Responses of Bernice B. Donald
Nominee to be United States Circuit Judge for the Sixth Circuit
to the Written Questions of Senator Jeff Sessions

1. During your tenure as Chair of the American Bar Association's Commission on Opportunities for Minorities in the Profession, you signed a number of resolutions sponsored by the Commission, including a resolution to the ABA's constitution endorsing affirmative action, specifically to "endorse legal remedies and voluntary actions that take into account as a factor race, national origin or gender to eliminate or prevent discrimination or otherwise serve a compelling interest."

a. Please list the "legal remedies" and "voluntary actions" referenced by the resolution.

Response: The resolution was authored and submitted by the Section of Individual Rights and Responsibilities. The Commission was a co-sponsor. I did not sign the resolution, nor cast a vote. The Chair of the Commission does not vote on resolutions, except in case of a tie. Support of Resolution #127 reflected the majority vote of the members of the Commission, a diverse entity. The phrases "endorse legal remedies" and "voluntary actions that take into account as a factor race, national origin, or gender to eliminate or prevent discrimination" refer to the Supreme Court precedent of *Adarand v. Pena*, 515 U.S. 200 (1995), and other precedents listed in the body of the report which accompanies the resolution.

Resolution #127 did not amend the ABA's Constitution. Amendment 11-4 amended the Association's Constitution to institutionalize diversity by providing dedicated seats for minorities and women on the ABA's Nominating Committee and Board of Governors. This action was prompted by the Report of the ABA's Governance Committee.

b. Please list the other "compelling interest[s]" referenced by the resolution.

Response: I did not draft the resolution, and therefore cannot speak for the drafters. The text of the resolution does not contain the words "compelling interests."

2. Also during your tenure as Chair, you signed a resolution adopted by the Commission that stated "that the American Bar Association opposes efforts (i) to restrict or deny any child in the United States equal access to public education, health care, foster care, or social services on the basis of the child's citizenship or immigration status or the immigration or citizenship status of the child's parents and (ii) to require that persons providing such services verify immigration status."

a. Please explain the basis for your opposition to any effort to assure that persons illegally present in the United States do not force American

taxpayers to pay for their education, health care, foster care or social services.

Response: I do not believe the Supreme Court has addressed all of these issues. I will follow Supreme Court and Sixth Circuit precedent. That resolution reflected the position of the Commission, a diverse entity which takes action by majority vote. The Chair of the Commission does not vote on resolutions except in case of a tie, but ABA policy requires submission of resolutions under the name of the Chair.

b. Do you believe that illegal immigrants have a right, whether based on the Constitution or on some other legal principle, to access these government benefits on an equal footing with United States citizens or aliens lawfully present in the United States?

Response: The Supreme Court has not addressed all of these issues. As with all matters, I will follow Sixth Circuit and Supreme Court precedent.

3. At your hearing, Senator Schumer asked you about remarks you made while on a panel at the American Bar Foundation Fellows Research Seminar in 2008. You testified that your "statement" as reported by the American Bar Foundation was taken out of context and "was related to a particular case that [you] worked on when [you] sat by designation at the court of appeals."

a. Which statement was taken out of context?

Response: I have never held a vastly different view of the summary judgment standard. The statement was erroneously attributed to me.

Before my hearing, I made a good faith effort to be responsive in my answers to the Senate Judiciary Questionnaire and to provide all requested materials. After conducting a diligent search and making an exhaustive inquiry of persons and entities involved, I was advised by the American Bar Foundation ("ABF") that there was no transcript or tape of this panel discussion. Although I did not recall making this statement because it is not something that I have ever believed, I assumed that the writer misinterpreted my remarks. It did not occur to me that the article might have misattributed another speaker's remarks to me. Rather, I assumed that the statement must have been in reference to a specific case that I heard while sitting by designation. That is why I answered as I did during my hearing before the Senate Judiciary Committee. Then as now, I maintained that I adhere to Supreme Court and Sixth Circuit precedent in analyzing summary judgment motions in all cases.

After my hearing, in preparing my responses to subsequent written questions, I conducted a search to find any case to which I might have been referring and determined that I sat by designation in three cases involving review of summary judgment in discrimination cases: *Still v. Wilkinson*, 194 F.3d 1314 (Table), 1999 WL 801577 (6th Cir. 1999) (affirming the district court's grant of summary judgment to defendants in a religious discrimination case); *Hatcher v. General Electric*, 208 F.3d 213 (Table), No. 98-6304, 2000 WL 245515 (6th Cir. 2000) (affirming the district court's grant of summary judgment to defendants in an age discrimination case); and *E.E.O.C. v. Watkins Motor Lines, Inc.*, 463 F.3d 436 (6th Cir. 2006) (affirming the district court's grant of summary judgment to defendant as to a claim under the Americans with Disabilities Act).

