

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Michael Francis Urbanski

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

United States District Judge for the Western District of Virginia

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.

United States District Court for the Western District of Virginia
Richard H. Poff United States Courthouse
210 Franklin Road, SW
P.O. Box 38
Roanoke, Virginia 24011

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

1956; Livorno, Italy. (My father was a career U.S. Army officer stationed there.)

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.

1978 – 1981, University of Virginia School of Law; J.D., 1981
1974 – 1978, College of William and Mary; A.B. (High Honors), 1978

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

2004 – Present
United States District Court for the Western District of Virginia
210 Franklin Road, 2nd Floor
Roanoke, Virginia 24011
United States Magistrate Judge

1984 – 2004
Woods Rogers, PLC
10 South Jefferson Street, Suite 1400
Roanoke, Virginia 24011
Principal (1989 – 2004)
Associate (1984 – 1988)

1982 – 1984
Vinson & Elkins, LLP
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Associate

1981 – 1982
United States District Court for the Western District of Virginia
246 Franklin Road, Suite 220
Roanoke, Virginia 24011
Law Clerk to U.S. District Judge James C. Turk

Summers 1980 & 1981
Vinson & Elkins, LLP
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Summer Clerk

Summer 1979
Marshall, Blalock, Garner & Millner
(now Jones, Blechman, Woltz & Kelly)
701 Town Center
Newport News, Virginia 23606
Summer Clerk

Summer 1978
Busch Gardens Williamsburg
One Busch Gardens Boulevard
Williamsburg, Virginia 23185
Supervisor, food and beverage

Other Affiliations (uncompensated)

2000 – 2004

Virginia Western Community College

P.O. Box 14007

Roanoke, Virginia 24038

Local Advisory Board – Chairman (2003-04); Board Member (2000-2003)

1990 – 1999

American Red Cross

Appalachian Region Blood Services

352 Church Avenue SW

Roanoke, Virginia 24016

Chairman (1996 – 1998)

1994 – 1998

Greater Raleigh Court Civic League

P.O. Box 3092

Roanoke, Virginia 24015

President (1996 – 1998)

Vice-President (1994 – 1996)

1991 – 1999

Greenvale School, Inc.

627 Westwood Blvd., NW

Roanoke, Virginia 24017

Member, Board of Directors

1991 – 1993

Bethany Hall, Inc.

1109 Franklin Road

Roanoke, Virginia 24016

Member, Board of Directors

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

I have not served in the military. I registered for selective service when I turned 18.

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.

“Best Lawyers in America” for Business Litigation (2001 – 2002, 2003 – 2004)
Fellows Award, Virginia Bar Association Young Lawyers Section (1992)
Martindale Hubbell “AV” rating
Phi Beta Kappa
Recognition for Outstanding Efforts in Preventing Youth Substance Abuse
Danville and Pittsylvania County, Regional Alliance for Substance Abuse Prevention (2009)
Virginia Business Magazine “Legal Elite” for Civil Litigation (2002 – 2003)

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

American Bar Association
Litigation and Antitrust Sections (1982 – 2004)
District of Columbia Bar
International Association of Defense Counsel
Roanoke Bar Association
Board of Directors (1997 – 1999, 2003 – 2004)
Ted Dalton American Inn of Court - Master of the Bench (2005 – present)
Virginia Association of Defense Attorneys
Virginia Bar Association
Special Issues Committee (2010 – present)
Civil Litigation Section Council (1999 – 2001)
Young Lawyers Section – Executive Committee (1990 – 92)
Virginia State Bar
Special Committee on Bench-Bar Relations (2009 – present)
Board of Governors, Litigation Section (2003 – 2004, *ex officio* 2004 – 2009)
Chairman, Antitrust, Franchise and Trade Regulation Section (1992 – 1993)

10. **Bar and Court Admission:**

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

Virginia, 1981
District of Columbia, 1982

There has been no lapse in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse

in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 1995
United States Court of Appeals for the Fourth Circuit, 1981
United States Court of Appeals for the Sixth Circuit, 1993
United States Court of Appeals for the Federal Circuit, 1991
United States District Court for the Western District of Virginia, 1981
United States District Court for the Eastern District of Virginia, 1981
United States District Court for the District of Columbia, 1983
United States Bankruptcy Court for the Western District of Virginia, 1988
Supreme Court of Virginia, 1981
District of Columbia Court of Appeals, 1982

There has been no lapse 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.

American Red Cross, Appalachian Region Blood Services (1990 – 1999)
Chairman (1996 – 1998)
Bethany Hall, Inc.
Board of Directors (1991 – 1993)
Boy Scouts of America
Eagle Scout Review Board (2010 – present)
Christ Episcopal Church, Vestry (1989 – 1990, 1991 – 1993)
Citizens' Task Force to Study Alternative Election Procedures for Roanoke City
Council (1991 – 1992)
Elks Club Pool (Approx. 1988 – 1996)
Emory and Henry College
Parents Council (2009 – present)
Fishburn Park Elementary School PTA
Co-President (1998 – 2000)
Greater Raleigh Court Civic League
President (1996 – 1998)
Vice-President (1994 – 1996)
Greenvale School, Inc.
Board of Directors (1991 – 1999)
Hunting Hills Country Club (Approx. 1997 – 2002)
Jefferson Club (Approx. early 1990s)

Roanoke College Turk Pre-Law Program Advisory Committee (2009 – present)
Roanoke Modified Election District Task Force
Chairman (1997)

Roanoke Regional Chamber of Commerce, Backbone Club (Approx. 1985 – 1989)

Roanoke Regional Chamber of Commerce, Leadership Roanoke Valley (1990)
Susan G. Komen Breast Cancer Foundation, Community Review Panel
(2008 – 2009)

Virginia Western Community College
Chairman, Local Advisory Board (2003 – 2004)
Board Member (2000 – 2003)

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

To my knowledge, none of the organizations with which I have been involved presently discriminates or formerly discriminated on the basis of race, sex, religion or national origin. The Boy Scouts of America, however, is an organization for boys only.

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.

This list represents the published material I have identified through searches of my files and internet databases. I have tried my best to list all of them here, although there may be some that I have not been able to identify or locate.

Michael F. Urbanski and Timothy E. Kirtner, *Employee Use of Company Computers – A Privilege Waiver Mine Field*, Virginia Lawyer, Virginia State Bar (Feb. 2009). Copy supplied.

Michael F. Urbanski, *View from the Bench – A Few Thoughts on Settlement Conferences*, Litigation News, Virginia State Bar (Spring 2007). Copy supplied.

Ellen S. Moore and Michael F. Urbanski, Update to Chapter Five, *The Interference Torts*, ABA Section of Antitrust Law, Business Torts and Unfair Competition Handbook (2d Edition 2006). Copy supplied.

Michael F. Urbanski, *Expanding the Reach of Virginia's Business Conspiracy Act*, *Litigation News*, Virginia State Bar (Winter 1998 – 1999). Copy supplied.

Michael F. Urbanski, *Supreme Court Lifts Ban on Vertical Maximum Price Fixing* <http://library.findlaw.com/1998/Jan/1/130655.html>. Copy supplied.

Mike Urbanski, *At-Large System Has Served the City Well; Should Roanoke Switch to Wards for Choosing City Council?*, *The Roanoke Times*, Nov. 2, 1997. Copy supplied.

Co-contributing editor, *Antitrust Law in Virginia, A Comprehensive Digest of Federal and State Antitrust Decisions and Developments 1980-1988*, Virginia State Bar Antitrust Section (1989). Copy supplied.

Between 1990 and 2001, I authored a survey on antitrust law with various co-authors. Below is a list of the publications and the years in which I worked with each author:

Michael F. Urbanski, James R. Creekmore & Ellen S. Moore, *Antitrust and Trade Regulation Law*, 38 U. Rich. L. Rev. 59 (2003). Copy supplied.

Michael F. Urbanski, James R. Creekmore & Beth G. Hungate-Noland, *Antitrust and Trade Regulation Law*, 35 U. Rich. L. Rev. 453 (2001). Copy supplied.

Michael F. Urbanski & James R. Creekmore, *Antitrust and Trade Regulation Law*, 34 U. Rich. L. Rev. 647 (2000). Copy supplied.

Michael F. Urbanski & James R. Creekmore, *Antitrust and Trade Regulation Law*, 33 U. Rich. L. Rev. 769 (1999). Copy supplied.

Michael F. Urbanski & James R. Creekmore, *Antitrust and Trade Regulation Law*, 32 U. Rich. L. Rev. 973 (1998). Copy supplied.

Michael F. Urbanski, Francis H. Casola & James R. Creekmore, *Antitrust and Trade Regulation Law*, 31 U. Rich. L. Rev. 943 (1997). Copy supplied.

Michael F. Urbanski & Francis H. Casola, *Antitrust and Trade Regulation*, 29 U. Rich. L. Rev. 789 (1995). Copy supplied.

Michael F. Urbanski & Francis H. Casola, *Antitrust and Trade Regulation*, 28 U. Rich. L. Rev. 823 (1994). Copy supplied.

Michael F. Urbanski & Francis H. Casola, *Antitrust and Trade Regulation*, 27 U. Rich. L. Rev. 575 (1993). Copy supplied.

Michael F. Urbanski, *Antitrust and Trade Regulation*, 26 U. Rich. L. Rev. 591 (1992). Copy supplied.

Michael F. Urbanski, *Antitrust and Trade Regulation*, 25 U. Rich. L. Rev. 565 (1991). Copy supplied.

Michael F. Urbanski, *Antitrust and Trade Regulation*, 24 U. Rich. L. Rev. 463 (1990). Copy supplied.

Since 2006, I have also served as editor-at-large for the Federal Courts Law Review. Copies of the journal available upon request.

- 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 June 12, 1997, as Chair of the Roanoke Modified Election District Task Force, I submitted the final report of the Task Force on its behalf to the Roanoke City Council. With the report, I filed a dissent to the proposed district plan. Copies of the report and my dissent are supplied.

In 1992, I served on a citizens task force studying alternative election systems for Roanoke, and I chaired a fact-finding subcommittee. The task force as a whole released a report of its findings in July 1992. The subcommittee created a report on the fact-finding phase of our work. Copies of both reports supplied.

- 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.

As a representative of the Greater Raleigh Court Civic League, I addressed the Roanoke City Council on a few zoning and other issues affecting the neighborhood, including the neighborhood's opposition to the rezoning of a parcel of land in the neighborhood from residential to commercial use, rezoning of another parcel for use as a drug store, and on a proposal to limit the number of cars garaged on residential property. I have no notes, transcripts or recordings.

On June 16, 1997, as Chair of the Roanoke Modified Election District Task Force, I presented an overview of the Task Force's report to the Roanoke City Council. I

have no notes, transcript or recording. A copy of the report is supplied in response to Question 12.b.

On April 21, 1997, as a private citizen, I also spoke to the Roanoke City Council in favor of a school board candidate, F. B. Webster Day. I have no notes, transcript, or recording, but press coverage is supplied.

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

The following is a list of speeches and panel discussions of which I have a record. To create this list, I searched my memory, personal files, and the internet. Notwithstanding my best efforts to create a list responding to this question that is as complete as possible, there may be other presentations I have given that I have been unable to identify or remember.

Virginia CLE

E-Discovery 2.0
Third Annual Advanced Business Litigation Institute
Charlottesville, Virginia
May 20, 2010
Written materials supplied.

Virginia Bar Association

Chief Justice's 2010 Pro Bono Summit
VBA address:
701 East Franklin Street, Suite 1120
Richmond, Virginia 23219
April 27, 2010
I have no notes, transcripts or recordings.

Fed Facts: High School and Middle School Drug Penalties Program

Lynchburg City Schools (March 12, 2010)
Hidden Valley High School, Roanoke County Schools (December 15, 2009)
Henry County Alternative School (November 9, 2009)
Addison, Breckinridge, Wilson and Madison Middle Schools, Roanoke (October 27-29, 2009, November 2, 2009)
Tunstall Middle School, Pittsylvania County (May 26, 2009)

Patrick County High School (April 27, 2009, October 8, 2009)
Roanoke County / Bedford County Alternative School (March 9, 2009)

Martinsville Middle and High Schools (January 13, 2009)
Written materials supplied.

Washington and Lee School of Law / Moot Court Executive Board
Representation in Mediation Competition, Final Round
1 Denny Circle
Lexington, VA 24450
February 27, 2010
February 27, 2009
I have no notes, transcripts or recordings.

William and Mary Law School
William B. Spong Moot Court Tournament
613 South Henry Street
Williamsburg, VA 23185
February 12-13, 2010
February 13-14, 2009
February 17, 2006
February 18-19, 2005
I have no notes, transcripts or recordings.

Hollins University
Rule of Law Class, History/Politics 561, The Rule of Law: History and
Traditions
Roanoke, Virginia
February 8, 2010
Written materials supplied.

