

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Andre Maurice Davis

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

United States Circuit Judge for the Fourth 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.

Office: United States Courthouse
 Room 5B
 101 W. Lombard Street
 Baltimore, MD 21201

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

1949; Baltimore, MD

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.

1972, 1975-1978; University of Maryland School of Law, Baltimore, MD; J.D. 1978

1967-1971; University of Pennsylvania, Philadelphia, PA; B.A. 1971

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.

Employment

August 14, 1995 to present

United States District Court for the District of Maryland
101 W. Lombard Street

5B Garmatz Federal Courthouse
Baltimore, MD 21201
United States District Judge

December 19, 1990 to August 13, 1995
Circuit Court for Baltimore City
100 N. Calvert Street
Clarence Mitchell Courthouse
Baltimore, MD 21201
Associate Judge

August 3, 1987 to December 18, 1990
District Court of Maryland for Baltimore City
Wabash Avenue
Baltimore, MD 21215
Associate Judge

University of Maryland School of Law
500 W. Baltimore Street
Baltimore, MD 21201
Visiting Professor of Law (July 1984 – June 1985)
Assistant Professor (July 1985 – July 1987)
Adjunct Professor of Law (part time - January 1982 to May 1984, Sept. 1987 to present)

July 1983 to June 1984
Frank, Bernstein, Conaway & Goldman (now dissolved)
Baltimore, MD
Associate Attorney

January 1981 to June 1983
Office of the United States Attorney
U. S. Courthouse
Baltimore, MD
Assistant United States Attorney

September 1980 to January 1981
Civil Rights Division
U.S. Department of Justice
Washington, DC
Appellate Attorney

August 1979 to August 1980
United States Court of Appeals for the Fourth Circuit
United States Courthouse
Baltimore, MD
Law Clerk to Judge Francis D. Murnaghan, Jr.

May 1978 to June 1979
United States District Court for the District of Maryland
United States Courthouse
Baltimore, MD
Law Clerk to Judge Frank A. Kaufman

Summer 1977
Piper & Marbury
36 S. Charles Street
Baltimore, MD 21201
Law Clerk

June 1976 to May 1977
Law Offices of William H. Murphy, Jr.
1007 N. Calvert Street
Baltimore, MD 21202
Law Clerk (full time summer; part-time during school year)

August 1975 to May 1976
Office of the Dean
University of Maryland School of Law
Baltimore, MD
Office Assistant

July 1972 to August 1975
Housing Authority for Baltimore City
401 E. Fayette Street
Baltimore, MD 21201
Assistant Housing Manager (July 1972 to November 1973)
Equal Employment Opportunity Specialist (November 1973 to August 1975)

November 1971 to April 1972
Baltimore News American
Baltimore, MD
District Circulation Manager

October 1971 to June 1972
Two Guys Department Store
Baltimore, MD
Retail Sales Associate

May 1971 to September 1971
Belvedere Camera Shop
Baltimore, MD
Sales Associate

Other affiliations

Baltimore Urban League
Baltimore, MD
Board Member, 1975 to 1978

Legal Aid Bureau, Inc.
Baltimore, MD
Member, 1983 to 1987; President 1985 to 1987

Goucher College
Towson, MD
Board Member, 1985 to 1991

Judicial Institute of Maryland, Inc.
Annapolis, MD
Board Member, 1987 to 1990

Big Brothers/Big Sisters of Central Maryland, Inc.
Baltimore, MD
Board Member, 1989 to 2005; Vice-President, 1992 to 1994; President 1994 to 1998

Open Society Institute – Baltimore
Baltimore, MD
Board Member, 2000 to present

Community Law in Action, Inc.
Baltimore, MD
President of the Board, 2001-2006

Baltimore Urban Debate League, Inc.
Baltimore, MD
Board Member, 2002 to 2008; President of the Board, 2002 to 2006

Foundation for Research on Economics and the Environment (FREE)
Board Member, 2003 to 2004

Park Heights Academy
Board Member, 1989 to 1990

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

I have not served in the military. I registered for selective service as required.

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.

2008 - Benjamin L. Cardin Public Service Award, University of Maryland School of Law Alumni Association

1985 - Order of the Coif, University of Maryland School of Law

1977 - Best Advocate, Meyerwitz Moot Court Competition, University of Maryland School of Law

1977 - Best Advocate, Marshall-Wythe Invitational Moot Court Competition, William and Mary School of Law

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.

1990 to present: Member, American Bar Association

2004-2005: Member, Justice Kennedy Commission

2002-2004: Member, Judicial Advisory Board, Committee on Judicial Ethics

2002-2004: Member, Criminal Standards Committee

1998-2003: Member of the Executive Committee, Secretary, and Chair, Conference of Federal Trial Judges/Judicial Division

2000-2003: Member, National Bar Association

1989-1999: Member, Maryland State Bar Association

1989-1999: Member, Section Council, Section of Correctional Reform

1992-2001: Member, J. Dudley Digges Inn of Court

1995 to 1996: President

2004 to present: Member, American Judicature Society

1997-2004: Member, Einstein Institute for Science, Health, and the Courts

1997-2004: Co-chair, International Committee

2003-2005: Member, National Judicial College Faculty Council

2001 to present: Member, Board of Visitors, University of Maryland School of Law

1991-2002: Member, Alumni Association of the University of Maryland School of Law

2000-2001: President

1997 to present: Member, Lawyer's Roundtable Law Club

1998 to present: Member, Wranglers Law Club

1994 to present: Member, Rule Day Law Club

1984-2001: Member, The Serjeant's Inn Law Club

2005-2006: Member, Working Group on DNA Evidence, National Institute of Justice

2003 to present: Member, Judicial Conference Committee on International Judicial Relations

1991-1995: Executive Committee of the Judicial Conference of Maryland
 1991-1995: Member and Circuit Representative
 1992-1993: Vice President
 1993-1994: President

1983-1987: Legal Aid Bureau, Inc.
 1983-1987: Member of the Board
 1985-1987: President of the Board

1995 to present: United States District court for the District of Maryland; Chair, Committee on Automation & Technology.

1999, Lawyers at Bail Project; Advisory Board member

1999 to present: Maryland Bar Foundation, Fellow

1986 to present: Bar Association of Baltimore City

1982 to present: Monumental City Bar Association

1986-1987: Maryland Attorney Grievance Commission, Inquiry Committee member

1983-1994: Judicial Conference of the United States Court of Appeals for the Fourth Circuit

1987-1996: District Court of Maryland, commissioner Education Committee

1994 to present: National Judicial College, Reno, NV; faculty member

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.

Maryland, November 1979

There have been no lapses in membership. I have been on "Inactive" status since June 5, 1991 because of my position as a Judge.

- 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.

Maryland State Courts, November 1979 – Inactive Status

United States District Court for the District of Maryland, June 1980

United States Court of Appeals for the Fourth Circuit, June 1980

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.

2000 to present: Trustee, Open Society Institute-Baltimore

1999 to present: Member, Sigma Phi Chi Professional Fraternity ("the Boule")

2002-2008: Baltimore Urban Debate League, Inc.,

2002-2008: Member of the Board

2002-2006: President of the Board

2001 to present: Member, Community Law in Action, Inc.

2001-2006: President of the Board

2003-2004: Member of the Board, Foundation for Research on Economics and the Environment (FREE)

2002-2003: Member, RFK Memorial, Kenya Support Group

1989-2005: Big Brothers/Big Sisters of Central Md., Inc.

1989-2005: Member of the Board

1992-1994: Vice President

1994-1998: President

1985-1991: Trustee, Goucher College

1989-1990: Member of the Board, Park Heights Academy

1975-1978: Member of the Board, Baltimore Urban League, Inc.

1968 to present: Member, Alpha Phi Alpha Fraternity, Inc.

1991 to present: Life Member, National Association for the Advancement of Colored People, Inc.

1993-1996: Member, Law Program, Advisory Panel, Lake Clifton/Eastern High School

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

None of the listed organizations presently or formerly engaged in invidious discrimination in any form.

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.

March 18, 2009; Letter to the Editor in Baltimore *Sun*

May 9, 2008; "To the Man Who Called Me N-Word," Baltimore *Sun*

Dec. 3, 2007; "Young People Need Mentors" in OSI Blog

June 25, 2006; "Summer Reading" Baltimore *Sun*

Winter 2004; Chair's Column, in *Federal Trial News*, American Bar Association

Spring 2004; "In Praise of 'Nose-Holding'", Chair's Column, in *Federal Trial News*, American Bar Association

2004; "Have the Promises of Brown Been Fulfilled," ABA *Judges Journal*

March 2002; "The Least Dangerous Branch," ABA *JD Record*

2001; "Musings on the Jury System," 66 Brooklyn Law Review 1249

Feb. 2000; "Genetic Technologies and Courts of Law," OECD Workshop

2000; "Doing Science in the 21st Century," *Journal of BioLaw and Business*

1998; "In Memoriam: Frank A. Kaufman," 57 Md.L.Rev. 621

1985 Book Review of *Thimblerriggers: The Law vs. Governor Marvin Mandel*, in Maryland Historical Magazine

Dec. 1993; "Today's District Court," *Maryland Bar Journal*

From Spring 1991 to late 1992, under the auspices of the Monumental City Bar Association, I was an occasional columnist for a column called "All About Law" published from time-to-time in the Baltimore Afro-American newspaper. The column was designed to give useful information about the legal and court system to non-lawyers.

- 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.

International Bar Association Report on Zimbabwe 2001

Report to the House of Delegates of the Justice Kennedy Commission, American Bar Association, August 2004

ABA Standards on Criminal Justice: Collateral Sanctions

ABA Standards on Criminal Justice: Speedy Trial

- 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.