The week of March 24, 2011, I again contacted the ABF and requested that they explore all sources to try and find a transcript or tape. On Monday April 4, 2011, a representative of the ABF advised that, after checking with the office of the ABF Fellows, she had located a tape recording of the panel discussion as well as a transcript. After reviewing this information, the ABF representative has concluded, and I have confirmed, that the "vastly different standard" statement was made by the appellate court judge on the panel, not by me.

The misattributed quote appears on page 53 of the transcript and reads as follows:

> I have to comment on one area of the summary judgments. I joined an appellate court of all white men and I have to say that our view of what evidence supports summary judgment, of what . . . what evidence is needed, was vastly different. Most . . . they hadn't experienced discrimination, but some of these situations that came up, I mean, I felt clearly that they should go forward and it was like, no, this was not something that should be litigated at all.

This statement was made by Judge Miriam Shearing, a former justice on the Supreme Court of Nevada and the first woman to join that court. Unfortunately, the contract transcriber to whom the tape was sent misattributed the quote to me and, because the author of the article was working from the transcript, the error was perpetuated.

I am including, for the benefit of the Committee, the original tape recording of the panel discussion, a CD to which I have transferred the tape recording, and the unofficial transcript. Katharine Hannaford, Senior Writer and Grants Officer of the ABF, has listened to the recording and corrected the relevant pages. I have also attached the corrected pages 53 and 54 for the Committee's benefit.

Ms. Hannaford has informed me that a correction will be posted on the *Researching Law* section of the ABF website and also printed in the next hard copy issue of *Researching Law*.

b. Please provide the citation to the case to which you referred and copies of any and all opinions rendered by the court of appeals in that case.

Response: Not Applicable.

c. Please provide a transcript of the panel discussion.

Response: Please see attached.

4. You co-authored an article entitled, "Immigrants and other Cultural Minorities as Non-Traditional Plaintiffs: Culture as a Factor in Determining Tort Damages," in which you suggest that courts should consider the plaintiff's culture in tort suits. You quote from the book, *The Culture Defense*, which argues that courts should consider a plaintiff's cultural background in tort suits, because that background may cause a plaintiff to be "more adversely affected by the error [or harm was magnified] [and] hence is entitled to a larger award." You also wrote that "to disallow consideration of culture in tort cases would risk the denial of true justice to entire segments of a pluralistic society" and that tort law "may serve, perhaps unexpectedly, as a force for greater cultural sensitivity and inclusion in the nation." You conclude that, "[i]t is certain that, as society becomes more globalized, more pluralistic, and more complex, courts hearing tort cases will increasingly find themselves on the front lines of public policy, cultural anthropology and the law."

a. Please explain how "to disallow consideration of culture in tort cases would risk the denial of true justice to entire segments of a pluralistic society."

Response: That article was written to draw attention to issues that judges will face in a complex multicultural society. I highlighted select cases to discuss the ways in which courts across the country have applied existing tort law to the measurement of damages and the determination of whether a plaintiff had stated a cause of action, when the plaintiff's culture might have been raised as a factor. I do not believe that the meaning of the law varies depending on a person's race, gender, ethnicity, or culture.

b. Please define the term "true justice" as you use it in the article.

Response: I understand that term simply to mean impartially applying the law to the facts and determining the appropriate relief, if any, that is reasonable, consistent with the law, and appropriate to the facts of the case. Both plaintiffs and defendants are entitled to justice by the same legal standards.

c. Please explain how tort law "may serve . . . as a force for greater cultural sensitivity and inclusion in the nation."

Response: A properly functioning legal system produces benefits for society at large, including assimilation of diverse populations under the same legal standards.

d. **Please explain the role of a court "on the front lines of public policy."**

Response: Courts should not engage in making public policy since policy issues are reserved to the legislative and executive branches. However, Courts are on the front lines of public policy in that they must apply and interpret law made by policy makers.

e. **Please explain the role of a court "on the front lines" of "cultural anthropology."**

Response: Sometimes individuals from unfamiliar cultures interact with the legal system. For example, in assessing credibility, eye contact is frequently a key component for the fact finder to consider in determining truthfulness. In some cultures, however, avoiding eye contact with an authority figure is a sign of respect.