University of Virginia School of Law
Trial Advocacy Workshop
580 Massie Road
Charlottesville, Virginia 22903
January 13, 2010
January 7-8, 2009
January 10-11, 2008
I have no notes, transcripts or recordings.

Roanoke Area Youth Substance Abuse Coalition Red Ribbon Candlelight Vigil
Fourteenth Annual Candlelight Vigil of Remembrance and Hope
Roanoke, Virginia
November 1, 2009
Written materials supplied.

Virginia Women Attorneys Association
Aggressive Plaintiff v. Aggressive Defendant: Does Anyone Know a
Good Mediator?
Roanoke, Virginia
October 13, 2009
Written materials supplied.

Washington and Lee School of Law
Federal Court Litigation – First 30 Days
Presented to Trial Practice Class
Lexington, Virginia
September 23, 2009
Written materials supplied.

Virginia Bar Association Foundation Rule of Law Project
R.E. Cook Alternative School
Vinton, Virginia
February 18, 2009
Written materials supplied.

Ted Dalton American Inn of Court
Ask the Judges
Salem, Virginia
January 26, 2009
I have no notes, transcripts or recordings.

Project Safe Childhood
Training for Law Enforcement
Roanoke, Virginia
PSC address:
Office of Justice Programs
Office of the Assistant Attorney General
810 Seventh Street, NW
Washington, DC 20531
September 10, 2008
I have no notes, transcripts or recordings.

Social Security Administration Judicial Conference
A View from the Bench
Savannah, Georgia
July 8, 2008
Written materials supplied.

International Association of Defense Counsel Annual Meeting
Mediation
White Sulphur Springs, West Virginia
IADC address:
303 West Madison, Suite 925
Chicago, Illinois 60606
July 4-5, 2008
I have no notes, transcripts or recordings.

Federal Public Defender's Office for the Eastern District of Virginia
Frank Dunham Federal Criminal Defense Conference
Perspective of U.S. Magistrate Judge on Detention Issues
Charlottesville, Virginia
FPD address:
1650 King Street, Suite 500
Alexandria, Virginia 22314
April 11, 2008
I have no notes, transcripts or recordings.

Roanoke Bar Association
Trial Advocacy Program and Mock Trial
Bar Association address:
P.O. Box 18183
Roanoke, Virginia 24014
April 4, 7-8, 2008
I have no notes, transcripts or recordings. Press coverage supplied.

Virginia Bar Association
Minority Pre-Law Conference Mock Trial
Washington and Lee School of Law
VBA address:
701 East Franklin Street, Suite 1120
Richmond, Virginia 23219
April 5, 2008
I have no notes, transcripts or recordings.

Virginia Association of Defense Attorneys
Trial Tactics Workshop
770 East Main Street, Suite 1050
Richmond, Virginia 23219
March 8, 2008
I have no notes, transcripts or recordings.

Ted Dalton American Inn of Court
Pretrial Issues Concerning Expert Witnesses
Salem, Virginia
November 26, 2007
Written materials supplied.

Virginia Association of Defense Attorneys Annual Meeting
Products Liability Breakout
Defining “Unreasonably Dangerous” in Virginia
Roanoke, Virginia
October 25, 2007
Written materials supplied.

Virginia State Bar
Professionalism Course
Roanoke, Virginia (August 23, 2007)
Charlottesville, Virginia (March 8, 2007)
Roanoke, Virginia (August 24, 2006)
Roanoke, Virginia (August 25, 2005)
Written materials from first course given in 2005 supplied.

Virginia CLE Webcast
Secrets of 30(b)(6) Depositions
Charlottesville, Virginia
June 13, 2007
Written materials supplied.

Virginia Association of Legal Secretaries Annual Meeting
Professionalism
Roanoke, Virginia
April 28, 2007
Written materials supplied.

Virginia Women's Attorney's Association
Mediation and Electronic Discovery in the Western District of Virginia
Roanoke, Virginia
March 29, 2007
Written materials supplied.

Ted Dalton American Inn of Court
Legal Issues Involving Eyewitness Identification
Lexington, Virginia
November 27, 2006
Written materials supplied.

Citizenship & Naturalization Ceremony

Abingdon, Virginia

October 27, 2006

I have no notes, transcript or recording. Press coverage supplied.

Virginia Trial Lawyers Association

Commercial Litigation Section

Mediation and Electronic Discovery in the Western District of Virginia

Roanoke, Virginia

October 17, 2006

Written materials supplied.

Virginia Women Attorneys Association

Criminal Practice before a United States Magistrate Judge

Williamsburg, Virginia

October 13, 2006

Written materials supplied.

Virginia Bar Association

Labor and Employment Section Seminar

New Electronic Discovery Rules

Roanoke, Virginia

October 7, 2006

Written materials supplied.

Virginia CLE

New Electronic Discovery Rules

Springfield, Virginia

August 30, 2006

Written materials supplied.

Comments at Retirement Dinner for Deputy Clerk Sam Golightly

Danville, Virginia

July 14, 2006

Written materials supplied.

Virginia State Bar

Litigation Section, Annual Meeting

Preparing Clients to Testify

Virginia Beach, Virginia

June 16, 2006

Written materials supplied.

Roanoke Bar Association
Criminal Practice before US Magistrate Judge
Roanoke, Virginia
May 24, 2006
Written materials supplied.

Blue Ridge Parkway
Legal Update: Court Procedures
May 12, 2006
Written materials supplied.

Roanoke Bar Association
Use of Depositions in Federal Court
Roanoke, Virginia
December 13, 2005
Written materials supplied.

Virginia Association of Defense Attorneys
Young Lawyers Division
Right Start Seminar
Richmond, Virginia
December 2, 2005
Written materials supplied.

Roanoke Bar Association
Memorial Resolution for Ellen Spring Moore
Roanoke, Virginia
November 8, 2005
Written materials supplied.

Virginia CLE
Use of Depositions in Federal Court
Danville, Virginia
August 21, 2005
Written materials supplied.

Comments at Retirement Luncheon for Deputy Clerk Barbara Gibson
Styled as spoof Report and Recommendation
Danville, Virginia
February 8, 2005
Written materials supplied.

Roanoke Bar Association
Presentation to new lawyers
Practice of Law Tour
Ted Dalton Ceremonial Courtroom
P.O. Box 18183
Roanoke, Virginia 24014
December 14, 2004
I have no notes, recordings or transcripts. Press coverage supplied.

Virginia Trial Lawyers Association
Commercial Litigation Section Luncheon
Business Torts
Roanoke, Virginia
Spring 2004
Written materials supplied.

Woods Rogers & Hazlegrove Luncheon Seminar
Non-Competition Agreements & Trade Secrets
Virginia Tech Corporate Research Center
Blacksburg, Virginia
Woods Rogers & Hazlegrove address:
10 S. Jefferson St, Suite 1400
Roanoke, Virginia 24011
March 12, 2003
I have no notes, transcripts or recordings.

Virginia Accounting and Auditing Conference
Board Duties of a Director of a Private Virginia Corporation
Virginia Tech Division of Continuing Education
VAAC address:
4309 Cox Road
Glen Allen, Virginia 23060
2002
I have no notes, transcripts or recordings.

Virginia State Bar Annual Meeting
Bench-Bar Relations Committee / Litigation Section
Jury Orientation and Management: Practical and Ethical Issues and
Solutions
Virginia Beach, Virginia
VSB address:
707 East Main St, Suite 1500
Richmond, Virginia 23219
June 2002
I have no notes, transcripts or recordings.

Virginia State Bar

Intellectual Property / Antitrust Sections Fall Seminar

A Primer on Intellectual Property - Antitrust Issues

707 East Main Street, Suite 1500

Richmond, Virginia 23219

Fall 2002

I have no notes, transcripts or recordings.

Virginia State Bar Annual Meeting

Bench-Bar Relations Committee / Litigation Section

Jury Orientation and Management: Practical and Ethical Issues and
Solutions

Virginia Beach, Virginia

VSB address:

707 East Main St, Suite 1500

Richmond, Virginia 23219

June 2002

I have no notes, transcripts or recordings.

Virginia Accounting and Auditing Conference

Proving Damages in a Business Case

Virginia Tech Division of Continuing Education

VAAC address:

4309 Cox Road

Glen Allen, Virginia 23060

2001

I have no notes, transcripts or recordings.

Virginia Bar Association

Labor and Employment Section

Noncompetes after *Motion Control v. East*

Charlottesville, Virginia

VBA address:

701 East Franklin Street, Suite 1120

Richmond, Virginia 23219

2001

I have no notes, transcripts or recordings.

Virginia Accounting and Auditing Conference
Non-Competition Law in Virginia
Virginia Tech Division of Continuing Education
VAAC address:
4309 Cox Road
Glen Allen, Virginia 23060
2000
I have no notes, transcripts or recordings.

Virginia CLE
Trying Federal Cases in the Western District of Virginia
Motions Practice
Virginia CLE address:
105 Whitewood Road
Charlottesville, Virginia 22901
1999, 2001
Written materials supplied.

Virginia Accounting and Auditing Conference
Business Torts for Accountants
Virginia Tech Division of Continuing Education
VAAC address:
4309 Cox Road
Glen Allen, Virginia 23060
1999
I have no notes, transcripts or recordings.

Virginia Association of Defense Attorneys
Handling the Commercial Breach of Warranty Case
VADA address:
770 East Main Street, Suite 1050
Richmond, Virginia 23219
1999
I have no notes, transcripts or recordings.

Virginia State Corporation Commission
The Fifteenth National Regulatory Conference
Antitrust: Will it Change the Lives of Telecommunications Executives?
Williamsburg, Virginia
May 5, 1997
Transcript supplied.

Virginia CLE

Dispositive Motions, 32 Timely and Important Issues in Your Federal Court Practice
Norfolk , Virginia and Tyson's Corner, Virginia
December 17 & 18, 1996
Written materials supplied.

Virginia CLE

How to Make Deals Pro-Competitive: Proving Cost Savings and Efficiencies, Health Care Market Dynamics: Antitrust Problems and Solutions for Hospitals, Physicians and Payers
Virginia CLE address:
105 Whitewood Road
Charlottesville, Virginia 22901
1996
I have no notes, transcripts or recordings.

Virginia CLE

Interrogatories and Requests for Admissions
105 Whitewood Road
Charlottesville, Virginia 22901
1995
Written materials supplied.

Roanoke Bar Association

Whistleblowing and Disclosure: Being Ethical on Betraying the Client?
Bar Association address:
P.O. Box 18183
Roanoke, Virginia 24014
1994
I have no notes, transcripts or recordings.

Virginia CLE

The Evolving Role of Antitrust Laws in Health Care Reform: Facilitator or Inhibitor? The Changing Health Care Market: Antitrust Issues and the Impact of Reform
Virginia CLE address:
105 Whitewood Road
Charlottesville, Virginia 22901
1993
I have no notes, transcripts or recordings.

Virginia CLE

Antitrust Issues Arising from Negotiation of Provider Contracts with
Managed Care Plans, Antitrust Law Compliance for Hospitals,
Physicians and Health Care Attorneys

Virginia CLE address:

105 Whitewood Road
Charlottesville, Virginia 22901
1992

I have no notes, transcripts or recordings.

Virginia CLE

Representing the Business Client in Antitrust Investigations, Antitrust,
Franchise and Trade Regulation Law, What You Need to Know About –
But Were Afraid to Ask

Virginia CLE address:

105 Whitewood Road
Charlottesville, Virginia 22901
1990

I have no notes, transcripts or recordings.

Virginia Insurance Reciprocal Defense Counsel Symposium

Antitrust Litigation Against Hospitals and Physicians

4200 Innslake Drive
Glen Allen, Virginia 23060
1989

I have no notes, transcripts or recordings.

In addition, from 2004 through 2010, I attended the Roanoke Bar Association's Bench-Bar Conference, and I participated in a Q&A session with sitting judges. I have no notes, transcripts, or recordings of any of these events.

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

I have searched my files and internet databases to refresh my memory in an effort to produce as complete a list of interviews as I could, but it is still possible there are some I was not able to locate.

A Lawyer's Duty to Virginia's Poor, The Virginian-Pilot, Apr. 30, 2010, at B6. Copy supplied.

Peter Vieth, *Standing 'Gag Order' Dropped from Final Local Rules, Says Western District of Virginia*, Virginia Lawyers Weekly, Mar. 15, 2010. Copy supplied.

Peter Vieth, *When Disputes Arise at Depositions, Who You Gonna Call?*, Virginia Lawyers Weekly, Mar. 8, 2010. Copy supplied.

Learn the Law Now or Learn it Later, Danville Register & Bee, May 29, 2009. Copy supplied.

Susan Elzey, *Judge: Drugs Not Worth the Prison Time*, Danville Register & Bee, May 27, 2009. Copy supplied.

Mickey Powell, *Kids Hear Tough Talk on Tough Issues*, Martinsville Bulletin, Jan. 14, 2009. Copy supplied.