I have done my best to identify any items responsive to this question but I have not uncovered any such testimony, official statements or communications.

- 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.

January 2009; Presenter, Caseflow Management Workshops for Judges and Lawyers, sponsored by USAID in locations in South Africa

October 21, 2008; Co-Presenter, "Confidentiality and Litigation Holds," Association of Corporate Counsel, in Seattle, WA (no notes)

October 2008; "Mapp v. Ohio: The Untold Story" delivered to Rule Day Law Club

September 27, 2008; Moderator, Panel on "Courts and the Media," Just the Beginning Foundation Bi-annual Meeting, Washington, DC

May 2008; Co-Presenter, Training for Liberian Judges and Magistrates, Monrovia, Liberia, for USAID

April 2008; Genetics Roundtable, University of Maryland School of Law (Reported in *Washington Post*, April 20, 2008)

March 21, 2008; "Confidentiality and the Media" panel discussion, Reynolds National Center for Courts and Media, National Judicial College, Reno, NV (video to be found at <http://www.youtube.com/watch?v=oKR6eBRqeGU>)

April 2007; Co-Presenter, "Judicial Philosophy in American Law," Sedona, AR, for the National Judicial College

February 17, 2007; "The Role of Judicial Independence in a Democracy," keynote address, Seminar for South African Judges, for the U.S. Department of Justice

December 13, 2006; Remarks to New Admittees, Maryland Court of Appeals, Annapolis

March 2006; Co-Presenter, U.S. Department of Justice Seminar on Plea Bargaining for Nigerian Judges, Lagos and Abuja, Nigeria

March 2006; Moderator of Panel, Forum on the Justice Kennedy Commission, University of Maryland School of Law, Baltimore, MD

September 27-29, 2006; Co-Presenter, "Criminal Enforcement of Intellectual Property Laws," Kampala, Uganda, for the U.S. Department of Justice

September 11-14, 2006; Co-Presenter, "Judicial Philosophy in American Law," Savannah, Georgia, for the National Judicial College

May 11, 2006; Panelist, "Genetic Evidence," American Society for Law, Medicine and Ethics, Harvard University, Cambridge, MA

January 2006; Co-presenter, "Equitable Relief in Intellectual Property Cases" a seminar for Egyptian Judges Alexandria, Egypt, for USAID

November 14-15, 2005; Remarks, "Justice and Journalism" Symposium, Vanderbilt School of Law and the First Amendment Center, Nashville, TN (no notes)

October 6-7, 2005; Remarks at "Video and the Law" seminar, Law Enforcement and Emergency Services Video Association, Coeur d'Alene, ID (no notes)

September 15, 2005; Co-Presenter, "Today's Justice," National Judicial College, Washington, DC

August 2005; Remarks, "CSI Meets the Courts" panel discussion, ABA Annual Meeting, Chicago, IL

July 27, 2005; Panelist, "Litigation Skills Workshop," Association of Trial Lawyers of America Annual Meeting, Toronto, Canada

November 10, 2005; Federal Open Doors Program for High School Students, U.S. Courthouse, Baltimore, MD (no notes)

November 2004; Facilitator, Bench Book Development Meeting, for Latvian judges, Prague, Czech Republic

October 4, 2004; Remarks at Conference on Race and Genetics, Congressional Black Caucus, Washington, DC (no notes)

September 17, 2004; "DNA Fingerprinting and Civil Liberties" at American Society of Law, Medicine & Ethics, Harvard University, Boston, MA

August 11, 2004; Co-Presenter, "Genetics in the Courtroom," National Bar Association Annual Meeting, Atlanta, Georgia (no notes)

August 2004; Remarks: The Courts and Terrorism, Steamboat Seminars, Steamboat, CO

June 17, 2004; Panelist, "Right to Counsel," Maryland State Bar Association, Ocean City, MD (no notes)

June 2004; Co-Presenter, "The Role of Judges in Democracies," Mbanie, Swaziland, for USAID (no notes)

December 2003; Remarks, Jonathan Luna Memorial Service, Baltimore, MD

October 2003; Remarks, "Applications of the Human Genome" at University of North Carolina, Chapel Hill, NC (no notes)

October 2003; Co-Moderator, Panel on "The Promise v. Board: Yesterday, Today and Beyond," Judicial Division of the American Bar Association Meeting, San Antonio, TX

August 2003; Panelist, "Reinventing Sentencing" for the Administrative Office of the Courts/Defender Services Division, Park City, Utah

January 2003; Remarks at American Judicature Society (AJS) conference, "Preventing the Conviction of Innocent Persons," Washington, DC

January 31, 2003; Panelist, Regional Judges Forum for the Roscoe Pound Institute, Honolulu, HI

October 2002; Panelist for "Sentencing and the Federal Judiciary" American Constitution Society at the University of Maryland School of Law, Baltimore

January 8, 2002; Remarks, "Criminal Sentencing: I Know Why the Caged Bird Sings" given at the Rule Day Club, Baltimore

October 2001; Moderator for Panel, Public Forum on Local Crime Fighting Policies, University of Maryland School of Law, Baltimore, MD

October 26, 2001; Remarks, "IT in the District Court" Maryland Federal Bench/Bar Conference, Baltimore

November 2000; Remarks, Francis J. Murnaghan, Jr., Memorial Service, Baltimore

September 2000; Panelist for "Trial of a Patent Case" ALI-ABA in Chicago

June 22, 1999; "Court Appointed Experts" (PowerPoint/National Judicial College)

July 2002; Panelist, "Teen Speak Out," Baltimore, MD

March 1999; "Ethical Pratfalls in Employment Cases" CLE Program, Columbia, MD

March 1999; Remarks, Frank A. Kaufman Memorial Service, Baltimore

November 1998; "Admissibility of DNA Evidence" at Science and the Courtroom course, National Judicial College, Reno, NV

May 1997; Remarks, John R. Hargrove Memorial Service, Baltimore

February 1997; Remarks on the Celebration of Black History Month, Baltimore

December 9, 1996; "Politics of Jury Nullification" Law Club address

June 28, 1996; "Baby Judge" Speech, Fourth Circuit Judicial Conference, White Sulphur Springs, WV

May 23, 1996; Commencement Address, University of Maryland School of Law, Baltimore

April 19, 1996; Remarks at Investiture as U.S. District Judge

June 1, 1992: Keynote Address, Baltimore County Public Schools

January 1992: Remarks, "Decline and Resurgence of Professionalism," University of Maryland School of Law

June 23, 1991; Commencement Address, Park Heights Academy, Baltimore

June 14, 1991: Announcement of Candidacy for State Circuit Court Judge, Baltimore

August 3, 1987; Remarks at Investiture as Judge of the District Court of Maryland, Baltimore

- 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.

January 2009, Interview with daily newspaper, Durban, South Africa

Fall 2008, Interview, University of Maryland School of Law Alumni Magazine

September 2008, Interview, "Tracking Marshall's Steps to the Supreme Court" *Washington Post*

April 20, 2008, Interview, "Second Generation of DNA in Halls of Justice" *Washington Post*

November 2006, Interview, "Visiting Egyptian Judges" *Baltimore Daily Record*

February 2006, Interview, Electronic Filing, *ABA Journal*

December 20, 2005, Interview, "Polygraph Loomed for MD Prosecutor" *Washington Post*

June 26, 2005, Interview, "Summertime Reading" in the *Baltimore Sun*

July-August 2004, Interview, "What do Judges think about the Feeney Amendment?" in *Judicature Magazine*, American Judicature Society

February 2, 2004, Interview, "Philanthropy: The Open Society Institute" in the *Baltimore Sun*

December 2003, Interview, "Who Killed Jonathan Luna?," *People Magazine*; *Philadelphia Inquirer*

Fall 2000, Interview, University of Maryland School of Law Alumni Magazine

July 1996, Interview, "Attorney Manners" *Baltimore Daily Record*

July 1996, Interview, "Genetic Questions Sending Judges Back to Classroom" *New York Times*

January 15, 1995, Interview, "Maryland Judges Issue More Lenient Sentencing Guidelines" in the *Washington Post*

May 8, 2003, Interview, "Drug Policies Wrong, Judges Say: Are Wrong People Jailed?" in *Baltimore Afro-American*

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.

On August 14, 1995, I was appointed United States District Judge for the District of Maryland by President Clinton, following confirmation by the United States Senate on August 11, 1995. I took the oath of office on August 14, 1995.

On December 19, 1990, I took the oath as Associate Judge of the Circuit Court for Baltimore City (a general jurisdiction court), following appointment by Governor William D. Schaefer, to serve until the general election in November 1992. In November 1992, I was elected to a 15 year term of office.

On August 3, 1987, I took the oath as Judge of the District Court of Maryland for Baltimore City (a court of limited jurisdiction), following appointment by Governor Schaefer to a ten-year term. Subsequently, the appointment was confirmed by the Maryland Senate.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? Approximately 5300 (federal cases only).

As a federal judge, I have presided over the closing of approximately 5300 cases. Of that number, approximately 4300 went to judgment based on a trial and/or decision I made, with approximately 450 opinions available in electronic databases. Approximately 75 to 85 have gone to verdict or decision after a trial.

i. Of these, approximately what percent were:

jury trials? 80%; bench trials 20% [total 100%]

civil proceedings? 25%; criminal proceedings? 75% [total 100%]

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

See attached lists of citations from Westlaw.

