

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Rossie David Alston, Jr.

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

United States District Judge for the Eastern District of Virginia

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

9255 Center Street
Suite 410
Manassas, Virginia 20110

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

1957; Washington, District of Columbia

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.

1979 – 1982, North Carolina Central University School of Law; J.D., *cum laude*, 1982
1975 – 1979, Averett College (now Averett University); B.A., History, *cum laude*, 1979

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.

2009 – present
Court of Appeals of Virginia
109 North Eighth Street
Richmond, Virginia 23219
Judge

2009 – present
Antonin Scalia Law School (formerly George Mason University School of Law)
3301 Fairfax Drive
Arlington, Virginia 22201
Distinguished Adjunct Professor

2004 – 2013; 2015 – present
George Mason University
4400 University Drive
Fairfax, Virginia 22030
Adjunct Professor

2001 – 2009
Circuit Court of Prince William County
31st Judicial Circuit of Virginia
9311 Lee Avenue
Third Floor
Manassas, Virginia 20110
Judge

1998 – 2001
Juvenile & Domestic Relations Court of Prince William County
9311 Lee Avenue
First Floor
Manassas, Virginia 20110
Judge

1992 – 1998
Smith, Hudson, Hammond and Alston
9301 Grant Avenue
Manassas, Virginia 20110
Principal

1989 – 1992
Merchak, Alston & Rollison
12660 Lake Ridge Drive
Woodbridge, Virginia 22192
Principal

1984 – 1989
National Right to Work Legal Defense Foundation
8001 Braddock Road
Springfield, Virginia 22160 (current address)
Staff Attorney

1982 – 1984

National Labor Relations Board
1015 Half Street SE
Washington, District of Columbia, 20003 (current address)
Staff Attorney

1979 – 1982
Prince William County Schools
14715 Bristow Road
Manassas, Virginia 20112
Substitute Teacher

Other Affiliations (uncompensated):

1998 – 2002; 2008 – 2012; 2014 – present
Averett University
420 West Main Street
Danville, Virginia 24541
Board of Trustees

2000 – 2004
Northern Virginia Football Officials Association
P.O. Box 232
Boyce, Virginia 22620
President

1992 – 1996
Skyline Football Officials Association
Now defunct (acquired by Northern Virginia Football in 1996)
Secretary

1994 – 1995
Prince William County Bar Association
9311 Lee Avenue, Third Floor
Manassas, Virginia 20110
President

1987 – 1994
Montclair Property Owner's Association
3561 Waterway Drive
Montclair, Virginia 22025
Secretary (1989 – 1994)
Treasurer (1988)
Vice President (1987)

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.

June – July 1975
United States Army
Private First Class / E-3
Honorable Discharge

I was never required to register for the selective service.

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

To the best of my recollection and from a review of my records, I have received the following honors, prizes, or other forms of recognition:

Antonin Scalia Law School Dean's Medal for Judicial Excellence (2018)

Old Dominion Bar President's Award for Outstanding Service (2017)

Northern Virginia Football Officials Association, Official of the Year (2015)

Old Dominion Bar Association Outstanding Service Award, 74th Annual Conference (2014)

Virginia State Bar, Board of Governors Section on the Education of Lawyers Member, Significant Service (2004 – 2010)

Supreme Court of Virginia, Recognition for Service on the Pandemic Flu Preparedness Commission (2009 – 2010)

Old Dominion Bar Association, Dedication, Loyalty and Inspiring Words, 69th Annual Conference (2009)

NOVABAA, Recognition of Elevation to the Court of Appeals of Virginia (2009)

Young Lawyers Conference, Committee on Women and Minorities, Certificate of Recognition as New Court of Appeals Judge (2009)

George Mason University Administration of Justice Department, Instructor Appreciation Award (2008 – 2009)

Averett University, Appreciation and Loyalty of Service, Member, Board of Trustees 1997-2005 (2005)

Prince William County, Appreciation Award, Black History Committee (2002)

Northern Virginia Football Officials Association, Inc., Recognition as President of the Association (2001 – 2002) and (2003 – 2004)

Young Lawyers Conference, Committee on Women and Minorities, Certificate of Recognition as New Circuit Court Judge (2001)

Dale City Multicultural Achievement Award & Scholarship Fundraiser and Dale City Christian Church, 16th Annual Professional Leadership Award (2000)

General Assembly Commendation, 2000 Dale City Multicultural Achievement Award (2000)

Greater Prince William CASA Commendation for Difficult Decisions Made on Behalf of Prince William County's Abused and Neglected Children (2000)

Averett College Alumni Association, Outstanding Alumnus Award (2000)

Mount Olive Baptist Church Youth, Certificate of Appreciation (1999)

Thurgood Marshall Elementary School, Certificate of Appreciation for Outstanding Contribution to Black History Month Program (1999)

Stafford County Juvenile & Domestic Relations Court, Recognition of Service as a Substitute Judge (1998)

American Heart Association, Appreciation for Support of Research and Education on Heart Disease and Stroke, Cardiac Arrest (1996 – 1997)

Prince William County Bar Association, Court-Appointed Attorney of the Year (1996)

American Heart Association, Virginia Affiliate, Prince William Division, Appreciation, Chairman, Cardiac Arrest (1995)

Prince William Bar Association, Appreciation for work on the Public Relations Committee (1995)

Prince William Bar Association, Appreciation for work as President (1994)

Prince William County Bar Association, Outstanding Service to Court-Appointed Clients (1994)

Prince William County Bar Association, Outstanding Service as Vice President (1993)

Montclair Property Owner's Association, Certificate of Appreciation (1992)

Montclair Property Owner's Association, Recognition of Volunteer Work for the Community (1989 – 1991)

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

American Bar Association (1982 – 1986)

Commissioner in Chancery (1990 – 1998)

District of Columbia Bar Association (1985 – present)

George Mason Inns of Court, Emeritus Member – Inactive (2011 – present)

Judicial Ethics Advisory Committee (2009 – 2015)

Northern Virginia Black Attorneys Association, Judicial Contributor (1998 – present)

Old Dominion Bar Association, Judicial Member (2002 – present)

Prince William County Bar Association (1990 – present)

Judicial Member (1998 – present)

Member (1990 – 1998)

President (1994 – 1995)

Special Justice (1994 – 1998)

Virginia Bar Association

Criminal Law Section, Council Member (2009 – 2013)

Board of Governors of Family Section (2007 – 2013)

Board of Governors for Education Committee (2004 – 2006)

Secretary of Nominating Committee (2006)

Chair of Nominating Committee (2008)

Virginia Trial Lawyers Association, Judicial Education Contributor (1998 – 2013)

Virginia Sentencing Commission (2012 – present)

Vice-Chairman (2016 – present)

Virginia State Bar, Member (1982 – present)

Fifth District Disciplinary Subcommittee, Member (1992 – 1996)

Professionalism Faculty, Member (1996 – 1998)

Virginia Supreme Court Committees

Virginia State Pro Bono Committee (approx. 2014 – present)
Equal Access to Justice Subcommittee, Member (approx. 2014 – present)
Education Committee of the Judicial Council, Member (2010 – 2017)
Chief Justice's Special Commission on the Rules of Discovery for Criminal Cases, Member (2014 – 2015)
Chief Justice's Special Committee for Professionalism in the Bar and Bench, Member (2009 – 2012)
Rules Committee, Member (2008 – 2010)
Pandemic Flu Commission (2009 – 2011)

10. Bar and Court Admission:

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

Virginia, 1982
District of Columbia, 1985

There have been no lapses in membership.

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

Supreme Court of the United States (1985)
United States Court of Appeals for the Third Circuit (1987)
United States Court of Appeals for the Fourth Circuit (1988)
United States Court of Appeals for the Sixth Circuit (1987)
United States Court of Appeals for the Seventh Circuit (1985)
United States Court of Appeals for the Eighth Circuit (1985)
United States Court of Appeals for the District of Columbia (1984)
United States District Court, Eastern District of Virginia (1982)
Supreme Court of Virginia (1982)

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.

Averett University Board of Trustees (1998 – 2002; 2008 – 2012; 2014 – present)

Christian Fellowship Softball League (1987 – present)

Commissioner and Statistician (1987 – present)

CXRIII Cigar Club (2007 – present)

Didlake Inc. (approx. 1995 – 1998)

Montclair Property Owner's Association (1985 – 1994)

Secretary (1989 – 1994)

Treasurer (1988)

Vice President (1987)

Northern Virginia Football Officials Association (1996 – present)

President (2000 – 2004)

Skyline Football Officials Association (1992 – 1996) (acquired by Northern Virginia Football in 1996)

Secretary (1992 – 1996)

Old Hickory Golf Club (2007 – present)

Virginia High School League (1994 – present)

Virginia United Methodist Church Foundation (approx. 1996 – 1998)

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

To my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or nation origin either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

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

material to the Committee.