5. **Please provide a brief summary of and citations for each death penalty case in which you participated as a judge, and, to the extent available, copies of opinions issued in those cases.**

Response: Listed below are summaries of death penalty prosecutions in which I have participated as a judge.

<u>Federal Death Penalty-Eligible Prosecutions</u>:

1. ***United States v. Bryan Lakeith Wilson et al.*** (2:01-cr-20041):

The United States indicted four defendants on federal bank robbery, firearms, and murder charges. The indictments arose out of an armed robbery in Lakeland, Tennessee on September 18, 2000. During the course of the robbery, one of the defendants shot and killed a bank customer. The United States filed a notice of intent to seek the death penalty, and the Court issued orders on various constitutional issues.

<u>Outcome</u>: The United States ultimately negotiated pleas with each defendant as follows: Wilson, life plus twenty five years; Shorter, life plus five years; Villery, forty years. The Government made a 5k1.1 motion for five years as to Guss, the lookout man.

2. ***United States v. Aaron Haynes et al.*** (2:01-cr-20247) (reported decision available at 269 F. Supp. 2d 970 (W.D. Tenn. 2003); *see also United States v. Haynes*, 265 F. Supp. 2d 914 (W.D. Tenn. 2003); *United States v. Haynes*, 242 F. Supp. 2d 540 (W.D. Tenn. 2003)):

This was a death penalty prosecution of individuals for a murder that resulted in the course of a bank robbery. The Court ruled on various motions in the case, including whether to declare the death penalty constitutional.

Outcome: The lead defendant, Haynes, proceeded to trial as a capital case. The jury found Haynes guilty on all counts. At the penalty phase, the jury was unable to reach a unanimous verdict on a sentence of death. The Court imposed a sentence of life imprisonment plus ten years. Maxwell and Johnson negotiated pleas and are now serving life sentences plus a term of years thereafter. In an appeal by Terance Johnson, the Sixth Circuit affirmed his sentence. *United States v. Johnson*, 416 F.3d 464 (6th Cir. 2005), *cert. denied*, 546 U.S. 1191 (2006). Johnson subsequently filed a pro se habeas petition, which the Court denied on October 30, 2009 and which is now on appeal. *See Terance Johnson v. United States of America*, Case No. 2:07-cv-02014 (W.D. Tenn.).

3. ***United States v. Sonny Shields et al.*** (2:04-cr-20254):

The United States indicted four defendants—Sonny Shields, Shannon Shields, and two other individuals—for federal crimes arising out of a carjacking, kidnapping, and murder. The Government elected to pursue the death penalty as to Shannon and Sonny Shields only. After an evidentiary hearing, based on Supreme Court precedent, the Court found Shannon Shields ineligible for the death penalty because of mental retardation. *See* 18 U.S.C. § 3596(c); *Atkins v. Virginia*, 36 U.S. 304 (2002).

Outcome: Shannon Shields was convicted following a jury trial in 2009 and sentenced in January 2010 to life plus fifteen years in prison. His appeal to the Sixth Circuit is currently pending. One non-capital co-defendant previously pled guilty, offered testimony against Shannon Shields at trial, and is awaiting sentencing. The matter of *USA v. Sonny Shields* is still a "death eligible" case. The other non-capital defendant is awaiting trial to follow disposition of *USA v. Sonny Shields*.

4. ***United States v. Danny Winberry*** (2:04-cr-20281):

The defendant in this case was indicted on nine counts relating to a contract murder of an elderly woman. Count 1 charged him with conspiring to use interstate commerce facilities in the commission of murder for hire in violation of 18 U.S.C. § 1958. Count 2 alleged arson in contravention of 18 U.S.C. § 844(i). Although the case was a death eligible case, the government negotiated a non-capital disposition. In addition, the government moved for a reduction in the defendant's sentence pursuant to § 5k1.1 of the United States Sentencing Guidelines and 18 U.S.C. § 3553(e).

Outcome: The Court held a sentencing hearing on June 23, 2009 and determined that the defendant had an advisory Guideline range of 360 months to life imprisonment. However, because Count 1 carried a statutorily mandated sentence of death or life imprisonment, the Court found that the defendant's Guideline sentence was life imprisonment. The government subsequently moved for a downward departure pursuant to § 5k1.1 of the United States Sentencing Guidelines and 18 U.S.C. § 3553(e), which the Court granted. The defendant was sentenced to 360 months in prison. The sentence was affirmed on appeal.