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. U.S. v. Savoy, affirmed in part, vacated in part, 2009 WL 567325, (4th Cir. March 6, 2009) (drug conspiracy prosecution in which defendant shot a law enforcement officer)

Andrea Smith
Office of the United States Attorney
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(410) 209-4800

Mellisa M. Phin, Esq.
10 N. Calvert Street
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(410) 528-8356

2. U.S. v. Ulrich et al., convictions affirmed, 28 Fed.Appx. 248, 2007 WL 1578172 (4th Cir. June 1, 2007) (four-defendant mail fraud prosecution in connection with real estate flipping scheme)

Richard C Bittner
Law Office of Richard C Bittner
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(410) 590-2552

Andrew Radding
Adelberg Rudow Dorf and Hendler LLC
Seven St Paul St Ste 600
Baltimore, MD 21202-1612
(410) 539-5195

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Fisher and Winner LLP
2002 Clipper Park Rd.
Suite 108
Baltimore, MD 21211
(410) 554-3602

Joyce K McDonald
Office of the United States Attorney
36 S Charles St Fourth Fl
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(410) 209-4800

3. U.S. v. Iskander et al., convictions affirmed, 407 F.3d 232 (4th Cir.2005) (unusual tax evasion prosecution involving cash skimming from business receipts)

Michael Schatzow
Venable LLP
750 E Pratt St Ste 900
Baltimore, MD 21202
(410) 244-7400

Gerard Patrick Martin
Rosenberg Martin Funk Greenberg LLP
25 S Charles St Ste 2115
Baltimore, MD 21201-3305
(410) 727-6600

Jonathan M. Mastrangelo
White & Case LLP
701 Thirteenth Street, NW
Washington, DC 20005-3807
(202) 626-3615

4. U.S. v. Bush, conviction affirmed, 404 F.3d 263 (4th Cir. 2005) (identity theft prosecution in which defendant wished to undertake self-representation but was not allowed to do so)

Joseph John Gigliotti
Law Office of Joseph J Gigliotti
8601 Georgia Ave Ste 905
Silver Spring, MD 20910
(301) 565-2122

Robert Reeves Harding
Office of the United States Attorney

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5. U.S. v. Hsu, et al., convictions affirmed, 364 F.3d 192 (4th Cir.2004) (conspiracy prosecution arising from attempt by national of People's Republic of China to export prohibited item from the United States)

Richard Henry Gordin
Tighe Patton Armstrong Teasdale PLLC
1747 Pennsylvania Ave NW Ste 300
Washington, DC 20006
(202) 454-2800

David L. Douglass
Porter Wright Morris and Arthur LLP
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Washington, DC 20006-3434
(202) 778-3000

Tarra DeShields Minnis
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6. U.S. v. Montgomery, et al., convictions affirmed, 262 F.3d 233 (4th Cir. 2001) (multi-defendant ten-week trial in narcotics conspiracy prosecution)

Cyril Vincent Smith, III
Zuckerman Spaeder LLP
100 E Pratt St Ste 2440
Baltimore, MD 21202
(410) 332-0444

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Judge District of Columbia Superior Court
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Washington, DC 20001
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Thanos Kanellakos Attorney at Law
488 N Walnut St
Dallastown, PA 17313
(717) 846-5757

Donald H Feige
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(410) 248-0985

Martin Joseph Clarke
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7. U.S. v. Gray, conviction affirmed, 137 F.3d 765 (4th Cir. 1998)(en banc) (racketeering murder prosecution)

Joseph A. Balter
Office of the Public Defender
Office of the Federal Public Defender
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(410) 962-3962

Harvey Ellis Eisenberg
Office of the United States Attorney
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8. U.S. v. Cohn, et al., appeal dismissed, 166 Fed.Appx. 4, 2006 WL 149071, (4th Cir. January 18, 2006) (mail fraud prosecution of an attorney)

W Neil Eggleston
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Kramon and Graham
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Francis Joseph Gorman
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9. U.S. v. Katz, et al., convictions affirmed, remanded for resentencing, 122 Fed.Appx. 613, 2005 WL 102986, (4th Cir. Jan. 19, 2005)

Francis Joseph Gorman
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10. U.S. v. Mitchell, et al., 405 F.Supp.2d 602 (D.Md. 2005); U.S. v. Gardner, 417 F.Supp.2d 703 (D.Md. 2006) (four-defendant racketeering/murder trial).

Laura Kelsey Rhodes
Albright and Rhodes LLC
200 A Monroe St. Ste. 305
Rockville, MD 20850
(301) 424-0094

Gerard Patrick Martin
Rosenberg Martin Funk Greenberg LLP
25 S. Charles St. Ste. 2115
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James Gerard Pyne
James G. Pyne PA
405 Allegheny Ave.
Towson, MD 21204
(410) 321-5500

Thomas L Crowe
Law Office of Thomas L Crowe
The World Trade Center
401 E. Pratt St. Ste. 1622
Baltimore, MD 21202
(410) 685-9428

Adam Harris Kurland
Howard University School of Law
2900 Van Ness St. NW
Washington, DC 20008
(202) 806-8063

Barry Coburn
Coburn and Coffman PLLC
1244 19th St. NW
Washington, DC 20036
(202) 470-6706

- 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. Richter v. Maryland, --- F.Supp.2d ----, 2008 WL 5377676 (D. Md. 2008).

Plaintiff's Counsel: Robin R. Cockey
Cockey Brennan and Maloney PC
313 Lemmon Hill Lane
Salisbury, MD 21801
(410) 546-1750
Fax: (410) 546-1811
Email: rrcesq@cbmlawfirm.com

Defendant's
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2. Baltimore County FOP Lodge 4 v. Baltimore County, 565 F. Supp. 2d 672 (D. Md. 2008).

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3. First Penn-Pacific Life Ins. Co. v. Evans, Not Reported in F.Supp.2d, 2007 WL 1810707 (D. Md. 2007), *aff'd*, 2009 WL 497394 (4th Cir. February 26, 2009).

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4. McFadden v. Grasmick, 485 F.Supp.2d 642 (D. Md. 2007).

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5. Neuberger Berman Real Estate Income Fund, Inc. v. Lola Brown Trust No. 1B, 485 F.Supp.2d 631 (D. Md. 2007).

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6. Equal Rights Center v. Equity Residential, 483 F.Supp.2d 482 (D. Md. 2007).

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7. Andrew v. Clark, 472 F.Supp.2d 659 (D. Md. 2007).

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8. Walker v. Todd Village, LLC, 419 F.Supp.2d 743 (D. Md. 2006).

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9. Broccoli v. Echostar Communications Corp., 229 F.R.D. 506 (D. Md. 2005).

Note: Also called Sklar v. Echostar Communications Corp.

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10. U.S. v. Mitchell, 405 F.Supp.2d 602 (D.Md. 2005).

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

MidAtlantic Medical Services, Inc. v. Sereboff, 303 F.Supp.2d 691, 316 F.Supp.2d 265 (D.Md. 2004), aff'd in part and vacated in part, 407 F.3d 212 (4th Cir. 2005), aff'd, 527 U.S. 356, 126 S.Ct. 1869 (2006).

S.E.C. v. Zandford, 238 F.3d 559 (4th Cir. 2001), rev'd, 535 U.S. 813, 122 S.Ct. 1899 (2002).

Gray v. State, 667 A.2d 983 (Md.App. 1995), rev'd, 687 A.2c 660 (Md. 1997), rev'd sub nom. Gray v. Maryland, 523 U.S. 185, 118 S.Ct. 1151 (1998).

U.S. v. Siegel, 536 F.3d 306 (4th Cir. 2008), cert. denied, 129 S.Ct. 770 (2008).

Onawola v. Johns Hopkins University, 2007 WL 5428683 (D.Md. Sep 24, 2007), aff'd 276 Fed.Appx. 358 (4th Cir.(Md.) May 05, 2008), cert. den. 129 S.Ct. 637 (2008).

The Piney Run Preservation Ass'n v. The County Com'rs Of Carroll County, MD, 523 F.3d 453 (4th Cir. 2008), cert. den. 129 S.Ct. 258 (2008).

U.S. v. Kimbrough, 477 F.3d 144 (4th Cir. 2007), cert. den. 128 S.Ct. 154 (2007).

U.S. v. Holland, 985 F.Supp. 587 (D.Md. Nov 04, 1997), and U.S. v. Holland, 59 F.Supp.2d 492 (D.Md. Aug 31, 1998), convictions and sentences aff'd, 262 F.3d 233, 57 Fed. R. Evid. Serv. 572 (4th Cir. 2001), cert. den. sub nom. Montgomery v. U.S., 534 U.S. 1034 (2001).

Walton v. Guidant Sales Corp., 417 F.Supp.2d 719 (D.Md. Mar 06, 2006), aff'd 203 Fed.Appx. 510 (4th Cir. Oct 17, 2006), cert. den. 549 U.S. 1254 (2007).

AJ v. Skojec, 161 Fed.Appx. 283 (4th Cir. Jan. 5, 2006), cert. den. 549 U.S. 823 (2006).

Neighborhood Development Collaborative v. Ginsberg, 2003 WL 23941712 (D.Md. Sep 02, 2003), aff'd, 102 Fed.Appx. 811 (4th Cir. Jul 22, 2004), cert. den. 543 U.S. 1052 (2005).

U.S. v. Stone, 85 Fed.Appx. 925, 93 A.F.T.R.2d 2004-579 (4th Cir. Jan 22, 2004), cert. den. 542 U.S. 943 (2004).

U.S. v. Gray, 28 Fed.Appx. 280 (4th Cir. Feb 7, 2002), cert. den. 535 U.S. 1107, 122 S.Ct. 2317 (2002).

U.S. v. Dangerfield, 230 F.3d 1354 (4th Cir. Sept. 14, 2000), cert. den. 531 U.S. 1153, 121 S.Ct. 1100, 148 L.Ed.2d 972 (2001).

Pollard v. High's of Baltimore, Inc., 281 F.3d 462 (4th Cir. 2002), cert. den. 537 U.S. 827, 123 S.Ct. 122, 154 L.Ed.2d 39 (2002).