The Rights and Responsibilities of Employees Confronted with Union Discipline, 38 LABOR L.J. 119 (1987) (with Glenn M. Taubman). Copy supplied. I did not participate in the writing of an updated version of the same article published on National Right to Work Legal Defense Foundation, Inc. website, available at: <http://www.nrtw.org/union-discipline-and-employee-rights/>.

Friday Night Lights, appeared in the Virginia Bar News, available at <http://www.vsb.org/site/about/reflections-14>. Copy supplied.

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

As a member of the Virginia Sentencing Commission since 2012, I have participated in meetings of the Commission and my name appears on the Commission's Annual Report. Copies of the Annual Reports for 2013 to 2017 and meeting minutes are supplied.

Report of the Special Committee on Criminal Discovery Rules to the Chief Justice and Justices of the Supreme Court of Virginia, December 2, 2014. Copy supplied.

Pandemic Influenza Bench Book for Virginia's Court System, Pandemic Flu Preparedness Commission, February 2010. Copy supplied.

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

In August 2015 and on January 27, 2016, during the proceedings regarding my nomination to the Supreme Court of Virginia, I testified before the Virginia House and Senate Committees on Courts of Justice in a hearing lasting less than 20 minutes. I have conducted a thorough investigation into whether any records of those proceedings are on file, but have been unable to locate any recordings or transcripts of the hearing, but press coverage of the January 27, 2016 proceeding is supplied. I do recall that I made no formal statement nor did I take any position on any critical legal issues.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions,

conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

The list that follows represents my best efforts, through a search of my records and public record searches, to identify speeches, remarks, and panel discussions in which I have participated. Although I have attempted to generate as complete a list as possible, there may be other speeches or remarks that I have been unable to identify or remember.

2007 – present: Speaker, Professionalism, Camp William B. Snyder, Haymarket, Virginia. I have spoken annually at Kamp Kappa, a program designed to provide educational experiences in outdoors environments for youths aged 10-16. I give informal remarks to the youths on the subjects of maturity, discipline, and professionalism. I have no notes, transcripts, or recordings. The address for Camp William B. Snyder is 6100 Antioch Road, Haymarket, VA 20169.

August 16, 2018: Speaker, Luncheon on Professionalism for New Attorneys, Virginia State Bar, Alexandria, Virginia. Remarks supplied.

June 21, 2018: Participant, “Lawyer Feud” CLE, Annual Meeting of the Virginia State Bar, Virginia Beach, Virginia. This was a “game-show” panel of judges from around the Commonwealth of Virginia. I have no notes, transcript, or recording. The address of the Virginia State Bar is 1111 East Main Street, Suite 700, Richmond, VA 23219.

May 24, 2018: Speaker, Trial Advocacy Series on Objections CLE, Fairfax County Bar Association, Fairfax, Virginia. I used substantially the same materials as provided for the May 4, 2017 presentation.

April 18, 2018: Speaker, Appeals from the Workers’ Compensation Commission: Views from the Bench CLE, Richmond, Virginia. Handout supplied.

January 25, 2018: Speaker, Martin Luther King, Jr. Day Celebration, Alexandria Detention Facility, Alexandria, Virginia. Speech supplied.

January 18, 2018: Panelist, Do’s and Don’ts in Appellate Practice, Complex Issues in Divorce and Custody Cases CLE, American Academy of Matrimonial Lawyers Virginia Chapter, Richmond, Virginia. Materials supplied.

November 1, 2017: Speaker, Jurisprudence Award Dinner Honoring Judge Gerald Bruce Lee, Fairfax Bar Association, Fair Oaks, Virginia. Speech supplied.

October 20, 2017: Speaker, Appellate Practice in the Trial Court CLE, Hampden-Sydney College, Hampden-Sydney, Virginia. Outline supplied.

October 2017 (exact date unknown): Speaker, Professionalism: Your Image in the Profession CLE, Young Lawyers Conference, Virginia State Bar, Fairfax, VA. Materials supplied.

June 2, 2017: Speaker, Judicial Luncheon, Old Dominion Bar Association, Springfield, Virginia. Speech supplied.

June 1, 2017: Speaker, Winning at the Virginia Court of Appeals: Procedures, Pointers, and Pitfalls, Appellate Practice in the Trial Court CLE, Prince William Chapter of Virginia Women Attorneys Association, Prince William County Courthouse. Materials supplied.

May 4, 2017: Speaker, Appeals 101: Preserving Your Trial Record and Maximizing Your Chances at Appeal CLE, Fairfax County Bar Association, Fairfax, Virginia. Outline supplied.

April 7, 2017: Moot Court Judge, Moot Court Competition, Antonin Scalia Law School, Alexandria, Virginia. As a moot court judge, I critiqued the participants following the conclusion of the mock proceedings, giving general constructive comments and criticism. I have no notes, transcript or recording. The address of Antonin Scalia Law School is 3301 Fairfax Drive, Fairfax, VA 22030.

June 18, 2016. Participant, "Judiciary Squares" CLE, Annual Meeting of the Virginia State Bar, Virginia Beach, Virginia. This was a "game-show" style program in which judges from across the Commonwealth of Virginia answered questions regarding a range of topics pertinent to Virginia attorneys. I have no notes, transcript, or recording. The address of the Virginia State Bar is 1111 East Main Street, Suite 700, Richmond, Virginia 23219.

June 13-16, 2016: Speaker, Circuit Court Judges Pre-Bench Orientation Program, Virginia Beach, Virginia. Materials supplied.

May 9-12, 2016: Speaker, Evidence, Transmedia Style, Judicial Conference of Virginia, Williamsburg, Virginia. Materials supplied.

April 13, 2016: Speaker, Speaker, Do's and Don'ts of Appellate Practice CLE – Worker's Compensation Practice, Manassas, Virginia. Materials supplied.

March 12, 2016: Panelist, Color of Justice Program, Northern Virginia Women Attorneys Association, Fairfax, Virginia. As a panelist, I accompanied a group of students while they deliberated as a jury following a mock trial. I gave brief remarks about my career path and answered questions about law school and the

law in general. I have no notes, transcript, or recording. The address of the Virginia Women Attorneys Association is P.O. Box 3806, Merrifield, VA 22116.

September 24, 2015: Speaker, Appellate Practice and Preserving Error in the Court of Appeals; How to Present a Case to the Court of Appeals, Access to the Justice Seminar, Henrico, Virginia. I have no notes, transcript, or recording.

July 10, 2015: Speaker, Appellate Practice in the Trial Court CLE, Indigent Defense Appellate Conference, Virginia Indigent Defense Commission, Richmond, Virginia. In addition to the lecture, I served as a moderator in a breakout group, and presented hypothetical “is the issue preserved” scenarios to the participants. I provided critique of the participants’ answers and gave tips on improvement. Materials supplied.

June 23, 2015: Speaker, Speech to Youth Salute, Gar-Field Senior High School, Woodbridge, Virginia. Speech supplied.

June 5, 2015: Speaker, Circuit Court Judges Pre-Bench Orientation Program, Richmond, VA. I used substantially the same materials as provided for the June 2016 presentation.

February 5, 2015: Speaker, Circuit Court Judges Pre-Bench Orientation Program, Richmond, Virginia. I used substantially the same materials as provided for the June 2016 presentation.

February 4, 2015: Speaker, Professionalism CLE, Virginia Trial Lawyers Association, Fairfax, Virginia. I was a panelist with Chief Justice Donald Lemons of the Supreme Court of Virginia, speaking to attorneys on issues of professionalism and civility. I have no notes, transcript, or recording. The address of the Virginia Trial Lawyers Association is 919 East Main Street Suite 620, Richmond, VA 23219.

November 20, 2014: Speaker, Virginia Court of Appeals Cases, Conference for Virginia Hearing Officers, Richmond, Virginia. I provided a synopsis on recent Court of Appeals cases. I have no notes, transcript, or recording. The Conference for Virginia Hearing Officers has no mailing address.

September 22, 2014: Speaker, Appellate Practice in the Trial Court CLE, Indigent Defense Appellate Conference, Virginia Indigent Defense Commission, Richmond, Virginia. In addition to the lecture, I served as a moderator in a breakout group, and presented hypothetical “is the issue preserved” scenarios to the participants. I provided critique of the participants’ answers and gave tips on improvement. I used substantially the same materials as provided for the July 10, 2015 presentation.

September 16, 2014: Speaker, Do’s and Don’ts of Appellate Practice, Annual

Public Defender Conference, Virginia Indigent Defense Commission, Hampton, Virginia. I used substantially the same materials as provided for the January 18, 2018 presentation.

June 5, 2014: Speaker, Commencement, Leadership Prince William, Manassas, Virginia. I told the graduates to always strive for excellence, integrity, and honesty. I have no notes, transcript, or recording. The address of Leadership Prince William is 9720 Capital Court, #204, Manassas, VA 20110.

