

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Evan Jonathan Wallach

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

United States Circuit Judge for the Federal Circuit

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 Court of International Trade  
One Federal Plaza  
New York, New York 10278

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

1949; Superior, Arizona

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.

1990 – 1992, United States Army Judge Advocate General School, Judge Advocate Officer Advanced Course; Diploma, 1992

1980 – 1981, University of Cambridge Law School; L.L.B., 1981

1973 – 1976, University of California, Berkeley, Boalt Hall School of Law; J.D., 1976

1971 – 1973, University of Arizona, School of Journalism; B.A., 1973

1967 – 1968, Diablo Valley Junior College; No degree received

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.

1995 – present  
United States Court of International Trade  
One Federal Plaza  
New York, New York 10278  
Judge

2000 – present  
Brooklyn Law School  
250 Joralemon Street  
Brooklyn, New York 11201  
Adjunct Law Professor, Law of War

2001 – 2008 (still affiliated with institution)  
Fachspezifische Fremdsprachenausbildung (FFA)  
University of Muenster  
Universitätsstrasse 14-16  
48143 Münster, Germany  
Visiting Professor, Law of War

1997 – 2000; Spring 2006 (still affiliated with institution)  
New York Law School  
185 West Broadway  
New York, New York 10013  
Adjunct Law Professor, Law of War

2004  
George Mason University Law School  
3301 Fairfax Drive  
Arlington, Virginia 22201  
Adjunct Professor, Law of War

1976 – 1995  
Lionel Sawyer & Collins  
300 South Fourth Street  
Las Vegas, Nevada 89101  
Partner (1983 – 1995)  
Associate (1976 – 1983)

1994 – 1995  
New Times Newspaper  
Las Vegas, Nevada  
(no longer in business)  
Restaurant Critic

1989 – 1995

Nevada Army National Guard

Battle Born Brigade

(No longer exists. Successor unit is Nevada Army National Guard, Joint Forces Headquarters, 2460 Fairview Drive, Carson City, Nevada 89701)

Judge Advocate CPT to MAJ

1991

United States Army

Office of the Judge Advocate General of the Army

International Affairs Division

The Pentagon

Washington, D.C. 20310

Active Duty Attorney-Advisor (on unpaid leave from law firm)

1987 – 1988

United States Senator Harry Reid

United States Senate

Office of the Majority Leader, S-221

The Capitol

Washington, D.C. 20510

General Counsel and Public Policy Advisor (on unpaid leave from law firm)

1981 – 1982

University of Nevada, Las Vegas

Political Science Department

4505 South Maryland Parkway

Las Vegas, Nevada 89154

Instructor, graduate-level course in international law

Summer 1974

University of Arizona

Tucson, Arizona 85721

Legal Secretary/Law Clerk to Counsel to the University

Other Affiliations (uncompensated unless otherwise indicated):

2001 – 2010

Judicial Advisory Board

George Mason Law and Economics Center

3301 Fairfax Drive

Arlington, Virginia 22201

Member

2001 – 2006  
Hughes Hall Alumni Association  
Hughes Hall College  
Cambridge, England CB1 2EW  
President

Approx. 1992 – 1995  
National Conference of Christians and Jews  
(now known as National Conference for Community and Justice)  
1095 Day Hill Road, Suite 100  
Windsor, Connecticut 06095  
Board Member

1977 – 1979  
Nevada B'Nai Brith Anti-Defamation League  
Address Unknown  
Director

Approx. 1977  
Nevadans for ERA  
Address Unknown  
Board member

Approx. 2001 – present  
Speedway Stone Associates, LLC  
c/o Les Wallach  
627 East Speedway  
Tucson, Arizona 85719  
Part-owner (previously received rental income)

Approx. 1984 – present  
WWH Partnership  
c/o Les Wallach  
627 East Speedway  
Tucson, Arizona 85719  
Part-owner (previously received rental income)

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.

1969 – 1971  
United States Army, PVT (E-1) to SGT (E-5) RA 18932400, Active service for training and combat service as Reconnaissance Sergeant, S-2, HHC, 8th Engineer Battalion, First



Cavalry Division (Air Mobile), Republic of Vietnam, 1970 – 1971. Honorable Discharge.

1971 – 1975 (Ready Reserve 1973 – 1974; Inactive Reserve balance of time)  
United States Army, SGT (E-5), Reserve service in Basic Combat Training Group, as Infantry Training Instructor (11B4H), HHC 91st Div. Comm. Grp. (BCT), 3225 Willow Pass Road, Concord, CA 94519. Transfer to inactive reserve due to law school work commitments.

1989 – 1995

Nevada Army National Guard, CPT (O-3) to MAJ (O-4), Army, Active Service for Persian Gulf War, as Attorney/Advisor, International Affairs Division, Office of the Judge Advocate of the United States Army, 1991. Honorable Discharge.

I have registered for Selective Service.

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

Scholarships:

Douglas Martin Journalism Scholarship, University of Arizona  
Rufenacht French Language Prize, University of Arizona  
University of Arizona Rhodes Scholar nominee

Fellowships:

Honorary Fellow, Hughes Hall College, Cambridge, England

Honorary Society Memberships:

Phi Beta Kappa (1973)  
Phi Kappa Phi (1973)  
Kappa Tau Alpha (1973)  
Alpha Gamma Sigma (1968)

Military Awards:

Meritorious Service Medal (1991, 1995)  
Nevada Medal of Merit (1995)  
Bronze Star Medal (1970)  
Air Medal (1970)  
Good Conduct Medal (1970)  
Valorous Unit Citation (1970)  
Republic of Vietnam Cross of Gallantry with palm (1970)

Honor Graduate Diploma Radio Operator Course (1969)  
Honor Graduate Diploma Radio Teletype Operator Course (1969)  
Honor Graduate Diploma Radio Teletype NCO Candidate Course (1969)

Special Recognition:

B'Nai Brith Distinguished Service Award for Service as Nevada Anti-Defamation League Director (1979)  
American Bar Association Liberty Bell Award for contributions to equality and justice under the law which have benefited the public (1992)  
President's Award, Nevada State Press Association for contributions to freedom of the press (1994)  
Intellectual Freedom Award, Clark County School Librarians (1995)  
New York Law School, Otto L. Walter Writing Award (2006)  
United States Court of International Trade, Resolutions of the Court for service as Chairman of the Rules and Technology Committees (2005)

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 (1977 – 1995)  
Clark County Bar Association (1977 – 1995)  
D.C. Bar Association (1987 – approx. 2000)  
International Judicial Relations Committee, Judicial Conference of the U.S. (2004 – 2010)  
Nevada State Bar Association (1977 – present)  
United States Court of International Trade  
    Budget Committee (1999 – 2004)  
    Chair, Rules Committee (1999 – 2004)  
    Public Affairs and Education Committee (2011 – present)  
    Technology Committee (1999 – 2011)  
        Chair (1999 – 2004)

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.

Nevada, 1977  
District of Columbia, 1987

I discontinued my membership in the District of Columbia bar in approximately 2000. Otherwise, there have been no lapses in membership.

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

Supreme Court of the United States, 1984  
United States Court of Appeals for the Ninth Circuit, 1989  
United States District Court for the District of Nevada, 1977  
Nevada Supreme Court, 1977  
District of Columbia Court of Appeals, 1987

There have been no lapses in membership.

#### **11. Memberships:**

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

American Law Institute (2003 – present)  
    Adviser: ALI Project: Legal and Economic Principles of World Trade Law  
    Consultative Group: International Jurisdiction and Judgments Project  
    Consultative Group: Recognition and Enforcement of Foreign Judgments  
Cambridge University Law Tennis Club (1980 – 1981)  
Cambridge War Studies Group (1980 – 1981)  
First Cavalry Division Association (1970 – present)  
Hughes Hall Alumni Association  
    President (2001 – 2006)  
Hughes Hall College, Honorary Fellow, Cambridge, England (2007 – present)  
Hughes Hall Rowing Club (1980 – 1981)  
Las Vegas Rotary Club (1994)  
National Association for the Advancement of Colored People (approx. 1982 – 1995)  
National Conference of Christians and Jews  
    Board Member (approx. 1992 – 1995)  
    Member, Fundraising Committee (1992 – 1995)  
National Guard Association of the United States (1989 – 1995)  
National Rifle Association (approx. 1977 – 1978)  
Nevada B’Nai Brith Anti-Defamation League  
    Director (1977 – 1979)  
Nevada State Press Association (approx. 1977 – 1995)  
Nevadans for ERA  
    Board member (approx. 1977)

Oxford Cambridge Club, London, England (approx. 1983 – 1995)  
Society of Professional Journalists (intermittently, including student chapters, 1967 – 1995)  
Veterans of Foreign Wars Post 8063 (approx. 1973 – 1976)

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

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

## 12. Published Writings and Public Statements:

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

International Law of War Association Web Site, designer and author  
[www.lawofwar.org](http://www.lawofwar.org) (on-line casebook for law of war students 1999 to present).  
Print-out of current (2011) version of on-line casebook supplied.

*Foreword* to 42 GEO. J. INT'L L. 1 (Fall 2010). Copy supplied.

*A Tiny Problem with Huge Implications – Nanotech Agents as Enablers or Substitutes for Banned Chemical Weapons: Is a New Treaty Needed?*, 33 FORDHAM INT'L L.J. 858 (2010). Copy supplied.

*Partisans, Pirates, and Pancho Villa: How International and National Law Handled Non-State Fighters in "the Good old Days" Before 1949 and that Approach's Applicability to the "War on Terror,"* 24 EMORY INT'L L. REV. 549 (2010). Copy supplied.

*Rule of Law: A U.S. Federal Judge's View*, Federal Judiciary of Pakistan, Federal Judicial Academy Bulletin, Jan.-June 2010. Copy supplied.

With I. Maxine Marcus, INTERNATIONAL CRIMINAL LAW, Chapter 4.1 *Command Responsibility*, (M. Cherif Bassiouni, ed., 3rd ed. 2008). Copy supplied.

*Waterboarding Used to be a Crime*, WASHINGTON POST, Nov. 4, 2007. Copy supplied.

*Drop by Drop: Forgetting the History of Water Torture in U.S. Courts*, 45 COLUM. J. TRANSNAT'L L. 468 (2007). Copy supplied.

*The Logical Nexus Between the Decision to Deny Application of the Third Geneva Convention to the Taliban and Al Qaeda and the Mistreatment of Prisoners in Abu Ghraib*, 36 CASE W. RES. J. INT'L L. 541 (2004). Copy supplied.

*Afghanistan, Quirin and Uchiyama: Does the Sauce Suit the Gander?*, ARMY LAW. 18 (2003). Copy supplied.

*The Procedural and Evidentiary Rules of The Post-World War II War Crimes Trials: Did They Provide An Outline For International Legal Procedure?*, 37 COLUM. J. TRANSNAT'L L. 851 (1999). Copy supplied.

*Extradition To The Rwandan War Crimes Tribunal: Is Another Treaty Required?*, 3 UCLA J. INT'L L. & FOREIGN AFF. 59 (1998). Copy supplied.

*Informed Consent*, LAS VEGAS REVIEW-JOURNAL, Sept. 14, 1995. Copy supplied.

*Stop the Presses: Three Ways Nevada Unconstitutionally Chills the Media*, 22 NEV. LAW. 17 (1994). Copy supplied.

*Legal Handbook for Nevada Reporters*, Published by Nevada State Press Association and Lionel Sawyers & Collins (1994). Updated on-line, at [http://web.mac.com/nevadapress/nevadapress.com/Reporters\\_legal\\_handbook.html](http://web.mac.com/nevadapress/nevadapress.com/Reporters_legal_handbook.html). August, 2008. Copy supplied.

NEVADA CIVIL PRACTICE MANUAL, Chapter 11, *Motions, Affidavits, Stipulations and Orders* (Brent T. Adams, ed., 3rd ed. 1993). Copy supplied.

*President's Much Ballyhooed Foreign-Policy Prowess an Illusion*, LAS VEGAS REVIEW-JOURNAL, Oct. 18, 1992. Copy supplied.

*The Use of Crude Oil by an Occupying Belligerent State as a Munition De Guerre*, 41 INT'L & COMP. L.Q. 287 (1992). Copy supplied.

*U.N. Should Consider Military Action to Halt Iraqi Aggression*, LAS VEGAS REVIEW-JOURNAL, Aug. 7, 1990. Copy supplied.

*Founding Fathers Sought to Protect Expression of Even Vile Ideas*, LAS VEGAS REVIEW-JOURNAL, July 1, 1990. Copy supplied.

*Free Nation Won't Muzzle Vile Ideas*, LAS VEGAS REVIEW-JOURNAL, July 4, 1989, at 7B. Copy supplied.

*Executive Powers of Prior Restraint over Publication of National Security Information: The UK and The USA Compared*, 36 INT'L & COMP. L.Q. 541 (1983).

I was a food critic for the Las Vegas New Times between August 1994 and August 1995. The columns I was able to obtain are supplied, as is an excerpt from a column that is posted on a web site.

I also wrote and edited numerous articles as a journalism student and student editor between 1967 and 1973 but do not have and have been unable to obtain copies of those materials.