U.S. v. Gray, 137 F.3d 765 (4th Cir. 1998), cert. den. 119 S.Ct. 157 (1998).

Motor Club of America Ins. Co. v. Hanifi, 145 F.3d 170 (4th Cir. 1998), cert. den., 525 U.S. 1001, 119 S.Ct. 509, 142 L.Ed.2d 423 (1998).

Andrews v. Anne Arundel County, 931 F.Supp. 1255 (D.Md. 1996), aff'd, 114 F.3d 1175 (4th Cir. 1997), cert. den. 118 S.Ct. 600 (1997).

- 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. Sharp Electronics Corp. v. Deutsche Financial Services Corp., 216 F.3d 388 (4th Cir. 2000).

I granted summary judgment in favor of the plaintiff in this commercial dispute arising under a written contract controlled by Illinois law. On appeal, the Fourth Circuit reversed and entered judgment in favor of the appellant/defendant.

2. Nagy v. Baltimore Life Ins. Co., 215 F.3d 1320, 2000 WL 718391 (4th Cir. June 5, 2000)(unreported), affirming in part and reversing in part, 49 F.Supp.2d 822 (D.Md. 1999).

The plaintiffs asserted that the insurance company discriminated against them by refusing to issue insurance policies. I granted summary judgment in favor of defendant. The Fourth Circuit affirmed in part, but concluded that summary judgment was not appropriate as to two of the plaintiffs and reversed and remanded as to them.

3. Robinson v. New Line Cinema Corp., 211 F.3d 1265, 2000 WL 380124 (4th Cir. April 14, 2000)(unreported), reversing, 42 F.Supp.2d 578 (D.Md. 1999).

This is a copyright infringement case. I granted summary judgment in favor of defendants. The Fourth Circuit concluded that disputes of material fact made summary judgment inappropriate and reversed and remanded.

4. Prudential Real Estate Affiliates, Inc. v. Long & Foster Real Estate, Inc., 208 F.3d 210, 2000 WL 248170 (4th Cir. March 6, 2000)(unpublished).

This non-jury case presented a claim for intentional interference with contractual rights under Maryland law. I granted summary judgment in favor of defendant. The Fourth Circuit concluded that disputes of material fact made summary judgment inappropriate and reversed and remanded.

5. Dukuly v. Woodmen of World Life Insurance Society, 202 F.3d 258, 1999 WL 1257220 (4th Cir., December 28, 1999)(unreported).

I dismissed this prisoner's civil rights claim against police officers. The Fourth Circuit reversed and remanded because the plaintiff was entitled to amend his complaint.

6. Kubicko v. Ogden Logistics Services, 181 F.3d 544 (4th Cir. 1999).

The plaintiff was terminated from his employment and sued on the ground that his termination was retaliatory because he assisted a female subordinate who had been sexually harassed by their supervisor. I granted summary judgment in favor of defendants. The Fourth Circuit concluded that disputes of material fact made summary judgment inappropriate and reversed and remanded.

7. Monumental Paving & Excavating, Inc. v. Pennsylvania Manufacturers' Ass'n Ins. Co., 176 F.3d 794 (4th Cir. 1999), affirming in part and reversing in part 948 F.Supp. 496 (D.Md. 1996).

This is an insurance coverage dispute which I resolved on summary judgment. The Fourth Circuit affirmed in part and reversed in part.

8. Motor Club of America Ins. Co. v. Hanifi, 145 F.3d 170 (4th Cir. 1998).

This is a personal injury action arising out of a motor vehicle accident. I granted summary judgment to defendants. The Fourth Circuit concluded that, contrary to my ruling, the Maryland Court of Appeals would likely apply a New York statute even though the accident occurred in Maryland, and that, in any event, disputes of material fact made summary judgment inappropriate and reversed and remanded.

9. Harold v. Cendo, 131 F.3d 134, 1997 WL 734028 (4th Cir., November 26, 1997)(unreported).

In this medical malpractice case, I concluded that a release signed by the plaintiff foreclosed her claims. The Fourth Circuit concluded that disputes of material fact over the effect of the release made summary judgment inappropriate and reversed and remanded.

10. Rich v. Bruce, 129 F.3d 336 (4th Cir. 1997).

The plaintiff was a Maryland prison inmate who was stabbed by an enemy inmate who was allowed out of his cell in violation of several regulations applicable to the maximum security prison in which they were housed. I found after a non-jury trial that one correctional officer had demonstrated "deliberate indifference" under the Eighth Amendment and I awarded damages to the inmate. The Fourth Circuit concluded that my underlying factual findings did not reasonably support the conclusion that the subjective element of an Eighth Amendment claim had been established and reversed the judgment.

11. U.S. v. Siegel, 536 F.3d 306 (4th Cir. 2008).

Reversed and Remanded. Defendant was charged with numerous fraud-based offenses, including mail and wire fraud. A week before trial, I granted defendant's motion to strike as surplusage allegations in the indictment about certain crimes that were not the subject of a substantive criminal count and her motion to preclude the government from

introducing in its case-in-chief evidence about those crimes and other crimes not mentioned in the indictment. Fourth Circuit reversed and held that (1) the order granting defendant's motion in limine was appealable; (2) other bad acts evidence was relevant to motive; (3) other bad acts evidence was relevant to show defendant's modus operandi; and (4) probative value of other bad acts evidence outweighed danger of unfair prejudice.

12. U.S. v. Tate, 524 F.3d 449 (4th Cir. 2008).

Vacated and remanded. Defendant was convicted in district court of being a felon in possession of a firearm, entering a conditional plea that reserved his right to appeal the denial of his motion to suppress the firearm on Fourth Amendment grounds. The Fourth Circuit held that the defendant was entitled to an evidentiary hearing regarding the integrity of the affidavit supporting the search warrant for his residence.

13. U.S. v. Jamison, 509 F.3d 623 (4th Cir. 2007).

Reversed and remanded. Defendant was charged with being a felon in possession of a firearm and I granted defendant's motion to suppress the firearm. The government appealed on the issue of whether a defendant subjected to police questioning in a hospital emergency room after he sought treatment for a gunshot wound was "in custody," triggering the protections of *Miranda v. Arizona*, 384 U.S. 436 (1966). The Fourth Circuit held that (1) affixing bags to defendant's hands pending gunshot-residue test, after he had requested treatment for gunshot wound in hospital emergency room, did not in itself render questioning by police custodial; and (2) defendant was not in custody, such that privilege against self-incrimination would attach, when police questioned him in hospital emergency room.

14. Three Lower Counties Community Health Services, Inc. v. Maryland, 498 F.3d 294 (4th Cir. 2007).

Affirmed in part, reversed in part, and remanded with instructions. Federally qualified health center (FQHC) providing services to medically underserved Medicaid patients filed suit seeking declaratory judgment and injunctive relief, claiming that state Department of Health and Mental Hygiene violated Medicaid Act. I granted summary judgment to Maryland on all issues. The Fourth Circuit reversed on the first two issues and affirmed on the second two, holding that (1) the Department failed to pay FQHC fully compensatory supplemental payments; and (2) the out-of-network FQHC was entitled to full compensation for emergency services; but (3) market rate paid to in-network FQHCs did not violate Act; and (4) state did not delegate supplemental payment determination.

15. U.S. v. McNeill, 484 F.3d 301 (4th Cir. 2007).

Reversed. Defendant who was charged with bank robbery moved to suppress statements he made to FBI agents, contending that they were given following an illegal arrest by Baltimore City police. I granted a motion to suppress and denied reconsideration, and the

government filed an interlocutory appeal. The Fourth Circuit held that (1) district court did not abuse its discretion in accepting government's motion for reconsideration; (2) government's failure to timely file certification did not warrant dismissal of appeal; and (3) warrantless arrest was supported by officer's probable cause to believe that defendant committed Maryland misdemeanor offense of harassment partially in officer's presence.

16. U.S. v. Kimbrough, 477 F.3d 144 (4th Cir. 2007).

Reversed and remanded. Defendant charged with possession of stolen firearms, possession of firearm in relation to drug trafficking crime, and possession of cocaine with intent to distribute moved to suppress gun, drugs, and his post-arrest statements made in response to questions asked by his mother in presence of police in mother's home. I denied the motion in part and granted it in part and the government appealed. The Fourth Circuit held that defendant's post-arrest, unwarned statements in response to questioning by his mother were not required to be suppressed, as mother spontaneously asked the questions at issue without direction by, or a tacit understanding with, the police officers, and because the officers' actions did not constitute interrogation under Miranda and its progeny.

17. U.S. v. Bradley, 455 F.3d 453 (4th Cir. 2006).

Vacated and remanded. On appeal from sentences based on their guilty pleas entered late in the trial, defendants argued that I had participated in plea negotiations, effectively encouraging them to plead guilty. The Fourth Circuit vacated the judgments. The Court concluded that the district court's involvement in plea discussions constituted plain error. Case remanded for new trial.

18. U.S. v. Allen, 450 F.3d 565 (4th Cir. 2006).

Vacated and remanded. I sentenced defendant, an armed career criminal, to 63 months in prison, granting a departure from the statutory mandatory minimum sentence of fifteen years. The 4th Circuit vacated the sentence because the district court was precluded from imposing a sentence below the mandatory minimum without an explicit government motion based on the statute; motion mentioning only the Sentencing Guidelines not sufficient.

19. U.S. v. Dickey-Bey, 393 F.3d 449 (4th Cir. 2004).

Reversed and remanded. Concluding that the police did not have probable cause to believe that defendant had knowledge that the package he possessed contained cocaine, I suppressed the evidence that the police had seized from his vehicle. Furthermore, I concluded that even if there was probable cause for defendant's arrest, the search of defendant's vehicle was not a valid search incident to an arrest. The Fourth Circuit reversed, concluding that, as a matter of law, the police officers (1) had probable cause to believe that defendant knowingly possessed cocaine and (2) had independent probable

cause to believe that defendant's automobile was being used as an instrumentality of a crime.