5. ***United States v. Dale Mardis*** (2:08-cr-20021) (reported decision at 670 F. Supp. 2d 696 (W.D. Tenn. 2009):

This case is a civil rights prosecution of a Caucasian defendant for the race-based murder and dismemberment of an African-American code enforcement officer. The defendant pled nolo contendere in state court to second degree murder. The United States filed a notice of intent to seek the death penalty. Subsequently, the Department of Justice allowed the case to be resolved as a non-capital case. The case involved a number of constitutional questions, including 1) whether the prosecution was untimely, 2) whether the Dual Sovereignty Exception to the Double Jeopardy Clause applied and thus permitted the federal prosecution, and 3) whether the Constitution's separation of powers clause was violated by a Congressman allegedly contacting the Department of Justice to advocate for the initiation of federal charges.

<u>Outcome</u>: This defendant pled guilty on the eve of trial and is awaiting sentencing. On an interlocutory appeal filed by the defendant, the Sixth Circuit affirmed the Court's finding that the Double Jeopardy Clause does not bar this prosecution. *United States v. Mardis*, 600 F.3d 693 (6th Cir. 2010), *cert. denied*, __ S. Ct. __, 2010 WL 3321494 (Oct. 4, 2010). No appellate opinions have yet been issued addressing the Court's other rulings.

6. Please provide a brief summary of and citations for each case in which you sentenced a defendant to a sentence below that which was called for by the U.S. Sentencing Guidelines. Please include the sentencing range called for under the guidelines and the sentence that you issued.

Response: The U.S. District Court, Western District of Tennessee statistical division reports that as of March 24, 2011, I have sentenced or otherwise disposed of 2307 defendants. I contacted the United States Sentencing Commission ("USSC") and requested sentencing data on all defendants sentenced by me since my entry on duty, January 21, 1996. The Sentencing Commission reports that they are unable to retrieve data prior to October 1998. From October 1998 to the present, I have determined that there have been non-government sponsored, non-guideline sentences imposed as to 149 defendants. The requested summary is attached.

7. Please provide a brief summary of and citations for each case in which you suppressed evidence found during a search by law enforcement officers.

Response: To answer your question, the Court's information technology staff executed a search of all criminal cases assigned to me and identified 380 cases in which motions to suppress were filed. The Court granted motions to suppress in 29 of those 380 cases. The United States appealed only 3 of these 29 orders. Summaries of and citations to those 29 cases are included below.

1. ***United States v. James Elkins and Carol Elkins*** (2:96-cr-20152), 95 F. Supp. 2d 796 (W.D. Tenn. 2000), *aff'd in part, rev'd in part*, 300 F.3d 638 (6th Cir. 2002):

This case arose from the search and seizure of hydroponic marijuana growing in several buildings owned by Defendants. The district court addressed two issues. The Court first addressed the sufficiency and validity of search warrants as to certain buildings which were based on a tip from a citizen characterized as a "confidential informant." Next, the Court addressed the warrantless search of another building where the officers 1) used thermal imaging to measure the waste heat radiating from the building, 2) went onto the property, disregarding a "no trespassing" sign, and 3) looked through an inch-wide hole around a protruding PVC pipe to see into the building and observe the growing marijuana.

I found that the officers had entered into the "curtilage" of the building around which there existed a zone of privacy. Moreover, I found that the officers' use of thermal imaging to gain probable cause, constituted an impermissible search in violation of the Fourth Amendment. While the Sixth Circuit did not address this issue, the Supreme Court later ruled in *Kyllo v. United States*, 533 U.S. 27 (2001), that thermal imaging does constitute a search under the Fourth Amendment.

2. ***United States v. Baljinder Singh*** (2:98-cr-20146):

This case involved the search of a vehicle in which the defendant was a passenger. The Court held that the defendant had standing to challenge the search based on a reasonable expectation of privacy and that the search did not fall within any of the exceptions to the warrant requirement. The Court specifically examined the U.S. Supreme Court's decision in *Knowles v. Iowa*, 119 S. Ct. 484 (1998), clarifying the rationale for the search incident to arrest exception to the warrant requirement.

3. ***United States v. Darren Burnett*** (2:00-cr-20245):

The Court denied in part and granted in part the defendant's motion to suppress as to the December 7, 2000 search of his home. The Court held that the search of defendant's home did not meet any of the exceptions to the warrant requirement. Evidence in plain view was admissible at trial.

