expect disclosure

21

Kaloti v. Kellogg Sales Co., 283
Wis.2d 555, 699 N.W.2d 205
(2005)

- Prior Wis. Law recognizes that ELD bars misrepresentation based in negligence and strict responsibility
- Court now adopts narrow fraud in the inducement exception to ELD where fraud is extraneous to the contract

22

Kaloti v. Kellogg Sales Co., 283
Wis.2d 555, 699 N.W.2d 205
(2005)

- Three elements to court's fraud in inducement exception:
 - Intentional misrepresentation
 - Misrep. occurred before the fraud
 - Fraud extraneous to rather than interwoven through contracts; i.e. fraud did not relate to quality or characteristics of goods for which the parties contracted
- Three justices would conclude that fraud does not fall within ELD

23

Grams v. Milk Products, Inc., 283
Wis.2d 511, 699 N.W.2d 167
(2005)

- Defective feed (milk replacer) kills a third of the calves feeding on it
- "Integrated system" concept does not translate well to all property damage
- Court adopts the "disappointed expectations" concept grounded in contract, to determine "other property" exception to ELD.
- Calves are no longer "other property."
- Two justices reject "disappointed expectations" doctrine, one withdraws

24

Linden v. Cascade Stone Co., 283
Wis.2d 606, 699 N.W.2d 189
(2005)

- Construction contract to build house; subcontractors used; roof and stucco leaks
- No contract between purchasers and subcontractors
- Trial court applies ELD to bar recovery against subcontractors who worked on roof and stucco

25

Linden v. Cascade Stone Co., 283
Wis.2d 606, 699 N.W.2d 189
(2005)

- When contract involves products and services, court adopts “predominant purpose test” to determine if ELD applies
- Predominant purpose here was to construct a house
- ELD applied even though no privity between purchaser and subcontractors
- Roof and stucco were “integrated systems,” not other property
- Three justices dissent

26

***STUART v. WEISFLOG*, 308
Wis.2d 103, 746 N.W.2d 762
(2008)**

- ELD does not apply to statutory claims
 - Includes statutory claims for misrepresentation
- Under predominant purpose test, an architectural contract was one for services
- A second contract for remodeling based on first contract was also for services under the predominant purpose test
- ELD does not bar recovery under tort for contracts predominantly for services

27

***WICKENHAUSER v. LEHTINEN*,
302 Wis.2d 41, 734 N.W.2d 855**

- Main issue in this case centered on fn5
 - “For example, in a recent case, *Linden v. Cascade Stone Co.*, 2005 WI 113, 283 Wis.2d 606, 699 N.W.2d 189, we concluded that a contract to construct residential real estate was subject to the economic loss doctrine; and therefore, the Lindens were required to proceed on contract claims rather than tort claims. *Id.* at ¶¶ 17, 25.
- *Linden*, however, concluded that the contract was for a product, a new house, not for real estate

28

WICKENHAUSER v. LEHTINEN,
302 Wis.2d 41, 734 N.W.2d 855

- Secondary issue not discussed by court is that contract was for a loan
- Loans are not products, and therefore are not subject to the ELD
 - See Nov. 17, 2008 Wisconsin Law Journal, “Economic Loss Doctrine Evolves,” by Atty. Tim Barber

29

BELOW v. NORTON, 751 N.W.2D 351

- Home purchaser alleges sellers knew of defects in sewer line prior to sale, and sellers misrepresented their knowledge to induce home purchase
- Does ELD apply to purchase of real estate?

30

BELOW v. NORTON, 751 N.W.2D 351

- ELD applies to noncommercial real estate transactions
- ELD bars common law claims for intentional misrepresentation for failure to disclose broken sewer line
- ELD does not bar statutory claims
- Decision relies on fn5 of *Wickenhauser* ruling
- *Query*: What is the product?

31

Where are we now?

- ELD no longer limited to commercial transactions
- ELD now applies to consumer transactions
- ELD now applies to real estate transactions
- ELD no longer limited to UCC
- Privity no longer required
- Equal bargaining power no longer necessary
- ELD not limited to negligence or strict liability
- Narrow fraud in inducement rule adopted
- "Integrated systems" doctrine adopted
- "Disappointed expectations" doctrine adopted
- ELD does not apply to statutory claims
- ELD does not apply to service contracts

32

Future of Tort Law?