Gregory J. Haley and Scott C. Ford, *From Courtroom to Conference Room: Reflections on Mediation*, Virginia Lawyer, Vol. 57, Feb. 2009. Copy supplied.

Travis J. Graham and James J. O’Keeffe IV, *Have You Made A Last-Ditch, Desperate, and Disingenuous Attempt to Subvert the Legal Process Today?*, Virginia Lawyer, Vol. 57, Feb. 2009. Copy supplied.

Mike Gangloff, *The Invisible Docket*, The Roanoke Times, Apr. 27, 2008, at A1. Copy supplied.

Cathy Benson, *Murray Run Greenway Completed*, The Roanoke Star-Sentinel, Nov. 21, 2007, at 1. Copy supplied.

Sharon Nelson & John Simek, *The New Federal Rules of Civil Procedure: An ESI Primer*, Law Practice, Dec. 2006, at 23. Copy supplied.

Beth Macy, *Ellen Moore Gave Her All to the Last*, The Roanoke Times, Apr. 1, 2005. Copy supplied.

Jen McCaffery, *Urbanski Sworn in as Magistrate Judge*, The Roanoke Times, Jan. 24, 2004, at B1. Copy supplied.

Beth Macy, *Still in the Race*, The Roanoke Times, June 8, 2003, at 1. Copy supplied.

Mark Berman, *Opinions Differ on Conference Wrangling; Lawsuit Against BC, Miami Open to Debate*, The Roanoke Times, June 8, 2003, at C1. Copy supplied.

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Henry Christner, *A River-Lutionary War? Landowners Try to Stop Anglers*, Richmond Times Dispatch, June 4, 1995, at D14. Copy supplied.

Dorothy Giobbe, *Newspaper Sues Real Estate Firms*, Editor & Publisher, Jan. 8, 1994, at 26. Copy supplied.

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I have also been interviewed by a few local television and radio stations over the years, although I do not have any copies of any materials concerning these appearances. As I recall, I was interviewed by a local radio station sometime around 1997 concerning my work on the City of Roanoke Modified Election District Task Force prior to a referendum on this issue; by local television stations in the early 1990s following a successful defense of an antitrust challenge to a hospital merger in Roanoke; and in connection with a lawsuit I was handling concerning fishing rights on the Jackson River.

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.

I was appointed United States Magistrate Judge for the Western District of Virginia on January 23, 2004.

As a United States Magistrate Judge, I hear preliminary felony criminal and civil matters pending in the Roanoke, Lynchburg and Danville Divisions of the court and may try civil cases on consent. In addition, I preside over misdemeanor trials. I have significant responsibility for the many habeas corpus and prisoner civil rights lawsuits pending in the Western District of Virginia, and I supervise a staff of pro se law clerks handling those cases. These matters represent a substantial portion of our docket. I also regularly conduct mediations of civil cases and have successfully resolved several hundred disputes. In 2010, Chief Judge Jones appointed me to chair an Advisory Committee on the new Local Rules adopted in the Western District.

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

I preside over federal misdemeanor trials which are held two days each month. Since 2004, judgments were docketed in more than 1,200 cases over which I presided. In civil cases, I regularly conduct evidentiary and motion hearings. Upon consent of the parties, civil cases may be transferred to me for disposition as presiding judge. Considering my duties as a whole, I estimate that I spend roughly half of my time on civil cases and half of my time on criminal cases. The numbers below reflect the approximately 600 misdemeanor trials over which I have presided.

- i. Of these, approximately what percent were:

jury trials:	
bench trials:	100 %
civil proceedings:	
criminal proceedings:	100 %

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

See attached list.

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

1. In re Peanut Corp. of Am., No. 6:10cv027, 2010 WL 3463212 (W.D. Va. Aug. 25, 2010). I presided over the proposed settlement of personal injury claims by individuals who had consumed peanut products tainted with Salmonella. The court was required to consider approval and distribution of a \$12 million fund to over 120 claimants, including review and approval of nine death claims and over 40 infant claims. After careful review of the procedure used to allocate the settlement fund and detailed evaluation of the substance of the claims and the proposed distribution, I recommended approval of the settlement. Judge Moon adopted that recommendation.

Counsel for PCA Salmonella Claimants were Bruce T. Clark, Marler Clark, L.L.P., P.S., 701 5th Avenue, Seattle, WA 98104, Tel (206) 346-1888; David B. Carson, Johnson Ayers & Matthews PLC, P.O. Box 2200, Roanoke, VA 24009, Tel (540) 767-2037; Ronald J. Simon, Simon & Luke, L.L.P., 2929 Allen Parkway, Houston, TX 77019, Tel (713) 335-4900; Gary M. Coates, Gary M. Coates, P.C., 2104 Langhorne Rd., Lynchburg, VA 24501, Tel (434) 846-5900; Brendan J. Flaherty, Pritzker Olsen, P.A., 2950 PLAZA VII, 45 South 7th Street, Minneapolis, MN 55402, Tel (612) 338-0202; and counsel for the Trustee was Richard Clifford Maxwell, Woods Rogers PLC, P.O. Box 14125, Roanoke, VA 24038, Tel (540) 983-7628.

2. Schwarz & Schwarz, LLC v. Certain Underwriters at Lloyd's London, No. 6:07cv042, 2009 WL 2882034 (W.D. Va. Aug. 31, 2009), was a multimillion dollar dispute over insurance coverage arising out of a massive fire at an industrial site in Altavista. At the time of the fire, portions of the automatic sprinkler system were shut down for repairs, causing large portions of the vacant industrial building to be engulfed by the fire. The insurance company denied coverage based on a provision in the policy requiring it to be notified if the automatic sprinkler system is shut off. The case required mastering the details of the condition and operation of the sprinkler system, the facts surrounding the origin of the fire, the terms of the insurance policy, and applicable Virginia law. I recommended granting summary judgment for the insurer based on the owner's failure to comply with the Protective Safeguards Endorsement to the insurance policy, and Judge Moon adopted that recommendation.

The property owner was represented by Joshua F.P. Long, Woods Rogers PLC, P.O. Box 14125, Roanoke, VA 24038, Tel (540) 983-7725. The insurance company was represented by Susan B. Ayers, Wright & O'Donnell, P.C., Suite 570, 15 East Ridge Pike, Conshohocken, PA 19428, Tel (610) 940-4092.

3. Treadway v. Danieli & Co., No. 7:08cv19 (W.D. Va. Oct. 16, 2008), was a products liability case brought by a steel worker against an Italian manufacturer of a furnace used in a steel mill. Plaintiff received catastrophic burns. After presiding over preliminary discovery matters, the case was referred to me for mediation and a compromise resolution was reached after extended negotiations. The plaintiff was represented by John Lichtenstein, Lichtenstein Fishwick & Johnson PLC, P.O. Box 601, Roanoke, VA 24004, Tel (540) 343-9711. Defendant was represented by Frank Ciano, Goldberg Segalla LLP, Suite 203, 170 Hamilton Avenue, White Plains, NY 10601, Tel (914) 798-5400.

4. Wade v. Alderman, No. 4:07cv0009 (W.D. Va. Sept. 18, 2008), was a dispute over conflicting claims of access to parcels of real estate dating back to the construction of the Blue Ridge Parkway. A creative resolution to this historic controversy was reached after many hours of negotiation with the parties.

The landowners were principally represented by Philip G. Gardner, Gardner Gardner Barrow & Sharpe, 4th Floor, Fidelity Bank Building, 231 East Church Street, Martinsville, VA 24112, Tel (276) 638-2455; Glenn W. Pulley, Clement & Wheatley, P.O. Box 8200, Danville, VA 24543, Tel (434) 793-8436; and Jonathan M. Rogers, P.O. Box 136, Floyd, VA 24091, Tel (540) 745-8686. The United States was represented by Assistant United States Attorney Anthony P. Giorno, P.O. Box 1709, Roanoke, VA 24008, Tel (540) 857-2254.

5. United States v. Savoy Senior Housing Corp., No. 6:06cv00031, 2008 WL 631161 (W.D. Va. Mar. 6, 2008), was an enforcement action against a developer and several contractors brought by the United States under the Clean Water Act. After presiding over a number of preliminary matters, I brokered a mediated settlement of this dispute. The mediation was extremely challenging given the number of parties and their competing interests.

The United States was represented by David J. Kaplan and Kenneth C. Amaditz, U.S. Department of Justice, P.O. Box 23986, Washington, DC 20026, Tel (202) 514-0997. Best GC, Inc. was represented by Lori Thompson, LeClair Ryan, PC, 1800 Wachovia Tower, Drawer 1200, Roanoke, VA 24006, Tel (540) 510-3011. Acres of Virginia, Inc. was represented by James A. Downey, Jr., 819 Main Street, Lynchburg, VA 24504, Tel (434) 846-6633, and Sidney H. Kirstein, P.O. Box 8, Lynchburg, VA 24505, Tel (434) 846-6868. The Savoy defendants were represented by David C. Wrobel, Wrobel & Schatz, LLP, 1040 Avenue of the Americas, 11th Floor, New York, NY 10018, Tel (212) 421-8100.

6. DE Techs., Inc. v. Dell, Inc., No. 7:04cv628 (W.D. Va. July 25, 2007), was a complex patent infringement case involving an interactive website for facilitating online sales, and I successfully mediated the resolution of the case.

Plaintiff was represented by William B. Poff, Woods Rogers PLC, P.O. Box 14125, Roanoke, VA 24038, Tel (540) 983-7649. Defendant was represented by Roderick B. Williams, Vinson & Elkins LLP, Suite 10C, 2801 Via Fortuna, The Terrace 7, Austin, TX 78746, Tel (512) 542-8436, and William Raymond Rakes, Gentry Locke Rakes & Moore, P.O. Box 40013, Roanoke, VA 24022, Tel (540) 983-9300.

7. Tunnell v. Ford Motor Co., No. 4:03cv074, 2006 WL 910012 (W.D. Va. Apr. 7, 2006), was a products liability case against Ford Motor Company pending in the Danville Division involving horrific burns to a passenger in a Ford Mustang that had struck a pole. I authored a series of opinions in this case on a variety of substantive issues. In the opinion referenced above, I recommended denial of plaintiff's motion for new trial, but imposed sanctions on defendant for discovery failings.

Plaintiff was represented by Fred D. Smith, P.O. Box 991, Martinsville, VA 24114, Tel (276) 638-2555, and James Haskins, Young Haskins Mann Gregory McGarry & Wall P.C., P.O. Box 72, Martinsville, VA 24114, Tel (276) 638-2367. Ford was represented by Paul G. Cereghini, Bowman & Brooke LLP, Suite 1600, 2901 North Central Avenue, Phoenix, AZ 85012, Tel (602) 643-2400, and Julie A. Childress, Seltzer Greene, PLC, Suite 1025, 707 East Main Street, Richmond, VA 23219, Tel (804) 672-4552.

8. United States ex rel. Callahan v. U.S. Oncology, Inc., No. 7:00cv350, 2005 WL 3334296 (W.D. Va. Dec. 7, 2005), concerned the contested settlement of a qui tam case brought by the United States against an oncology group in Roanoke regarding complicated allegations of overbilling the government for treatment services. After a two day hearing, I orally recommended approval of the settlement reached between the United States and the doctors, over the objection of the relator.

Counsel for the United States was Susan Lynch, Department of Justice, Commercial Litigation Branch, P.O. Box 261, Ben Franklin Station, Washington, DC 20044, Tel (202) 353-7171. The defendant was represented by Hunter W. Sims, Jr., Kaufman & Canoles, P.C., P.O. Box 3037, Norfolk, VA 23514, Tel (757) 624-3272. The relator was represented by Candace McCall, Suite 700, 11350 Random Hills Road, Fairfax, VA 22030, Tel (703) 385-5251.

9. United States v. Warren, No. 7:04cr021 (W.D. Va. Oct. 13, 2005), was a wire and mail fraud criminal prosecution involving the embezzlement of over seven million dollars by a claimed securities trader. After defendant entered a plea agreement to five felony counts, I was tasked with fashioning a restitution remedy

for the victims of the fraud. This was a huge undertaking, involving painstaking review of extraordinary amounts of data from the crime victims and developing a mechanism for a fair and just allocation of competing claims. Copy of opinion supplied.

The United States was represented by Assistant United States Attorney Jennie L. M. Waering, P.O. Box 1709, Roanoke, VA 24008, Tel (540) 857-2905. The defendant was represented by L. Bradford Bradford, P.O. Box 750, Roanoke, VA 24004, Tel (540) 342-2850.

10. United States v. Powers, 318 F. Supp. 2d 339 (W.D. Va. 2004). As United States Magistrate Judge, one of my most significant responsibilities is to conduct detention hearings for individuals charged with federal felonies. I conduct such hearings nearly every day, and each of these cases is significant to the individuals involved, as well as to the community at large. In reaching decisions in these cases, I am required to balance a defendant's individual constitutional and procedural rights against the danger he or she may pose to the community if released. Many of these cases involve serious drug and gun crimes, often with an overlay of substance abuse and mental illness. In Powers, I detained a defendant charged with being a felon in possession of firearms and explosives.