May 17, 2014: Speaker, Commencement, Antonin Scalia Law School, Arlington, Virginia. Speech supplied.

March 27, 2014: Speaker, Do's and Don'ts of Appellate Practice, Virginia Trial Lawyers Association Convention, Homestead, Virginia. I used substantially the same materials as provided for the January 18, 2018 presentation.

March 20, 2014: Speaker, Recent Developments in Family Law CLE, Virginia Women Attorneys Association, Fairfax, Virginia. I provided a synopsis of recent Court of Appeals cases. I have no notes, transcript, or recording. The address of the Virginia Women Attorneys Association is P.O. Box 3806, Merrifield, VA 22116.

January 23, 2014: Speaker, Do's and Don'ts of Appellate Practice, Annual Divorce Practice Seminar, Virginia Trial Lawyers Association and the American Association of Matrimonial Lawyers, University of Richmond, Richmond, Virginia. I used substantially the same materials as provided for the January 18, 2018 presentation.

November 15, 2013: Moot Court Judge, Moot Court Competition, Antonin Scalia Law School, Fairfax, Virginia. As a moot court judge, I critiqued the participants following the conclusion of the mock proceedings, giving general constructive comments and criticism. I have no notes, transcript, or recording. The address of Antonin Scalia Law School is 3301 Fairfax Drive, Arlington, VA 22201.

October 12-13, 2013: Panelist, Virginia Women Attorneys Association Conference, Richmond, Virginia. This panel addressed subjects including the judicial appointment process in Virginia, a summary of the Court of Appeals in order to foster better appellate practice, gender and racial bias in the judicial system, and judicial independence. I have no notes, transcript, or recording. The address of the Virginia Women Attorneys Association is P.O. Box 3806, Merrifield, Virginia 22116.

October 8, 2013: Faculty Member, Appealing Your Family Law Case CLE, 32nd Annual Family Law Seminar, Virginia Law Foundation, Fairfax, Virginia. I was a faculty member for this CLE but did not participate as a speaker. I may have given some welcoming remarks to the attendees. I have no notes, transcript, or

recording. The address of the Virginia Law Foundation is 105 Whitewood Road, Charlottesville, VA 22901.

May 18, 2013: Speaker, "Civility," American Academy of Matrimonial Lawyers Virginia Chapter, Middleburg, Virginia. I spoke on civility and professionalism to a group of domestic relations lawyers. I have no notes, transcript, or recording. The address of the American Academy of Matrimonial Lawyers Virginia Chapter is P.O. Box 115, Winchester, Virginia 22604.

April 12, 2013: Panelist, Virginia Women Attorneys Association Biennial Conference, Richmond, Virginia. I answered questions about general topics in domestic relations law. I have no notes, transcript, or recording. The address of the Virginia Women Attorneys Association is P.O. Box 3806, Merrifield, VA 22116.

March 2, 2013: Panelist, Color of Justice Program, Asian Pacific American Bar Association of Virginia, Arlington, Virginia. As a panelist, I accompanied a group of students while they deliberated as a jury following a mock trial. I gave brief remarks about my career path and answered questions about law school and the law in general. I have no notes, transcript, or recording. The address of the Asian Pacific American Bar Association of Virginia is 3201 Jermantown Road #200, Fairfax, VA 22030.

November 17, 2012: Moot Court Judge, Thomas Tang International Moot Court Competition, National Asian Pacific American Bar Association Law Foundation, Alexandria, Virginia. As a moot court judge, I critiqued the participants following the conclusion of the mock proceedings, giving general constructive comments and criticism. I have no notes, transcript, or recording. The address of National Asian Pacific American Bar Association Law Foundation is P.O. Box 65801, Washington, D.C. 20035.

November 16, 2012: Moot Court Judge, Moot Court Competition, Antonin Scalia Law School, Fairfax, Virginia. As a moot court judge, I critiqued the participants following the conclusion of the mock proceedings, giving general constructive comments and criticism. I have no notes, transcript, or recording. The address of Antonin Scalia Law School is 3301 Fairfax Drive, Arlington, VA 22201.

October 10-11, 2012: Speaker, Do's and Don'ts of Appellate Practice, Virginia Trial Lawyers Association Annual Convention, Homestead, Virginia. I used substantially the same materials as provided for the January 18, 2018 presentation.

June 15, 2012: Panelist, "Judiciary Squares" CLE, Virginia State Bar Annual Meeting, Virginia Beach, Virginia. This was a "game-show" style program in which judges from across the Commonwealth of Virginia answered questions regarding a range of topics pertinent to Virginia attorneys. I have no notes,

transcript, or recording. The address of the Virginia State Bar is 1111 East Main Street, Suite 700, Richmond, VA 23219.

May 14-16, 2012: Panelist, "Ask a Judge" Panel, Judicial Conference of Virginia, Norfolk, Virginia. I answered questions from trial court judges on how to ensure that their cases are capable of review on appeal, tips on creating a proper record, and other general comments on being a trial judge. I have no notes, transcript, or recording. The address for the Judicial Conference of Virginia is 100 North Ninth Street, Richmond, VA 23219.

April 13, 2012: Moot Court Judge, Moot Court Competition, Antonin Scalia Law School, Alexandria, VA. As a moot court judge, I critiqued the participants following the conclusion of the mock proceedings, giving general constructive comments and criticism. I have no notes, transcript, or recording. The address of Antonin Scalia Law School is 3301 Fairfax Drive, Arlington, VA 22201.

March 29-April 1, 2012: Speaker, Do's and Don'ts of Appellate Practice, Virginia Trial Lawyers Association Annual Convention, Greenbrier, Virginia. I used substantially the same materials as provided for the January 18, 2018 presentation.

February 17-18, 2012: Moot Court Judge, National Constitutional Law Moot Court Competition, Regent University School of Law, Virginia Beach, Virginia. As a moot court judge, I critiqued the participants following the conclusion of the mock proceedings, giving general constructive comments and criticism. I have no notes, transcript, or recording. The address for Regent University School of Law is 1000 Regent University Drive, RH 225L, Virginia Beach, VA 23464.

February 25-26, 2011: Speaker, Do's and Don'ts of Appellate Practice, Advanced Family Law Retreat, Virginia Law Foundation, Tysons Corner, Virginia. I used substantially the same materials as provided for the January 18, 2018 presentation.

May 9-11, 2011: Panelist, "Ask a Judge" Panel, Judicial Conference of Virginia, Roanoke, Virginia. I answered questions from trial court judges on how to ensure that their cases are capable of review on appeal, tips on creating a proper record, and other general comments on being a trial judge. I have no notes, transcript, or recording. The address for the Judicial Conference of Virginia is 100 North Ninth Street, Richmond, VA 23219.

April 8, 2011: Moot Court Judge, Moot Court Competition, Antonin Scalia Law School, Alexandria, Virginia. As a moot court judge, I critiqued the participants following the conclusion of the mock proceedings, giving general constructive comments and criticism. I have no notes, transcript, or recording. The address of Antonin Scalia Law School is 3301 Fairfax Drive, Arlington, VA 22201.

April 1-3, 2011: Speaker, Do's and Don'ts of Appellate Practice, Virginia Trial Lawyers Association Annual Convention, Homestead, Virginia. I used substantially the same materials as provided for the January 18, 2018 presentation.

March 26, 2011: Moot Court Judge, 1L Moot Court Tournament, Liberty University School of Law, Lynchburg, Virginia. As a moot court judge, I critiqued the participants following the conclusion of the mock proceedings, giving general constructive comments and criticism. I have no notes, transcript, or recording. The address of Liberty University School of Law is 1971 University Boulevard, Lynchburg, VA 24502.

February 11-12, 2011: Moot Court Judge, National Constitutional Law Moot Court Competition, Regent University School of Law, Virginia Beach, Virginia. As a moot court judge, I critiqued the participants following the conclusion of the mock proceedings, giving general constructive comments and criticism. I have no notes, transcript, or recording. The address of Regent University School of Law is 1000 Regent University Drive, RH 225L, Virginia Beach, VA 23464.

November 5, 2010: Speaker, Pro Bono Seminar, Prince William County Bar Association, Manassas, Virginia. Speech supplied.

May 1, 2010: Speaker, Commencement, Averett University, E. Stuart James Grant Convocation and Athletic Center. I told the students to follow their dreams and act professionally and with civility. I have no notes, transcript, or recording. The address for Averett University is 707 Mt. Cross Road, Danville, VA 24540.

April 30, 2010: Speaker, "It's Not Over 'Til It's Over", Family Law Section Seminar, Virginia State Bar, Richmond, Virginia. With Judge Robert P. Frank, I discussed Virginia appellate rules and provided practice pointers. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Virginia State Bar is 1111 East Main Street, Suite 700, Richmond, VA 23219.

February 25, 2010: Speaker, Luncheon Event, Prince William County Bar Association, Manassas, Virginia. I do not recall the substance of this event. I have no notes, transcript, or recording. The address of the Prince William County Bar Association is 9311 Lee Avenue, Manassas, VA 20110.