- 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.

As a judge on the United States Court of International Trade, I authored the following:

Chambers Procedures (continuously revised, 1995 – present). Copy supplied.

As a judge on the United States Court of International Trade, I served on a committee approving the following reports, memoranda to the judges, and policy statements of the court.

Procedures for Producing and Posting Slip Opinions (July 2010). Copy supplied.

Guidelines for Acceptable/Responsible Use of the Internet, DCN/J-Net and Electronic Mail (June 2002, revised Jan. 2008). Copy supplied.

Administrative Order regarding Practice by Students Enrolled in an Approved Law School Clinical Program (Jan. 24, 2006). Copy supplied.

Procedures for Portable Wireless Communications Devices in the Court (Aug. 16, 2005). Copy supplied.

Manual for a Uniform System for Slip Opinions (Aug. 2005). Copy supplied.

Guidelines regarding Bill of Costs (May 25, 2004). Copy supplied.

Procedures for Publication of Opinions and Orders (Mar. 23, 2004). Copy supplied.

Guidelines for Court-Annexed Mediation (Sept. 30, 2003). Copy supplied.

Memo regarding Pending Case Report (Sept. 27, 1999). Copy supplied.

I authored several reports for the International Judicial Relations Committee of the Judicial Conference of the United States. They contain information about United States diplomatic facilities and contacts with the judiciaries of foreign countries and may contain information related to judicial security, personal information about judges, or other material of a diplomatic or intelligence nature. The reports are listed below, but because they contain sensitive material that could impact the foreign relations of the United States, and in some cases, contain national security information, they are not provided:

Afghanistan Trip Report (approx. Apr. 15, 2009).

Pakistan Trip Report (Dec. 29, 2008).

Mongolia Trip Report (June 17, 2008).

Second Interim Report to International Judicial Relations Committee (Nov. 19, 2007).

Report to International Judicial Relations Committee (Aug. 21, 2007).

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

On July 18, 1995, I testified before the United States Senate Judiciary Committee as a nominee to be United States Judge for the Court of International Trade. Transcript supplied.

On July 14, 1994, as General Counsel for the Nevada State Press Association, I wrote a letter to the University and Community College System of the Nevada Board of Regents requesting them to conduct candidate interviews during open meetings. I do not have a copy of the letter, but the UCCSN Board of Regents meeting minutes relating the contents of the letter are supplied.

On June 24, 1994, as General Counsel for the Nevada State Press Association, I wrote a letter to Nevada Attorney General Frankie Sue Del Papa requesting the Attorney General to require the University and Community College System of Nevada (UCCSN) to hold public interviews for candidates to head the UCCSN. I do not have a copy of the letter, but press coverage is supplied.

On April 19, 1993, I submitted written testimony to the Nevada State Senate Committee on Judiciary that included proposed amendments to anti-stalking legislation. The testimony was read into the record by Andrea Engleman, a lobbyist for the Nevada State Press Association. I do not have a copy of my testimony, but committee meeting minutes are supplied.

On April 13 and 14, 1993, as General Counsel for the Nevada State Press Association, I testified before the Nevada State Assembly Committee on Government Affairs about state laws concerning public books and records. I do not have a copy of my testimony, but committee meeting minutes from both days are supplied.

On March 15, 1993, as General Counsel for the Nevada State Press Association, I testified before the Nevada State Senate Committee on Judiciary and Assembly Committee on Judiciary about anti-stalking legislation. Committee meeting minutes supplied.

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

March 3, 2011: Bench and Bar Dialogue panel discussion concerning practice before the court, Georgetown Law CLE. I have no notes, transcript, or recording. The address of Georgetown Law is 600 New Jersey Avenue, NW, Washington, D.C. 20001.

November 18, 2010: United States Court of International Trade Judicial Conference. Panelist on Procedural and Remedy Issues. I have no notes, transcript, or recording. The address of the USCIT is One Federal Plaza, New York, NY 10278.

March 1, 2010: Emory Law School, Atlanta, Georgia. I discussed how the United States had handled unconventional enemies in the past. Notes supplied. The basis of my remarks was also later published as the paper *Pirates, Partisans and*



*Pancho Villa: How International and National Law Handled Non-State Fighters in "the Good old Days" Before 1949 and that Approach's Applicability to the War on Terror*, which was supplied in response to 12(a).

November 9, 2009: Goldstone Report Panel Discussion on Implications for the Future of International Criminal Accountability and Human Rights Advocacy, International Law Society, ILS Human Rights Committee, and the Secular Legal Society of Brooklyn Law School. I discussed general law of armed conflict issues. I have no notes, transcript, or recording. The address of Brooklyn Law School is 250 Joralemon Street, Brooklyn, NY 11201.

September 30, 2009: Participated in a UN-World Bank knowledge exchange workshop to chair a panel on "Support for rule of law in fragile states/post-conflict situations." I spoke on importance of rule of law. I have no notes, transcript or recording. The address of the UN is 405 East 42nd Street, New York, NY 10017. The address of the World Bank is 1818 H Street, NW, Washington, DC 20433.

July 10, 2009: Army JAG School Rule of Law Keynote. I have no notes, transcript or recording, but my remarks were based on the Pakistan and Afghanistan International Judicial Committee Reports referenced in response to 12(b) and the Rule of Law Article supplied in response to 12(a). The address of the Army JAG School is 600 Massie Road, Charlottesville, VA 22903.

March 28-31, 2009: Talks to Afghan Judges and Law Students, United States Agency for International Development, Kabul, Afghanistan. I have no notes, transcript or recording, but my remarks were based on the Afghanistan Trip Report referenced in response to 12(b). The address for USAID is Ronald Reagan Building, Washington, DC 20523.

December 15-19, 2008: Talks to Pakistani judges sponsored by USAID, Islamabad, Pakistan. PowerPoint slides supplied for talks on Judicial Independence and on Foundational Evidence and Equity. I have no notes, transcripts or recording for another talk on the rule of law, but the Rule of Law in Pakistan article supplied in response to 12(a) was the basis of this talk. The address for USAID is Ronald Reagan Building, Washington, D.C. 20523.

November 19, 2008: United States Court of International Trade Judicial Conference, panelist on New Directions in Customs Practice. I have no notes, transcript, or recording. The address of the USCIT is One Federal Plaza, New York, NY 10278.

October 16, 2008: presided over a Trial Skills Seminar, U.S. Court of International Trade and the Customs & International Trade Bar. I have no notes, transcript, or recording. The address of the USCIT is One Federal Plaza, New York, NY 10278.

June 2-6, 2008: Talks to Mongolian judges, sponsored by United States Patent and Trademark Office, Ulan Bator, Mongolia. PowerPoint slides supplied for speeches on The Basics of Intellectual Property and International Trade, Intellectual Property Protection, The American Media and The Law, and a separate speech to the Mongolian National Military Academy on the Law of Armed Conflict.

October 2-3, 2007: George Mason Law and Economics Center, seminar for judges on "International, Law Economic Perspective," with Prof. Eric Posner. My presentation was limited to discussion of military tribunals, law of armed conflict and their application to game theory. I have no notes, transcript, or recording. The address of George Mason University School of Law is 3301 Fairfax Drive Arlington, VA 22201.

November 18, 2006: Speaker, National Communication Association, "Splendid Little Wars," San Antonio, Texas. Speech supplied; I no longer have a copy of the slides that accompanied the speech.

November 6, 2006: United States Court of International Trade Judicial Conference, panelist on judges' panel. I have no notes, transcript, or recording. The address of the USCIT is One Federal Plaza, New York, NY 10278.

November 2, 2006: DiCarlo Lecture, John Marshall Law School, Chicago, Illinois. Remarks supplied.

October 2006: United States Court of International Trade Judicial Conference, panelist on judges' panel on emerging issues. I have no notes, transcript, or recording. The address of the USCIT is One Federal Plaza, New York, NY 10278.

October 10, 2006: Foundation for Responsible Environmental Economics (FREE), Racine, Wisconsin, Panel on terrorism. PowerPoint slides supplied.

February 2, 2006: Georgetown University Law Center Continuing Legal Education International Trade Update, participant in Bench and Bar Roundtable Discussion. I have no notes, transcript, or recording. The address for the Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, D.C. 20001.

January 15, 2006: Talk on Intellectual Property Protection to Judges from Moslem countries, United States Patent and Trademark Office, Dubai. Notes supplied.

April 19, 2005: United States Court of International Trade, United States Court of International Trade Bar Association, and American Bar Association joint presentation on "Litigating Trade Adjustment Assistance Cases before the United

States Court Of International Trade.” I have no notes, transcript, or recording. The address of the USCIT is One Federal Plaza, New York, NY 10278.

October 2004: George Mason Law and Economics Center, seminar for judges on “International Law in American Courts,” with Professor John Yoo. My presentation was limited to discussion of military tribunals and law of armed conflict. I have no notes, transcript, or recording. The address of George Mason University School of Law is 3301 Fairfax Drive Arlington, VA 22201.

October 2004: Panelist, “Terrorism on Trial” conference, Case Western Reserve University School of Law, Cleveland, Ohio. The paper I presented was published as *The Logical Nexus between the Decision to Deny Application of the Third Geneva Convention to the Taliban and Al Qaeda and the Mistreatment of Prisoners in Abu Ghraib*, which was supplied in response to 12(a).

September 2004: Panel with Professor John Yoo at Federalist Society, New York, New York. I spoke about military tribunals. I have no notes, transcript, or recording. The address of the New York Federalist Society is at Hogan Lovells US LLP, 875 Third Avenue, New York, NY 10022.

September 13, 2004: Operation Homecoming, Fort Richardson, Alaska. Subject matter was the use of literature, and particularly poetry for combat veterans to articulate their wartime experience. I also spoke to officers on a general overview of the law of war. I have no notes, transcript or recording, but press coverage is supplied. The address of Fort Richardson is Anchorage, AK 99505.

August 2004: American Bar Association, Committee on Military Law, panel discussion on military tribunals. I have no notes, transcript, or recording, but the remarks were similar in content to the 2003 Army Lawyer article submitted in response to 12(a). The address of the American Bar Association is 321 North Clark Street, Chicago, IL 60654.

January 29, 2004: Presided over a mock U.S. Court of International Trade oral argument, Georgetown Law School. I have no notes, transcript, or recording. The address of Georgetown Law School is 600 New Jersey Avenue, NW, Washington, D.C. 20001. Since approximately 1996, I have also presided over mock hearings every 2-3 years for Professor Lenni Benson of New York Law School. I do not recall the specific dates, and I have no notes, transcript, or recording. The address of New York Law School is 185 West Broadway, New York, NY 10013.

August 2003: Presenter, Foundation for Responsible Environmental Economics (FREE), Seminar on Terrorism, Bozeman, Montana. Handout supplied.

October 15, 2002: United States Court of International Trade Bar Association, speaker at “Discovery Seminar” and panelist on a judges’ panel. I have no notes,

transcript, or recording. The president of CITBA, Michael S. O'Rourke, may be reached at Rode & Qualey, 55 West 39th Street, New York, NY 10018.

March 2002: District Court Judges Convention, New Orleans, Louisiana. Invited to replace panelist for discussion of war on terror sponsored by the American Society of International Law. I spoke on the history of military tribunals and the structure of the Geneva Convention. I have no notes, transcript, or recording, but the content was based on and similar to the 2003 Army Lawyer article submitted in response to 12(a). The address of the American Society of International Law is 2223 Massachusetts Avenue, NW, Washington, D.C. 20008.

October 2001: Columbia Law School, talk with international trade class, Professor Meri Janow. I have no notes, transcript, or recording. The address is 435 West 116th Street, Mail Code 4004, New York, NY 10027.

September 21, 2001: Hughes Hall Speech, Hughes Hall College, Cambridge England. Speech supplied.

June 1999: Talk for Russian Judges on Enforcement of Foreign Judgments sponsored by United States Agency for International Development, Moscow and St. Petersburg, Russia. Introduction supplied, but I have no notes, transcript, or recording for the rest of talk, which was conducted as a Socratic dialogue. The address for USAID is Ronald Reagan Building, Washington, D.C. 20520.

May 13, 1999: New York Law School Commencement, New York, New York. Outline supplied.

May 11, 1999: Speech to American Foundation for Suicide Prevention accepting award for Senator Harry Reid. Speech supplied.

April 1999: United States Court of International Trade Bar Association, speaker at annual dinner. I have no notes, transcript, or recording. The address of the USCIT is One Federal Plaza, New York, NY 10278.

April 1999: New York Law School Journal of International & Comparative Law, guest speaker at dinner. I have no notes, transcript, or recording. The address of New York Law School is 185 West Broadway, New York, NY 10013.

November 20, 1998: Talk on relations among bench, bar and media for American Bar Association Rule of Law Initiative (CEELI), Zagreb, Croatia. Notes supplied.

May 1998: John Jay College of Criminal Justice, City University of New York. Guest lectured to class on international criminal law for Professor George Andreapoulis. I have no notes, transcript, or recording. The address of John Jay College of Criminal Justice is 899 Tenth Avenue, New York, NY 10019.