20. Olatunji v. Ashcroft, 387 F.3d 383 (4th Cir. 2004).

Reversed. I denied a petition for habeas corpus. Petitioner was a resident alien who had been deemed inadmissible upon his return to the United States following nine-day trip abroad based on his previous guilty plea to crime of moral turpitude. The Fourth Circuit reversed because the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) provision that prevented petitioner's reentry was not in effect at the time he had pled guilty to the crime of moral turpitude.

21. Brickwood Contractors, Inc. v. Datanet Engineering, Inc., 369 F.3d 385 (4th Cir. 2006).

Reversed. I imposed Rule 11 monetary sanctions on contractors who had asserted claims of defamation and tortious interference with business relationship against successful bidders for a county project. The Fourth Circuit held that (1) the safe harbor provisions of Rule 11 did not implicate the district court's subject matter jurisdiction, and (2) the district court committed plain error in imposing Rule 11 sanctions, notwithstanding failure of appellant to have objected on the ground of the safe harbor provision.

22. Snowden v. CheckPoint Check Cashing, 290 F.3d 631 (4th Cir. 2002).

Vacated and remanded. I denied motions to compel arbitration and to stay court proceedings, or in the alternative to dismiss all claims in this "pay-day loan" case. The Fourth Circuit held that the Arbitration Agreement fell within the scope of the Federal Arbitration Act, and the party opposing arbitration failed to show sufficient justification to hold the Arbitration Agreement unenforceable.

23. Williams v. Ironworkers Local 16 Pension Fund, 178 Fed. Appx. 235 (4th Cir. 2006).

Reversed. Employee of employers that contributed to a union pension plan brought an action against plan seeking benefits under Employee Retirement Income Security Act (ERISA). I granted summary judgment to the Fund, finding that the claim was barred by the statute of limitations because the statute began to run upon the exhaustion of the Fund's first review process in 1996. The plaintiff appealed, and the Fourth Circuit held that the claim accrued when plan formally denied plaintiff's second request for funds.

24. U.S. v. Custis, 150 Fed.Appx. 265 (4th Cir. 2005).

Vacated and remanded. I granted defendant's motion to dismiss in a prosecution for various federal drug and firearm offenses, finding the warrant for a residential search defective and insufficient. The government appealed and the Fourth Circuit vacated and remanded for further proceedings, holding probable cause supported issuance of the search warrant.

25. Saad v. Baltimore Life Ins. Co., 47 Fed.Appx. 228 (4th Cir. 2002).

Affirmed in part, reversed in part, and remanded. Resident aliens filed a § 1981 action alleging that an insurer's rejection of their applications for life insurance policies constituted alienage discrimination. I granted summary judgment in favor of the insurer. The Fourth Circuit held that (1) the issue of whether the insurer had a policy of denying coverage to non-citizens was for the jury, and (2) there was no abuse of discretion in refusing to admit the insurer's former general counsel's deposition testimony.

26. Witcher v. Westphal, 45 Fed.Appx. 300 (4th Cir. 2002).

Vacated and remanded. I dismissed a complaint for failing to provide a short and plain statement showing that the pleader was entitled to relief. The Fourth Circuit's one-paragraph opinion stated that although the complaint did not comply with the district court's instruction to allege claims clearly, in one-sentence paragraphs, it was adequate to inform the defendant of the nature of the pleader's claims, as well as the factual basis for those claims.

27. Mutual Ben. Ins. Co. v. Jordan, 11 Fed.Appx. 79 (4th Cir. 2001).

Reversed and remanded. In an action between a landlord and its insurer, I issued an order declaring that insurer had no duty to defend or indemnify landlord in a lead poisoning case. The Fourth Circuit held that the language in the insurance policy and complaint in initial tort action entitled the landlord to benefit of the doubt as to whether the original plaintiff resided in apartment during the landlord's policy period.

- 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.

Beginning with my service on the District Court in 1995, I endeavored to make available all of my written opinions of more than strictly routine application of law to undisputed facts to Westlaw and Lexis for inclusion in electronic databases. Since late the late 1990s, our court has maintained a publicly-available website and I have endeavored to post all such opinions on the website.

With the advent of CM/ECF in our court in 2003, all opinions in civil cases, with the exception of some opinions in pro se cases, are available through the PACER system.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

I have decided a countless number of federal and state constitutional issues in the course of my 21+ year tenure as a judge. Many of these decisions are quite routine. For example, I have decided a host of cases presenting collateral attacks on state and federal criminal judgments brought pursuant to 28 U.S.C. § § 2254, 2255, each of which of necessity

involves one or more constitutional issues. Similarly, I have heard innumerable motions to suppress evidence on the basis of alleged constitutional violations in the course of criminal prosecutions. The following opinions are some significant constitutional decisions in civil and criminal cases:

1. Concerned Citizens of Carderock v. Hubbard, 84 F.Supp.2d 668 (D.Md. 2000).
2. Andrews v. Anne Arundel County, Md., 931 F.Supp. 1255 (D.Md. 1996), aff'd, 114 F.3d 1175 (4th Cir.)(unpublished), cert. denied, 522 U.S. 1015 (1997).
3. Rich v. Bruce, 129 F.3d 336 (4th Cir. 1997). The plaintiff was a Maryland prison inmate who was stabbed by an enemy inmate who was allowed out of his cell in violation of several regulations applicable to the maximum security prison in which they were housed. I found after a non-jury trial that one correctional officer had demonstrated "deliberate indifference" under the Eighth Amendment and I awarded damages to the inmate. The Fourth Circuit concluded that my underlying factual findings did not reasonably support the conclusion that the subjective element of an Eighth Amendment claim had been established and reversed the judgment.
4. While a state court judge, I presided over the homicide trial which is the subject of Gray v. Maryland, 523 U.S. 185, 118 S.Ct. 1151, 140 L.Ed.2d 294 (1998), reversing State v. Gray, 344 Md. 417, 687 A.2d 660 (Md. 1997), reversing Gray v. State, 107 Md.App. 311, 667 A.2d 983 (1995). At trial, I admitted a redacted confession of one co-defendant. Ultimately, the Supreme Court held that under the circumstances of the case, the admission of the redacted confession in a joint trial violated the Sixth Amendment right of confrontation of the non-confessing defendant.
5. Burke v. City of Charleston, 139 F.3d 401 (4th Cir. 1998) I wrote this opinion while sitting by designation with the Fourth Circuit. I held that the plaintiff/appellant, an artist who painted a mural on the exterior wall of a building in Charleston, lacked Article III standing to challenge Charleston's architectural review ordinance.
6. Municipal Mortg. & Equity v. Southfork Apartments Ltd. Partnership, 93 F.Supp.2d 622 (D.Md. 2000)(motion to dismiss granted for lack of personal jurisdiction).
7. Associated Utility Contractors of Maryland, Inc. v. Mayor and City Council of Baltimore, 83 F.Supp.2d 613 (D.Md. 2000)(declaring Baltimore City racial and gender set-aside law unconstitutional under the Equal Protection Clause).
8. Anthony v. Schuppel, 86 F.Supp.2d 531 (D.Md. 2000)(denying relief to state inmate challenging her conviction).
9. Agora, Inc. v. Axxess, Inc., 90 F.Supp.2d 697 (D.Md. 2000)(rejecting online defamation claim in favor First Amendment protection of speech, in part).
10. Cavanagh v. Grasmick, 75 F.Supp.2d 446 (D.Md. 1999)(rejecting due process challenge to state scheme for adjudicating claims of disabled children).

11. Ivy Hall Geriatric and Rehabilitation Center, Inc. v. Shalala, 50 F.Supp.2d 447 (D.Md. 1999)(rejecting due process challenge to statute regulating nursing homes).
12. Greer v. Anne Arundel County, Md., 46 F.Supp.2d 416 (D.Md. 1999)(rejecting civil claims based on alleged Fourth Amendment violations by county police).
13. Thomas v. Corcoran, 40 F.Supp.2d 691 (D.Md. 1998)(denying relief to state inmate challenging his conviction).
14. United States v. Nieves, 27 F.Supp.2d 636 (D.Md. 1998)(granting motion to suppress evidence for violation of Fourth Amendment).
15. United States v. Holland, 985 F.Supp. 587 (D.Md. 1997), subsequent opinion, 59 F.Supp.2d 492 (D.Md. 1998)(granting in part and denying in part motions to suppress evidence on constitutional grounds)(appeals pending).
16. Ritz Camera Centers, Inc. v. Wentling Camera Shops, Inc., 982 F.Supp. 350 (D.Md. 1997)(motion to dismiss granted for lack of personal jurisdiction).
17. Andrews v. Anne Arundel County, Md., 931 F.Supp. 1255 (D.Md. 1996), aff'd, 114 F.3d 1175 (4th Cir.)(unpublished), cert. denied, 522 U.S. 1015 (1997)(rejecting contract clause challenge to local government pension plan).
18. Richter v. Maryland, 2008 WL 5377676 (D.Md. 2008)(denying summary judgment as to First Amendment retaliation claim).
19. Munyiri v. Haduch, 585 F.Supp.2d 670 (D.Md. 2008) (granting in part and denying in part motion to dismiss Fourth Amendment claims against state officials).
20. Jackson v. Clark, 564 F.Supp.2d 483 (D.Md. 2008)(denying motion to dismiss due process claim).
21. Andrew v. Clark, 472 F.Supp.2d 659 (D.Md. 2007)(dismissing First Amendment and Fourteenth Amendment retaliation claims), appeal pending.
22. Wilson v. Board of Trustees, 333 F.Supp.2d 192 (D.Md. 2004)(dismissing First Amendment claims).
23. Simms v. Hardesty, 303 F.Supp.2d 656 (D.Md. 2003)(denying summary judgment and qualified immunity respecting due process claim for damages), aff'd, 104 FedAppx. 853, 2004 WL 1595700 (4th Cir. July 19, 2004).
24. Martin v. Mendoza, 230 F.Supp.2d 665 (D.Md. 2002)(granting summary judgment as to Fourth Amendment claim).