January 21, 2010: Panelist, Annual Divorce Practice Seminar, Virginia Chapter of the American Association of Matrimonial Lawyers, University of Richmond School of Law, Richmond, Virginia. My comments consisted of responding to questions from attorneys on how to effectively practice family law and tips for proving certain claims during trial. I have no notes, transcript, or recording. The address of the Virginia Chapter of the American Association of Matrimonial Lawyers is P.O. Box 115, Winchester, VA 22604.

May 12-24, 2009: Speaker, Protecting the Record and Other Ways You Can Avoid Reversal on Appeal, Judicial Conference of Virginia, Norfolk, Virginia. I used substantially the same materials as provided for the June 2016 presentation.

May 28, 2008: Panelist, "Best Practices – View from Bench", 69th Annual Conference, Old Dominion Bar Association, Oxon Hill, Maryland. This panel of judges from around the Commonwealth of Virginia addressed questions from the attendees regarding effective litigation tactics. I have no notes, transcript, or recording. The address of the Old Dominion Bar Association is P.O. Box 12301 Richmond, VA 23241.

April 10, 2009: Moot Court Judge and Speaker, "Celebrating Diversity in the Law," Antonin Scalia Law School, Arlington, Virginia. As a moot court judge, I critiqued the participants following the conclusion of the mock proceedings, giving general constructive comments and criticism, and I gave remarks at a reception following the final round of the competition. I have no notes, transcript, or recording. The address of Antonin Scalia Law School is 3301 Fairfax Drive, Arlington, VA 22201.

May 1, 2010: Speaker, Commencement, Averett University, Danville, Virginia. I told the students to follow their dreams and act professionally and with civility. I have no notes, transcript, or recording. The address for Averett University is 420 West Main Street, Danville, VA 24541.

February 24, 2006: Panelist, Color of Justice Program, Northern Virginia Women Attorneys Association, Fairfax, Virginia. As a panelist, I accompanied a group of students while they deliberated as a jury following a mock trial. I gave brief remarks about my career path and answered questions about law school and the law in general. I have no notes, transcript, or recording. The address of the Northern Virginia Women Attorneys Association is P.O. Box 3806, Merrifield, VA 22116.

2003 or 2004 (exact date unknown): Speaker, Commencement, Brentsville District High School, Nokesville, Virginia. I told the students to follow their dreams and act professionally and with civility. I have no notes, transcript, or recording. The address of Brentsville District High School is 12109 Aden Road, Nokesville, VA 20181.

2003 or 2004 (exact date unknown): Speaker, Commencement, Osbourn High School, Manassas, Virginia. I told the students to follow their dreams and act professionally and with civility. I have no notes, transcript, or recording. The address of Osbourn High School is 1977 Eagle Way, Manassas, VA 20110.

2002 or 2003 (exact date unknown): Speaker, Commencement, Gar-Field Senior High School, Woodbridge, Virginia. I told the students to follow their dreams and act professionally and with civility. I have no notes, transcript, or recording.

The address of Gar-Field Senior High School is 14000 Smoketown Road, Woodbridge, VA 22192.

October 10, 1998: Speaker, Swearing-In Ceremony at Investiture, Prince William County Courthouse, Manassas, Virginia. I made general comments about support from my family, wife, and friends. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Prince William County Courthouse is 9311 Lee Avenue, Manassas, Virginia 20110.

1994 – 1996: As member of professionalism faculty of the Virginia State Bar, I spoke regularly to new admittees to the bar about professionalism and civility. Notes supplied.

- 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.

Benjamin Pratt, *In This Time of Turbulence*, ReadTheSpirit.com, June 23, 2018. Copy supplied.

Peter Vieth, *Judges in Virginia Urged to Crack Down on Rude Lawyers*, Virginia Lawyers Weekly, October 11, 2012. Copy supplied.

Theresa Vargas, *County Judges on Rise at Circuit, Appeals Court*, Washington Post, November 29, 2007. Copy supplied.

Lucas Grundmeier, *Former Coach: Green Was at His Best Against Best Opponents*, University Wire, May 20, 2003. Copy supplied.

D.C. Council to Vote on Embattled Inspector, Washington Post, February 4, 2002. Copy supplied.

In 2001, the Potomac News (now defunct) interviewed me about my perspective on being promoted to the circuit bench. I have no notes, transcript, or recording.

Gretchen Lacharite, *Reckless Driver Gets Jail, Anger-Control Course*, Washington Times, April 5, 1997. Copy supplied.

Leef Smith, *Driver Sentenced in Road Duel That Nearly Killed Virginia Child*, Washington Post, April 5, 1997. Copy supplied.

Gretchen Lacharite, *Fiancee Stands By Her Man in Case of I-95 Rest-Stop Robbery, Murder*, Washington Times, March 19, 1997. Copy supplied.

Gretchen Lacharite, *Reckless-Driving Charges Dropped in I-95 Duel*, Washington

Times, February 8, 1997. Copy supplied.

Kristan Trugman, *I-95 Killing Suspects Probed in Other Crimes*, Washington Times, January 10, 1997. Copy supplied.

Scott Higham, *Police Paying High Price for Block Raid*, Baltimore Sun, July 3, 1994. Copy supplied.

Kristan Metzler, *Alexandria Offers Easy Way out of Wedlock*, Washington Times, January 20, 1993. Copy supplied.

Avis Thomas-Lester, *Remembering 'Mercy Percy'*, Washington Post, May 23, 1991. Copy supplied.

Supreme Court Won't Review Challenge to Saturn Agreement by Right to Work Group, Daily Labor Report, June 28, 1988. Copy supplied.

Jeffrey L. Hall, *UAW-GM Saturn Contract: 'Sweetheart Deal' or Novel Labor-Management Agreement?*, 17 MEM. ST. U. L. REV., September 16, 1986. Copy supplied.

UAW and Chrysler Are Targets of Charge Over Labor Practice, Wall Street Journal, June 30, 1986. Copy supplied.

Right to Work Group Voices Saturn Objections at Meeting with NLRB General Counsel Collyer, Daily Labor Report, January 24, 1986. Copy supplied.

Matt Yancey, *Group Seeks Charge on General Motor's Saturn Plant*, Associated Press, January 23, 1986. Copy supplied.

'Spirit Week' Set at Averett, The Bee, November 25, 1977. Copy supplied.

Pamela Denney, *Averett College Banquet Honors Students, Faculty*, The Danville Register, May 11, 1977. Copy supplied.

'50's Attire Replaces Blue Jeans at Averett, The Danville Register, December 1, 1976. Copy supplied.

Averett Stresses Nostalgia, The Bee, November 26, 1976. Copy supplied.

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.

Since 2009, I have served as a judge on the Court of Appeals of Virginia. I was elected unanimously by the state legislature and reelected unanimously in 2017 to a new eight-

year term. The Court of Appeals hears appeals on domestic relations issues, any final decision of the Workers' Compensation Commission, any final decision of a circuit court on appeal from a decision of an administrative agency, any interlocutory order granting, dissolving, or denying an injunction or adjudicating the principles of a cause in any of those types of cases, final criminal orders in which no death penalty was imposed, final decisions of a circuit court on applications for concealed weapons permits, and certain preliminary rulings in felony cases when requested by the Commonwealth.

From 2001 to 2009, I served as a judge on the Circuit Court of Prince William County. I was appointed by Governor James Gilmore and unanimously elected by the state legislature, and reelected unanimously in 2009 to a six-year term, but was elevated to the Court of Appeals shortly thereafter. I was chosen by my peers to serve as Chief Judge in 2007. The Circuit Court has jurisdiction to hear criminal and civil cases. For civil cases, the circuit court has authority to try cases with an amount in controversy of more than \$4,500 and has exclusive original jurisdiction for claims over \$25,000. In criminal matters, the circuit court handles all felony charges and misdemeanors originally charged there. The circuit court also has appellate jurisdiction over any case arising from a general district court claiming more than \$50, and for various administrative agency decisions.

From 1998 to 2001, I served as a judge on the Juvenile and Domestic Relations Court of Prince William County. I was unanimously elected by the state legislature to a six-year term, but was elevated to the Circuit Court in 2001. The Juvenile and Domestic Relations Court handles cases involving juvenile crime, child abuse, neglect, custody and visitation and other family-related matters. The Juvenile & Domestic Court also handles cases in which a child or family member is an alleged victim.

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

In considering my 10 years of experience as a trial judge, my best estimate is that I presided over approximately 2,500 cases that went to verdict or judgment.

- i. Of these, approximately what percent were:

jury trials:	10%
bench trials:	90%
civil proceedings:	20%
criminal proceedings:	80%

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

Please see list attached as Appendix 13(b).