April 1998: University of California, Berkeley. Trade Panel with Professor David Caron. I have no notes, transcript, or recording. The address is 215 Boalt Hall, Berkeley, CA 94720.

September 10, 1997: presentation on practice and procedure at the Court of International Trade, International Law Section of the Michigan Bar, Detroit, Michigan. I have no notes, transcript, or recording. The address of the USCIT is One Federal Plaza, New York, NY 10278.

1991 or 1992: Speaker, Las Vegas Rotary Club, Iraq War remarks. Speech supplied.

1990s: speaker at seminars sponsored by the National Conference of Christians and Jews. I do not have records of the specific dates, but in 1994 I spoke on the topic of the Holocaust, and in 1995, I spoke on the topic of the separation of Church and State. I have no notes, transcript, or recording. The address of the Conference (now known as National Conference for Community and Justice) is 1095 Day Hill Road, Suite 100, Windsor, CT 06095.

- 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.

*Independent Judiciary Must Protect Rights of People*, Balochistan Times, Dec. 19, 2008. Copy supplied.

*US Judge, Justice Department Adviser Visit FJA*, Balochistan Times, Dec. 18, 2008 [re-printed in multiple outlets]. Copy supplied.

Phil Reisman, *Hartsdale Dogs Strut Their Stuff at July Fourth Walk*, The Journal News, July 8, 2003. Copy supplied.

Tim Collie, *Tribunals Would Be Models for Future Terrorist Trials*, Sun-Sentinel, Jan. 12, 2002. Copy supplied.

Monica Dias, *Leggett's Case Revives Talk about Shield Law*, News Media & the Law, Jan. 1, 2002. Copy supplied.

Warren Richey, *Tribunals on Trial*, Christian Science Monitor, Dec. 14, 2001. Copy supplied.

Warren Bates, *Eclectic Local Attorney in Line for Taste of Federal Judgeship*, Las Vegas Review-Journal, May 22, 1995. Copy supplied.

Michael Reynolds, *Attorney Fights to Open Government to the People*, North Lake Tahoe Bonanza, undated but approximately 1992. Copy supplied.

Associated Press, *Las Vegas Attorney Says Allies Can Attack*, Nevada Appeal Aug. 6, 1991. Copy supplied.

K.J. Evans, *LV Lawyer Kept Eye on U.S. Troops*, Las Vegas Review-Journal, Aug. 5, 1991. Copy supplied.

Jane Ann Morrison, *Nevada GOP to Pay \$25,000 Fine*, Las Vegas Review-Journal, July 30, 1991 [quote re-printed in multiple outlets]. Copy supplied.

Interview on July 12, 1984 with quote re-printed: Staff, *Path to Geraldine Ferraro's Place in History Passed through Tahoe*, Reno Gazette-Journal, Mar. 27, 2011. Copy of the 2011 article supplied.

*State-by-State Results of Voting in Primaries and Caucuses*, Washington Post, Mar. 15, 1984. Copy supplied.

*Hart Wins in Nevada*, Associated Press, Mar. 14, 1984. Copy supplied.

*Untitled*, United Press International, Mar. 14, 1984. Copy supplied.

Cy Ryan, *Untitled*, United Press International, Mar. 14, 1984. Copy supplied.

Jeff Rabin, *Hart Gains Make Race in Nevada*, Sacramento Bee, Mar. 11, 1984. Copy supplied.

Cy Ryan, *Campaign '84: Hart Seen Close Behind Mondale in Nevada's 'Super Tuesday' Caucuses*, United Press International, Mar. 10, 1984. Copy supplied.

Jay Mathews, *Hart Riding High as West Saddles Up for 'Super Tuesday'*, Washington Post, Mar. 10, 1984. Copy supplied.

John Glisch, *Hart Aims to Uproot the Well-Rooted Mondale in Nevada*, Christian Science Monitor, Mar. 8, 1984. Copy supplied.

John Glisch, *Organizer's Drive Gives Mondale an Advantage*, Las Vegas Review-Journal, Jan. 15, 1984. Copy supplied.

I also recall giving interviews to two local television stations and one radio station during the period 1987-1995, usually in my role as counsel for the Nevada State Press Association or the Democratic Party of Nevada, but also occasionally as a commentator on legal issues or political election coverage. I do not have copies or transcripts of any of those appearances, and have been unable to obtain them.

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 have served as an Article III judge on the U.S. Court of International Trade since my appointment in 1995. During this time, I have also sat by designation on three courts of appeal and three district courts.

The U.S. Court of International Trade has national geographic jurisdiction but limited subject matter jurisdiction. Its subject matter jurisdiction was expanded by Congress in 1980. The court hears international trade and customs cases and also deals, among other matters, with specific issues such as denial or revocation of customs brokers' licenses, civil penalties for alleged improper importation of goods, and trade adjustment assistance to displaced workers. The court has full legal and equitable powers.

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

I have presided over 15 bench or jury trials, presided over approximately 140 additional cases that resulted in judgment, and sat on appellate panels in approximately 85 additional cases.

(Most of the judgments in cases over which I presided were not the product of a trial. Many of these cases were decided on motions to dismiss, motions for summary judgment, or motions for judgment on the agency record. In particular, 28 U.S.C. § 2640 directs that certain cases that come before the U.S. Court of International Trade are to be decided on the basis of the underlying administrative record rather than de novo.)

- i. Of these, approximately what percent were:

|               |      |
|---------------|------|
| jury trials:  | 13 % |
| bench trials: | 87 % |

|                       |      |
|-----------------------|------|
| civil proceedings:    | 100% |
| criminal proceedings: | 0%   |

(If appellate proceedings are included, these percentages are 88 % civil and 12 % criminal.)

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

See attachment 13b.



- 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) Ammex, Inc. v. United States, Court No.: 99-01-00013, 23 C.I.T. 1066, 86 F. Supp. 2d 1278 (Ct. Int'l Trade 1999); 23 C.I.T. 549, 62 F. Supp. 2d 1148 (Ct. Int'l Trade 1999); 24 C.I.T. 851, 116 F. Supp. 2d 1269 (Ct. Int'l Trade 2000); 26 C.I.T. 247, 193 F. Supp. 2d 1325 (Ct. Int'l Trade 2002), aff'd, 334 F.3d 1052 (Fed. Cir. 2003), cert. denied, 541 U.S. 1041 (2004); 26 C.I.T. 510, 201 F. Supp. 2d 1374 (Ct. Int'l Trade 2002), aff'd, 334 F.3d 1052 (Fed. Cir. 2003), cert. denied, 541 U.S. 1041 (2004)

The operator of a duty-free store challenged the U.S. Customs Service's refusal to permit the sale of duty-free fuel at that store. After granting limited discovery to the plaintiff but denying the plaintiff's motion to supplement the administrative record submitted by the agency, I decided that the agency acted unlawfully. I granted the plaintiff's motion for judgment on the agency record but denied the plaintiff's motion alleging contempt. Following this decision, the agency identified new information that led it to again reject the sale of duty-free fuel. I decided that this determination had not contravened the previous ruling and could be challenged anew by the plaintiff, but only through the proper channels.

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- 2) Mikohn Gaming Corp. v. Acres Gaming, Inc., Court Nos.: CV-S-97-1383-EJW (LRL) and CV-S-98-1462-EJW (LRL), 2001 U.S. Dist. LEXIS 23416 (D. Nev. Aug. 1, 2001)

The jury in a patent infringement case found that the plaintiff had infringed on the defendant's patents related to a system of networked gaming devices and



awarded \$1.5 million in damages. I then denied the plaintiff's challenges to that verdict and granted the defendant's requests for interest, an accounting of sales, and a permanent injunction barring the plaintiff from using the defendant's system, which I stayed pending appeal. Ultimately, the case settled and the appeal was dismissed.

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- 3) NSK Ltd. v. United States, Consol. Court No.: 02-00627, 28 C.I.T. 1535, 346 F. Supp. 2d 1312 (Ct. Int'l Trade 2004); 29 C.I.T. 74, 358 F. Supp. 2d 1313 (Ct. Int'l Trade 2005), aff'd, 481 F.3d 1355 (Fed. Cir. 2007), cert. denied, 2008 U.S. LEXIS 1173 (Jan. 22, 2008)

In one of the first cases concerning a particular statistical approach known as zeroing, I held that the United States Department of Commerce's decision to assign a zero margin to sales above normal value of ball bearings was consistent with both U.S. statutory law and U.S. W.T.O. obligations. Additionally, I held Commerce's administrative review on a non-notified exporter, use of mode-specific methodology in calculating cost, application and use of adverse facts available, and acceptance of the exporter's reported cost data were proper. I remanded the case to correct clerical errors related to one of the exporters. The determination was sustained in all other respects.

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- 4) Optrex America, Inc. v. United States, Court No.: 00-08-00382, 30 C.I.T. 192, 427 F. Supp. 2d 1177 (Ct. Int'l Trade 2006), aff'd, 475 F.3d 1367 (Fed. Cir. 2007)

An importer challenged the U.S. Customs Service's tariff classification of liquid crystal displays (LCDs). Following a bench trial, I concluded that the proper classification was under an alternate heading proposed by the defendant.

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- 5) PS Chez Sidney, L.L.C. v. U.S. Int'l Trade Comm'n, Court No.: 02-00635, 30 C.I.T. 858, 442 F. Supp. 2d 1329 (Ct. Int'l Trade 2006); 31 C.I.T. 1155, 502 F. Supp. 2d 1318 (Ct. Int'l Trade 2007); 533 F. Supp. 2d 1359 (Ct. Int'l Trade 2008); 545 F. Supp. 2d 1345 (Ct. Int'l Trade 2008); 558 F. Supp. 2d 1370 (Ct. Int'l Trade 2008)

The Continued Dumping and Subsidy Act of 2000 (CDSOA) gave money to affected domestic producers, but only to those who stated in writing they supported antidumping investigations that resulted in findings of harmful dumping. A domestic seafood producer challenged its exclusion from these payments because it had taken no position on the investigation. Because that producer had not supported the underlying antidumping petition, it was ineligible for payments under the CDSOA. I concluded that this restriction interfered with the plaintiff's political speech, that it did not satisfy a permissible exception or serve a compelling government interest, and that it therefore violated the First Amendment. The Court of Appeals for the Federal Circuit considered these arguments in a related case and decided that a particular saving construction of the CDSOA could pass constitutional muster. See SKF USA, Inc. v. U.S. Customs and Border Protection, 556 F. 3d 1337 (Fed. Cir. 2009).

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- 6) RSM Prod. Corp. v. Fridman, Court No.: 06-cv-11512, 2008 U.S. Dist. LEXIS 12840 (S.D.N.Y. Feb. 19, 2008); 2008 U.S. Dist. LEXIS 72058 (S.D.N.Y. Sept. 23, 2008); 643 F. Supp. 2d 382 (S.D.N.Y. 2009), aff'd, 387 Fed. Appx. 72 (2d Cir. 2010)

Various companies sued a former official of the government of Grenada for not issuing a license as promised in a contract formed among the parties as well as other individuals and companies for conspiracy and other claims. I dismissed the case for lack of jurisdiction under the Foreign Sovereign Immunities Act. I also found that the former government official was entitled to the protection of the Foreign Sovereign Immunities Act and that plaintiffs had not demonstrated that any of the exceptions to immunity applied.

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- 7) SKF USA, Inc. v. United States, Court No.: 03-00490, 28 C.I.T. 170, 316 F. Supp. 2d 1322 (Ct. Int'l Trade 2004), vacated and remanded, 512 F.3d 1326 (Fed. Cir. 2007); 29 C.I.T. 969, 391 F. Supp. 2d 1327 (Ct. Int'l Trade 2005), vacated and remanded, 512 F.3d 1326 (Fed. Cir. 2007); 30 C.I.T. 1263, 435 F. Supp. 2d 1247 (Ct. Int'l Trade 2006), vacated and remanded, 512 F.3d 1326 (Fed. Cir. 2007); 30 C.I.T. 1402, 452 F. Supp. 2d 1335 (Ct. Int'l Trade 2006), vacated and remanded, 512 F.3d 1326 (Fed. Cir. 2007); 533 F. Supp. 2d 1347 (Ct. Int'l Trade 2008)

In three separate opinions, I granted a preliminary injunction prohibiting liquidation (final processing) of the plaintiff's entries, denied the defendant's motion to dismiss the case, and remanded the Department of Commerce's decision to the agency. Commerce then submitted its redetermination, which I affirmed in part and struck in part. My decisions were vacated by and remanded by the Federal Circuit in SKF USA, Inc. v. United States, 512 F.3d 1326, 246 Fed. Appx. 692, 2007 U.S. App. LEXIS 20919 (Fed. Cir. 2007), which held that the entries had been liquidated by operation of law before the court ruled on the initial request for preliminary injunction, precluding the court from granting relief. I then dismissed the case as moot.

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- 8) United States v. Tri-State Hospital Supply Corp., Court No.: 97-04-00678, 23 C.I.T. 736, 74 F. Supp. 2d 1311 (Ct. Int'l Trade 1994)

The United States sought civil penalties against an importer of surgical instruments for alleged negligence, gross negligence, and fraud with respect to such importation. I denied the government's pre-trial motion to rule that allegedly false statements made by the importer were material. Following trial, the jury returned a verdict for the importer.