The United States was represented by Assistant United States Attorney Andrew Bassford, P.O. Box 1709, Roanoke, VA 24008, Tel (540) 857-2935. The defendant was represented by E. Scott Austin, Gentry Locke Rakes & Moore, P.O. Box 40013, Roanoke, VA 24022, Tel (540) 983-9393.

- 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. Martinsville Cable, Inc. v. Time Warner N.Y. Cable, LLC, 445 F. Supp. 2d 668 (W.D. Va. 2006), was a dispute between the City of Martinsville and cable television companies over the ownership and control of cable television assets serving the residents of Martinsville. The city argued that it had the right to acquire and operate, through a corporate alter ego, the assets of an existing cable television provider. The decision was significant because it concluded that the city did not comply with various provisions of Virginia's Municipal Cable Law and could not lawfully own or operate the disputed cable television assets.

The city was represented by Peter S. Partee, Sr., Hunton & Williams, 200 Park Avenue, 52nd Floor, New York, NY 10166, Tel (212) 309-1056. Defendant cable companies were represented by Jon Talotta, Hogan Lovells US, Park Place II - Ninth Floor, 7930 Jones Branch Drive, McLean, VA 22102, Tel (703) 610-6156.

2. Bryant v. Yorktowne Cabinetry, Inc., 538 F. Supp. 2d 948 (W.D. Va. 2008), concerned the issue of ex parte communications by counsel with former employees of a corporate party. I found the challenged communications to be proper under the Virginia Rules of Professional Conduct and decided cases. This decision was significant because it set clear rules for Virginia lawyers to follow in communicating with former employees of adverse parties.

Plaintiff was represented by W. Hunter Byrnes, Clement & Wheatley PC, P.O. Box 8200, Danville, VA 24543, Tel (434) 793-8200. Defendant was represented by Thomas R. Bagby, Woods Rogers PLC, P.O. Box 14125, Roanoke, VA 24038, Tel (540) 983-7766.

3. Spicer v. Universal Forest Products, No. 7:07cv462, 2008 WL 4455854 (W.D. Va. Oct. 1, 2008), dealt with a corporate party's obligations at a Rule 30(b)(6) deposition. I found that the requirements of the rule were not met. This decision was significant because the requirements of the rule had been flaunted, and practicing lawyers and parties need to have clear guidance as to the adverse consequences of flagrant noncompliance with the Federal Rules.

Plaintiff was represented by John P. Fishwick, Jr., Lichtenstein Fishwick & Johnson PLC, P.O. Box 601, Roanoke, VA 24004, Tel (540) 345-5890. Defendant was represented by Rafael E. Morell, Suite 300, 1250 24th Street NW, Washington, DC 20037, Tel (202) 467-8377.

4. Domonoske v. Bank of America, Inc., Nos. 5:08cv066, 5:09cv080, 2010 WL 329961 (W.D. Va. Jan. 27, 2010), was a proposed class action lawsuit against Bank of America under the Fair Credit Reporting Act. I found that the proposed class action settlement did not comply with the law concerning the availability of injunctive relief under the FCRA. The significance of this opinion lies in the recognition of the significant costs and burden associated with large civil cases, and the court's obligation to ensure that the integrity of the legal system is upheld and justice is done in each case.

Counsel for plaintiff were Matthew Erausquin, Consumer Litigation Associates PC, Suite 600, 1800 Diagonal Road, Alexandria, VA 22314, Tel (703) 273-7770, and Leonard Bennett, Consumer Litigation Associates, 12515 Warwick Boulevard, Suite 100, Newport News, VA 23606, Tel (757) 930-3660. Counsel for defendant was Michael Agoglia, Morrison & Foerster LLP, 425 Market Street, San Francisco, CA 94105, Tel (415) 268-6057.

5. United States v. Moore, No. 7:07mj507, 2007 WL 3172140 (W.D. Va. Oct. 26 2007), concerned a prolonged vehicle stop and subsequent search on the Blue Ridge Parkway. I found that the seizure of the driver violated the Fourth Amendment because the park ranger lacked reasonable articulable suspicion of criminal activity consistent with the requirements of Terry v. Ohio, 392 U.S. 1

(1968). This decision was significant because of the balance it required between the rights of citizens and legitimate law enforcement efforts.

The United States was represented by Assistant United States Attorney Sharon Burnham, P.O. Box 1709, Roanoke, VA 24008, Tel (540) 857-2250. Defendant was represented by William Harrison Cleaveland, Suite 101, 40 British Woods Drive, Roanoke, VA 24019, Tel (540) 591-5959.

6. Arista Records LLC v. Does 1-14, No. 7:08cv0205, 2008 WL 5350246 (W.D. Va. Dec. 22, 2008), was an effort by a record company to compel a state university to provide information regarding the identity of alleged copyright infringers using the university's internet service. The issue in the opinion concerned whether the state university was protected by the Eleventh Amendment from having to comply with the record company's discovery demands.

The record company was represented by Katheryn Coggon, Holme Roberts & Owen LLP, Suite 4100, 1700 Lincoln Street, Denver, CO 80203, Tel (303) 861-7000. The university was represented by Mary Beth Nash, Virginia Polytechnic Institute and State University, 327 Burruss Hall, Blacksburg, VA 24061, Tel (540) 231-6293.

7. Sprenger v. Rector and Board of Visitors of Virginia Tech, No. 7:07cv502, 2008 WL 2465236 (W.D. Va. June 17, 2008), concerned the issue whether an employee using a work computer has a reasonable expectation of privacy in electronic communications with her spouse or whether use of the employer's computer waived the common law spousal privilege. While the subsequent utility of the holding in my opinion was rather narrow because of the sparse evidentiary record in the case before me, the issue of whether an employee's use of an employer's computer can waive the attorney-client or doctor-patient privilege is an important issue to the millions of people using work computers every day.

The plaintiff was represented by David G. Harrison, Harrison Firm PC, 5305 Medmont Circle, Roanoke, VA 24014, Tel (540) 777-7100. The university was represented by Mary Beth Nash, Virginia Polytechnic Institute and State University, 327 Burruss Hall, Blacksburg, VA 24061, Tel (540) 231-6293.

8. Smith v. James C. Hormel School of Virginia Institute of Autism, No. 3:08cv0030, 2009 WL 4799738 (W.D. Va. Dec. 8, 2009), was a suit brought under the Individuals with Disabilities in Education Act concerning whether a private school had obligations under the statute and whether the local school board provided the child with a free and appropriate public education. In two opinions, I found that the IDEA did not impose liability on a private school that contracted with a public agency to provide special education and that the local school board provided free and appropriate public education.

Plaintiff proceeded pro se during these proceedings, but is now represented by George Naylor, Carter & Shands PC, Suite 530, 9030 Stony Point Parkway, Richmond, VA 23235, Tel (804) 747-7470. Defendant school board was represented by Kathleen S. Mehfoud, Reed Smith LLP, Suite 1700, Riverfront Plaza - West Tower, 901 East Byrd Street, Richmond, VA 23219, Tel (804) 344-3421. The private school was represented by Thomas Hall, Jason Burt and Maximilian Grant, Latham & Watkins LLP, Suite 1000, 555 Eleventh Street, NW, Washington, DC 20004, Tel (202) 637-2200.

9. Carr v. Hazelwood, No. 7:07cv001, 2008 WL 4556607 (W.D. Va. Oct. 8, 2008), was a claim for sexual assault brought by a female pretrial detainee under 42 U.S.C. § 1983. The opinion concerned whether the plaintiff had exhausted her administrative remedies. The case proceeded to trial at which plaintiff obtained a jury verdict in her favor.

Plaintiff was represented by Trey Sibley and Pete Johnson, Hunton & Williams LLP, Riverfront Plaza East Tower, 951 East Byrd Street, Richmond, VA 23219, Tel (804) 788-8200. Defendant was represented by John A. Gibney, Jr., Thompson & McMullan PC, Third Floor, 100 Shockoe Slip, Richmond, VA 23219, Tel (804) 698-6214.

10. Powers v. Coble, No. 7:05cv0436, 2007 WL 840114 (W.D. Va. Mar. 16, 2007), was a dispute over the termination of an auto salvage business and involved a myriad of breach of contract, business conspiracy and fiduciary duty claims. I found that material issues of fact precluded summary judgment, and the dispute was resolved at a subsequent mediation.

Plaintiff was represented by Mark D. Loftis, Woods Rogers PLC, P.O. Box 14125, Roanoke, VA 24011, Tel (540) 983-7618 and Jonathan D. Sasser, Ellis & Winters LLP, P.O. Box 33550, Raleigh, NC 27636, Tel (919) 865-7000. Defendants were represented by Kevin Oddo and Lori Thompson, LeClair Ryan P.C., 1800 Wachovia Tower, Drawer 1200, Roanoke, VA 24006, Tel (540) 510-3000.

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

Williams v. Jabe, No. 7:08cv00061, 2008 WL 5427766 (W.D. Va. Dec. 31, 2008), aff'd, 339 F. App'x 317 (4th Cir. 2009), cert. denied, 130 S. Ct. 1061 (2010).

Tunnell v. Ford Motor Co., No. 4:03cv00074, 2006 WL 910012 (W.D. Va. Apr. 7, 2006), adopted by, 2006 WL 1788233 (W.D. Va. June 26, 2006), aff'd, 245 F. App'x 283 (4th Cir. 2007), cert denied, 128 S. Ct. 1447 (2008).

Davis v. United States, No. 7:04cv00255, 2005 WL 1356032 (W.D. Va. June 7, 2005), appeal dismissed, 227 F. App'x 255 (4th Cir. 2007), cert. denied, 128 S. Ct. 416 (2007).

Cota v. Johnson, No. 7:03cv00782, 2004 WL 3334011 (W.D. Va. Nov. 5, 2004), aff'd, 126 F. App'x 642 (4th Cir. 2005), cert. denied, 126 S. Ct. 482 (2005).

- 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.

As a United States Magistrate Judge, every decision I make is subject to review by the district court or the Fourth Circuit. The vast majority of my decisions have been adopted or affirmed on review. The following decisions have been reversed, in whole or in part, on subsequent review.

Domonoske v. Bank of America, NA, No. 5:08cv066, 2010 WL 329961 (W.D. Va. Jan. 27, 2010), aff'd on other grounds, 2010 WL 1507212 (W.D. Va. Apr. 15, 2010). I declined to approve all of the terms of a proposed class action settlement of a case under the Fair Credit Reporting Act, including a provision for proposed injunctive relief. I recommended approval of the class action settlement with this term excised. The district court agreed with my legal analysis as to the availability of injunctive relief under the FCRA, and on that basis denied overall class certification.

Canada v. Ray, No. 7:08cv219, 2010 WL 297818 (W.D. Va. Jan. 19, 2010), adopted in part, declined in part, 2010 WL 2179062 (W.D. Va. May 28, 2010). I recommended dismissal as frivolous under 28 U.S.C. §1915A(b)(1) all but one claim in a civil rights action brought by an inmate. I recommended requiring the defendant warden to respond to the claim that a skin test for tuberculosis testing is the least restrictive means of reaching a compelling governmental interest under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc. The district court affirmed as to all but the RLUIPA claim. As to that claim, the district court did not reach the legal issue, finding that the pro se inmate alleged only that the testing violated the First Amendment and did not allege a violation of RLUIPA.

Bowen v. Astrue, No. 7:07cv00023, 2007 WL 4287735 (W.D. Va. Dec. 5, 2007), vacated, No. 7:07cv023 (W.D. Va. Dec. 20, 2008) (order vacating Report and Recommendation for factual clarification), clarified by, 2008 WL 65454 (W.D. Va. Jan. 4, 2008), aff'd, No. 7:07cv023 (W.D. Va. Jan. 18, 1008) (order adopting Report and Recommendation). The district court sought clarification of a factual issue concerning the opinion of a state agency physician. After clarification, the case was affirmed.

Smith v. James C. Hormel School of Virginia Institute of Autism, No. 3:08cv030, 2009 WL 4799738 (W.D. Va. Dec. 8, 2009), adopted in part, declined in part, 2010 WL 1257656 (W.D. Va. Mar. 26, 2010). District court adopted Report and Recommendation (“R&R”) granting summary judgment to private school and public county school board in Individuals with Disabilities in Education Act claim. District court also adopted denial of motion to dismiss defamation counterclaim, but declined to dismiss the fraud counterclaim.

Hartman v. Commissioner, No. 6:07cv044, 2008 WL 5110859 (W.D. Va. Dec. 4, 2008), declined to follow, 2009 WL 102737 (W.D. Va. Jan. 15, 2009). In this Social Security disability case, I recommended remand for a consultative medical evaluation, but the district court disagreed, finding substantial evidence to support the Commissioner’s decision.