- 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) *Commonwealth v. Andrews*, Nos. CR63746-63755 & 63774-63787, 2007 WL 5187551 (Cir. Ct. June 1, 2007) & 77 Va. Cir. 349 (2008).

I presided over the jury trial in this case but was elevated to my current position on the Court of Appeals prior to the sentencing hearing. This case involved four charges of capital murder. The defendant robbed and then killed two individuals in an apartment before stealing marijuana, jewelry, and other items. Next, the defendant committed another shooting and robbery, and sold several stolen items at a pawn shop. After he was apprehended in New York City, police interrogated him about another killing from January 2002, for which he was later charged. The defendant was then indicted with the fourth capital murder charge under Code Section 18.2-31(8), which is applicable when an individual is charged with first degree murder of more than one individual within a three-year period. The case proceeded to a jury trial, and the jury convicted the defendant of three counts, acquitting him in the 2002 killing. The jury recommended the death penalty on each of the three guilty verdicts.

The case involved a litany of evidentiary issues and legal arguments, both pre-trial and during trial, including a suppression motion, the defendant's motion to declare the Virginia death penalty statute unconstitutional, the defendant's motion to strike a juror for cause, the introduction of a prior bad act by the defendant, the introduction of ballistics analysis evidence of guns that had been destroyed, and the exclusion of mitigating evidence during the sentencing phase. On appeal, the Supreme Court of Virginia affirmed each of my rulings within the guilt phase of the trial. *See* 280 Va. 231 (2010).

The Court did remand for re-sentencing due to issues with the sentencing phase of the trial. Specifically, the Court held that I erred in allowing victim impact testimony from an individual who was neither a victim nor related to a victim of the capital murders. The Court also held that I erred in precluding the defendant from introducing various mitigating evidence during the sentencing phase. With respect to the other sentencing issue, which occurred at a point in the case during which I did not preside, the Supreme Court of Virginia ruled that the Double Jeopardy Clause was violated when a death sentence was imposed both on the conviction under Code Section 18.2-31(8) and under Code Section 18.2-31(7), as each addressed the same conduct.

Counsel for the Commonwealth:

Jim Willett

Commonwealth Attorney's Office
9311 Lee Ave.
Second Floor
Manassas, VA 20110
(703) 792-6050

Defense Counsel:

Thomas B. Walsh
Petrovich & Walsh, PLC
10605 Judicial Dr., Suite A-5
Fairfax, VA 22030
(703) 934-9191

(2) *Kapur v. Kapur*, No. CL04070419-00-03 (Cir. Ct. Feb. 9, 2007 & Mar. 7, 2008).

This case involved a divorce proceeding in which I ruled that primary physical custody be awarded to the mother after considering the best interests of the child, the work schedules of the parties, and other relevant evidence. Additionally, the husband had failed to appear for deposition on two occasions, so I sanctioned him pursuant to Rule 4:12(b) of the Rules of the Supreme Court of Virginia and precluded him from introducing evidence at the subsequent support and equitable distribution hearing. The Court of Appeals held that I erred in imposing this sanction because no written order compelling his attendance was ever entered, reasoning that my ruling contravened the sanctioning procedures set forth under Rule 4:12. *See* 2009 Va. App. LEXIS 234 (May 19, 2009).

Plaintiff's Counsel:

Robert W. Partin
Sands Anderson, PC (formerly with Locke, Partin & DeBoer, PLC)
1111 E. Main St., Suite 2400
Richmond, VA 23219
(804) 783-7232

Defense Counsel:

Richard Wexell
Wexell Milman
10480 Armstrong Street
Fairfax, VA 22030
(703) 539-5398

(3) *In re Estate of Edwards*, 77 Va. Cir. 351 (2009).

This case involved a dispute between several siblings over their father's will. The parents had divorced and the mother remarried in Pennsylvania. The mother's new husband formally adopted the parents' daughter under Pennsylvania law. Following the father's death intestate, the sons claimed that the daughter was outside intestate succession because Pennsylvania law bars an adopted child from inheriting from the biological parents' estate. I ruled that the adoption must be recognized under the Full Faith and Credit Clause of the United States Constitution. However, although the adoption had occurred under Pennsylvania law, because the father had died in Virginia, I determined that his estate should be distributed pursuant to Virginia law, which retains inheritance rights in adopted children under Code Section 64.1-5.1. The case was not appealed.

Counsel involved:

Kimberley Ann Murphy
Hale, Ball, Carlson, Baumgartner & Murphy, PLC
10511 Judicial Dr.
Fairfax, VA 22030
(703) 962-1164

Deborah G. Matthews
Law Office of Deborah G. Matthews
110 N. Royal St., Suite 575
Alexandria, VA 22314
(703) 548-3699

Diana H. Metcalf
Law Office of Diana H. Metcalf, LLC
51 Monroe St., Suite 1600
Rockville, MD 20850
(301) 251-6707

Richard Murray
601 King St., Suite 400
Alexandria, VA 22314
(703) 739-1340

Robert B. Walker
709 Old Hunt Way
Herndon, VA 20170
(703) 437-5128

(4) *Manassas Autocars, Inc. v. Couch*, 77 Va. Cir. 30 (2008).

This case involved a dispute between car buyers and car dealership. The buyers claimed that they properly revoked acceptance of the car when they discovered

damage and the dealership had claimed the car was brand new. Furthermore, the buyers claimed that the dealership engaged in a deceptive practice under the Virginia Consumer Protection Act because it listed an allegedly erroneous stock number of the vehicle in an advertisement, and then raised the price of the vehicle sold to the buyers on that basis. I ruled that two applicable laws were in conflict – the regulation under 24 Va. Admin. Code Section 22-30-30(L) provided that a stock number alone is sufficient to prove limited availability, while Code Section 46.2-1581(12)(a) stated the opposite. Because of that conflict, I prohibited the dealership from using the regulation as a defense. The case proceeded to a jury trial, and the jury returned a verdict for the buyers. On appeal, the Supreme Court of Virginia affirmed my rulings and the verdict, but remanded for further consideration of the issue of attorneys' fees. *See* 274 Va. 82 (2007).

Plaintiff's Counsel:

Thomas R. Breeden
10326 Lomond Dr.
Manassas, VA 20109
(703) 361-9277

Defense Counsel:

Howard Silberberg
6451 Johns Rd.
Falls Church, VA 22043
(703) 821-1800

Anthony Grimaldi (deceased)

(5) *Eccleston v. Patriot Harley Davidson Inc.*, 75 Va. Cir. 421 (2008).

This case involved a traffic accident in which a motorcyclist sustained horrific brain injuries, rendering her incapacitated. I ruled that although the complaint had been filed more than two years after the incident, it was timely filed under Code Section 8.01-229(A)(2)(b), which tolls the statute of limitations during the time an individual remains incapacitated. Additionally, because the incident occurred in New Jersey, I ruled that New Jersey's substantive law should govern the case itself, and that Virginia law should govern the procedures. Furthermore, I denied the defendant's motion for summary judgment on the grounds that the affidavit filed was deficient in multiple ways, including timeliness, completeness, and further that it did not demonstrate that material facts were not in dispute. The case was later dismissed due to inactivity, so I assume that it settled at some point.

Plaintiff's Counsel:

Stephen M. Smith

2100 Kecoughtan Rd.
P.O. Box 1437
Hampton, VA 23661
(757) 244-7000

Edward E. Scher
6912 Three Chopt Rd., Suite D
Richmond, VA 23226
(804) 421-6000

Stephen T. Conrad
Incarcerated

Defense Counsel:

J. Kevin King
Cline, King & King, PC
675 Reeves Way, Suite B
P.O. Box 250
(844) 471-3785

(6) *Hasson v. Commonwealth*, Nos. CR 05056564-70 & CR0505056886-91 (Cir. Ct. 2005).

This case involved multiple charges including credit card theft and credit card fraud. The defendant had taken credit cards from his godmother, who suffered from Alzheimer's disease and had a guardian ad litem appointed for her. After using the credit cards for multiple purchases, the defendant was charged and a jury trial commenced. I rendered rulings on two significant issues: (1) that testimony on the content of prior court orders did not violate the best evidence rule because the content was not in dispute, and (2) that the methods used by police to recover fingerprint evidence were not an issue of admissibility, but rather an issue of weight and credibility for the jury to determine. The Court of Appeals affirmed my rulings and the defendant's convictions. *See* 2006 Va. App. LEXIS 225 (May 23, 2006).

Counsel for the Commonwealth:

Michael Dixon
Commonwealth Attorney's Office
9311 Lee Ave.
Second Floor
Manassas, VA 20110
(703) 792-6050

Defense Counsel:

Charles C. Maddox
Maddox, Hoppe, Hoofnagle & Hafey
1401 Mercantile Lane, Suite 105
Largo, MD 20774
(301) 341-2580

(7) *Hughes v. Olin*, 69 Va. Cir. 46 (2005).