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- 9) Usinor v. United States, Consol. Court No.: 01-00010, 26 C.I.T. 767 (Ct. Int'l Trade 2002); 28 C.I.T. 1107, 342 F. Supp. 2d 1267 (Ct. Int'l Trade 2004)

Under its international obligations, the government is required to review antidumping and countervailing decisions no later than five years after issuance to determine if those decisions are still necessary (in a proceeding called a sunset review). I affirmed in part and remanded in part the International Trade Commission's five-year sunset review determinations in Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom. I then held as supported by substantial evidence numerous post-remand ITC sunset review determinations: the ITC's decision to cumulate subject imports, the ITC's decision to not conduct a strict quantitative negligibility analysis in a five-year review, the ITC's finding of likely discernible adverse impact, and the overall ITC determination that the revocation of the orders on subject imports were likely to cause the continuation or recurrence of material injury within a reasonably foreseeable time. I sustained the ITC's sunset review following remand.

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- 10) Wooten v. United States Sec'y of Agric., Court No.: 05-00208, 30 C.I.T. 849, 441 F. Supp. 2d 1253 (Ct. Int'l Trade 2006); 30 C.I.T. 99, 414 F. Supp. 2d 1313 (Ct. Int'l Trade 2006)

The USDA had denied the plaintiff's application for trade adjustment assistance because his net income from fishing increased from a loss to a gain in the relevant two years. After I granted the plaintiff's motion to supplement the record, the plaintiff argued that the definition of "net farm income" adopted by USDA violated the intent of Congress. I held that the Secretary of Agriculture has broad discretion in choosing a definition and that the definition chosen was reasonable and rational and therefore permissible.

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

- 1) Ad Hoc Shrimp Trade Action Comm. v. United States, 616 F. Supp. 2d 1354 (Ct. Int'l Trade 2009), aff'd, 596 F.3d 1365 (Fed. Cir. 2010)

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- 2) Int'l Trading Co. v. United States, 28 C.I.T. 1, 306 F. Supp. 2d 1265 (Ct. Int'l Trade 2004), aff'd, 412 F.3d 1303 (Fed. Cir. 2005)

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- 3) Mikohn Gaming Corp. v. Acres Gaming, Inc., 2001 U.S. Dist. LEXIS 23416 (D. Nev. Aug. 1, 2001)

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- 4) NSK Ltd. v. United States, 28 C.I.T. 1535, 346 F. Supp. 2d 1312 (Ct. Int'l Trade 2004), aff'd, 481 F.3d 1355 (Fed. Cir. 2007), cert. denied, 2008 U.S. LEXIS 1173 (Jan. 22, 2008)

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- 5) Nufarm America's, Inc. v. United States, 29 C.I.T. 1317, 398 F. Supp. 2d 1338 (Ct. Int'l Trade 2005)

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- 6) Precision Specialty Metals v. United States, 24 C.I.T. 1016, 116 F. Supp. 2d 1350 (Ct. Int'l Trade 2000); see also Precision Specialty Metals v. United States, No. 98-02-00291 (Ct. Int'l Trade Sept. 20, 2000) (not for publication), aff'd, 315 F.3d 1346 (Fed. Cir. 2003)

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- 7) PS Chez Sidney, L.L.C. v. U.S. Int'l Trade Comm'n, 30 C.I.T. 858, 442 F. Supp. 2d 1329 (Ct. Int'l Trade 2006)

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- 8) RSM Prod. Corp. v. Fridman, 643 F. Supp. 2d 382 (S.D.N.Y. 2009), aff'd,  
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- 9) United States v. Berke, 170 F.3d 882 (9th Cir. 1999) (Wallach, J., dissenting)

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10) USEC Inc. v. United States, 31 C.I.T. 1049, 498 F. Supp. 2d 1337 (Ct. Int'l Trade 2007)

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

- 1) Ammex, Inc. v. United States, 26 C.I.T. 247, 193 F. Supp. 2d 1325 (Ct. Int'l Trade 2002), aff'd, 334 F.3d 1052 (Fed. Cir. 2003), cert. denied, 541 U.S. 1041 (2004)

- 2) Californians for Safe & Competitive Dump Truck Transp. v. Mendonca, 152 F.3d 1184 (9th Cir. 1998), cert. denied, 1999 U.S. LEXIS 2508 (Apr. 5, 1999)
  - 3) Eurodif S.A. v. United States, 30 C.I.T. 1139, 442 F. Supp. 2d 1367 (Ct. Int'l Trade 2006), appeal dismissed, 506 F.3d 1051 (Fed. Cir. Sept. 21, 2007), rev'd, 555 U.S. 305 (Jan. 26, 2009)
  - 4) Kulas v. Valdez, 159 F.3d 453 (9th Cir. 1998) (Wallach, J., dissenting), cert. denied, 2000 U.S. LEXIS 1209 (Feb. 22, 2000)
  - 5) NSK Ltd. v. United States, 28 C.I.T. 1535, 346 F. Supp. 2d 1312 (Ct. Int'l Trade 2004), aff'd, 481 F.3d 1355 (Fed. Cir. 2007), cert. denied, 2008 U.S. LEXIS 1173 (Jan. 22, 2008)
  - 6) Nufarm America's, Inc. v. United States, 31 C.I.T. 203, 477 F. Supp. 2d 1290 (Ct. Int'l Trade 2007), aff'd, 521 F.3d 1366 (Fed. Cir. 2007), cert. denied, 2008 U.S. LEXIS 8336 (Nov. 10, 2008)
  - 7) United States v. Aviles, 1998 U.S. App. LEXIS 38820 (9th Cir. Apr. 14, 1998), cert. denied, 1999 U.S. LEXIS 5461 (Oct. 4, 1999)
  - 8) United States v. Dee, 1997 U.S. App. LEXIS 22448 (9th Cir. Apr. 14, 1998), cert. denied, 1998 U.S. LEXIS 5015 (Oct. 5, 1998)
  - 9) United States v. Doe, 149 F.3d 945 (9th Cir. 1998), cert. denied, 1998 U.S. LEXIS 7208 (Nov. 9, 1998)
  - 10) United States v. Etsitty, 140 F.3d 1274 (9th Cir. 1997) (per curiam), cert. denied, 1998 U.S. LEXIS 7317 (Nov. 16, 1998)
  - 11) United States v. Fredericks, 1998 U.S. App. LEXIS 10350 (9th Cir. Apr. 16, 1998), cert. denied, 1998 U.S. LEXIS 6292 (Oct. 5, 1998)
  - 12) United States v. Guerrero-Acosta, 1998 U.S. App. LEXIS 12855 (9th Cir. Apr. 14, 1998), cert. denied, 1998 U.S. LEXIS 6796 (Oct. 19, 1998)
  - 13) United States v. Liddawi, 1998 U.S. App. LEXIS 9780 (9th Cir. Apr. 15, 1998), cert. denied, 1999 U.S. LEXIS 335 (Jan. 11, 1999)
  - 14) Walker v. Univ. of Rochester, Strong Mem'l Hosp., 368 Fed. Appx. 188 (2d Cir. 2010), cert. denied, 2010 U.S. LEXIS 5958 (Oct. 4, 2010)
- 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.
- 1) In Allegheny Ludlum Corp. v. United States, 24 C.I.T. 858, 116 F. Supp. 2d 1276 (Ct. Int'l Trade 2000), vacated and remanded, 287 F.3d 1365 (Fed. Cir.

2002), I held that, although there were errors committed by the ITC and evidence detracting from the substantiality of the evidence, the evidence was significant enough to find that subject imports did not cause material injury to the cold-rolled plate industry. In vacating and remanding, the Federal Circuit held that the ITC's price determination was not supported by substantial evidence and therefore my decision to affirm the Commission was incorrect.

- 2) The Federal Circuit affirmed my decision in Ammex, Inc. v. United States, 26 C.I.T. 247, 193 F. Supp. 2d 1325 (Ct. Int'l Trade 2002), aff'd, 334 F.3d 1052 (Fed. Cir. 2003), cert. denied, 541 U.S. 1041 (2004) to deny the plaintiff's Motion for an Order to Show Cause Why the United States Customs Service Should Not be Held in Contempt. However, the Federal Circuit stated that I had "erred in [my] initial decision by applying the elements of collateral estoppel (or issue preclusion) instead of those of res judicata." 334 F.3d at 1055.
- 3) In Archer Daniels Midland Co. v. United States, 559 F. Supp. 2d 1347 (Ct. Int'l Trade 2008), rev'd and remanded, 561 F.3d 1308 (Fed. Cir. 2009), I held that imported deodorizer distillate was not prima facie classifiable in the U.S. Harmonized Tariff Schedule. The Federal Circuit disagreed.
- 4) In USEC Inc. v. United States, 27 C.I.T. 1419, 281 F. Supp. 2d 1334 (Ct. Int'l Trade 2003) (Pogue, J.), a three-judge panel on which I sat decided, among other things, that certain low-enriched uranium was transacted as a service rather than as a good but was nonetheless subject to the countervailing duty statute. On interlocutory appeal, the Federal Circuit affirmed the nature of the transactions but reversed on the applicability of the statute. Eurodif S.A. v. United States, 411 F.3d 1355 (Fed. Cir. 2005). Following additional decisions by the Court of International Trade panel and the Federal Circuit, the U.S. Supreme Court ultimately held that the U.S. Department of Commerce had reasonably treated the transacted uranium as a good. United States v. Eurodif S.A., 555 U.S. 305 (2009).
- 5) In Former Emps. of Quality Fabricating, Inc. v. United States, 28 C.I.T. 679, 343 F. Supp. 2d 1272, motion for reconsideration denied at 28 C.I.T. 1061, 353 F. Supp. 2d 1284 (Ct. Int'l Trade 2004), vacated and remanded 448 F.3d 1351 (Fed. Cir. 2006), I held that the court had jurisdiction over secondarily-affected worker groups with regard to trade adjustment certifications under the Trade Act of 1974. The Federal Circuit disagreed.
- 6) In Gallant Ocean (Thailand) Co. v. United States, 602 F. Supp. 2d 1337 (Ct. Int'l Trade 2009), vacated and remanded, 602 F.3d 1319 (Fed. Cir. 2010), I held that, due to the plaintiff's unwillingness to supply information in the investigation, Commerce permissibly assigned an adverse facts available rate. The Federal Circuit held, however, that this rate did not represent "commercial reality." 602 F.3d at 1322.

- 7) In GE Med. Sys. Group v. United States, 24 C.I.T. 12, 86 F. Supp. 2d 1291 (Ct. Int'l Trade 2000), rev'd, 247 F.3d 1231 (Fed. Cir. 2001), I held that certain medical photographic equipment should be classified as cameras. The Federal Circuit reversed, finding that this equipment should be classified as accessories.
- 8) The Federal Circuit affirmed my decision in Horizon Lines, LLC v. United States, 659 F. Supp. 2d 1285 (Ct. Int'l Trade 2009), aff'd, 626 F.3d 1354 (Fed. Cir. 2010) that certain work done on the plaintiff's ship was not dutiable under the vessel repair statute. The Federal Circuit nonetheless stated that "the Court of International Trade erred when it held that the prior condition of replaced parts is irrelevant to the determination of whether work constitutes a nondutiable modification or a dutiable repair. However, because the Court of International Trade determined that the replaced parts on the HAWAII were in proper working order prior to modification, this error was harmless." 626 F.3d at 1356.
- 9) In reviewing NMB Sing. Ltd. v. United States, 31 C.I.T. 1943, 533 F. Supp. 2d 1244 (Ct. Int'l Trade 2007), aff'd in part, vacated in part, remanded in part, 557 F.3d 1316 (Fed. Cir. 2009), the Federal Circuit upheld Commerce's antidumping determination, but only with regards to the continuation of the antidumping order; with regards to the antidumping duty rates, the Federal Circuit vacated and remanded.
- 10) In reversing Orlando Food Corp. v. United States, 28 C.I.T. 1244, 343 F. Supp. 2d 1375 (Ct. Int'l Trade 2004), rev'd and remanded, 423 F.3d 1318 (Fed. Cir. 2005), the Federal Circuit held that I "erred in holding that 19 U.S.C. § 1505 did not apply to amounts determined to be excess money deposited as a result of a reliquidation pursuant to section 1408 of the Tariff Suspension and Trade Act of 2000." 423 F.3d at 1325.
- 11) In Rubie's Costume Co. v. United States, 26 C.I.T. 209, 196 F. Supp. 2d 1320 (Ct. Int'l Trade 2002), rev'd, 337 F.3d 1350 (Fed. Cir. 2003), I held that the classification decision by United States Customs was not entitled to Chevron deference and found the agency's reasoning unpersuasive under Skidmore deference. In reversing, the Federal Circuit agreed that Chevron deference did not apply but found the reasoning of Customs persuasive under Skidmore deference.
- 12) In SKF USA Inc. v. United States, 28 C.I.T. 170, 316 F. Supp. 2d 1322 (Ct. Int'l Trade 2004), vacated and remanded, 512 F.3d 1326 (Fed. Cir. 2007), I issued a preliminary injunction prohibiting liquidation of entries. In vacating and remanding this decision, the Federal Circuit held that the entries had been liquidated by operation of law before the court ruled on the initial request for preliminary injunction, removing the court's ability to grant relief.