25. Duckworth v. State Board of Elections, 213 F.Supp.2d 543 (D.Md. 202)(dismissing constitutional challenge to state redistricting map), aff'd 332 F.3d 769 (4th Cir. 2003).
- 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.

Published opinions I authored:

1. Yarmouth Sea Products Ltd. v. Scully, 131 F.3d 389, 1998 A.M.C. 825 (4th Cir. 1997)(admiralty issues regarding liability for ship collisions).
2. Burke v. City of Charleston, 139 F.3d 401 (4th Cir. 1998)(holding that the plaintiff/appellant, an artist who painted a mural on the exterior wall of a building in Charleston, lacked Article III standing to challenge Charleston's architectural review ordinance)
3. PSINet, Inc. v. Chapman, 362 F.3d 227 (4th Cir. 2004)(published concurring opinion)(split decision affirming injunction against operation of state statute on First Amendment grounds)

Other opinions I joined while sitting by designation

1. Ale House Management, Inc. v. Raleigh Ale House, Inc., 205 F.3d 137, 2000 WL 232010, 2000 Copr.L.Dec. P 28,029, 54 U.S.P.Q.2d 1040, , C.A.4 (N.C.), March 01, 2000(No. 99-1175.)
2. Teal v. Angelone, 54 Fed.Appx. 776, 2003 WL 61216, , C.A.4 (Va.), January 09, 2003(Nos. 01-7758, 01-8029, 02-6502.)
3. Jones v. Buchanan, 325 F.3d 520, 62 Fed. R. Evid. Serv. 522, C.A.4 (N.C.), April 15, 2003 (NO. 01-2280.)
4. U.S. v. Parson, 57 Fed.Appx. 134, 2002 WL 31888188, C.A.4 (N.C.), December 30, 2002(No. 01-6642.)
5. U.S. v. Sandalis, 39 Fed.Appx. 798, 2002 WL 1434246, 90 A.F.T.R.2d 2002-5121, 2002-2 USTC P 50,516, C.A.4 (Va.), July 03, 2002(Nos. 00-4748, 02-4073.)
6. U.S. v. Ponce, 50 Fed.Appx. 614, 2002 WL 31513384, C.A.4 (S.C.), November 12, 2002(No. 00-4287.)

7. Carrigan v. Reliance Standard Life Ins. Co., 55 Fed.Appx. 630, 2003 WL 132981, 29 Employee Benefits Cas. 2710, C.A.4 (N.C.), January 17, 2003(No. 02-1196.)
8. Gannett Co., Inc. v. Clark Const. Group, Inc., 286 F.3d 737, 2002 WL 596379, C.A.4 (Va.), April 18, 2002(No. 01-2475.)
9. Consolidated Diesel Co. v. N.L.R.B., 263 F.3d 345, 2001 WL 920667, 168 L.R.R.M. (BNA) 2026, 144 Lab.Cas. P 11,067, C.A.4, August 15, 2001(Nos. 00-2545, 01-1064.)

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

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

In assessing the need for recusal, I have scrupulously adhered to all extant ethical and legal requirements. Recusals for financial conflicts are straightforward and prompt. Apart from potential financial conflicts, there are two attorneys who are my close friends and in whose cases I will not preside or participate, as a result. With the exceptions mentioned below, no attorney has sought my recusal during my judicial career on the basis of any alleged conflict of interest or other reason.

One exception mentioned above arises from an extraordinarily contentious case that has now been on my docket for more than ten years. The case is Contract Materials Processing, Inc. v. Kataleuna GmbH, No. AMD 98-147 (D.Md.). The claims and counterclaims arise out of the failure of a series of multi-million dollar agreements entered by a Maryland-based chemical services company and certain German companies. I have issued a number of published opinions in the case, including a lengthy opinion following a non-jury trial on some of the claims presented. See Contracts Materials Processing, Inc. v. KataLeuna GmbH Catalysts, 164 F.Supp.2d 520 (D.Md.2001) (granting in part and denying in part cross-motions for summary judgment); 222

F.Supp.2d 733 (D.Md.2002) (interlocutory award of attorney's fees to KataLeuna); 303 F.Supp.2d 612 (D.Md.2003) (findings of fact and conclusions of law, and entering judgment on counterclaim). As a result of bankruptcy proceedings and other delays, the case has not yet reached final judgment; accordingly, there has been no final, appealable judgment permitting appellate review of my rulings.

Recently, plaintiff's (CMP's) counsel, Mr. Paul Richter, Esq. (Richter Miller and Finn 1900 L St NW Ste 610 Washington, DC 20036-5032 (202)467-6200) has made repeated requests and motions that I recuse from this case. As best as I understand his basis for seeking recusal, he seems to rely on two arguments. First, he contends that because I served (briefly) on the Board of the Foundation for Research on Economics and the Environment ("FREE"), and because one or more of the donors to FREE, e.g., Shell Oil Co., once had a financial interest in one or more of the defendants in this case, my recusal was required by law. Second, he has indicated that he believes I have some unspecified animus towards him and/or his client. I have found the motions for recusal specious and pretextual, and that they constitute simply an indirect attack on adverse rulings in my management of the litigation. Mr. Richter has filed at least two mandamus petitions in the United States Court of Appeals for the Fourth Circuit in an effort to have me removed from the case. The Fourth Circuit has rebuffed Mr. Richter's efforts to have me removed at every turn. Counsel for defendants is Barbara Susan Wahl, Esq. (Arent Fox PLLC 1050 Connecticut Ave NW Ste 5th Fl Washington, DC 20036 (202)857-6000).

One other instance of an adjudicated motion for recusal is Peeples v. Coastal Office Products, Inc., 203 F.Supp.2d 432, 462 n. 1 (D.Md.2002), *aff'd*, 64 Fed.Appx. 860, 2003 WL 21019353 (4th Cir. May 7, 2003). I set forth in my opinion the circumstances surrounding the filing of the motion for recusal and my reasons for denying it:

"The motion for recusal was filed under the following circumstances. Upon my initial review of the cross-motions for summary judgment and the supporting memoranda, it became immediately apparent that (1) as the party with the burden of proof, plaintiff's motion for summary judgment was plainly not well-taken; (2) the failure-to-accommodate and retaliation claims asserted pursuant to the ADA failed as a matter of law; and (3) a bare scintilla of evidence could be said to support the FMLA claim. The conclusion that the FMLA claim should survive summary judgment rested in significant part on my erroneous belief, created by plaintiff's representation in his memorandum in opposition to the defendant's motion for summary judgment, that the plaintiff's diagnosis of depression, which was rendered by hospital emergency room personnel on the day he abruptly left the workplace, never to return, had been faxed to plaintiff's supervisor on the next business day after plaintiff commenced his leave. (In fact, as discussed *infra* in text, plaintiff and his primary care physician never advised defendant of plaintiff's diagnosis of clinical depression or of his prognosis, and specifically, plaintiff did not fax the emergency room discharge instructions, which included the diagnosis of depression, to his supervisor on March 13, 2000, as I thought.) Moreover, there is overwhelming evidence in this record, including the plaintiff's own testimony that he believed defendant terminated his employment on the basis of a sincere belief that plaintiff would not or

could not return to work at Coastal, of defendant's good faith belief in the lawfulness of its termination of plaintiff's employment.

"Consequently, on March 18, 2002, I wrote to counsel setting a June 2002 trial date and an April 2002 pre-trial conference. I also stated to counsel in that same memorandum, in the naive belief that I might foster a settlement of the case by reflecting on my perception of its lack of merit (counsel had requested, and I had allowed, a suspension of the briefing schedule on dispositive motions to permit the parties to continue settlement discussions), that "I believe it is highly likely, indeed, a virtual certainty, that I will grant a motion for judgment at the close of the plaintiff's case." I noted that summary judgment was being withheld on the FMLA "claim(s)" because "the 'he said, she said' nature of the factual record . . . , coupled with the plentitude of ambiguous medical records amassed by plaintiff . . . render summary judgment on the FMLA claim inappropriate." In addition, I candidly stated that "I agree with defendant that the plaintiff's affidavit is an embarrassment, but that must be laid at the feet of counsel and not used to penalize plaintiff himself." (The description of plaintiff's affidavit as an "embarrassment" was based on the remarkably sloppy drafting of the plaintiff's affidavit, in which the plaintiff, who generally refers to himself therein in the first person, is made to refer to himself in several paragraphs in the third person, obviously as a result of the failure of plaintiff's counsel carefully to differentiate the use of language in the affidavit from the identical language appearing in the memorandum in support of plaintiff's cross-motion for summary judgment and in opposition to defendant's motion for summary judgment. See, e.g., Affidavit of Plaintiff, Exh. 31, at ¶¶ 3 ("The Manager job required plaintiff"); 4 ("During the time period from my promotion ... no one ever indicated to me that he was not performing his duties"); 11 ("Ziskind ... asked me if his illness was something from which he could recover"); 18 (" I never stated that he had any second thoughts about the manager position"; " I never expected ... that Ziskind would do my job for him.") (emphases added).)