This case involved a dispute between a doctor and patient, in which the patient argued that his health care benefits plan constituted an express contract between him, the doctor, and the employer, or alternatively, that the health care benefits plan conferred third-party beneficiary status upon him in the event of a breach. I rejected the patient's arguments because he did not present any facts proving the essential contractual elements of offer, acceptance, and consideration. I also rejected the patient's third-party beneficiary argument, reasoning that no evidence existed of an intent to confer third-party status on the patient by the other entities involved, and further holding that the patient enjoyed only "potential and mere incidental beneficiary" status. Accordingly, I dismissed the patient's claims for breach of contract on both grounds.

Plaintiff's Counsel:

Gary B. Mims
Sickels, Frei & Mims, LLP
3925 Chain Bridge Rd., Suite 402
Fairfax, VA 22030
(703) 925-0500

Defense Counsel:

Richard L. Nagle
Hancock, Daniel, Johnson & Nagle, PC
3975 Fair Ridge Dr., Suite 475 South
Fairfax, VA 22033
(703) 591-3440

(8) *Commonwealth v. McCloud*, No. CL07060440-00 (Cir. Ct. Feb. 20, 2004).

This case involved the Commonwealth's petition to classify the defendant as a sexually violent predator pursuant to Code Section 37.1-70.1, and commit him for treatment pursuant to Code Section 37.1-70.9(C). A jury reached a verdict, determining that the defendant was a sexually violent predator. Following another hearing, I determined that all alternatives to involuntary confinement and treatment were unsuitable, and committed the defendant to the Department of Mental Health for treatment. The Supreme Court of Virginia granted the appeal

because the underlying statutory procedures for commitment had never been reviewed by the appellate courts. The Supreme Court of Virginia affirmed the judgment. *See* 269 Va. 242 (2005).

Counsel for the Commonwealth:

Pamela A. Sargent
Office of the Attorney General
202 N. Ninth St.
Richmond, VA 23219
(804) 786-2071

Defense Counsel:

C. Shawn Allen
9255 Lee Ave.
Manassas, VA 20110
(703) 361-8246

(9) *Commonwealth v. Kelly*, No. CR05053304-00 (Cir. Ct. Feb. 21, 2003).

This case involved the prosecution of a father who left his child unattended in a car for an extended period of time, causing the child's death. As the trial judge, I presided over pre-trial motions, the jury trial, and dealt with a multitude of difficult issues due to the substance of the case. A jury convicted the defendant of involuntary manslaughter and reckless endangerment. Although the sentencing guidelines recommended incarceration, I sentenced the defendant to serve only one day in jail per year (on the anniversary of the child's death), and ordered the defendant to organize and run an annual blood drive in the child's name. The Court of Appeals affirmed the judgment. *See* 42 Va. App. 347 (2004).

Counsel for the Commonwealth:

Sandra Sylvester
Commonwealth Attorney's Office
9311 Lee Ave.
Second Floor
Manassas, VA 20110
(703) 792-6050

Defense Counsel:

Hon. Carroll Weimer
Prince William County Circuit Court
9311 Lee Ave.
Manassas, VA 20110

(703) 792-6015

(10) *Headley v. Jewell* (Cir. Ct. 2002) (record under seal)

This case involved a petition for custody and visitation filed by the mother. I ruled that the Circuit Court of Prince William County lacked jurisdiction to hear the case because the child had not resided in Virginia for more than 16 months prior to the hearing and that Virginia was not the child's or the custodial parent's home state. I determined that Kansas was the proper venue, because the child and the custodial parent had resided there since July 2002, and before that had resided in Germany beginning in June 2001. Accordingly, I ruled that a hearing in Kansas would cause the least disruption to the child's life and that the bulk of the evidence relevant to the proceeding would likely exist there. The Court of Appeals affirmed my rulings. *See* 2003 Va. App. LEXIS 344 (June 17, 2003).

Plaintiff's Counsel:

None.

Defense Counsel:

None.

- 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) *Harvey v. Commonwealth*, 67 Va. App. 336 (2017)

Counsel for appellant:

Suzanne Moushegian
Moushegian Law, PLLC
103 S. College Ave.
Salem, VA 24153
(540) 389-3977
Counsel for the Commonwealth:

Aaron J. Campbell
Office of the Attorney General
202 N. Ninth St.
Richmond, VA 23219
(804) 692-0274

(2) *Sandoval v. Commonwealth*, 64 Va. App. 398 (2015)

Counsel for appellant:

Matt Beyrau
Attorney at Law
21 St. Kent St.
Winchester, VA 22601
(540) 667-2507

Counsel for the Commonwealth:

Robert H. Anderson, III
Office of the Attorney General
754 Riverstone Rd.
Midlothian, VA 23113
(804) 379-5547

(3) *United Parcel Service, Inc. v. Prince*, 63 Va. App. 702 (2014)

Counsel for appellant:

Patricia C. Arrighi
PennStuart
1700 Bayberry Ct. #100
Richmond, VA 23226
(804) 819-1770

Counsel for appellee:

Gregory O. Harbison
Harbison & Kavanagh, PLLC
9115 Dickey Dr.
Mechanicsville, VA 23116
(804) 888-8000

(4) *Reynolds v. Commonwealth*, 2014 Va. App. LEXIS 213 (May 27, 2014)

Counsel for appellant:

Dusty Sparrow Reed
Attorney at Law (formerly with the Office of the Public Defender)
15 East Market St. #569
Leesburg, VA 20178
(703) 662-1099

Counsel for the Commonwealth:

Rosemary V. Bourne
Office of the Attorney General
202 N. Ninth St.
Richmond, VA 23219
(804) 786-4820

(5) *Farrell v. Warren Cnty. Dep't of Soc. Servs.*, 59 Va. App. 342 (2012)

Counsel for appellant:

Howard J. Manheimer
Attorney at Law
P.O. Box 753
Winchester, VA 22604
(540) 535-6915

Counsel for appellee:

Neal T. Knudsen
Vanderpool Frostick & Nishanian, P.C.
9 W. Piccadilly St.
Winchester, VA 22601
(540) 535-0091

(6) *Dovell v. Coffeewood Correctional Center/Commonwealth*, 2012 Va. App.
LEXIS 17 (Jan. 24, 2012)

Counsel for appellant:

Matthew J. O'Herron
Turbitt, O'Herron & Leach, P.L.L.C.
22 Luck Ave. SW
Roanoke, VA 24011
(540) 345-5700

Counsel for the Commonwealth:

Adam L. Katz
Office of the Attorney General
202 N. Ninth St.
Richmond, VA 23219
(804) 371-0978

(7) *Harrison v. Harrison*, 58 Va. App. 90 (2011)

Counsel for appellant:

Morgan A. Cox
The Child Advocate Law Firm PLLC (formerly with The Maddox Law Firm, PC)
1710 Allied St., Suite 21
Charlottesville, VA 22903
(434) 282-4575

Counsel for appellee:

Laura C. Dove
Mullet, Dove, Meacham & Bradley PLLC (formerly with Betty A. Thompson,
Ltd.)
1100 N. Glebe Rd., Suite 1060
Arlington, VA 22201
(703) 522-8100

(8) *Ervin v. Commonwealth*, 2010 Va. App. LEXIS 249 (Jun. 22, 2010)

Counsel for appellant:

Jessica M. Bulos
Burgeon Legal Group (formerly with the Office of the Appellate Defender)
10517 Ocean Hwy., Unit 4-27
Pawleys Island, SC 29585
(843) 235-9871

Counsel for the Commonwealth:

Jennifer C. Williamson
Office of the Attorney General
202 N. Ninth St.
Richmond, VA 23219
(804) 225-3197

(9) *Johnson v. Commonwealth*, 56 Va. App. 244 (2010)

Counsel for appellant:

Keith Orgera
Office of the Public Defender
828 Main St., Suite 1002
Lynchburg, VA 24504
(434) 947-2244

Counsel for the Commonwealth:

Eugene Murphy
Office of the Attorney General
202 N. Ninth St.
Richmond, VA 23219
(804) 786-5314

(10) *Nelson v. Commonwealth*, 2010 Va. App. LEXIS 42 (Feb. 2, 2010)

Counsel for appellant:

Patrick M. Blanch
Elders, Zinicola & Blanch
4085 Chain Bridge Rd. #302
Fairfax, VA 22030
(703) 934-8580

Counsel for the Commonwealth:

John W. Blanton (deceased)

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

Parish v. Commonwealth, 56 Va. App. 324 (2010), *cert. denied*, 562 U.S. 1220 (2011).

Commonwealth v. Andrews, 77 Va. Cir. 349 (2008), *aff'd in part and vacated in part*, 280 Va. 231 (2010), *cert. denied*, 564 U.S. 1008 (2011).

- 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.

Wiggins v. Commonwealth, 2016 Va. App. LEXIS 139 (April 26, 2016), *rev'd in part and vac'd in part*, *Commonwealth v. Wiggins*, 2017 Va. Unpub. LEXIS 28 (Mar. 13, 2017).