13) The Federal Circuit affirmed my decision in Tung Mung Dev. Co. v. United States, 26 C.I.T. 969, 219 F. Supp. 2d 1333 (Ct. Int'l Trade 2002), aff'd, 354 F.3d 1371 (Fed. Cir. 2004), which in turn affirmed the U.S. Department of Commerce's remand determination. The Federal Circuit stated that while I "erred in holding that Commerce's decisions were not entitled to Chevron deference . . . , it is not clear that this error was the basis for the Court of International Trade's decisions." 354 F.3d at 1379 n.8.

- 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.

All public slip opinions issued in U.S. Court of International Trade cases over which I presided are available in official reporters or commercial databases such as Lexis and Westlaw. When the inclusion of business proprietary or other confidential information has required a confidential version of a slip opinion, I have issued a corresponding public version of that slip opinion from which the confidential information was redacted.

At the U.S. Court of International Trade, all final decisions whether in a contested action or with regards to a preliminary injunction must be accompanied by a statement of findings of fact and conclusions of law or an opinion stating the reasons and facts behind the decision. These statements and opinions in addition to all orders and judgments can be found at the Office of the Clerk as public records. All parties to a given action are automatically provided with a copy of all judgments, orders, opinions, decisions, etc. associated with their case.

Although I rarely issue unpublished opinions, I issued one such opinion that formally reprimanded an attorney in Precision Specialty Metals, Inc. v. United States, Court No.: 98-02-00291, and that the Federal Circuit affirmed in Precision Specialty Metals, Inc. v. United States, 315 F.3d 1346 (Fed. Cir. 2003).

In general, opinions issued in cases for which I sat by designation are available in official reporters or commercial databases such as Lexis and Westlaw. However, I am aware of one opinion in a case at the District Court for the District of Columbia that is not provided in any official or unofficial reporter, and is instead available only within the case docket.

- 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) Int'l Trading Co. v. United States, 24 C.I.T. 596, 110 F. Supp. 2d 977 (Ct. Int'l Trade 2000), aff'd, 281 F.3d 1268 (Fed. Cir. 2002)

2) Nereida Trading Co. v. United States, 683 F. Supp. 2d 1348 (Ct. Int'l Trade 2010)

- 3) Nufarm America's, Inc. v. United States, 29 C.I.T. 1317, 398 F. Supp. 2d 1338 (Ct. Int'l Trade 2005)
- 4) Nufarm America's, Inc. v. United States, 31 C.I.T. 203, 477 F. Supp. 2d 1290 (Ct. Int'l Trade 2007), aff'd, 521 F.3d 1366 (Fed. Cir. 2007), cert. denied, 2008 U.S. LEXIS 8336 (Nov. 10, 2008)
- 5) PS Chez Sidney, L.L.C. v. U.S. Int'l Trade Comm'n, 30 C.I.T. 858, 442 F. Supp. 2d 1329 (Ct. Int'l Trade 2006)
- 6) PS Chez Sidney, L.L.C. v. U.S. Int'l Trade Comm'n, 31 C.I.T. 1155, 502 F. Supp. 2d 1318 (Ct. Int'l Trade 2007)
- 7) United States v. Berke, 170 F.3d 882 (9th Cir. 1999) (Wallach, J., dissenting)
- 8) United States v. Etsitty, 140 F.3d 1274 (9th Cir. 1997) (per curiam), cert. denied, 1998 U.S. LEXIS 7317 (Nov. 16, 1998)
- 9) United States v. Sloan, 1998 U.S. App. LEXIS 5454 (9th Cir. June 11, 1997)
- 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.

In the following cases, I sat by designation and authored a majority, dissenting or concurring opinion.

- 1) Boesch v. Sacco, 2003 U.S. App. LEXIS 9006 (3d Cir. Apr. 29, 2003)

The appellant's appeal of the district court's dismissal of her complaint was dismissed for lack of jurisdiction. The plaintiff failed the redressability prong of the Article III standing inquiry. She was unable to demonstrate that relief could be granted to her by the federal courts for the injury she alleged.

- 2) Boyce v. Barnhart, 66 Fed. Appx. 297, 2003 U.S. App. LEXIS 6004 (3d Cir. 2003)

The administrative law judge denied the plaintiff's application for disability, disability benefits, and Social Security income. We affirmed the decision because it was supported by substantial evidence.

- 3) Ho by Ho v. San Francisco Unified Sch. Dist., 147 F.3d 854 (9th Cir. 1998) (Wallach, J., dissenting)

I dissented from the majority opinion which found a lack of jurisdiction to hear an appeal regarding this desegregation case. Summary judgment should

have been granted at the trial level; there was sufficient information on the record to determine there were no genuinely contested facts to create a genuine issue or to deprive us of jurisdiction. Therefore, the trial court's denial of summary judgment should have been reversed.

- 4) Kulas v. Valdez, 159 F.3d 453 (9th Cir. 1998), cert. denied, 2000 U.S. LEXIS 1209 (Feb. 22, 2000) (Wallach, J., dissenting)

I dissented from the majority opinion, which upheld the qualified immunity of a prison doctor who forced an inmate to take medication. I argued that the forced medication of the inmate was not reasonably within the scope of the order of the judge who had committed the inmate to an institution after determining him momentarily incompetent to stand trial.

- 5) Neal v. Comm'r of Soc. Sec., 57 Fed. Appx. 976 (3d Cir. 2003)

The administrative law judge's decision regarding the onset of appellant's disability for the purposes of Social Security disability benefits was upheld as being supported by substantial evidence. Therefore the district court's affirmation of the administrative law judge's decision was affirmed.

- 6) United States v. Berke, 170 F.3d 882 (9th Cir. 1999) (Wallach, J., dissenting)

I dissented from the majority opinion, which upheld the district court's determination that the defendant knowingly and voluntarily waived his First Amendment rights with regards to a consent decree that permanently enjoined him from involvement in the production, sale, or distribution of any sexually explicit materials. In my view, the consent decree acted in part as a prior restraint on the defendant's First Amendment rights and therefore was void as contrary to public policy.

- 7) United States v. Brannon, 146 F.3d 1194 (9th Cir. 1998) (Wallach, J., dissenting)

I dissented from the majority opinion that upheld the district court's decision to admit evidence from an uncompleted breathalyzer test. In my view, the government had not shown that the results of the partial breathalyzer test were reliable under Daubert.

- 8) United States v. Etsitty, 140 F.3d 1274 (9th Cir. 1997) (per curiam), cert. denied, 1998 U.S. LEXIS 7317 (Nov. 16, 1998)

We affirmed the defendant's convictions for kidnapping and assault with a dangerous weapon, as the defendant's brother's suicide note was properly excluded.



- 9) United States v. McElyea, 158 F.3d 1016 (9th Cir. 1998)

We affirmed the conviction of the lower court but remanded the case for resentencing, because we held that, under the Armed Career Criminal Act, the appellant's previous burglaries "arose out of a single criminal episode."

- 10) United States v. Parmelee, 319 F.3d 583 (3d Cir. 2003)

The plaintiff was charged with four counts of possession of child pornography using media that traveled in interstate commerce. We reversed the plaintiff's sentence and remanded for re-sentencing consistent with the Sentencing Guidelines.

- 11) United States v. Shumway, 199 F.3d 1093 (9th Cir. 1997) (Wallach, J., concurring)

I concurred with the majority and wrote separately to highlight a particular aspect of mining that was important to the decision.

- 12) United States v. Torres, 56 Fed. Appx. 556 (3d Cir. 2002)

We affirmed the district court's determination that the defendant was the leader or supervisor in a drug importation conspiracy, an aggravating factor under the U.S. Sentencing Guidelines Manual § 3B1.1.

In the following cases, I sat by designation on a federal court of appeals and joined the majority opinion.

- 1) Allen v. Great Am. Ins. Co., 1998 U.S. App. LEXIS 8370 (9th Cir. Apr. 27, 1998)
- 2) Bailey v. United States, 1997 U.S. App. LEXIS 17443 (9th Cir. June 11, 1997)
- 3) Blixt v. Stockton Unified Sch. Dist., 1997 U.S. App. LEXIS 19978 (9th Cir. July 30, 1997)
- 4) Californians for Safe & Competitive Dump Truck Transp. v. Mendonca, 152 F.3d 1184 (9th Cir. 1998), cert. denied, 1999 U.S. LEXIS 2508 (Apr. 5, 1999)
- 5) Cann v. Woodborough Dev. Co. (In re Woodborough Dev. Co.), 1997 U.S. App. LEXIS 25175 (9th Cir. Sept. 15, 1997)
- 6) Concrete Equip. v. Fox (In re Vigil Bros. Constr.), 1997 U.S. App. LEXIS 17197 (9th Cir. July 7, 1997)
- 7) D.C. Hollingsworth Enters. v. United States, Dep't of Agric., 1998 U.S. App. LEXIS 11755 (9th Cir. June 2, 1998)
- 8) Fonteno v. Equitable Life Assur. Soc'y of the United States, 1997 U.S. App. LEXIS 19776 (9th Cir. July 28, 1997)



- 9) Foodland Supermarket v. Hamada, 1997 U.S. App. LEXIS 30045 (9th Cir. Oct. 23, 1997)
- 10) Gonzales-Neyra v. INS, 133 F.3d 726 (9th Cir. 1997)
- 11) Gonzalez v. INS, 1997 U.S. App. LEXIS 19779 (9th Cir. June 9, 1997)
- 12) Lopez-Smith v. Hood, 121 F.3d 1322 (9th Cir. 1997)
- 13) Luan v. INS, 1997 U.S. App. LEXIS 26543 (9th Cir. June 13, 1997)
- 14) Nelson v. United States, 1997 U.S. App. LEXIS 17189 (9th Cir. June 11, 1997)
- 15) Nickel v. Bank of Am. Nat'l Trust & Sav. Ass'n, 1997 U.S. App. LEXIS 19307 (9th Cir. June 12, 1997)
- 16) O'Hara v. Teamsters Union Local #856, 151 F.3d 1152 (9th Cir. 1998)
- 17) Pherson v. Chater, 1997 U.S. App. LEXIS 21587 (9th Cir. June 13, 1997)
- 18) Rhinehart v. IBM, 1997 U.S. App. LEXIS 21589 (9th Cir. June 9, 1997)
- 19) Rodriguez v. INS, 1997 U.S. App. LEXIS 24657 (9th Cir. June 9, 1997)
- 20) Security Farms v. Int'l Bhd. of Teamsters, 124 F.3d 999 (9th Cir. 1997)
- 21) Security Farms v. Int'l Bhd. of Teamsters, 2000 U.S. App. LEXIS 1557 (9th Cir. Dec. 6, 1999)
- 22) Sherber v. O'Brien Corp., 1997 U.S. App. LEXIS 19109 (9th Cir. June 10, 1997)
- 23) Sierra Club v. Babbitt, 1998 U.S. App. LEXIS 7915 (9th Cir. Apr. 14, 1998)
- 24) Simpson v. City of Reno, 1997 U.S. App. LEXIS 17425 (9th Cir. June 10, 1997)
- 25) Stoimenov v. INS, 1998 U.S. App. LEXIS 9538 (9th Cir. Apr. 13, 1998)
- 26) Suma Fruit Int'l v. Albany Ins. Co., 122 F.3d 34 (9th Cir. 1997)
- 27) SVT Corp. v. Federal Express Corp., 1998 U.S. App. LEXIS 17791 (9th Cir. Apr. 17, 1998)
- 28) United States Fid. & Guar. Co. v. Riggs, 1997 U.S. App. LEXIS 19775 (9th Cir. June 13, 1997)
- 29) United States v. Atkins, 1998 U.S. App. LEXIS 12567 (9th Cir. Apr. 15, 1998)
- 30) United States v. Aviles, 216 F.3d 881 (9th Cir. 2000)
- 31) United States v. Aviles, 1998 U.S. App. LEXIS 38820 (9th Cir. Apr. 14, 1998), cert. denied 1999 U.S. LEXIS 5461 (Oct. 4, 1999)
- 32) United States v. Cretacci, 1998 U.S. App. LEXIS 11754 (9th Cir. Apr. 14, 1998)