Fields v. Justus, No. 1:07cv019, 2008 WL 570951 (W.D. Va. Feb. 28, 2008), adopted, 2008 WL 863723 (W.D. Va. Mar. 31, 2008), rev’d, 566 F.3d 281 (4th Cir. 2009). District court adopted Report and Recommendation (“R&R”) granting plaintiff’s motion for summary judgment on qualified immunity grounds in suit alleging that a public employee was not hired due to political affiliation. The Fourth Circuit reversed, agreeing that while the First Amendment generally prohibits consideration of political affiliation during hiring, it was not clearly established for the specific position involved in this case at the time the hiring decision was made.

Fisher v. Va. Dep’t of Corrections, No. 7:06cv00529, 2007 U.S. Dist. LEXIS 38487 (W.D. Va. May 25, 2007), adopted in part, rejected in part, 2007 U.S. Dist. LEXIS 48969 (W.D. Va. July 6, 2007) and 2007 U.S. Dist. LEXIS 48970 (W.D. Va. July 6, 2007). R&R recommending denial of defendants’ supplemental motion for summary judgment was adopted in its entirety except as it related to one defendant, who was dismissed by the district court because prisoner made no allegation as to this particular defendant’s involvement in violating prisoner’s First Amendment right to free exercise of religion.

Ostrander v. Commissioner, No. 7:06cv513 (W.D. Va. June 19, 2007), declined to follow, (W.D. Va. Oct. 19, 2007). In this Social Security disability case, I recommended affirming the Commissioner’s decision, but the district court remanded for further administrative consideration.

Centennial Broadcasting, LLC v. Burns, No. 6:06cv006, 2007 WL 1112672 (W.D. Va. Apr. 12, 2007), adopted in part, declined in part, 2007 WL 1472067 (W.D. Va. May 18, 2007). R&R denying award of attorney’s fees adopted, but denial of costs declined.

Williams v. Bays, No. 7:07cv00019, 2007 U.S. Dist. LEXIS 41306 (W.D. Va. Mar. 20, 2007), adopted in part, rejected in part, 2007 U.S. Dist. LEXIS 37581

(W.D. Va. May 23, 2007), appeal dismissed, 251 F. App'x 837 (4th Cir. 2007), aff'd, 274 F. App'x 284 (4th Cir. 2008). R&R recommending dismissal of all claims was adopted by district court except as to prisoner's claim regarding denial of medical care under the Eighth Amendment. The Fourth Circuit dismissed for lack of jurisdiction prisoner's appeal of the district court's Order and ultimately affirmed the district court's decision.

Montgomery v. Johnson, No. 7:05cv0131, 2006 WL 3370181 (W.D. Va. Nov. 17, 2006), adopted in part, declined in part, 2007 WL 473984 (W.D. Va. Feb 7, 2007). District court adopted R&R denying summary judgment to defendants in prisoner excessive force claim as to prolonged use of four point restraints, but declined to follow regarding the prison's initial use of force and initial placement in restraints.

Grimes v. Virginia, No. 7:05cv00036, 2005 U.S. Dist. LEXIS 44071 (W.D. Va. Dec. 20, 2005), adopted in part, 2006 U.S. Dist. LEXIS 87560 (W.D. Va. Jan. 12, 2006) (order recommitting matter for further findings of fact and conclusions of law), issue reconsidered in, 2006 U.S. Dist. LEXIS 2468 (W.D. Va. Jan. 24, 2006), adopted, 2006 U.S. Dist. LEXIS 87570 (W.D. Va. Feb. 7, 2006), aff'd, 206 F. App'x 241 (4th Cir. 2006). In this § 1983 suit, I recommended dismissing two of prisoner's claims based on statute of limitations and denying defendants' motion for summary judgment as to prisoner's third excessive force claim, finding a disputed issue of material fact as to administrative exhaustion. The district court adopted R&R with respect to the claims that were statutorily barred and recommitted the case for further findings of fact and conclusions of law on the issue of exhaustion, recognizing that prisoner had not demanded a jury and court was the ultimate trier of fact on the issue. In a second R&R, I recommended dismissing prisoner's remaining claim based on his failure to exhaust administrative remedies. District court adopted the R&R in its entirety and the Fourth Circuit affirmed.

Blount v. Johnson, No. 7:04cv429, 2005 WL 1313513 (W.D. Va. May 31, 2005), adopted, 373 F. Supp. 2d 615 (W.D. Va. Jun. 28, 2005), vacated by, 2005 WL 2246558 (W.D. Va. Sep. 15, 2005). R&R granting summary judgment to defendants due to prisoner's failure to exhaust administrative remedies adopted, and later vacated. District court allowed pro se prisoner to file additional evidence of exhaustion after R&R was entered, which created issue of fact.

Mitchell v. Commissioner, No. 6:04cv002 (W.D. Va. Feb. 3, 2005), declined to follow, (W.D. Va. Mar. 28, 2005). In this Social Security disability case, I recommended remand for additional vocational evidence, but the district court disagreed, finding substantial evidence to support the Commissioner's decision.

DirecTV, Inc. v. Swisher, No. 5:03cv079, 2004 WL 1109886 (W.D. Va. Apr. 30, 2004), declined to follow, 2004 WL 1381152 (W.D. Va. Jun. 18, 2004). R&R

dismissing satellite television piracy suit rejected as pleadings deemed sufficient to state a claim.

- 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.

Most of my decisions are not published in official reporters, but are reported on Westlaw. All orders and opinions issued by me are filed with our court's Electronic Case Filing (ECF) system.

- 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.

1. Ebersole v. Conover, 7:08cv503, 2010 WL 3629581 (W.D. Va. Aug. 27, 2010).
2. Hammonds v. Johnson, No. 7:09cv365, 2010 WL 2244389 (W.D. Va. Apr. 29, 2010).
2. Diaz v. United States, No. 7:09cv80138, 2010 WL 1005262 (W.D. Va. Mar. 1, 2010).
3. Oquinn v. Adkins, No. 7:08cv426, 2010 WL 677771 (W.D. Va. Feb. 24, 2010).
4. Whitner v. Ray, No. 7:09cv140, 2010 WL 1027418 (W.D. Va. Feb. 17, 2010).
5. Canada v. Ray, No. 7:08cv219, 2010 WL 297818 (W.D. Va. Jan. 19, 2010).
6. Jones v. Vandevander, No. 7:09cv055, 2009 WL 4709561 (W.D. Va. Dec. 8, 2009).
7. Beltran v. United States, No. 6:07cr012-001, No. 6:08cv80119, 2009 WL 3877517 (W.D. Va. Nov. 17, 2009).
8. Showalter v. Johnson, No. 7:08cv276, 2009 WL 3379146 (W.D. Va. Oct. 20, 2009).
9. Canada v. Ray, No. 7:08cv219, 2009 WL 2448557 (W.D. Va. Aug. 10, 2009).
10. Brown v. United States, No. 7:08cv80102, 2009 WL 1789121 (W.D. Va. June 23, 2009).
11. Fuentes v. United States, No. 5:08cv80101, 2009 WL 1806660 (W.D. Va. June 23, 2009).

12. Waters v. O'Brien, No. 7:08cv555, 2009 WL 1806661 (W.D. Va. June 23, 2009).
13. Showalter v. Johnson, No. 7:08cv276, 2009 WL 1321694 (W.D. Va. May 12, 2009).
14. United States v. Porter, No. 5:08cv80023, 2009 WL 825757 (W.D. Va. Mar. 26, 2009).
15. Murray v. United States, No. 5:08cv80028, 2009 WL 675807 (W.D. Va. Mar. 11, 2009).
16. Graham v. Dunagan, No. 7:08cv260, 2009 WL 440633 (W.D. Va. Feb. 20, 2009).
17. Couch v. Mathena, No. 7:08cv518, 2009 WL 233547 (W.D. Va. Jan. 30, 2009).
18. Williams v. Jabe, No. 7:08cv061, 2008 WL 5427766 (W.D. Va. Dec. 31, 2008).
19. Arista Records L.L.C. v. Does 1-14, No. 7:08cv205, 2008 WL 5350246 (W.D. Va. Dec. 22, 2008).
20. Giarratano v. Harvey, No. 7:08cv361, 2008 WL 5082750 (W.D. Va. Nov. 25, 2008).
21. United States v. Hairston, No. 4:05cr022-001, 2008 WL 4809165 (W.D. Va. Nov. 4, 2008).
22. Graham v. United States, No. 7:07cv377, 2008 WL 4735601 (W.D. Va. Oct. 20, 2008).
23. Carr v. Hazelwood, No. 7:07cv001, 2008 WL 4556607 (W.D. Va. Oct. 8, 2008).
24. Chacon v. Ofogh, No. 7:08cv046, 2008 WL 4146142 (W.D. Va. Sept. 8, 2008).
25. Callejas-Urbe v. United States, No. 7:07cv446, 2008 WL 2844497 (W.D. Va. July 22, 2008).
26. Sprenger v. Rector and Bd. of Visitors of Virginia Tech, No. 7:07cv502, 2008 WL 2465236 (W.D. Va. June 17, 2008).
27. Turner v. Kinder, No. 7:07cv419, 2008 WL 2078094 (W.D. Va. May 15, 2008).
28. Henderson v. Virginia, No. 7:07cv266, 2008 WL 792171 (W.D. Va. Mar. 25, 2008).

29. United States v. Gettier, No. 7:08po0024, 2008 WL 822073 (W.D. Va. Mar. 25, 2008).
30. McCain v. United States, No. 7:07cv301, No. 4:05cr011, 2008 WL 2332342 (W.D. Va. Mar. 25, 2008).
31. Guillen v. Bartee, No. 7:07cv236, 2008 WL 706536 (W.D. Va. Mar. 14, 2008).
32. Turner v. Kinder, No. 7:07cv419, 2008 WL 648982 (W.D. Va. Mar. 10, 2008).
33. Fields v. Justus, No. 1:07cv019, 2008 WL 570951 (W.D. Va. Feb. 28, 2008).
34. Henry v. United States, No. 7:07cv076, 2008 WL 552450 (W.D. Va. Feb. 27, 2008).
35. Tune v. Sandridge, No. 7:07cv347, 2008 WL 2264496 (W.D. Va. Feb. 19, 2008).
36. Williams v. Braxton, No. 7:07cv292, 2007 WL 4561295 (W.D. Va. Dec. 20, 2007).
37. Joyce v. Thomas, No. 7:07cv339, 2007 WL 4561297 (W.D. Va. Dec. 20, 2007).
38. Williams v. Bays, No. 7:07cv019, 2007 WL 4553701 (W.D. Va. Dec. 19, 2007).
39. United States v. Moore, No. 7:07mj507, 2007 WL 3172140 (W.D. Va. Oct. 26, 2007).
40. Redd v. Medical Staff, No. 7:07cv204, 2007 WL 2712956 (W.D. Va. Sept. 14, 2007).
41. Shifflett v. United States, No. 7:06cv497, 2007 WL 2463262 (W.D. Va. Aug. 28, 2007).
42. Saucedo-Gonzalez v. United States, No. 7:07cv073, 2007 WL 2319854 (W.D. Va. Aug. 13, 2007).
43. Poles v. Middle River Reg'l Jail, No. 7:07cv096, 2007 WL 2138705 (W.D. Va. July 23, 2007).
44. Odighizuwa v. Strouth, No. 7:06cv720, 2007 WL 2007337 (W.D. Va. July 6, 2007).
45. Pierson v. United States, No. 7:06cv366, 2007 WL 2021891 (W.D. Va. July 5, 2007).

46. Smith v. Rodriguez, No. 7:06cv521, 2007 WL 1768705 (W.D. Va. June 15, 2007).
47. Fisher v. Va. Dep't of Corrections, No. 7:06cv529, 2007 WL 1552548 (W.D. Va. May 25, 2007).
48. Shifflett v. United States, No. 7:06cv497, 2007 WL 1555738 (W.D. Va. May 22, 2007).
49. Moore v. Gregory, No. 7:06cv546, 2007 WL 1555774 (W.D. Va. May 22, 2007).
50. Abdullah v. O'Brien, No. 7:07cv040, 2007 WL 1472785 (W.D. Va. May 21, 2007).
51. United States v. Scott, No. 7:06mj713, 2007 WL 1289920 (W.D. Va. Apr. 30, 2007).
52. Odighizuwa v. Strouth, No. 7:06cv720, 2007 WL 1170640 (W.D. Va. Apr. 17, 2007).
53. Smith v. United States, No. 7:06cv391, 2007 WL 990279 (W.D. Va. Mar. 29, 2007).
54. Williams v. Bays, No. 7:07cv019, 2007 WL 1553588 (W.D. Va. March 20, 2007).
55. Scales v. Bristol Va. City Jail, No. 7:06cv556, 2007 WL 777532 (W.D. Va. Mar. 13, 2007).
56. Fisher v. Va. Dep't of Corrections, No. 7:06cv529, 2007 WL 628344 (W.D. Va. Feb. 23, 2007).
57. White v. Bristol Va. City Jail, No. 7:06cv504, 2007 WL 552206 (W.D. Va. Feb. 21, 2007).
58. Alvarado-Acosta v. United States, No. 7:05cv767, 2006 WL 3392204 (W.D. Va. Nov. 22, 2006).
59. Montgomery v. Johnson, No. 7:05cv131, 2006 WL 3370181 (W.D. Va. Nov. 17, 2006).
60. Mayo v. Morris, No. 7:06cv280, 2006 WL 3337385 (W.D. Va. Nov. 15, 2006).
61. Canada v. Ray, No. 7:06cv190, 2006 WL 2709637 (W.D. Va. Sept. 20, 2006).
62. Carpenter v. Sheriff of Roanoke City, No. 7:05cv667, 2006 WL 2709691 (W.D. Va. Sept. 20, 2006).