I authored the opinion in this case, in which a three-judge panel held, in relevant part, that a defendant's possession of a loaded firearm with a child also in the home was not sufficient, on its own, to establish guilt for the charge of felony child neglect. The Supreme Court of Virginia reversed on that issue only, holding that the Court of Appeals should have deferred more significantly to the standard of review in appeals based on sufficiency of the evidence. The Court reinstated the defendant's conviction. Notably, one justice on the Supreme Court dissented,

stating that he agreed with the Court of Appeals' opinion "in its entirety."

Commonwealth v. Cole, 2015 Va. App. LEXIS 53 (Feb. 13, 2015), *rev'd and rem'd*, *Cole v. Commonwealth*, 2017 Va. LEXIS 162 (Nov. 16, 2017).

I authored the opinion in this case, in which a three-judge panel considered a pre-trial appeal and held that jail officials had not violated the defendant's constitutional rights when conducting a strip search of his person before placing him into the "booking area" of the detention facility. The Supreme Court of Virginia held that the Court of Appeals erred in ruling that it did not possess the authority to reconsider the pre-trial issue during the defendant's post-trial appeal, because Code Sections 17.1-410 and 19.2-409 expressly provide for that authority. However, the Supreme Court of Virginia stated that the strip search evidence was properly admitted and that the evidence in totality was sufficient for a conviction, and entered final judgment for the Commonwealth.

Luttrell v. Cucco, 2015 Va. App. LEXIS 135 (April 21, 2015), *rev'd in part and vac'd in part*, *Luttrell v. Cucco*, 2016 Va. LEXIS 57 (April 28, 2016).

I authored the opinion in this case, in which a three-judge panel held, in relevant part, that the General Assembly, when drafting language within Code Section 20-109(A), "intended the phrase 'habitually cohabiting with another person in a relationship analogous to a marriage' to mean 'a status in which a man and a woman live together continuously...mutually assuming the duties and obligations normally attendant with a marital relationship.'" The Supreme Court of Virginia reversed on this issue, reasoning that because the General Assembly, when amending the statute in 1997, had omitted the phrase "of the opposite sex," it thus had signaled its intent to include same-sex relationships, regardless of the fact that same-sex marriage was not legal in Virginia at that time.

Gilliam v. Commonwealth, 2013 Va. App. LEXIS 354 (Dec. 3, 2013), *vac'd in part and rem'd*, *Gilliam v. Commonwealth*, 2014 Va. App. LEXIS 231 (May 27, 2014).

I authored the opinion in this case, in which a three-judge panel held that certain testimony was admitted in violation of the hearsay rule, reversing the defendant's conviction and remanding for a new trial on a lesser-included charge only. The Commonwealth filed a motion for rehearing or rehearing *en banc*. The three-judge panel granted the motion for rehearing, and we reversed our decision to preclude the Commonwealth from retrying the defendant on the original charge.

Pratt v. Pratt, 2011 Va. App. LEXIS 410 (Dec. 20, 2011), *vac'd in part and rem'd*, *Pratt v. Pratt*, 2012 Va. App. LEXIS 286 (Aug. 21, 2012).

I authored the opinion in this case, in which a three-judge panel held that the trial

court erred by classifying the marital residence, a 2006 Toyota, and an investment fund, as marital property. The wife filed a motion for rehearing. The three-judge panel granted the motion for rehearing, and we vacated our decision on those three issues. First, we vacated our ruling that the marital residence was presumptively separate property, second, we held that the 2006 Toyota was marital property and remanded for equitable distribution, and third, we vacated our ruling that the investment fund was separate property, and remanded the issue for clarification by the trial court.

Quarles v. Commonwealth, 58 Va. App. 13 (2011) (*en banc*), *rev'd*, *Commonwealth v. Quarles*, 283 Va. 214 (2012).

I authored the opinion in this case, in which the *en banc* Court of Appeals held that the investigating detective had impermissibly reinitiated communication with the defendant after the defendant had requested assistance of counsel. Four judges dissented, stating they would have held that the investigating detective's statements to the defendant did not constitute an "interrogation." The Supreme Court of Virginia agreed with the dissent and reversed, holding that the investigating detective did not make statements "reasonably likely to elicit an incriminating response" from the defendant, and reasoning that the Court of Appeals erred in applying the standard in *Rhode Island v. Innis*. See 446 U.S. 291 (1980).

Ervin v. Commonwealth, 2010 Va. App. LEXIS 249 (Jun. 22, 2010), *rev'd en banc*, *Ervin v. Commonwealth*, 57 Va. App. 495 (2011).

I authored the opinion in this case, in which a divided three-judge panel held that insufficient evidence existed to prove that the defendant exercised dominion and control over marijuana in his vehicle. The Court of Appeals granted rehearing *en banc*, and reversed the panel's decision, reasoning that the evidence was sufficient to prove possession based on the strong odor of marijuana, the defendant's sole possession of the vehicle, and the defendant's possession of the key to the glove compartment within which the marijuana was recovered.

Simms v. Ruby Tuesday, Inc., 54 Va. App. 388 (2009), *rev'd and rem'd*, *Simms v. Ruby Tuesday, Inc.*, 281 Va. 114 (2011).

I authored the opinion in this case, in which a three-judge panel held that the "horseplay doctrine," as applied by Virginia courts, had its viability questioned by *Hilton v. Martin*, 275 Va. 176 (2008), and we thus declined to apply it, ruling that the claimant was not entitled to compensation. The Supreme Court of Virginia reversed, stating that the *Hilton* decision did nothing to modify the "horseplay doctrine," but then decided the case by applying the "actual risk" test instead.

Royal Indem. Co. v. SimplexGrinnell, LP, 77 Va. Cir. 395 (Feb. 20, 2009), *aff'd in part and rev'd in part*, *Royal Indem. Co. v. Tyco Fire Prods., LP*, 281 Va. 157

(2011).

While a trial judge in the Circuit Court of Prince William County, I authored an opinion ruling that certain negligence claims and breach of warranty claims were barred by their respective statutes of limitations. The Supreme Court of Virginia reversed my decision on the negligence claims, reasoning that the allegedly defective products qualified as “equipment” and thus were not subject to the applicable statute of limitations. The court affirmed my decision on the breach of warranty claims.

Kapur v. Kapur, 2009 Va. App. LEXIS 234 (May 19, 2009).

This case involved a divorce proceeding in which I ruled that primary physical custody be awarded to the mother after considering the best interests of the child, the work schedules of the parties, and other relevant evidence. Additionally, the husband had failed to appear for deposition on two occasions, so I sanctioned him pursuant to Rule 4:12(b) of the Rules of the Supreme Court of Virginia and precluded him from introducing evidence at the subsequent support and equitable distribution hearing. The Court of Appeals held that I erred in imposing this sanction because no written order compelling his attendance was ever entered, reasoning that my ruling contravened the sanctioning procedures set forth under Rule 4:12.

Commonwealth v. Andrews, Nos. CR63746-63755 & 63774-63787, 2007 WL 5187551 (Cir. Ct. June 1, 2007) & 77 Va. Cir. 349 (2008), *remanded for re-sentencing*, 280 Va. 231 (2010).

I presided over the jury trial in this capital murder case but was elevated to my current position on the Court of Appeals prior to the sentencing hearing. The Supreme Court of Virginia affirmed my rulings within the guilt phase of the trial, but remanded for re-sentencing, holding that I erred in allowing victim impact testimony from an individual who was neither a victim nor related to a victim of the capital murders, and in precluding the defendant from introducing certain mitigating evidence. The Court also ruled that the Double Jeopardy Clause was violated with respect to how the sentencing was applied in the case, but that error occurred at a point in the case during which I did not preside.

Olson v. Olson, No. CL0407202700 (Cir. Ct.), *rev'd*, 2007 Va. App. LEXIS 252 (July 17, 2007).

While a trial judge in the Circuit Court of Prince William County, I handled a child support case and deviated from the child support guidelines on the grounds of certain tax considerations, the equitable distribution award at trial, and the catch-all provision under Code Section 20-108.1. The Court of Appeals held that my rulings were not specific enough for review, and remanded the case for clarification. After rendering my rulings more specifically, the Court upheld my

judgment in the subsequent appeal in *Olson v. Olson*, 2009 Va. App. LEXIS 6 (2009).

Commonwealth v. Marek, 59 Va. Cir. 349 (2002), *rev'd in part*, *Commonwealth v. Marek*, 2003 Va. App. LEXIS 46 (Feb. 5, 2003).

While a trial judge in the Circuit Court of Prince William County, I authored an opinion following a motion to suppress. I ruled that the police had exceeded their authority under a search warrant by recovering additional items from the defendant's home that were not covered under the warrant, and suppressed any evidence recovered after they had recovered what the warrant specified. The Commonwealth appealed, and a three-judge panel reversed my decision, holding that the plain view doctrine rendered the recovery of the other evidence lawful.