- 33) United States v. Dee, 1997 U.S. App. LEXIS 22448 (9th Cir. Apr. 14, 1998), cert. denied, 1998 U.S. LEXIS 5015 (Oct. 5, 1998)
- 34) United States v. Doe, 149 F.3d 945 (9th Cir. 1998), cert. denied, 1998 U.S. LEXIS 7208 (Nov. 9, 1998)
- 35) United States v. Fredericks, 1998 U.S. App. LEXIS 10350 (9th Cir. Apr. 16, 1998), cert. denied, 1998 U.S. LEXIS 6292 (Oct. 5, 1998)
- 36) United States v. Guerrero-Acosta, 1998 U.S. App. LEXIS 12855 (9th Cir. Apr. 14, 1998), cert. denied, 1998 U.S. LEXIS 6796 (Oct. 19, 1998)
- 37) United States v. Liddawi, 1998 U.S. App. LEXIS 20111 (Aug. 12, 1998)
- 38) United States v. Liddawi, 1998 U.S. App. LEXIS 9780 (9th Cir. Apr. 15, 1998), cert. denied, 1999 U.S. LEXIS 335 (Jan. 11, 1999)
- 39) United States v. Lobo-Osuna, 1998 U.S. App. LEXIS 8995 (9th Cir. Apr. 14, 1998)
- 40) United States v. Madera-Reyes, 1998 U.S. App. LEXIS 11753 (9th Cir. Apr. 16, 1998)
- 41) United States v. McDermott, 1997 U.S. App. LEXIS 27194 (9th Cir. June 13, 1997)
- 42) United States v. Ordaz, 145 F.3d 1111 (9th Cir. 1998)
- 43) United States v. Padilla, 1998 U.S. App. LEXIS 9496 (9th Cir. Dec. 10, 2002)
- 44) United States v. Preusch, 1997 U.S. App. LEXIS 19225 (9th Cir. June 11, 1997)
- 45) United States v. Sloan, 1998 U.S. App. LEXIS 5454 (9th Cir. June 11, 1997)
- 46) United States v. Wallen, 1997 U.S. App. LEXIS 21604 (9th Cir. June 13, 1997)
- 47) United States v. Washington, 1998 U.S. App. LEXIS 8842 (9th Cir. Apr. 16, 1998)
- 48) Vera-Valera v. INS, 147 F.3d 1036 (9th Cir. 1997)
- 49) Booker v. Doe, 368 Fed. Appx. 186 (2d Cir. 2010)
- 50) Duемmel v. Fischer, 368 Fed. Appx. 180 (2d Cir. 2010)
- 51) Murphy v. Allied World Assur. Co. (U.S.), 370 Fed. Appx. 193 (2d Cir. 2010)
- 52) Robinson v. Citibank S.D., N.A., 368 Fed. Appx. 185 (2d Cir. 2010)
- 53) Terreri v. Astrue, 368 Fed. Appx. 204 (2d Cir. 2010)
- 54) Travelers Indem. Co. v. Kabir, 368 Fed. Appx. 209 (2d Cir. 2010)
- 55) United States v. Harper, 374 Fed. Appx. 124 (2d Cir. 2010)
- 56) United States v. Lee, 368 Fed. Appx. 183 (2d Cir. 2010)
- 57) United States v. Rodriguez, 368 Fed. Appx. 178 (2d Cir. 2010)

- 58) Walker v. Univ. of Rochester, Strong Mem'l Hosp., 368 Fed. Appx. 188 (2d Cir. 2010), cert. denied, 2010 U.S. LEXIS 5958 (Oct. 4, 2010)
- 59) Warren v. Goord, 368 Fed. Appx. 161 (2d Cir. 2010)
- 60) Wetherby v. Astrue, 368 Fed. Appx. 199 (2d Cir. 2010)
- 61) Buffa v. N.J. State Dep't of Judiciary, 56 Fed. Appx. 571 (3d Cir. 2003)
- 62) Davis v. Ashcroft, 57 Fed. Appx. 968 (3d Cir. 2003)
- 63) Eeoc v. Hesco Parts Corp., 57 Fed. Appx. 518 (3d Cir. 2003)
- 64) Fed. Home Loan Mortg. Corp. v. Scottsdale Ins. Co., 316 F.3d 431 (3d Cir. 2003)
- 65) Gibbons v. Anton Noll, Inc. (In re RFE Indus.), 65 Fed. Appx. 405 (3d Cir. 2003)
- 66) Gibbons v. Anton Noll, Inc. (In re RFE Indus.), 59 Fed. Appx. 501 (3d Cir. 2003)
- 67) Matlin v. Langkow, 65 Fed. Appx. 373 (3d Cir. 2003)
- 68) Nembhard v. United States, 56 Fed. Appx. 73 (3d Cir. 2002)
- 69) Palm Bay Imps., Inc. v. Miron, 55 Fed. Appx. 52 (3d Cir. 2002)
- 70) Rivera v. Cont'l Airlines, 56 Fed. Appx. 567 (3d Cir. 2010)
- 71) Scopia Mortg. Corp. v. Greentree Mortg. Co., L.P., 56 Fed. Appx. 93 (3d Cir. 2003)
- 72) United States v. Martinez, 54 Fed. Appx. 761 (3d Cir. 2002)
- 73) United States v. Reyes, 56 Fed. Appx. 559 (3d Cir. 2002)

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.

I assess the necessity and propriety of recusal in accordance with 28 U.S.C. §§ 144 and 455 as well as the Code of Conduct for United States Judges.

I am not aware of any cases, motions or matters that came before me in which a litigant or party requested that I recuse myself due to an asserted conflict of interest. The U.S. Court of International Trade's Case Management / Electronic Case File System (CM/ECF), which encompasses case activity since 2001, contains no records of any such requests by a litigant or party. It also contains no records of any instances where I recused myself sua sponte.

Because I participate in automated conflict checking through CM/ECF, cases that would otherwise have been assigned to me may have been automatically assigned to another judge without my knowledge.

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

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

I have not held any public office other than judicial office. I have not had any 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.

Member Democratic Party of Nevada, 1976 – 1995

General Counsel, Nevada Democratic Party, 1982 – 1987 and 1989 – 1995 (with breaks in service while on military duty)

General legal representation including appearances before the Federal Election Commission

General Counsel, Nevada Assembly Democratic Caucus, 1982 – 1995

General legal representation including appearances before the Federal Election Commission

Harry Reid campaigns for House of Representatives, 1982 and 1984; United States Senate, 1986 and 1992; 1982 – 1987 and 1989 – 1995 (with breaks in service while on military duty)

No title; served as general counsel, speech writer, researcher and policy advisor; defended and filed Federal Election Complaints, and provided representation before the Ethics Committee of the House of Representatives

Richard Bryan, campaigns for United States Senate, 1988; Governor, 1982, 1986

No title; served as general counsel and researcher; defended Federal Election Complaint

Rep. James H. Bilbray, General campaign legal advice, 1986 – 1994

Albert Gore, Jr. President, 1988

State Director, Nevada and Arizona; organized campaign staff, volunteers and strategy

Walter Mondale, President 1984

Chair, Nevadans for Mondale, personal candidate representative

Delegate, 1984 and 1988, and alternate, 1980, to Democratic National Conventions

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

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

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

I did not serve as a law clerk to a judge.

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

I did not practice 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.

1976 – 1995

Lionel Sawyer & Collins

300 South Fourth Street

Las Vegas, Nevada 89101

Associate (1976 – 1983)

Partner (1983 – 1995) (with breaks in employment in 1987 to 1988 to work for Sen. Harry Reid, and in 1991 for active duty service, United States Army)

1987 – 1988

United States Senator Harry Reid

United States Senate

Office of the Majority Leader, S-221

The Capitol

Washington, D.C. 20510

General Counsel and Public Policy Advisor (on unpaid leave from law firm)

1991

United States Army

Office of the Judge Advocate General of the Army

International Affairs Division

The Pentagon

Washington, D.C. 20310

Active Duty Attorney-Advisor (on unpaid leave from law firm)

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

I have not served as a mediator.

b. Describe:

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

From 1977 to 1986, I had a general litigation practice with emphasis on Employee Retirement Income Security Act (ERISA) collection litigation. The bulk of my work involved representation of trustees of employee benefit trust funds to collect unpaid benefits. In addition, I was engaged in

a general practice with increasing emphasis on representing Nevada's media.

From 1987 to 1995, I had a general litigation practice with emphasis on media law and with a significant amount of appellate practice before the Nevada Supreme Court and the United States Court of Appeals for the Ninth Circuit. From 1987 forward, the bulk of my work involved representing media companies in Nevada in work other than broadcast licensing. I obtained access to information for reporters and protected their work against subpoenas. I defended libel actions. I also did the business work associated with a newspaper including employee grievances, pollution issues, collection actions, copyright protection and general legal counsel.

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

Typical clients from 1977 to 1986 included ERISA-regulated employee benefit trust funds. Typical clients from 1987 to 1995 included the Nevada State Press Association, the Las Vegas Review Journal, the Society of Professional Journalists and various other newspapers and electronic media outlets.

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

I appeared in court frequently. While the number of trials varied from year to year (many of the non-trial appearances were evidentiary proceedings to establish damages where liability had been established by summary judgment) the frequency of court appearances did not, except for those periods when I was on leave from the firm to work for Sen. Reid or the Army.

- i. Indicate the percentage of your practice in:

- 1. federal courts: 20%
- 2. state courts of record: 80%
- 3. other courts: 0%
- 4. administrative agencies: 0%

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 99%
- 2. criminal proceedings: 1%

- 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.

My records indicate that for the period between 1982 and 1995 I tried twenty trials, in all but one as lead counsel.

i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury:     | 10% |
| 2. non-jury: | 90% |

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. Operating Engineers Pension Trust v. G. C. Wallace, Inc., Case No. CV-S-91-026-PMP (RLH), United States District Court for the District of Nevada, Judge Philip M. Pro (1993 – 1995).

This was an ERISA collection action claiming alter-ego. Twenty days before all motions were due I was retained by the main defendant (G. C. Wallace, Inc.) at the request of its past counsel to try the case. I had previously represented only plaintiffs in ERISA collection actions. Upon review of the extensive file (including a file of an earlier connected case on similar issues which had been tried and lost, and lost again on appeal to the Ninth Circuit), I determined that our client was entitled to a summary judgment. I assembled evidence, researched the issues, and wrote, filed and argued a Motion for Summary Judgment. That Motion was granted and later affirmed on appeal in an unpublished opinion by the Ninth Circuit. See Operating Eng'rs Pension Trust v. G.C. Wallace, Inc., No. 93-



15421, 1994 WL 521194 (9th Cir. Sept. 23, 1994). I also wrote, filed and argued a Motion for Sanctions pursuant to Fed. R. Civ. P. 11, and 28 U.S.C. § 1927 and ERISA, which resulted in an award of attorneys fees against plaintiffs and their counsel for more than \$100,000. See Operating Eng'rs Pension Trust v. G.C. Wallace, Inc., 159 F.R.D. 536 (D. Nev. 1994).

Co-Counsel for G.C. Wallace:

Kevin C. Efroymson  
2915 West Charleston Boulevard, #9  
Las Vegas, Nevada 89102  
(702) 870-9601

Co-Counsel for Co-Defendant Surveyors, Inc.:

Richard A. Avila  
5711 Alfred Drive  
Las Vegas, Nevada 89108  
(702) 877-0141

Co-Counsel for Plaintiffs:

Kevin B. Christiansen  
Christiansen & Boggess  
7440 West Sahara Avenue  
Las Vegas, Nevada 89117  
(702) 255-1718

Michael Urban  
Jett & Laquer  
800 Bellevue Way, NE, Suite 300  
Bellevue, Washington  
(206) 637-3009

2. Hawley v. Hall, Case No. CV-S-88-259-LDG (RJJ), United States District Court for the District of Nevada, Magistrate Judge Robert J. Johnson (1990).

This was an action for alleged wrongful termination and civil rights violations by the former Las Vegas City Clerk against the City Manager, Mayor, and other public officials. Defendants moved for a protective order to seal any depositions taken in the case. I successfully moved to intervene on behalf of the Las Vegas Review Journal and successfully opposed the Motion for Protective Order. Reported at Hawley v. Hall, 131 F.R.D. 578 (D. Nev. 1990). This argument resulted in a major extension of the law relating to access to discovery by the press in suits involving public officials.

Counsel for Plaintiff:

Eric Zobel  
7251 West Lake Mead Boulevard, Suite 300  
Las Vegas, Nevada 89128  
(702) 369-3369

Counsel for Defendant Hall:

William R. Morse  
Morse & Mobray  
300 South Fourth Street, Suite 1400  
Las Vegas, Nevada 89101  
(702) 384-6340

Counsel for Other Defendants:

Roy A. Woofter  
218 601 Greenway Road #D  
Henderson, Nevada 89002  
(702) 598-4620

3. United States v. Spencer, Case No. CR-S-92-276-LDG (RLH), United States District Court for the District of Nevada, Judge Lloyd D. George (1993).

In this criminal case, the defendant sought to subpoena information from a Las Vegas television station. I moved to quash on behalf of the media witnesses. The court denied the motion (one of only two such denials out of a number filed between 1990 and 1995). I moved for reconsideration or withdrawal of the Order Denying the Motion to Quash. That motion was also denied although the court issued an order clarifying its previous ruling.

Counsel for the United States:

Thomas O'Connell  
Office of the United States Attorney  
701 East Bridger, Suite 800  
Las Vegas, Nevada 89101  
(702) 388-6336

Counsel for Defendant:

Dwight E. Duncan  
Federal Public Defender  
330 South Third Street, Suite 700  
Las Vegas, Nevada 89101  
(702) 388-6577

4. Bart v. City of Caliente, Case No. CV-LV-82-277 (RDF), United States District Court for the District of Nevada, Judge Lloyd D. George (1984 – 1985).