63. Diaz-Rodriguez v. United States, No. 7:05cv367, 2006 WL 2553415 (W.D. Va. Sept. 1, 2006).
64. Montgomery v. Johnson, No. 7:05cv131, 2006 WL 2403305 (W.D. Va. Aug. 18, 2006).
65. Blount v. Boyd, No. 7:05cv643, 2006 WL 2381968 (W.D. Va. Aug. 17, 2006).
66. United States v. Mackey, 7:06mj149, 2006 WL 1699736 (W.D. Va. June 12, 2006).
67. Menas v. O'Brien, No. 7:06cv026, 2006 WL 1457744 (W.D. Va. May 23, 2006).
68. Sadler v. Young, No. 7:04cv580, 2006 WL 1214073 (W.D. Va. Apr. 28, 2006).
69. Carpenter v. U.S. Dep't of Justice, No. 7:05cv491, 2006 WL 1134072 (W.D. Va. Apr. 25, 2006).
70. Chase v. United States, No. 7:03cv811, 2006 WL 982006 (W.D. Va. Apr. 11, 2006).
71. Gereau-Bey v. Wallens Ridge State Prison, No. 7:05cv605, 2006 WL 840325 (W.D. Va. Mar. 29, 2006).
72. Thompson v. Simpson, No. 7:05cv503, 2006 WL 681026 (W.D. Va. Mar. 15, 2006).
73. Teal v. Braxton, No. 7:04cv406, 2006 WL 467985 (W.D. Va. Feb. 24, 2006).
74. Grimes v. Virginia, No. 7:05cv036, 2006 WL 197113 (W.D. Va. Jan. 24, 2006).
75. Fitzgerald v. Danville City Jail, No. 7:05cv434, 2006 WL 167913 (W.D. Va. Jan. 23, 2006).
76. Noesi v. Bledsoe, No. 7:05cv451, 2006 WL 167498 (W.D. Va. Jan. 20, 2006).
77. Thomas v. Mail Room Staff, No. 7:05cv242, 2006 WL 213714 (W.D. Va. Jan. 10, 2006).
78. Washington v. Proffit, No. 7:04cv671, 2006 WL 4006141 (W.D. Va. Jan. 10, 2006).
79. Perez-Fulgencio v. United States, No. 7:05cv235, 2006 WL 83407 (W.D. Va. Jan. 9, 2006).

80. Grimes v. Virginia, No. 7:05cv036, 2005 WL 5488733 (W.D. Va. Dec. 20, 2005).
81. Washington v. Proffit, No. 7:04cv671, 2005 WL 6144294 (W.D. Va. Dec. 1, 2005).
82. Bazemore v. United States, No. 7:05cv371, 2005 WL 6156020 (W.D. Va. Dec. 1, 2005).
83. Gray v. Johnson, No. 7:04cv634, 2005 WL 3036644 (W.D. Va. Nov. 9, 2005).
84. Combs v. United States, No. 7:05cv064, 2005 WL 3019092 (W.D. Va. Nov. 8, 2005).
85. Plaster v. Brown, No. 6:05cv006, 2005 WL 3021961 (W.D. Va. Nov. 8, 2005).
86. United States v. McGavock, No. 7:05M404, 2005 WL 2675109, 68 Fed. R. Evid. Serv. 707 (W.D. Va. Oct. 18, 2005).
87. McFarlin v. Bassett, No. 7:05cv023, 2005 WL 2006962 (W.D. Va. Aug. 17, 2005).
88. Adams v. Compton, No. 7:04cv258, 2005 WL 2006975 (W.D. Va. Aug. 17, 2005).
89. Thomas v. Commonwealth, No. 7:04cv273, 2005 WL 1924170 (W.D. Va. Aug. 9, 2005).
90. Braithwaite v. United States, No. 7:03cv760, 2005 WL 1862664 (W.D. Va. Aug. 3, 2005).
91. Shuck v. Bledsoe, No. 7:05cv167, 2005 WL 1862666 (W.D. Va. Aug. 3, 2005).
92. Petty v. Bledsoe, No. 7:05cv206, 2005 WL 1806450 (W.D. Va. Aug. 1, 2005).
93. Hawkins v. Mills, No. 7:05cv216, 2005 WL 1806451 (W.D. Va. Aug. 1, 2005).
94. Harvey v. Johnson, No. 7:05cv238, 2005 WL 1812821 (W.D. Va. Aug. 1, 2005).
95. Peters v. Powers, No. 7:04cv678, 2005 WL 1801666 (W.D. Va. July 29, 2005).
96. Thomas v. Virginia, No. 7:04cv273, 2005 WL 1801672 (W.D. Va. July 28, 2005).

97. Edwards v. Braxton, No. 7:04cv550, 2005 WL 1388746 (W.D. Va. June 10, 2005).
98. Davis v. United States, No. 7:04cv255, 2005 WL 1356032 (W.D. Va. June 7, 2005).
99. Aziz v. Central Va. Reg'l Jail, No. 7:04cv732, 2005 WL 1307964 (W.D. Va. May 31, 2005).
100. Blount v. Johnson, No. 7:04cv429, 2005 WL 1313513 (W.D. Va. May 31, 2005).
101. Caudell v. Rose, No. 7:04cv557, No. 7:04cv558, 2005 WL 1278543 (W.D. Va. May 27, 2005).
102. Moore v. Bledsoe, No. 7:04cv595, 2005 WL 2709279 (W.D. Va. May 27, 2005).
103. Washington v. Proffit, No. 7:04cv671, 2005 WL 1176587 (W.D. Va. May 17, 2005).
104. Henderson v. Braxton, No. 7:04cv622, 2005 WL 1106648 (W.D. Va. May 6, 2005).
105. Thomas v. Virginia, No. 7:04cv497, 2005 WL 1074333 (W.D. Va. May 5, 2005).
106. Cota v. Johnson, No. 7:03cv782, 2004 WL 3334011 (W.D. Va. Nov. 5, 2004).
107. Smith v. Bureau of Prisons, No. 7:03cv662, 2004 WL 3397938 (W.D. Va. Oct. 22, 2004).

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

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

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

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

The court maintains a computerized conflict system to identify financial and other conflicts of interest. In addition, I have a computer printout of all clients I billed while at Woods Rogers, my former law firm, and I refer to it as needed. For a number of years after taking the bench, I recused myself from all cases involving Woods Rogers. I have, over the past six years, recused myself from cases involving former clients, personal friends and companies in which I have a financial interest. Such recusals are infrequent, but I believe essential to the impartial administration of justice. As a judge, I must avoid even the appearance of a conflict of interest. I have not maintained a listing of cases from which I have recused myself.

Counsel have asked that I be recused twice since I took the bench, and I did not participate in either case. Each of these cases involved lawyers who were opposing parties in a case I handled in private practice, in which I represented a law firm in a dispute with several of its former partners.

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 was appointed by Roanoke City Council to serve on the Local Advisory Board for Virginia Western Community College in 2000, and I served on that board as a member from 2000 to 2003 and as chairman from 2003 until I was appointed U.S. Magistrate Judge in 2004. From December, 1991 to June, 1992, I was appointed to a Citizens' Task Force to Study Alternative Election Procedures for Roanoke City Council. In 1997, I was appointed by Roanoke City Council to serve on the Roanoke Modified Election District Task Force, and I served as its Chairman.

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

I was a Delegate to the Virginia Democratic Convention in 1978. In 1997, I was a member of a nonpartisan committee, One Roanoke, which advocated no change in the city's method of electing city council members. I have not held a position or played a significant role in any partisan political campaign. Prior to my appointment as U.S. Magistrate Judge, I volunteered in minor capacities such as poll worker or canvasser a few times.

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

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

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

I served as a law clerk to the Hon. James C. Turk, Chief Judge, United States District Judge, Western District of Virginia, Roanoke (1981-1982).

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

I have not practiced law alone.

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

1982 – 1984
Vinson & Elkins, LLP
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Associate

1984 – 2004
Woods Rogers, PLC
10 South Jefferson Street, Suite 1400
Roanoke, Virginia 24011
Associate (1984 – 1988)
Principal (1989 – 2004)

- 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.

As U.S. Magistrate Judge, I regularly mediate cases pending in the Western District, and have done so in several hundred cases pending in the Roanoke, Lynchburg, Danville, Harrisonburg and Charlottesville Divisions.

The cases I have successfully mediated span the substantive scope of the federal court docket and include many personal injury, employment discrimination, intellectual property, eminent domain, breach of contract, construction, medical malpractice, qui tam and other federal court cases. Broad categories of such cases, with significant ones noted, are identified below.

1. Interstate 81 Trucking Cases. As this high truck volume artery cuts through the Western District, I have mediated many cases involving accidents on I-81. One recent tragic case involved a young British student visiting America who was killed on I-81 shortly after his arrival in this country. See Compton v. Douglas, No. 7:09cv87 (Roanoke Div.) (settlement approved Sept. 17, 2009).

2. Eminent Domain Cases. I successfully mediated dozens of eminent domain disputes between landowners and a natural gas company concerning a pipeline constructed in southwest Virginia. These cases called for deft handling as many of the landowners were angry over the taking of their property for use by the natural gas utility. See, e.g., East Tenn. Natural Gas Co. v. 1.91 Acres, No. 4:02cv132 (Danville Div.) (settled May 30, 2007).

3. Products Liability Cases. I have mediated a number of such cases, including a case involving significant burns to a worker inside a steel mill, and others ranging from commonplace products such as ladders to unusual ones such as carnival equipment. See, e.g., Treadway v. Danieli & C. Officine Meccaniche Spa, No. 7:08cv00019 (Roanoke Div.) (settled Oct. 16, 2008).

4. Employment Cases. Employment cases make up a large component of the civil docket in the Western District, and I have successfully mediated many of these cases, involving claims of race, sex, disability, national origin and age discrimination. See, e.g., Guthrie v. Atlantic Credit & Finance, Inc., No. 7:09cv467 (Roanoke Div.) (settled following mediation Feb. 17, 2010).

5. Environmental Cases. I successfully mediated a complicated, multiparty dispute over the environmental consequences of silt in streams

from a construction project in Lynchburg brought by the Environmental Protection Agency. See U.S. v. Savoy Senior Housing Corp., No. 6:06cv00031 (Lynchburg Div.) (settled Nov. 6, 2008).

6. Construction Litigation. I have helped parties settle a number of construction cases, including one involving the construction of the Virginia Tech football stadium. See Varney, Inc. v. Turner Construction Co., No. 7:05cv00710 (Roanoke Div.) (settled Feb. 21, 2006).

7. Intellectual Property. I have mediated a number of intellectual property disputes, including a high stakes computer patent case brought against a major domestic computer manufacturer. See DE Technologies, Inc. v. Dell, Inc., No. 7:04cv00628 (Roanoke Div.) (settled July 25, 2007).

8. Property Disputes. One extremely challenging case to settle involved a number of rather hostile landowners concerning conflicting claims of access to parcels of real estate dating back to the construction of the Blue Ridge Parkway. It took a great deal of collaboration and patience to iron out a compromise among the warring neighbors. See Wade v. Alderman, No. 4:07cv00009 (Danville Div.) (settled Aug. 18, 2008).

9. Commercial Cases. Settling disputes between commercial concerns allows me to call on my substantial practical experience in this area. One large case I mediated involved a contract between an international coal shipper and a railroad over construction costs and shipping revenue. See Norfolk Southern Railway Co. v. Drummond Coal Sales, Inc., 7:08cv00340 (Roanoke Div.) (settled Dec. 14, 2009).