4. ***United States v. Prater*** (2:00-cr-20191):

Officers conducting a drug investigation in a high crime neighborhood observed the defendant sitting on the front porch. Ten to twelve officers approached. Officers testified that the defendant appeared fidgety but did not attempt to flee. Officers testified that they observed a "bulge" in the defendant's upper shirt pocket and did a pat down for officer safety. They extracted four folded checks. The Court suppressed evidence based on Supreme Court and Sixth Circuit precedent.

5. ***United States v. Riddick*** (1:01-cr-10005) (W.D. Tenn. 2004), *rev'd*, 134 F. App'x 813 (6th Cir. 2005):

After a *Franks* hearing, the Court found that the confidential informant provided false information to obtain search warrants. The Court granted the defendant's motion to suppress. The Court of Appeals reversed finding the confidential informant credible.

6. ***United States v. Cuauhtemoc Pinon Hernandez*** (2:02-cr-20117):

The Court granted the defendant's motion to suppress evidence seized as a result of a search of his vehicle. The search was not supported by valid consent or the search incident to arrest exception to the warrant requirement.

7. ***United States v. Rodney Eaton*** (2:02-cr-20107):

The United States moved that the defendant's motion to suppress be granted as the evidence was obtained in violation of the Fourth Amendment.

8. ***United States v. Charles A. Davis*** (2:02-cr-20377):

Officers searched the defendant and others on private property without probable cause or reasonable suspicion in violation of *Terry*. The search violated the Fourth Amendment.

9. ***United States v. Scowden et al.*** (2:02-cr-20030):

This case involved evidence secured at a Days Inn motel in Memphis, Tennessee. The Court found that the voluntary consent to search the room given by defendant Hyatt did not extend to defendant Murphy's personal containers or effects. The Court concluded, however, that the evidence in plain view or in the common areas was properly seized. The motion to suppress was denied in part and granted in part.

10. ***United States v. Eddie Hayes McMullen*** (2:02-cr-20129):

The Court granted the defendant's motion to suppress a firearm and ammunition secured from his person. The search was not constitutionally permissible under *Terry*. The case was dismissed on motion of the United States.

11. ***United States v. Marvin King*** (2:02-cr-20196):

The stop and search of the defendant's vehicle violated the defendant's Fourth Amendment rights resulting in the motion to suppress being granted. The Court found that the officer's testimony was not credible.

12. ***United States v. James Herndon*** (2:03-cr-20207):

The Court denied the defendant's motion to suppress evidence seized from the defendant's vehicle and granted the motion as to statements made by the defendant subsequent to his arrest. The defendant's statements were made in response to questions posed by officers while the defendant was in custody and without being advised of the *Miranda* warnings.

13. ***United States v. Margaret Lacey Monger et al*** (2:03-cr-20085):

The Court held that the officer's affidavit and the search warrant based on that affidavit were invalid because the affidavit did not contain the date of the officer's observations and thus could not satisfy recency or staleness issues.

14. ***Untied States v. Bradis Merkson*** (2:04-cr-20012):

The Court granted the defendant's motion to suppress evidence derived from an officer's search of the defendant's person in a public area. The government failed to prove that the officer's pat-down of the defendant was supported by probable cause or reasonable suspicion as required for a *Terry* frisk.

15. ***Untied States v. Melvin Baptist*** (2:04-cr-20174):

The Court issued its findings orally on the record that the search violated the Fourth Amendment. I have no independent recollection of the facts. The files have been sent to the archives. The Government did not appeal the order and moved to dismiss the indictment.

16. ***United States v. Jerome Reed*** (2:04-cr-20127):

The Court granted a motion to suppress evidence derived from the search of a vehicle because the officers did not have probable cause for the initial stop.

17. ***United States v. Donnie Johnson*** (2:04-cr-20299):

The Court granted a motion to suppress evidence derived from officers' search of a room at a rooming house rented by the defendant's uncle. The officers first conducted a search of the defendant without probable cause or reasonable suspicion. This search exceeded the limits of *Terry*. Even though the search of the defendant found no weapons or contraband, the officers then moved from the public area and searched the room (Defendant's home) at the rooming house without cause, without a search warrant, and without valid consent, in violation of the Fourth Amendment.

18. ***United States v. Larry Walls*** (2:04-cr-20370):

The Court granted the defendant's motion to suppress evidence found as a result of a warrantless search of the defendant's home. The officers' search of the home was based on the purported consent of the defendant's intoxicated girlfriend, who was present, but did not live in the home and who did not have standing to consent. Even if there was standing, the girlfriend's degree of intoxication rendered her incapable of giving knowing and voluntary consent.