I represented the city of Caliente, Nevada, and its elected officials in the defense of an action for wrongful termination and defamation. My examination of witnesses demonstrated that plaintiff, the former city constable, could only have based the gravamen of his Complaint upon illegally obtained wiretap evidence. The case was resolved in favor of defendants by a motion pursuant to Fed. R. Civ. P. 41(b) at the close of plaintiff's evidence. In a later Motion for Sanctions, the court awarded attorney's fees and costs pursuant to Fed. R. Civ. P. 11 against plaintiff and his counsel.

Counsel for Plaintiff:

Marilyn V. Romanelli  
1404 South 17th Street  
Las Vegas, Nevada 89104  
(702) 384-7852

5. Dick v. United States and Sandia Corp., Case No. CIV-LV 81-208 RDF, United States District Court for the District of Nevada, Judge Roger D. Foley (1987 – 1993).

Plaintiff alleged that he had been exposed to ionizing radiation during his employment by defendant Sandia, which allegedly caused cancer. On behalf of Sandia I researched, wrote and filed a Motion to Dismiss based on various immunities, including governmental immunity doctrines and workers' compensation defenses. All motions by other defendants were decided adverse to them. The Court, however, repeatedly stated that while it was aware of my pending motion it had not yet determined how to rule. That motion placed my client in an extremely advantageous position since the Court did not rule on it for over six years. Eventually, on the eve of trial, when all other counsel were consulting with the Court, and my client had still not filed an answer and could not be taken to trial, the United States Congress modified the Federal Tort Claims Act and the government substituted into the case in place of my client, and settled the matter.

Counsel for Co-Defendant United States:

Leon B. Taranto (formerly with Torts Branch, Civil Division, United States  
Department of Justice)  
600 New Hampshire Avenue, N.W.  
Washington, D.C. 20037  
(202) 772-5846

Counsel for Co-Defendant Reynolds Electrical & Engineering:

John Thorndal  
Thorndal, Armstrong, Delk, Balkenbush & Elsinger  
1100 East Bridger Avenue  
Las Vegas, Nevada 89101  
(702) 366-0622

Counsel for Plaintiff:

Larry C. Johns  
3107 East Charleston Boulevard #30  
Las Vegas, Nevada 89104  
(702) 387-5003

6. Trustees v. Sparks, Adv. 82-0942, United States Bankruptcy Court for the District of Nevada, Judge Clive Jones (1985 – 1986).

In this case on behalf of the Trustees of an ERISA regulated trust, I filed a motion which set aside a discharge in bankruptcy, filed an adversary proceeding, and then filed and won a detailed and factually complex Motion for Summary Judgment for Non-Dischargability for bankruptcy fraud. The debtor had transferred and concealed assets, set up a new business under a new name, and did business through hidden bank accounts. Through extensive discovery I determined sufficient facts to support a successful motion for summary judgment. When I argued this motion, a number of a long-time bankruptcy attorneys in the courtroom indicated their skepticism when I said to the judge that the plaintiffs were moving for a summary judgment for non-dischargability based on fraud. The judge granted the motion, despite commenting that he was known for not granting summary judgments, especially in fraud cases.

Opposing Counsel:

John E. Kelly  
2211 Paradise Road  
Las Vegas, Nevada 89104  
(702) 369-2111

7. Trustees v. Whittaker Plastering, Case No. A 213788, Eighth Judicial District Court for the State of Nevada, Judge Myron E. Leavitt (1984 – 1985).

This was a large and complex action to collect unpaid employee benefit trust fund contributions in which I represented the trustees of ERISA regulated trusts. The case involved multiple time periods of liability with differing grounds for liability in each (liability was established by a summary judgment motion I wrote and argued) as well as a trial involving complex proof of damages during those differing time periods with the testimony of competing expert witnesses. The judge specifically complimented me on my handling of the case and later requested the charts I had created for trial for use in a seminar on how counsel should use demonstrative evidence.

Counsel for Defendants:

John F. O'Reilly  
O'Reilly Law Group  
325 South Maryland Parkway, #1  
Las Vegas, Nevada 89101  
(702) 382-2500

Donald Haight  
8972 West Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
(702) 862-8200

8. Klas v. Caesars Palace, Case No. A 329704, Eighth Judicial District Court for the State of Nevada, Judge John S. McGroarty (1994 – 1995).

On behalf of Caesars Palace Casino, I successfully rewrote and argued a Motion for Judgment on the Pleadings in a high profile case involving the interplay of federal Internal Revenue Service tip withholding regulations and Section 401(k) employee retirement plans. The motion was previously written and argued by another attorney and denied. I rewrote the motion and re-argued before the same Judge, and despite his reluctance convinced him to grant a Judgment on the Pleadings and a Summary Judgment.

Opposing Counsel:

John Brannelly  
4632 South Maryland Parkway, Suite 20  
Las Vegas, Nevada 89101  
(702) 386-3999

9. Fox v. Wines, Case No. 8796, Fifth Judicial District Court for the State of Nevada, Judge Stanley Smart (1979).

In my first trial as lead counsel and in a high profile proceeding, I successfully defended a removal action against my client, the incumbent Sheriff of Nye County, Nevada. Plaintiff, who was a former deputy terminated by the Sheriff, sought to remove her from office on grounds of misfeasance and malfeasance. Under Nevada law, a removal action had to be tried within twenty days after filing. I prepared a motion and successfully argued it, striking most of plaintiff's claims. The case went to a bench trial on the remaining allegations. After my cross examination of the plaintiff, the District Court judge trying the case told counsel that he did not believe a word the plaintiff had said.

Opposing Counsel:

Jerry Collier Lane  
630 South Third Street  
Las Vegas, Nevada 89101  
(775) 329-2936

10. DiPietro v. WTMJ, Inc., Case No. A318148, Eighth Judicial District Court for the State of Nevada, Judge Jack Lehman (1993).

This was the defense of an action for defamation brought by a plaintiff who complained about the broadcast of the image of his face in a television story he found objectionable. I participated in preparing a retraction, successfully moved to dismiss all claims for general and punitive damages, and then settled the case for a minimal payment following discovery on special damages.

Opposing Counsel:

David Riddle  
1850 East Flamingo Road  
Las Vegas, Nevada 89119  
(702) 408-3800

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.)

1. I represented Nevada Army National Guard soldiers in hearings before disciplinary and separation boards and appeals from those boards, and in appeals

of determinations relating to statements of charges for lost, missing or damaged government property, and to whether injuries or illnesses were incurred in the line of duty.

2. I represented members of the Nevada Press Association in open government complaints before the Attorney General of Nevada and various county district attorneys in Nevada.
  3. I served as counsel for Sen. Harry Reid, Sen. Richard Bryan, Rep. James Bilbray, the Nevada Democratic Party, and the Nevada Assembly Democratic Caucus. In that representation I have appeared before the Federal Election Commission and the Ethics Committee of the House of Representatives.
  4. I represented various clients before the Nevada State Contractors Board, Nevada Industrial and Occupational Safety and Health Division, and the Labor Commissioner of the State of Nevada.
  5. Between 1990 and 1995, I created and operated the Nevada Press Association telephone hotline which provided free legal advice to reporters and newspapers.
  6. I wrote the Legal Handbook for Nevada Reporters for the Nevada Press Association.
  7. Between 1989 and 1995, I created and operated the "Battle Born Brigade hotline" which provided free legal advice to Army National Guard members and other United States military personnel.
  8. Prior to my activation for Operation Desert Storm I provided, pro bono and in my free time, over two hundred wills for Nevada National Guard and military reserve personnel who were subject to activation.
  9. I served as a Senior Editor for the Nevada Civil Practice Manual (Third Edition, 1993) and author of a chapter of that book (attached under writings).
  10. I drafted legislation and lobbied for the Nevada State Press Association at the Nevada Legislature for open meeting and open records laws and reporters' shield laws.
  11. I represented, pro bono, Clark County school librarians before the Clark County Commission when there was an attempt to remove certain books from school libraries.
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.

1. Public International Law

University of Nevada Las Vegas, Political Science Department, 1981 to 1982.

I do not have a course syllabus but the general subject matter of the course was sources of international law, existence and recognition of states and governments, territorial sovereignty, law of the sea, state jurisdiction including privileges and immunities, legal responsibility of states, human rights, international treaties, state succession, and international organizations including international tribunals.

2. Law of War

a. New York Law School, 1997, 1998, 2000, and 2005

b. Brooklyn Law School, 2001 to present

c. George Mason Law School, 2004

d. Fachspezifische Fremdsprachenausbildung (FFA), University of Muenster, 2001 to 2008

The syllabus for this course at all these law schools is the same. A copy is supplied and the on-line course casebook was supplied in response to Question 12a.

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.

I have no specific plans, commitments or agreements, but I expect I will continue to teach law of war should the opportunity arise.

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



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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

My wife, Dr. Katherine C. Tobin, was Deputy Assistant Secretary of Education for Performance Improvement from 2009 until February 2011. If any matter came before me in which she had been involved, I would recuse myself. Hearing a case involving any publicly-traded corporations in which I hold stock, which currently includes General Electric, Alcatel-Lucent, LSI Corporation, or MVC Corporation, would constitute a conflict of interest and I would recuse myself.

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

In my present position, I always review a case assigned to me to determine if a potential conflict exists, by adhering to 28 U.S.C. § 455, other relevant statutes, the Code of Conduct for United States Judges, and any applicable policies and procedures of the United States Courts and of the United States Court of International Trade. If a conflict is evident I will recuse myself. If there is a potential for conflict I advise counsel and discuss recusal on the record. If confirmed for this position I will observe the same practice.

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 performed extensive pro bono work as a lawyer for military personnel, media persons and entities, and political persons and organizations. This work has included creating and providing all services for legal hotlines for journalists and for military personnel between 1989 and 1995; drafting over 200 wills for military personnel; representing political persons and organizations without charge before the Federal Election Commission; and

representing school librarians, journalists, and media entities without charge or at a reduced rate. In addition, all services provided to political candidates and party organizations between 1977 and 1995 were without charge. In 1994, my last full year of practice, I devoted over 600 hours to pro bono work. I am no longer obligated under Canon 2 of the American Bar Association's Code of Professional Responsibility, and cannot, of course, practice law as a sitting judge. However, as a member of the International Judicial Relations Committee of the Judicial Conference of the United States I have devoted a considerable amount of work to assistance to foreign judiciaries through travel, teaching and writing.

**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.

I have long been interested in public service at the Circuit Court level, and Senator Reid has been very supportive of this desire. As far as I know, because of his requests I participated in interviews at the White House with Deputy White House Counsel and/or White House Counsel for various Circuits in January 2009, July 2009, and July 2010. Since February 4, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 28, 2011, the President submitted my nomination to the Senate.

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

No.

# 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)<br>Wallach, Evan J.                                                                                                                                        | 2. Court or Organization<br>Federal Circuit                                                                                                                                                                                                                   | 3. Date of Report<br>07/28/2011                       |
| 4. Title (Article III judges indicate active or senior status;<br>magistrate judges indicate full- or part-time)<br>Circuit Judge                                                                                 | 5a. Report Type (check appropriate type)<br><input checked="" type="checkbox"/> Nomination, Date 07/28/2011<br><input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final<br>5b. <input type="checkbox"/> Amended Report | 6. Reporting Period<br>01/01/2010<br>to<br>07/26/2011 |
| 7. Chambers or Office Address<br>U.S. Court of International Trade<br>One Federal Plaza<br>New York, NY 10278                                                                                                     | 8. On the basis of the information contained in this Report and any<br>modifications pertaining thereto, it is, in my opinion, in compliance<br>with applicable laws and regulations.<br><br>Reviewing Officer _____ Date _____                               |                                                       |
| <p><b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts,<br/>checking the NONE box for each part where you have no reportable information. Sign on last page.</p> |                                                                                                                                                                                                                                                               |                                                       |

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

☐ NONE (No reportable positions.)

| <u>POSITION</u>      | <u>NAME OF ORGANIZATION/ENTITY</u>                        |
|----------------------|-----------------------------------------------------------|
| 1. Partner           | WWH Partnership (Investment Partnership)                  |
| 2. Member            | Speedway Stone Associates, LLC (Investment)               |
| 3. Board of Advisors | International Humanitarian Law Clinic at Emory Law School |
| 4. Member            | American Law Institute                                    |
| 5. Honorary Fellow   | Hughes Hall College                                       |
| 6. Executor          | Estate #1                                                 |
| 7. Trustee           | Trust #1                                                  |

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

☒ NONE (No reportable agreements.)

| <u>DATE</u> | <u>PARTIES AND TERMS</u> |
|-------------|--------------------------|
| 1.          |                          |
| 2.          |                          |
| 3.          |                          |

**FINANCIAL DISCLOSURE REPORT**

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Name of Person Reporting

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

| <u>DATE</u> | <u>SOURCE AND TYPE</u>       | <u>INCOME</u><br><i>(yours, not spouse's)</i> |
|-------------|------------------------------|-----------------------------------------------|
| 1. 2011     | Brooklyn Law School-Teaching | \$8,200.00                                    |
| 2. 2010     | Brooklyn Law School Teaching | \$8,200.00                                    |
| 3. 2009     | Brooklyn Law School Teaching | \$8,200.00                                    |
| 4.          |                              |                                               |