"Plaintiff (or plaintiff's counsel) took great umbrage at my candid assessment of the merits of the case and notified me in the proposed pretrial order (which was submitted in advance of the scheduled pretrial conference in accordance with the court's local rules) that a motion for recusal would be filed in advance of the pretrial conference. Indeed, plaintiff did so, asserting that I had improperly "prejudged" the case, that plaintiff would not receive a fair trial and/or, of equal importance, would not feel that he had received a fair trial even if he did receive a fair trial, and arguing that I should transfer the case to another judge for trial pursuant to 28 U.S.C. § 455. Plaintiff also pointed out, correctly, that as the standards for summary judgment and for judgment as a matter of law were precisely the same, see, e.g., *Dennis v. Columbia Colleton Medical Center, Inc.*, --- F.3d ---, --- (4th Cir.2002) ("A Rule 50(b) motion for judgment as a matter of law follows the same standard as a Rule 56 motion for summary judgment."), a contradiction inhered in my prediction that a motion for judgment would likely be granted in respect to the FMLA claim, in the face of a contemporaneous denial of summary judgment.

"A further review of the dispositive motions prompted by the motion for recusal, clarified that, indeed, as discussed *infra* in text, plaintiff failed to trigger defendant's duties under

the FMLA because plaintiff failed to provide adequate and timely notice of the need for FMLA leave, and therefore, summary judgment should indeed be granted to defendant on that claim as well, as there is no genuine dispute of material fact.

"I take very seriously motions for recusal, as every federal judge must. In almost seven years on this bench, and in the eight years before that on the state bench, this is to my recollection only the third non-frivolous one I have had occasion to review. Having fully reflected on the matter, I am satisfied that, a reasonable person fully informed of the factual and procedural circumstances which gave rise to plaintiff's decision to file his motion for recusal in this instance would not reasonably conclude that I harbored a bias against plaintiff arising from an extra judicial source such as to call in to question the appearance of propriety in my presiding over this case. See *In re Beard*, 811 F.2d 818, 827 (4th Cir.1987). Accordingly, the motion for recusal shall be denied and summary judgment entered in favor of defendant for the reasons stated in this opinion." 203 F.Supp.2d at 462 n. 1.

On appeal, the Fourth Circuit affirmed the judgment in its entirety, specifically stating, as to the motion for recusal, "We likewise see no basis for the district court's recusal." 2003 WL 21019353, at **2, n. 2.

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 served as an Assistant United States Attorney (District of Maryland) from January 1981 through June 1983. I was appointed by the then United States Attorney, Russell T. Baker.

I was nominated by President Clinton in October 2000 to a vacancy on the United States Court of Appeals for the Fourth Circuit; I did not have a confirmation hearing and the nomination expired. The nomination was returned to the President on December 15, 2000.

In July 1994, I was one of four Baltimore City trial judges nominated by the Appellate Judicial Nominating Commission for elevation to the intermediate appellate court in Maryland, the Court of Special Appeals. Another nominee was appointed by the Governor to that vacancy.

- 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.

In 1971 (while in college) I was a volunteer in the democratic mayoral primary on behalf of Hardy Williams

16. Legal Career: Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a law clerk for Judge Francis D. Murnaghan, Jr., United States Court of Appeals for the Fourth Circuit from August 1979 through September 1980.

I served as a law clerk for Judge Frank A. Kaufman, United States District Court for the District of Maryland from May 1978 through June 1979.

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

I have not practiced alone.

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

August 14, 1995 to present
United States District Court for the District of Maryland
101 W. Lombard Street
5B Garmatz Federal Courthouse
Baltimore, MD 21201
United States District Judge

December 19, 1990 to August 13, 1995
Circuit Court for Baltimore City
100 N. Calvert Street
Clarence Mitchell Courthouse
Baltimore, MD 21201
Associate Judge

August 3, 1987 to December 18, 1990
District Court of Maryland for Baltimore City
Wabash Avenue
Baltimore, MD 21215
Associate Judge

July 1983 to June 1984
Frank, Bernstein, Conaway & Goldman (now dissolved)
Baltimore, MD
Associate Attorney

January 1981 to June 1983
Office of the United States Attorney
U. S. Courthouse
Baltimore, MD
Assistant United States Attorney

September 1980 to January 1981
Civil Rights Division
U.S. Department of Justice
Washington, DC
Appellate Attorney

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

I have not served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.
- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

From September 1980 through January 1981, I was an appellate attorney in the United States Department of Justice, Civil Rights Division, Washington, D.C. I researched legal issues and wrote briefs in cases pending before the various courts of appeal.

From January 1981 through June 1983, I was an Assistant United States Attorney for the District of Maryland in Baltimore. I tried jury and non-jury civil and criminal cases, briefed and argued appeals of such cases, sought indictments before federal grand juries, and supervised criminal investigations by the FBI and other federal agencies, among other duties.

From July 1983 through June 1984, I was an associate attorney in the litigation department of the law firm Frank, Bernstein, Conaway & Goldman, in Baltimore. I had general responsibility for a range of legal matters, mainly commercial disputes involving merchants and other businesses. The firm dissolved in 1992.

Starting in Spring 1982, and continuously since then, I have taught the course on constitutional criminal procedure in the evening division of the University of Maryland School of Law.

As a full-time member of the faculty from 1984 through 1987, I taught federal civil procedure; constitutional criminal procedure; legal reasoning, research and writing; oral advocacy; and legal ethics. In addition, I served on several law school committees, including the Committee on Admissions.

- 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.

As an Assistant United States Attorney from 1980 through 1983, I represented the interests of the United States and its agencies before federal and state courts. Although government agencies were usually my clients, there were instances in which I represented an individual, e.g., Veterans Reemployment Rights Act cases. In the area of criminal prosecution, which commanded the majority of my attention as an Assistant U. S. Attorney, I served a public prosecutor role.

During my stint of private practice from July 1983 through June 1984, I represented the private interests of individuals and corporate and similar business entities.

- i. Indicate the percentage of your practice in:

- | | | |
|-----------------------------|-----|-------------|
| 1. federal courts: | 99% | (1981-1983) |
| 2. state courts of record: | 99% | (1983-1984) |
| 3. other courts: | | |
| 4. administrative agencies: | | |

- ii. Indicate the percentage of your practice in:

- | | | |
|--------------------------|---------|-------------|
| 1. civil proceedings: | 15%-18% | (1981-1983) |
| | 90-95% | (1983-1984) |
| 2. criminal proceedings: | 82-85% | (1981-1983) |
| | 5-10% | (1983-1984) |

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

In approximately eight cases, I was sole counsel.

In approximately five cases, I was chief counsel.

In approximately six cases, I was associate counsel.

- i. What percentage of these trials were:
 - 1. jury: 40%
 - 2. non-jury: 60%
- 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) Monumental Health, Inc. v. Dept. Health & Human Servs., 510 F.Supp. 244 (D.Md. 1981).

In February 1981, a group of Baltimore physicians sued the U.S. Department of Health and Human Services, seeking injunctive and monetary relief for alleged discriminatory termination of federal funding of a local health maintenance organization. As sole counsel for defendants, I tried a four-day, non-jury trial before Judge Shirley B. Jones in the United States District Court for the District of Maryland in February 1981.

Agreeing with my interpretation of the controlling federal statutes and regulations, and accepting my arguments supporting the individual defendants' exercise of discretion, the court ruled in favor of the defendants. The case was significant in that there had been no prior litigation of the particular statutory and regulatory provisions. An appeal was withdrawn. Opposing counsel were David R. Cohan, Esq., Suite 820, 2 N. Charles Street, Baltimore, MD 21201 ((410) 332-1400); and Charles J. Piven, Esq., Suite 2700, 111 S. Calvert Street, Baltimore, MD 21202 ((410)332-0030).

2) United States v. Anderson, et al. (no reported opinion). In Fall 1982, I supervised a grand jury investigation conducted with the assistance of the United States Postal Inspectors into a large-scale fraudulent benefits scheme perpetrated by an employee of a Washington, D.C.-based health insurer. Under my direction, a federal grand jury in Baltimore (many of the co-conspirators lived in Maryland, and cashed checks in Maryland) returned a multi-count indictment charging 19 people with mail fraud and

related offenses. The particular significance of the case was that the total loss over the life of the scheme exceeded \$100,000, and the prosecution of the participants made clear to the victim corporation the need for improved security. The case against one defendant was dismissed; 16 defendants pleaded guilty to one or more counts; and two defendants went to trial before Judge James R. Miller, of the District Court, in late 1982. They were convicted by a jury of various mail fraud and conspiracy counts. Defense counsel in the case that went to trial was Jay Fred Cohen, Esq., (deceased).

3) Green v. Lehman, 544 F.Supp. 260 (D. Md. 1982), aff'd 744 F.2d 1049 (4th Cir. 1984).

In the early 1980's several lawsuits were filed in the United States District Court for the District of Maryland, and elsewhere, by Naval Academy midshipmen, challenging aspects of their treatment by the Academy. I represented the Academy and the Secretary of the Navy in several of such matters. These cases were particularly significant to the continued maintenance of the longstanding regime of military order and discipline within the structure of the Naval Academy. In Green, I represented the Navy in the early stages of one such action. Green challenged his disciplinary discharge from the Academy (and orders to active duty) as discriminatory and arbitrary. With research help from the Navy lawyer, I appeared before Judge Edward J. Northrop in the District Court, who agreed with my arguments that, despite the seeming hardship on individual midshipmen under the disciplinary regime of the Academy, larger institutional considerations were properly controlling. Judge Northrop dissolved a temporary restraining order, denied a preliminary injunction, and ultimately dismissed all claims. Counsel for Green, Weldon Leroy Mattox, Esq., is deceased. I was co-counsel in the early stages of a similar action before Judge Alexander Harvey II in Wimmer v. Lehman, 705 F.2d 1402 (4th Cir. 1983)(reversing grant of preliminary injunction in favor of discharged midshipman).