10. Whistleblower Cases. One of the more interesting settlement dynamics occurs in federal qui tam cases, because there is a tension between the amount of money paid to the United States and that going to the relator and his or her counsel. I conducted a lengthy mediation a few years ago in which we were able to settle a substantial health care fraud case. See U.S. ex rel. Clarke v. Diabetes Self Care, No. 7:02cv01168 (Roanoke Div.) (settled Oct. 10, 2005).

b. Describe:

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

My law practice primarily involved litigation. My early practice in Washington with Vinson & Elkins involved antitrust, trade regulation and administrative law. In my twenty years practicing law in Roanoke with Woods Rogers, my practice initially involved personal injury cases, including products liability, automobile, and premises liability work. My practice over time evolved to a largely commercial one, including

substantial work in antitrust litigation, counseling and investigations, contract and business tort litigation, and intellectual property litigation. A small portion of this work was white collar criminal defense.

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

From the earliest days of my practice, I have had substantial involvement with complex federal litigation, representing individuals and local, regional and national businesses. While in Washington at Vinson & Elkins, I worked on a large antitrust case involving the proposed construction of a coal slurry pipeline from the Powder River Basin in Wyoming to the Mississippi River. My client was a joint venture developing the pipeline. I also recall working on a matter pending at the Iran-US Claims Tribunal at The Hague as well as other federal administrative law issues. I also represented pro bono an individual with a Title VII claim.

After I returned to Roanoke in 1984, I did insurance defense work on personal injury cases for insurance companies such as Nationwide, Aetna and others for a time. My typical clients for this work were individuals and small businesses. This work ranged from automobile wrecks and slip and fall cases to substantial products liability cases involving personal injury, property and economic damages. One federal court case from my early practice in Roanoke that stands out involved the failure of an axle atop the head frame of one of the deepest coal mines in southwest Virginia, causing enormous property damage and claimed economic losses. My client in that Big Stone Gap Division case was a coal mining machinery manufacturer from Michigan. In another substantial products liability case pending in Harrisonburg, I represented Charles Machine Works, manufacturer of Ditch Witch trenchers, in an alleged personal injury case.

Beginning in the late 1980s and continuing throughout my tenure at Woods Rogers, I developed a substantial antitrust and trade regulation practice. Representing national and regional businesses such as Goodyear Tire and Rubber Co., Bethlehem Steel, Bayer Corp., R.J. Reynolds Tobacco Co., and Carilion Health System, I worked on a wide variety of federal antitrust cases pending in the Western District of Virginia. These civil cases ran the gamut of the federal antitrust laws, and included Sherman Act § 1 conspiracies in restraint of trade, Sherman Act § 2 monopolization and attempted monopolization, and price discrimination under the Robinson-Patman Act. In addition to representing large corporate clients on such issues, I represented many regional and local businesses and professionals in substantial antitrust and trade regulation matters pending in federal court in the Western District, including such

clients as a small real estate firm in Charlottesville and doctors practicing in Danville.

Beyond civil antitrust cases, I represented a number of local and regional clients in criminal and civil investigations by the Antitrust Division of the United States Department of Justice and the Federal Trade Commission. These matters included allegations of soft drink and milk bid rigging, television advertising price fixing, and higher education salary, tuition and financial aid information exchanges alleged to be in violation of § 1 of the Sherman Act. Certain of these criminal prosecutions spawned additional civil suits brought by the Commonwealth of Virginia and the states of Tennessee and West Virginia, federal administrative debarment proceedings, as well as private class action suits.

In addition to antitrust work, my federal practice spanned other substantive areas. William B. Poff of Woods Rogers and I obtained a multimillion dollar verdict in a patent infringement case for GTE Products Corp. in the Roanoke Division. I successfully defended Consolidation Coal Company from a breach of contract and fraud case involving the purchase of wood products for underground mining in the Abingdon Division. I represented a small Chatham company that manufactured airplane engines in a breach of contract suit in the Lynchburg Division. I worked on federal securities litigation for Optical Cable Corporation in the Roanoke Division and Pannill Knitting, a textile manufacturer, in the Danville Division. I represented American of Martinsville, a hotel furniture manufacturer, in a trademark dispute in the Danville Division. I worked for several years on two patent infringement cases for a Pulaski manufacturer of bimetallic cylinders used in the manufacture of plastics.

As evident from these examples, while my office was located in Roanoke, my federal practice was not confined to the Roanoke Division, and I handled substantial federal cases in every division of the Western District.

In addition to federal court litigation, I handled many cases in state courts throughout the Western District on a wide variety of substantive areas. One of my more memorable cases involved representing landowners in Alleghany County in a historic dispute over fishing rights on the Jackson River. In the final years of my practice, I represented a number of small businesses and professionals in disputes over the dissolution of their businesses, including representation of real estate developers, physicians and lawyers.

- 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.

The vast majority of my work was civil litigation; however, I did do some white collar criminal defense work and some resulting administrative work before federal agencies.

- i. Indicate the percentage of your practice in:
 1. federal courts: 60-70%
 2. state courts of record: 30-40%
 3. other courts:
 4. administrative agencies: <1%

- ii. Indicate the percentage of your practice in:
 1. civil proceedings: 95%
 2. criminal proceedings: 5%

- 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.

I estimate that I handled more than one hundred cases which went to verdict, judgment or final decision in courts of record. I estimate that I served as chief or sole counsel in two-thirds of these cases. The vast majority of these cases were set for jury trials, but many were decided on summary judgment prior to trial.

- i. What percentage of these trials were:
 1. jury: 25%
 2. non-jury: 75%

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

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

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

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

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

1. Worrell Enterprises v. Charlotte Ramsey Realtors, No. 3:94cv0001 (W.D. Va. Dec. 19, 1994). I was lead counsel for Charlotte Ramsey Realtors, a local real estate firm in Charlottesville. When the Charlottesville Area Association of Realtors created a weekly real estate publication and its members began advertising in it, the established daily newspaper brought an antitrust group boycott and conspiracy claim against a number of local real estate firms. U.S. Magistrate Judge B. Waugh Crigler in Charlottesville granted summary judgment for the defendants, and the court also dismissed defendants' Noerr-Pennington sham exception counterclaim.

Counsel for the other defendant real estate firms were Thomas G. Slater, Jr., Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, VA 23219, Tel (804) 788-8475, and R. Hewitt Pate II (then of Hunton & Williams in Richmond), now Vice President and General Counsel, Chevron Corporation, 6001 Bollinger Canyon Road, San Ramon, CA 94583, Tel (925) 842-9958; Edward B. Lowry, Michie Hamlett Lowry, Rasmussen & Tweel PC, P.O. Box 298, Charlottesville, VA 22902, Tel (434) 951-7220; and Edward E. Scher, Troutman Sanders LLP, P.O. Box 1122, Richmond, VA 23218, Tel (804) 697-1200. Plaintiff was represented by Dennis S. Rooker, Suite 3, 1421 Sagem Place, Charlottesville, VA 22901, Tel (434) 977-7424, and Lee H. Simowitz, Baker & Hostetler, Suite 1100, 1050 Connecticut Avenue NW, Washington, DC 20036, Tel (202) 861-1500.

2. Supermarket of Marlinton, Inc. v. Valley Rich Dairy, 161 F.3d 3 (4th Cir. 1998). I was lead counsel for a joint venture milk producer charged with price fixing in a class action lawsuit. This civil class action suit followed a federal criminal school milk bid rigging investigation and subsequent Commonwealth of Virginia and State of West Virginia civil lawsuits. These related criminal and civil cases went on for nearly ten years. Ultimately, the class action suit was dismissed for lack of antitrust standing by U.S. District Judge Jackson L. Kiser in Roanoke, and the dismissal was affirmed by the Fourth Circuit.

A co-defendant milk producer was represented by Frank G. Smith III and Michael A. Doyle, Alston & Bird LLP, One Atlantic Center, 1201 West Peachtree Street, Atlanta, GA 30309, Tel (404) 881-7000. Plaintiff was represented by Leonard Egan, Suite 611, 1900 L Street, NW, Washington, DC 20036, Tel (202) 467-4047.

3. Beverly v. Charles Machine Works, Inc., 45 F.3d 425 (4th Cir. 1994). Albert Lee Beverly claimed that he was injured trying to clear a rock out of the digging chain on a Ditch Witch trencher. On the eve of trial in Augusta County Circuit Court, he nonsuited the case and refiled in federal court in Harrisonburg. U.S. Magistrate Judge B. Waugh Crigler dismissed the case on summary judgment, and the Fourth Circuit affirmed on appeal.

I was lead counsel for the manufacturer of the trencher, Charles Machine Works. The co-defendant firm that rented the trencher was represented by Humes J. Franklin, Jr., now a Virginia Circuit Court Judge, 113 East Beverley Street, 2nd Floor, Staunton, VA 24401-4390, Tel (540) 332-3870. Plaintiff was represented by Martin J. McGetrick, Chandler, Franklin & O'Bryan, P.O. Box 6747, Charlottesville, VA 22906, Tel (434) 971-7273.

4. Bristol Steel & Iron Works v. Bethlehem Steel Corp., 41 F.3d 182 (4th Cir. 1994). I was co-counsel with Heman Marshall of Woods Rogers, (540) 983-7654, in this civil antitrust price discrimination trial held in Abingdon. Bristol Steel, a bridge and building steel fabricator, claimed that Bethlehem provided favorable pricing to its competitors in violation of the Robinson-Patman Act. After a two week trial, Bethlehem prevailed under the statutory meeting competition defense, and the Fourth Circuit affirmed. The case was tried before U.S. District Judge Glen M. Williams.

My co-counsel were Heman A. Marshall III and Francis H. Casola, Woods Rogers PLC, P.O. Box 14125, Roanoke, VA 24038, Tel (540) 983-7600. Principal counsel for Bristol was William W. Lanigan, 361 Vanderveer Avenue, Somerville, NJ 08876, Tel (908) 234-1155.

5. United States v. Carilion Health System, 892 F.2d 1042 (4th Cir. 1989). I was part of the trial team that successfully defended the Antitrust Division's second attempt to block a hospital merger in the United States. The government had earlier prevailed in stopping a hospital merger in Rockford, Illinois, but was not able to convince U.S. District Judge James C. Turk and an advisory Roanoke Division jury that the merger in Roanoke would be anticompetitive. The district court's judgment was affirmed by the Fourth Circuit.

My co-counsel were William B. Poff (lead trial counsel) and Heman A. Marshall III, Woods Rogers PLC, P.O. Box 14125, Roanoke, VA 24038, Tel (540) 983-7649; and William G. Kopit, Epstein, Becker & Green, 1227 25th Street, NW, Suite 700, Washington, DC 20037, Tel (202) 861-1803. Principal counsel for the United States was Robert Bloch, now with Mayer Brown, 1999 K Street, NW, Washington, DC 20006, Tel (202) 263 3203.

6. C&A Wood Products v. Consolidation Coal Co., No. 1:95cv0212 (W.D. Va. Apr. 24, 1998). In this Abingdon Division case, a supplier of crib blocks and other wood products to a leading national coal producer brought suit for breach of contract and fraud over the provision of wood products to mines in southwest Virginia. I was lead counsel for Consolidation Coal, and U.S. District Judge Glen M. Williams granted summary judgment for my client.

Lead counsel for plaintiff was J. Scott Sexton, Gentry Locke Rakes & Moore, P.O. Box 40013, Roanoke, VA 24022, Tel (540) 983-9379.

7. Patent infringement cases. I was part of the trial team for the plaintiff with William B. Poff of Roanoke, (540) 983-7649, and David G. Conlin, Dike, Bronstein, Roberts, Cushman & Pfund, 130 Water Street, Boston, MA 02109, Tel (617) 517-5515, in GTE

Products Corp. v. Kennemetal, Inc., 772 F. Supp. 907 (W.D. Va. 1991), a patent infringement case. This case, tried over several weeks before U.S. District Judge Jackson L. Kiser in the Roanoke Division, concerned the shape of rotatable cutting bits used in the highway resurfacing industry. The jury awarded several million dollars in damages, and the case ultimately settled on appeal.

I was lead counsel for the plaintiff in two related patent infringement cases in federal court in Roanoke, in which I represented Xaloy, Inc., a Pulaski, Virginia manufacturer of bimetallic cylinders. Each case ultimately settled. J. Scott Sexton of Gentry Locke in Roanoke, Tel (540) 983-9379, represented one defendant, and the other defendant was principally represented, at different periods, by James H. Hulme of Arent Fox in Washington, Tel (202) 857-6000, and Matthew M. Neumeier of Jenner & Block, in Chicago, Tel (312) 222-9350.

8. Hoover Color Corp. v. Bayer Corp., 24 F. Supp. 2d 571 (W.D. Va. 1998). I represented Bayer in a Robinson-Patman price discrimination case in the Roanoke Division concerning Bayer's pricing of synthetic iron oxide pigment used in the construction industry as a color additive. Bayer prevailed on summary judgment in the district court before U.S. District Judge Jackson L. Kiser, the Fourth Circuit reversed, and the case settled. My co-counsel was Thomas Demitrack, Jones, Day, Reavis & Pogue, 901 Lakeside Avenue, Cleveland, OH 44114, Tel (216) 586-7141.