**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. 2011     | US Department of Education, Salary |
| 2. 2010     | US Department of Education, Salary |
| 3.          |                                    |
| 4.          |                                    |

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

| <u>SOURCE</u> | <u>DATES</u> | <u>LOCATION</u> | <u>PURPOSE</u> | <u>ITEMS PAID OR PROVIDED</u> |
|---------------|--------------|-----------------|----------------|-------------------------------|
| 1. Exempt     |              |                 |                |                               |
| 2.            |              |                 |                |                               |
| 3.            |              |                 |                |                               |
| 4.            |              |                 |                |                               |
| 5.            |              |                 |                |                               |

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**V. GIFTS.** *(Includes those to spouse and dependent children; see pp. 28-31 of filing 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. 32-33 of filing instructions.)*☒ NONE *(No reportable liabilities.)*

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

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## VII. INVESTMENTS and TRUSTS – Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

| A.<br>Description of Assets<br>(including trust assets)<br><br>Place "(X)" after each asset<br>exempt from prior disclosure | B.<br>Income during<br>reporting period |                                               | C.<br>Gross value at end<br>of reporting period |                                           | D.<br>Transactions during reporting period      |                         |                                 |                                |                                                                   |
|-----------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|-----------------------------------------------|-------------------------------------------------|-------------------------------------------|-------------------------------------------------|-------------------------|---------------------------------|--------------------------------|-------------------------------------------------------------------|
|                                                                                                                             | (1)<br>Amount<br>Code 1<br>(A-H)        | (2)<br>Type (e.g.,<br>div., rent,<br>or int.) | (1)<br>Value<br>Code 2<br>(J-P)                 | (2)<br>Value<br>Method<br>Code 3<br>(Q-W) | (1)<br>Type (e.g.,<br>buy, sell,<br>redemption) | (2)<br>Date<br>mm/dd/yy | (3)<br>Value<br>Code 2<br>(J-P) | (4)<br>Gain<br>Code 1<br>(A-H) | (5)<br>Identity of<br>buyer/seller<br>(if private<br>transaction) |
| 1. Citibank Cash                                                                                                            | A                                       | Interest                                      | J                                               | T                                         | Exempt                                          |                         |                                 |                                |                                                                   |
| 2. Citibank Cash                                                                                                            | A                                       | Interest                                      | K                                               | T                                         |                                                 |                         |                                 |                                |                                                                   |
| 3. Chase Bank Household Escrow Account                                                                                      | A                                       | Interest                                      | J                                               | T                                         |                                                 |                         |                                 |                                |                                                                   |
| 4. Charles Schwab Cash                                                                                                      | A                                       | Int./Div.                                     | L                                               | T                                         |                                                 |                         |                                 |                                |                                                                   |
| 5. Fidelity Contrafund (IRA)                                                                                                | B                                       | Dividend                                      | L                                               | T                                         |                                                 |                         |                                 |                                |                                                                   |
| 6. Fidelity Magellan (IRA)                                                                                                  | C                                       | Dividend                                      | L                                               | T                                         |                                                 |                         |                                 |                                |                                                                   |
| 7. Fidelity Puritan (IRA)                                                                                                   | B                                       | Dividend                                      | L                                               | T                                         |                                                 |                         |                                 |                                |                                                                   |
| 8. TIAA-Traditional                                                                                                         | B                                       | Interest                                      | K                                               | T                                         |                                                 |                         |                                 |                                |                                                                   |
| 9. TIAA-CREF Stock                                                                                                          | D                                       | Dividend                                      | L                                               | T                                         |                                                 |                         |                                 |                                |                                                                   |
| 10. TIAA-Growth Stock                                                                                                       | A                                       | Dividend                                      | J                                               | T                                         |                                                 |                         |                                 |                                |                                                                   |
| 11. TIAA-Global Equities                                                                                                    | C                                       | Dividend                                      | K                                               | T                                         |                                                 |                         |                                 |                                |                                                                   |
| 12. TIAA-Soc Ch                                                                                                             | C                                       | Dividend                                      | L                                               | T                                         |                                                 |                         |                                 |                                |                                                                   |
| 13. Addison Ave- Federal Credit Union                                                                                       | A                                       | Dividend                                      | J                                               | T                                         |                                                 |                         |                                 |                                |                                                                   |
| 14. Fidelity Advisor Ser. I Equity Growth (IRA)                                                                             | A                                       | Dividend                                      | L                                               | T                                         |                                                 |                         |                                 |                                |                                                                   |
| 15. Fidelity Advisor Equity Port Income (IRA)                                                                               | A                                       | Dividend                                      | K                                               | T                                         |                                                 |                         |                                 |                                |                                                                   |
| 16. Franklin Strategic Biotechnology (IRA)                                                                                  | A                                       | Dividend                                      | L                                               | T                                         |                                                 |                         |                                 |                                |                                                                   |
| 17. Growth Fund America (IRA)                                                                                               | A                                       | Dividend                                      | K                                               | 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  
N = \$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

# FINANCIAL DISCLOSURE REPORT

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## VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

| A.<br>Description of Assets<br>(including trust assets)<br><br>Place "(X)" after each asset<br>exempt from prior disclosure | B.<br>Income during<br>reporting period |                                               | C.<br>Gross value at end<br>of reporting period |                                           | D.<br>Transactions during reporting period      |                         |                                 |                                |                                                                   |
|-----------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|-----------------------------------------------|-------------------------------------------------|-------------------------------------------|-------------------------------------------------|-------------------------|---------------------------------|--------------------------------|-------------------------------------------------------------------|
|                                                                                                                             | (1)<br>Amount<br>Code 1<br>(A-H)        | (2)<br>Type (e.g.,<br>div., rent,<br>or int.) | (1)<br>Value<br>Code 2<br>(J-P)                 | (2)<br>Value<br>Method<br>Code 3<br>(Q-W) | (1)<br>Type (e.g.,<br>buy, sell,<br>redemption) | (2)<br>Date<br>mm/dd/yy | (3)<br>Value<br>Code 2<br>(J-P) | (4)<br>Gain<br>Code 1<br>(A-H) | (5)<br>Identity of<br>buyer/seller<br>(if private<br>transaction) |
| 18. Seligman Communications & Information Fund (IRA)                                                                        | A                                       | Dividend                                      | K                                               | T                                         |                                                 |                         |                                 |                                |                                                                   |
| 19. Alcatel-Lucent Corp Commonstock (IRA)                                                                                   | A                                       | Dividend                                      | J                                               | T                                         |                                                 |                         |                                 |                                |                                                                   |
| 20. General Electric Co (IRA)                                                                                               | B                                       | Dividend                                      | K                                               | T                                         |                                                 |                         |                                 |                                |                                                                   |
| 21. LSI Corp (IRA)                                                                                                          | A                                       | Dividend                                      | J                                               | T                                         |                                                 |                         |                                 |                                |                                                                   |
| 22. Microsoft Corp (IRA)                                                                                                    | A                                       | Dividend                                      | K                                               | T                                         |                                                 |                         |                                 |                                |                                                                   |
| 23. MVC Capital (IRA)                                                                                                       | B                                       | Dividend                                      | K                                               | T                                         |                                                 |                         |                                 |                                |                                                                   |
| 24. Pfizer Incorporated (IRA)                                                                                               | A                                       | Dividend                                      |                                                 |                                           | Exempt                                          |                         |                                 |                                |                                                                   |
| 25. Wells Fargo Cash (IRA)                                                                                                  | A                                       | Interest                                      | K                                               | T                                         |                                                 |                         |                                 |                                |                                                                   |
| 26. Wells-Fargo First Clearing, LLC                                                                                         | E                                       | Distribution                                  |                                                 |                                           | Exempt                                          |                         |                                 |                                |                                                                   |
| 27. General Electric                                                                                                        | A                                       | Dividend                                      |                                                 |                                           | Exempt                                          |                         |                                 |                                |                                                                   |
| 28. 1 Parcel Real Property, Tucson AZ (1/3) Interest                                                                        | A                                       | Rent                                          | K                                               | W                                         |                                                 |                         |                                 |                                |                                                                   |
| 29. 1 Parcel real Property, Tucson, AZ (1/3) Interest                                                                       | A                                       | Rent                                          | M                                               | W                                         |                                                 |                         |                                 |                                |                                                                   |
| 30. Trustee UBS Cash Account (Trust #1)                                                                                     | A                                       | None                                          | P1                                              | T                                         |                                                 |                         |                                 |                                |                                                                   |

1. Income Gain Codes:  
(See Columns B1 and D4)

A = \$1,000 or less  
F = \$50,001 - \$100,000

2. Value Codes  
(See Columns C1 and D3)

J = \$15,000 or less  
N = \$250,001 - \$500,000  
P1 = \$25,000,001 - \$50,000,000

3. Value Method Codes  
(See Column C2)

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

**FINANCIAL DISCLOSURE REPORT**

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

The only asset WWH partnership owns is one parcel of land in Tucson, (part VII line 28) and the only asset Speedway/Stone LLC owns is a contiguous parcel (part VII line 27).

I am the executor of Trust #1 whose sole asset is cash account referenced in line 30. Trust is in the process of being liquidated.



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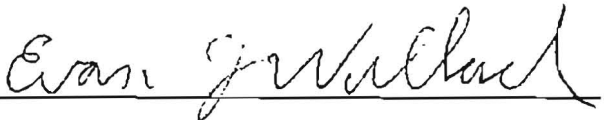
07/28/2011

**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



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         |   | 91  | 567 | Notes payable to banks-secured                      |    |     |     |
| U.S. Government securities        |   |     |     | Notes payable to banks-unsecured                    |    |     |     |
| Listed securities -- see schedule |   | 857 | 910 | Notes payable to relatives                          |    |     |     |
| Unlisted securities               |   |     |     | Notes payable to others                             |    |     |     |
| Accounts and notes receivable:    |   |     |     | Accounts and bills due                              |    |     |     |
| Due from relatives and friends    |   |     |     | Unpaid income tax                                   |    |     |     |
| Due from others                   |   |     |     | Other unpaid income and interest                    |    |     |     |
| Doubtful                          |   |     |     | Real estate mortgages payable -- personal residence |    | 124 | 738 |
| Real estate owned -- see schedule | 1 | 050 | 000 | Chattel mortgages and other liens payable           |    |     |     |
| Real estate mortgages receivable  |   |     |     | Other debts-itemize:                                |    |     |     |
| Autos and other personal property |   | 250 | 000 |                                                     |    |     |     |
| Cash value-life insurance         |   |     |     |                                                     |    |     |     |
| Other assets itemize:             |   |     |     |                                                     |    |     |     |
| Thrift Savings Plan               |   | 30  | 200 |                                                     |    |     |     |
|                                   |   |     |     |                                                     |    |     |     |
|                                   |   |     |     | Total liabilities                                   |    | 124 | 738 |
|                                   |   |     |     | Net Worth                                           | 2  | 154 | 939 |
| Total Assets                      | 2 | 279 | 677 | Total liabilities and net worth                     | 2  | 279 | 677 |
| 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

|                                        |                  |
|----------------------------------------|------------------|
| Alcatel-Lucent                         | \$9,475          |
| General Electric                       | 48,133           |
| LSI Corporation                        | 3,862            |
| Microsoft                              | 27,664           |
| MVC Capital                            | 32,375           |
| 401(k) cash account                    | 21,993           |
| Growth Fund of America CLC             | 39,798           |
| Columbia Seligman Comm'ns & Info. Fund | 42,405           |
| Fidelity Advisor Equity Income Class T | 33,027           |
| Fidelity Advisor Equity Growth Class T | 75,951           |
| Fidelity Contra Fund                   | 116,561          |
| Fidelity Magellan Fund                 | 67,960           |
| Fidelity Puritan                       | 87,138           |
| Franklin Biotechnology Discovery Fund  | 66,086           |
| TIAA-Traditional                       | 25,289           |
| TIAA-CREF Global Equities              | 24,615           |
| TIAA-CREF Growth                       | 4,546            |
| TIAA-CREF Social Choice                | 54,737           |
| TIAA-CREF Stock                        | 76,295           |
| Total Listed Securities                | <u>\$857,910</u> |

#### Real Estate Owned

|                                              |                    |
|----------------------------------------------|--------------------|
| Personal residence                           | \$750,000          |
| 2 undeveloped contiguous lots (1/3 interest) | <u>300,000</u>     |
| Total Real Estate Owned                      | <u>\$1,050,000</u> |

Note: Not later than August 3, 2011, I will receive a distribution of approximately \$430,000 as a 1/3 beneficiary of my parent's living trust

AFFIDAVIT

I, Evan J. Wallach, do swear  
that the information provided in this statement is, to the best  
of my knowledge, true and accurate.

26 July 2011  
(DATE)

Evan J. Wallach  
(NAME)

Linda Sue Sloane  
(NOTARY)

**LINDA SUE SLOANE**  
Notary Public, State of New York  
No. 01SL4634165  
Qualified in New York County  
Commission Expires June 30, 2014