4) Armed bank robbery prosecution is a regular part of the prosecution docket in Maryland and elsewhere. These cases are significant criminal prosecutions because they very often involve genuine threats of physical injury and potentially death to bank employees, customers and passersby. I was involved in three such cases that posed especially difficult issues of identification, turning, as they do, upon the testimony of victims and witnesses who often have but fleeting observations of the perpetrators.

i. In United States v. Moore, 710 F.2d 157 (4th Cir. 1983), I was co-counsel at trial (occurring in Spring 1982), and I handled the appellate brief-writing and oral argument alone. A cooperating co-defendant committed perjury at trial, in violation of his plea agreement with the government, and he gave testimony in front of the jury that was favorable to the defendant. Vigorous objection was made to my closing argument, which was indeed animated; however, the trial judge, District Judge Herbert R. Murray, overruled the objections. The convictions were affirmed on appeal. Co-counsel was Lynne A. Battaglia, Esq., (now) Associate Judge, Maryland Court of Appeals, Murphy Court Building, Annapolis, MD 21401 ((410) 962-2458). Defense counsel was David Carey Woll, Esq., 18526 Office Park Drive, Gaithersburg, MD 20879 ((301) 926-4811).

ii. In United States v. Henderson, 717 F.2d 135 (4th Cir. 1983), cert. denied, 465 U.S. 1009, 104 S.Ct. 1006, 79 L.Ed.2d 2338 (1984), I tried, with another prosecutor, a bank robbery with significant witness problems, e.g., a co-conspirator who agreed to testify under a plea agreement, but who had credibility weaknesses; and a bank security guard who was not alert on the job, and whose testimony at trial was internally inconsistent. District Judge Joseph C. Howard presided at trial in Summer 1982. On appeal, the Fourth Circuit approved introduction of a written plea agreement in the government's case-in-chief. Co-counsel was James A. Rothschild, Esq., 201 N. Charles Street, Baltimore, MD 21202 ((410) 752-1630). Defense counsel were Bruce C. Bereano, Esq., 195 Duke of Gloucester Street, Annapolis, MD 21401 ((301) 269-5330); and (now) retired Chief Judge Martha F. Rasin, District Court of Maryland, Sweeney District Court Building, 361 Rowe Blvd, Annapolis, MD 21401 ((410) 260-1525).

iii. In United States v. Hicks, 748 F.2d 854 (4th Cir. 1984), I was co-counsel with another prosecutor in a difficult case based upon mainly circumstantial evidence against the getaway driver. District Judge Norman P. Ramsey refused to give an alibi instruction because the only basis for the instruction in the evidence was a police officer's testimony as to certain "false" declarations by the defendant upon his arrest. The Fourth Circuit panel, with one judge dissenting, held there was a sufficient basis for the requested instruction, and the conviction of one defendant was reversed. Co-counsel was Herbert Better, Esq., 100 E. Pratt Street, Baltimore, MD 21202 (410) 332-0444. Defense counsel were Stephen D. Langhoff, Esq., 400 E. Pratt Street, Baltimore, MD 21202 ((410) 539-3737); and Fred Warren Bennett, Esq., (deceased).

5) In Dixon v. Westinghouse Electric Corp., 615 F.Supp. 538 (D.Md. 1985), aff'd 787 F.2d 943 (4th Cir. 1986), remanded, 486 U.S. 1019, 108 S.Ct. 1990, 100 L.Ed.2d 222 (1988), rev'd on remand, 857 F.2d 945 (4th Cir. 1988), I was one of counsel to defendant Westinghouse during the discovery/summary judgment stage of the litigation, which involved claims of sex discrimination under Title VII of the 1964 Civil Rights Act. The significance of this case is that it foreshadowed a further development in the law under Title VII. As I predicted during the preparation of the motion for summary judgment filed on behalf of the defendant, the Supreme Court ultimately held that, under "workshare" agreements in "deferral" states, the Equal Employment Opportunity Commission could lawfully accept for processing a complaint of discrimination even if the complaint would have been untimely if it had been filed directly with the state "deferral" agency. The Supreme Court so held in EEOC v. Commercial Office Products Co., 486 U.S. 107, 108 S.Ct. 1666, 100 L.Ed.2d 96 (1988), and upon the remand of the Dixon case to the Fourth Circuit, the appellate court reversed itself and the contrary holding of Judge Joseph H. Young of the District Court in Maryland. My co-counsel were Leonard E. Cohen, Esq., Piper and Marbury, 6225 Smith Avenue, Baltimore, MD 21209 ((410)580-3000) and Monte Fried, Esq., 3rd Floor, 100 Light Street, Baltimore, MD 21202 ((410) 659-1312). Opposing counsel was Mark E. Herman, Esq., 14 W. Madison Street, Baltimore, MD 21201 ((410) 837-2144).

6) In addition, I played a major role in the following significant appeals (opinions attached):

i. In Iron Arrow Honor Society, etc., et al. v. Heckler, 652 F.2d 445 (5th Cir. 1981)(involving the application of Title IX: non-discrimination in federal educational programs), I wrote the brief for the federal defendants. In subsequent proceedings in this case, the Supreme Court dismissed the action as moot. 464 U.S. 67, 104 S.Ct.373, 78 L.Ed.2d 58 (1983)(per curiam).

ii. In United States v. Hess, 691 F.2d 188 (4th Cir. 1982)(appeal of RICO forfeiture), I presented oral argument on behalf of the government.

iii. In State v. Standifur and Henry, 310 Md. 3, 526 A.2d 955 (1987), affg 64 Md.App. 570, 497 A.2d 1164 (1985)(application of the "declaration against penal interest" exception to the Hearsay Rule in Maryland; convictions reversed), I wrote the brief and presented oral argument on behalf of defendant Colonel Henry, in both appellate courts.

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.)

I have been active in the Maryland Bar Association and the American Bar Association, in which I served, *inter alia*, as Chair of the Executive Committee of the Conference of Federal Trial Judges, a constituent unit of the Judicial Division of the ABA.

I served as a facilitator at the 1997 Judicial Conference of the United States Court of Appeals for the Fourth Circuit, leading a panel discussion. I have served as a panelist on numerous legal education programs, including employment law, patent litigation and scientific evidence.

Since 1994, I have been a volunteer instructor at the National Judicial College, located in Reno, NV.

Since 2002, I have served as a member (by appointment of the Chief Justice) of the Judicial Conference of the United States, Committee on International Judicial Relations. In this connection, I have traveled to more than a dozen countries as a "Judicial Ambassador" to conduct numerous education and training workshops and seminars, including Rule of Law activities.

In summer 2007, I hosted a group of five Russian judges during their week-long visit to Baltimore to study American judicial systems (the "Open World" Program). I have hosted

numerous groups of foreign judges, prosecutors, and lawyers at my court who were visiting the United States.

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

I have taught as an adjunct at the University of Maryland School of Law for many years. I have taught mainly constitutional criminal procedure, covering Fourth, Fifth, Sixth, and Fourteenth Amendment Supreme Court jurisprudence. I have also taught the course on federal jurisdiction, covering the law of federal courts and related issues, as well as appellate advocacy. My syllabi consisted simply of readings from selected casebooks.

I also serve as an occasional lecturer (once annually) for a one-day course on Maryland State Civil Procedure in a course for bar exam applicants seeking admission to the Bar of Maryland.

- 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 plan to continue to teach one course per year as an adjunct professor at the University of Maryland School of Law.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. Potential Conflicts of Interest:

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

I am not aware of any such potential conflicts-of-interest.

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

I employ the Judicial Conference-mandated computerized conflicts software to avoid and discover potential financial conflicts in the cases assigned to my docket. In addition, I remain vigilant by examining every matter assigned to me to uncover promptly any potential conflict. I do not anticipate conflicts apart from those arising from, and requiring recusal as a result of, financial holdings of myself and family members in accordance with federal law and the Code of Judicial Conduct for United States Judges.

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

I have engaged in a wide variety of activities of a pro bono publico nature throughout my career as a lawyer and judge. I have visited elementary and secondary schools, especially around the annual May 1 "Law Day" observances, but at other times during the year as well.

While an attorney for the government I could not represent private persons; however, while in private practice, I represented indigent persons in court for no fee. Approximately 5% of my time while in private practice was devoted to pro bono matters.

Since becoming a judge in 1987, I have been prohibited from the practice of law. However, I have served on committees for non-profits, continued to participate in "Law Day" (and similar) activities, and I serve on the Board of a local high school "Law-Related Education" program.

Also, as a judge, I have been especially active in connection with issues of gender and racial equality in the judicial system and in the legal system. I have appeared as a panelist and participant in a number of bar association meetings and seminars. I appeared in a training video produced under the sponsorship of the State Justice Institute and the National Center for State Courts.

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.

There is no selection commission in Maryland.

I understand that Senator Mikulski consulted with respected members of the Maryland bar as to her decision on whom to support for this nomination. I communicated my desire to be considered for nomination to Senators Mikulski and Cardin in early January 2009. Senator Mikulski spoke to me in early January and told me that she intended to recommend me for nomination to the White House. On or about January 30, 2009, I spoke to the Office of White House Counsel and received by email forms to complete to commence the vetting process. A few days later, I received additional forms from the Justice Department. In early February 2009, I was interviewed by a representative of the ABA and, in mid-February, by agents of the FBI. On March 24, 2009, I met with lawyers from the Counsel's Office at the White House. That meeting was followed by an additional telephone conference. On March 27, 2009, I met with the Attorney General for approximately fifteen minutes in his office.

- 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.

AFFIDAVIT

I, Andre M. Davis, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

April 1, 2009
(DATE)

Andre M. Davis
(NAME)

Shirley Thompson
(NOTARY)

my commission expires
on November 2009