Lead counsel for plaintiff was Dennis P. Brumberg, Brumberg Mackey & Wall, Suite 300, 30 W Franklin Rd., Roanoke, VA 24011, Tel (540) 343-2956.

9. American Furniture Company, Inc. v. Pulaski Furniture Corp., No. 4:99cv0071 (W.D. Va. 2000). In this Danville Division case, I was lead counsel for a Martinsville, Virginia furniture manufacturer alleging trade dress infringement of its designs of hotel furniture. The case settled after a hotly contested preliminary injunction proceeding.

Defendant was represented by R. Hewitt Pate II (then of Hunton & Williams in Richmond), now Vice President and General Counsel, Chevron Corporation, 6001 Bollinger Canyon Road, San Ramon, CA 94583, Tel (925) 842-9958.

10. Kraft v. Burr, 252 Va. 273, 476 S.E.2d 715 (1996). I was co-counsel for a group of landowners who brought a trespass action against a fishing guide chartering trips on the Jackson River through our clients' property. The case was fascinating because the landowners could trace their title to a crown grant from the King of England prior to the Revolutionary War, which gave them the exclusive right to fish, fowl and hunt the property. The legal issue in the case involved the juxtaposition of that crown grant with a twentieth century federal court decision declaring the involved portion of the Jackson River navigable. Our clients prevailed in the Circuit Court of Alleghany County before Circuit Judge Duncan M. Byrd, Jr. and in the Supreme Court of Virginia.

My co-counsel was Thomas T. Lawson, now retired from Woods Rogers in Roanoke, and counsel for the defendant was Terry N. Grimes, Grimes & Williams PC, Franklin

Commons, 320 Elm Avenue SW, Roanoke, VA 24016, Tel (540) 982-3711. Counsel for amicus curiae the Virginia Farm Bureau was R. Hewitt Pate II (then of Hunton & Williams in Richmond), now Vice President and General Counsel, Chevron Corporation, 6001 Bollinger Canyon Road, San Ramon, CA 94583, Tel (925) 842-9958.

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.)

Given that my legal practice was principally litigation-oriented, the most significant legal activities I have been involved with during my career involved the lawsuits noted above. Outside of litigation, while at Woods Rogers, I regularly advised clients on antitrust and trade regulation issues, conducted antitrust compliance programs and provided business advice to the firm's clients on these issues and many other issues of federal and state law affecting their operations and decisions. I did not do any lobbying.

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.

None.

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.

None.

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.

No.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items

exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

Other than immediate family members and personal friends, I am not aware of any other potential conflicts of interest.

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

I would not hear a case involving a family member, personal friend or any entity in which I have a financial interest. I adhere to conflict of interest rules in the Code of Conduct for United States Judges and would continue to do so if confirmed as U.S. District Judge.

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

I have tried to serve the bar and the community in a wide range of public service capacities and have spent substantial time on such pursuits over the years, as reflected in my response to questions 6, 9 and 11.a. I served as coordinator of Legal Aid conflicts referrals for pro bono cases for the Roanoke Bar Association for a period of time and worked on setting up the Barrister Book Buddies school reading program. I have done a fair amount of pro bono work for the various organizations with which I have been involved and some pro bono work for individuals.

Since taking the bench, I have worked to aid the disadvantaged involved in our system of justice, as well as to help develop programs to keep young people out of the criminal justice system and to aid those exiting the process.

As U.S. Magistrate Judge in Roanoke, I am responsible for managing the hundreds of pro se prisoner cases filed in the Western District. Given this supervisory responsibility, I appreciate the need for pro bono representation of indigent defendants. Working with Kimberly Carpenter Emery, Assistant Dean for Pro Bono and Public Interest at the University of Virginia School of Law, and Helen Trainor of the Legal Aid Justice Center, we have developed and implemented a successful pilot program to secure pro bono counsel for prisoners in selected civil rights cases.

During my tenure on the bench, I have witnessed the impact of federal drug laws on youthful offenders. As a result, in 2008, I initiated a program to educate middle and high school students on the serious federal penalties associated with drug trafficking crimes. During 2009, the program was presented to more than 6,000 students in six school districts in our area.

Along with Judge James Jones in Abingdon and Judge Sam Wilson in Roanoke, I am participating in a pilot Reentry Court designed to assist federal felons exiting the penitentiary with the difficult transition to society. Spearheaded by the Probation Service, this program reaches out to these persons to provide support, training and employment assistance. It has been an extremely fulfilling experience for me to personally play a small part in the substantial efforts of these folks to turn their lives around.

Additionally, I was asked by the Virginia Bar Association to participate in The Chief Justice's Pro Bono Summit held on April 27, 2010, at which time I addressed the Virginia Supreme Court on pro bono initiatives in the Western District of Virginia.

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.

The Virginia State Bar coordinates evaluations of judicial candidates and endorsements by the eight statewide bar associations in Virginia. The Virginia State Bar requires submission of a Judicial Selection Questionnaire followed by a personal interview. The interview was conducted on April 19, 2010. I also was interviewed on that day by the Virginia Women Attorneys Association, the Old Dominion Bar Association, the Hispanic Bar Association of Virginia and the Asian Pacific American Bar Association. The Virginia Bar Association, Virginia Trial Lawyers Association, and Virginia Association of Defense Attorneys

evaluated judicial candidates and endorsed candidates without personal interviews.

I received the highest rating from all eight statewide bar groups:

Virginia State Bar - Highly Qualified
Virginia Bar Association - Recommended
Virginia Trial Lawyers Association - Highly Qualified
Virginia Association of Defense Attorneys - Highly Qualified
Virginia Women Attorneys Association - Highly Recommended
Old Dominion Bar Association - Highly Qualified
Hispanic Bar Association of Virginia - Highly Recommended
Asian Pacific Bar Association - Highly Recommended

In addition, two local bar associations endorsed me for the vacancy in the Western District of Virginia. On April 13, 2010, the Roanoke Bar Association voted to endorse me for the vacancy, and the Salem/Roanoke County Bar Association voted to endorse me as Most Highly Qualified on April 19, 2010.

On May 15, 2010, I was interviewed by Senator Jim Webb and Senator Mark R. Warner's staff. On the same day, the Danville Bar Association met to endorse a candidate for the vacancy in the Western District. I was advised that not enough members were present to constitute a quorum under that association's bylaws, but I was permitted by the association to tell the Senators that those present unanimously recommended me for the vacancy.

On June 15, 2010, I was interviewed by Senators Webb and Warner. On June 29, 2010, Senators Webb and Warner recommended that President Obama nominate me to serve as U.S. District Judge.

Since July 2010, I have been in contact with pre-nomination officials at the U.S. Department of Justice. I interviewed with attorneys from the White House Counsel's Office and the Department of Justice on August 26, 2010.

On September 22, 2010, I was interviewed by E. Fitzgerald Parnell, III, Poyner Spruill LLP, 301 S. College St., Ste. 2300, Charlotte, NC 28208, (704) 342-5252, the Fourth Circuit Representative on the American Bar Association's Standing Committee on the Federal Judiciary.

On December 1, 2010, the President submitted my nomination to the Senate.

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

No.

FINANCIAL DISCLOSURE REPORT NOMINATION FILING

Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial) Urbanski, Michael F	2. Court or Organization US Dist.Ct.West.Dist. of Va.	3. Date of Report 12/01/2010
4. Title (Article III Judges indicate active or senior status; magistrate Judges indicate full- or part-time) District Judge	5a. Report Type (check appropriate type) ☒ Nomination, Date 12/01/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	6. Reporting Period 01/01/2009 to 11/29/2010
7. Chambers or Office Address P. O. Box 38 Roanoke, VA 24002-0038	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of instructions.)

☒ NONE (No reportable positions.)

POSITION

NAME OF ORGANIZATION/ENTITY

1.		
2.		
3.		
4.		
5.		

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of instructions.)

☒ NONE (No reportable agreements.)

DATE

PARTIES AND TERMS

1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting

Urbanski, Michael F

Date of Report

12/01/2010

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of instructions.)***A. Filer's Non-Investment Income**☒ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1.		
2.		
3.		
4.		
5.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.**(Dollar amount not required except for honoraria.)*☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2010	Part-time employee - Townside Gardens, Inc. / self-employed gardener (occasional)
2. 2009	Part-time employee - Townside Gardens, Inc. / self-employed gardener (occasional)
3. 2009	Timber Sale
4.	
5.	

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment.**(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)*☐ NONE *(No reportable reimbursements.)*

<u>SOURCE</u>	<u>DESCRIPTION</u>
1. Exempt	
2.	
3.	
4.	
5.	

FINANCIAL DISCLOSURE REPORT

Page 3 of 6

Name of Person Reporting

Urbanski, Michael F

Date of Report

12/01/2010

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*☐ NONE *(No reportable gifts.)*

<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1. Exempt		
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-34 of instructions.)*☒ NONE *(No reportable liabilities.)*

<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.		
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT

Page 4 of 6

Name of Person Reporting

Urbanski, Michael F

Date of Report

12/01/2010

VII. INVESTMENTS and TRUSTS – Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)



NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Wachovia Bank - Accounts	A	Interest	K	T	exempt				
2. Grayson Bankshares, Inc.	B	Dividend	K	U					
3. Shenandoah Life Insurance Co. - Whole Life	A	Interest	J	T					
4. MetLife Policyholder Trust	A	Dividend	J	T					
5. Wells Fargo Advisors - Cash Account	A	Interest	J	T					
6. Real Estate/Carroll Co., VA (1/2 int) (see Part VIII)		None	M	S					
7. American Funds, Growth Fund of America - 529A	C	Dividend							
8. AXA Equitable/Multimanager Aggressive Equity Fund	A	Dividend	J	T					
9. Invesco Mid Cap Core Equity A Fund	A	Dividend	J	T					
10. Goldman Sachs Structured US Equity A Fund	A	Dividend	J	T					
11. American Funds, Income Fund of America - 529A	A	Dividend							
12. Northwestern Mutual - Ordinary Life	C	Dividend	K	T					
13. Northwestern Mutual - Custom Comp Life	C	Dividend	L	T					
14. Northwestern Mutual - Term to Age 65	B	Dividend	K	T					
15. Northwestern Mutual - Whole Life	A	Dividend	J	T					
16. Northwestern Mutual - 65 Life	A	Dividend	J	T					
17. Northwestern Mutual - 65 Life	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less H = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
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FINANCIAL DISCLOSURE REPORT

Page 5 of 6

Name of Person Reporting

Urbanski, Michael F

Date of Report

12/01/2010

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

Part VII Investment and Trusts, Line 6 -- One-half interest in real estate in Carroll County, Virginia. The assessed value of the entire parcel as of December 7, 2009 is \$207,300.

FINANCIAL DISCLOSURE REPORT

Page 6 of 6

Name of Person Reporting

Urbanski, Michael F

Date of Report

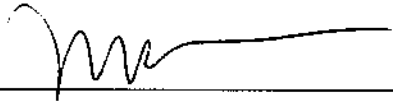
12/01/2010

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature



Date

12/1/10

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		27	713	Notes payable to banks-secured (auto loan)		24	790
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		5	506	Notes payable to relatives			
Unlisted securities – see schedule		22	579	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			900
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable			
Real estate owned – see schedule		492	850	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		90	000				
Cash value-life insurance		133	000				
Other assets itemize:							
Thrift Savings Plan		470	556				
				Total liabilities		25	690
				Net Worth	1	216	514
Total Assets	1	242	204	Total liabilities and net worth	1	242	204
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities

AXA Equitable Multimanager Aggressive Equity Fund	\$ 2,594
Goldman Sachs Structured US Equity A Fund	1,204
Invesco Mid Cap Core Equity A Fund	1,708
Total Listed Securities	<u>\$ 5,506</u>

Unlisted Securities

Grayson Bankshares Inc.	\$ 22,579
Total Unlisted Securities	<u>\$ 22,579</u>

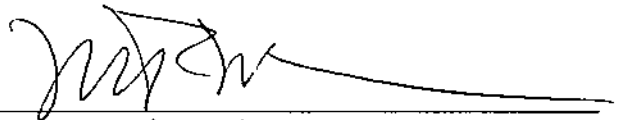
Real Estate Owned

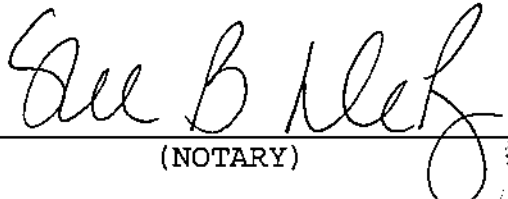
Personal residence	\$ 389,200
Undeveloped property	103,650
Total Real Estate Owned	<u>\$ 492,850</u>

AFFIDAVIT

I, **MICHAEL FRANCIS URBANSKI**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Nov. 29 2010
(DATE)


(NAME)


(NOTARY)

my Commission Expires:
1/31/2011
Reg # 226063