19. ***United States v. Patrick Williams*** (2:04-cr-20454):

The Court granted the defendant's motion to suppress evidence and statements resulting from the search of the defendant's home. Officers had an arrest warrant for the defendant. Officers went to the home armed with a photo of the defendant and encountered the defendant outside of his residence. Officers used a ruse to get the defendant to reenter his home and then searched the premises. The officers' search under the mattress exceeded the justifiable scope of a search incident to arrest, and no other Fourth Amendment exception applied. Officers also engaged in a custodial interrogation of the defendant without advising him of his *Miranda* rights.

20. ***United States v. Derrico Bobbitt*** (2:05-cr-20283):

The Court orally granted the motion to suppress with respect to ammunition officers uncovered but denied the motion with respect to a firearm. The Court stated reasons on the record at the hearing. I do not have access to a transcript of the hearing, and I have no independent recollection of the case or legal basis for the ruling. The Government did not appeal the order and subsequently moved to dismiss the indictment.

21. ***United States v. Anthony Siggers*** (2:06-cr-20176):

Officer encountered the defendant seated in his car at a car wash. There was no reasonable suspicion of criminal activity. The officer searched the defendant and his vehicle and found a firearm. The officer's encounter and pat down of the defendant was not supported by probable cause or reasonable suspicion as required by Fourth Amendment jurisprudence.

22. ***United States v. Vincent Halliburton and Vikita Parrett*** (2:07-cr-20004):

The Court granted in part and denied in part the defendants' motions to suppress evidence derived from a warrantless search of a home. The Court suppressed a small quantity of drugs found in a washing machine when officers, without cause, exceeded the scope of the initial consent to search. The Court *denied* the motion as to the rest of the evidence—including narcotics, drug paraphernalia, a firearm, and ammunition—because these items were found subject to a valid consent to search, or in plain view.

23. ***United States v. Marcus Parker*** (2:07-cr-20119):

Officers observed the defendant standing in front of an apartment building in a high crime area. The Court held that the ensuing search of the defendant's person was not permissible under *Terry*, nor would the evidence have been inevitably discovered incident to a lawful arrest. Being in a high crime area without more does not form a basis for a search. The search was in violation of the Fourth Amendment and the motion to suppress was granted.

24. ***United States v. Ulric Brooks*** (2:08-cr-20248):

The Court granted the defendant's motion to suppress evidence obtained from a search of the defendant's vehicle. Although the officers lawfully arrested the defendant, the arrest occurred away from his vehicle. The officers then obtained the defendant's vehicle keys and searched the vehicle, which was lawfully parked on private property. Therefore, the search was invalid under Supreme Court precedent. *See Arizona v. Gant*, 129 S. Ct. 1710 (2009). The inevitable discovery doctrine did not apply.

25. ***United States v. Tavrenteze Evans*** (2:08-cr-20253):

Officers seized the defendant by blocking his vehicle without probable cause and impermissibly searching the defendant on a public street. Officers' actions constituted a seizure and search without probable cause. The Court granted the motion to suppress and the government later moved to dismiss the indictment.

26. ***United States v. Eugene Richmond*** (2:08-cr-20418):

The defendant moved to suppress a bullet found on the defendant during a search of his person. Because the defendant was searched without a warrant and without probable cause, the motion was granted.

27. ***United States v. Larry Wilborn*** (2:09-cr-20144):

The defendant's motion to suppress was granted where the search was conducted without probable cause. The fact that the area was characterized as a "high crime area" was not sufficient to provide probable cause to search the vehicle. The case turned on credibility.

28. ***United States v. Brandon Person*** (2:09-cr-20279):

The Court granted the defendant's motion to suppress evidence because the officers' search was without a warrant and without probable cause and did not come within any exception to the Fourth Amendment. Officers had a search warrant for 1484 Oaklawn Street, Memphis, TN. Officers proceeded to search 1484 and the separate, independent address of 1482 Oaklawn as well as all persons on the porch at both sides of the duplex. The Court granted the motion as to evidence obtained from 1482 Oaklawn.

29. ***United States v. Rico Rice*** (2:10-cr-20051):

The Court orally granted the defendant's motion to suppress, finding that the officers had no probable cause to conduct a traffic stop of the defendant's vehicle. The search of the vehicle was without probable cause and thus violated the Fourth Amendment.