Woods v. Mendez, No. CL07051795-00 (Cir. Ct.), *rev'd*, 265 Va. 68 (2003).

While a trial judge in the Circuit Court of Prince William County, I granted a demurrer on behalf of several motorists who had been sued following a significant traffic accident. On appeal, the Supreme Court of Virginia held that I erred in dismissing the plaintiff's claims for punitive damages (1) statutorily under Code Section 8.01-44.5, because I erroneously ruled that any blood alcohol content evidence would have been irrelevant, and (2) under common law negligence, because a reasonable person could conclude that the defendants' actions were willful and wanton.

- 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.

Of the cases in which I have authored the majority opinion, approximately 154 out of 220 are unpublished, which is approximately 70%. Unpublished decisions of the Court of Appeals are available on the Court of Appeals website at <http://www.courts.state.va.us/wpcau.htm>.

- 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.

Spaulding v. Commonwealth, 2016 Va. App. LEXIS 35 (Feb. 9, 2016).

Farrell v. Warren County Dep't of Soc. Servs., 59 Va. App. 342 (2012).

Commonwealth v. Ferrell, 2011 Va. App. LEXIS 47 (Feb. 10, 2011).

Redmond v. Commonwealth, 57 Va. App. 254 (2010).

- i. Provide citations to all cases in which you sat by designation on a federal court of

appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

None.

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

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

As an appellate judge, and earlier as a trial judge, I assess(ed) recusal concerns in accordance with the Code of Judicial Conduct and any other applicable rule, statute, authority, or solely my interest in maintaining impartiality and the appearance of impartiality of the court on which I am sitting. I disclose any potential conflict and recuse myself when appropriate.

I evaluate each case when referred to me. I also review cases as they proceed and on a continuing basis I examine the list of counsel and parties to determine if an association would appear to create a conflict or if some other reason might exist that would require recusal. I have never been explicitly asked by a party or another judge to recuse myself from a case.

I have proactively recused myself a number of times. In these situations, I ensured that I was never assigned to hear certain cases in an effort to avoid a recusal concern after a proceeding had already commenced. I am unaware of any recusal list kept by the courts and I do not retain a list of recusals. I recall recusing myself in the following situations: (1) *Cortez-Hernandez v. Commonwealth*, 58 Va. App. 66 (2011), was a case before the Court of Appeals that originated in the Circuit Court of Prince William County, where I had recently served as a trial judge. I recused myself from the case because I was the chief judge at the time the indictments against the defendant were certified; (2) if a former law clerk engaged in employment that involved practice and/or appearances

before the Court of Appeals, I ensured that I was not involved in any case for a period of one year following that law clerk's departure from my office – I instructed my staff to flag cases in which those individuals were involved. I would then immediately inform the Chief Judge so that the case could be timely reassigned to a different judge or panel; (3) between August 2015 and August 2017, I recused myself from all cases from the Circuit Court of Prince William County in which Judge Lon E. Farris was the presiding judge, because my daughter, Peyton Simmons, was his law clerk during that time period; (4) finally, during my first two years as a trial judge in the Circuit Court of Prince William County, I recused myself from all cases involving my former law firm, Smith, Hudson, Hammond & Alston.

15. Public Office, Political Activities and Affiliations:

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

I have not held any public offices other than judicial offices, nor have I had any unsuccessful candidacies.

- 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 or around 1990, I was *ex officio* treasurer for William Ryland's (my former law partner's husband) campaign for Clerk of Court for the Circuit Court of Prince William County. In the same year, I was legal adviser for John Rollisson (my other law partner's husband) campaign for a state delegate position. I was never compensated for either position and performed no active services.

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 never served as a clerk to any judge.

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

I never practiced alone during my career.

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

1982 – 1984
National Labor Relations Board
1015 Half St SE
Washington, District of Columbia, 20003 (current address)
Staff Attorney

1984 – 1989
National Right to Work Legal Defense Foundation
8001 Braddock Road
Springfield, Virginia 22160 (current address)
Staff Attorney

1989 – 1992
Merchak, Alston & Rollison
12660 Lake Ridge Drive
Woodbridge, Virginia 22192
Principal

1992 – 1998
Smith, Hudson, Hammond and Alston
9301 Grant Avenue
Manassas, Virginia 20110
Principal

- 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 never 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.

I began my career working in labor law from 1982 until 1989, and primarily addressed claims brought by individuals who suspected they had been the victims of improper termination or suspension, etc. Next, from 1989 until 1998, I was in a general private practice. I was a litigator involved in criminal defense, domestic relations, and general civil

litigation on the plaintiff side. At the end of my law practice, my firm became involved in civil defense litigation.

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

My typical clients during my labor law practice were employees of large corporations, though some from smaller companies. During my private practice, my clients were mainly individuals accused of criminal offenses. I handled both court-appointed cases and retained cases. My clients in civil cases were individuals seeking divorce, individuals brought into court for traffic accidents and other civil disputes, and toward the end of my time as an attorney, individuals who wanted to file suit for various reasons.

- 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.

From 1982 until 1987, I appeared in court very infrequently. From 1988 until 1998 (when I became a judge), my practice consisted of almost 100% litigation, and I appeared and practiced in courtrooms on a daily basis.

- i. Indicate the percentage of your practice in:

1. federal courts:	5%
2. state courts of record:	90%
3. other courts:	0%
4. administrative agencies:	5%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	35%
2. criminal proceedings:	65%

- 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.

During my ten years of experience as a litigator, I tried approximately 5,000 cases to verdict or judgment. I was most often sole counsel, but sometimes served as associate counsel as well. I handled cases in state court nearly every day during that time period, trying cases involving everything from traffic tickets to capital murder charges. I also appeared in federal court occasionally and tried both criminal and civil matters. I also engaged in civil litigation in state court, in cases involving everything from landlord-tenant disputes to domestic relations.

- i. What percentage of these trials were:
 1. jury: 5%
 2. non-jury: 95%
- 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.

During my time at the National Right to Work Legal Defense Foundation, I participated in the authorship of several amicus briefs. I am unable to recall the specific cases, apart from those listed below.

Amicus Brief in *U.S. Dep't of Defense v. Fed. Labor Rel. Auth.*, 510 U.S. 487 (1994), 1993 WL 13010969 (May 13, 1993).

Amicus Brief in *Breiner v. Sheet Metal Workers' Int'l Ass'n Local Union No. 6*, 493 U.S. 67 (1989), 1989 U.S. S. Ct. Briefs LEXIS 579 (April 7, 1989).

Petition for certiorari in *Reed v. Collyer*, No. 87-1757, *cert. denied*, 108 S. Ct. 2885 (1988). Copy supplied.

Amicus Brief in *Trans World Airlines, Inc. v. Independent Fed. of Flight Attendants*, 485 U.S. 1072 (1989), 1987 WL 881192 (August 13, 1987).

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) *Commonwealth v. Baggett*, No. CR05041308-00, Prince William Circuit Court (1998)

I represented the defendant in this capital murder case and successfully negotiated a deal with the Commonwealth Attorney for my client to provide testimony in exchange for a

nolle prosequi on several charges. The co-defendant had fatally shot a Pennsylvania motorist at a rest stop along Interstate 95 and robbed that individual of \$150.00. The jury eventually convicted the shooter of capital murder but did not recommend the death penalty, instead recommending 56 years of incarceration, with the trial court imposed. My client received a sentence of only 6 years. The dates of my representation were 1997 – 1998. The case was heard by Judge Frank Hoss.

Counsel for the Commonwealth:

Paul B. Ebert
Commonwealth Attorney's Office
9311 Lee Ave.
Second Floor
Manassas, VA 20110
(703) 792-6050

(2) *Gamble v. Jeld-Wen Inc.*, No. 138861 (chancery), Fairfax County Circuit Court (1997)

My law firm represented the plaintiff in this case, and I participated as associate counsel. The case involved a products liability claim, in which we represented the family of a 13-month-old baby who had fallen through a window screen and sustained significant traumatic brain injuries. Our theory of the case was that the screen had been installed improperly, and that the injury would not have occurred if the installation had been completed correctly. The jury reached a verdict for the plaintiff and awarded \$15 million in damages. The case was later reversed on appeal in *Jeld-Wen, Inc. v. Gamble*, 256 Va. 144 (1998). The dates of my participation were during the trial in 1997. The case was heard by Judge J. Howe Brown, Jr.

Co-counsel for the Plaintiff:

Hon. Tracy C. Hudson
Circuit Court of Prince William County (formerly with Smith, Hudson, Hammond & Alston)
9311 Lee Ave.
Manassas, VA 20110
(703) 792-6010

Donna McIntosh
262 Fort Howell Dr.
Hilton Head, SC 29926

Peter S. Everett
Blankingship & Keith, PC
4020 University Dr., Suite 300
Fairfax, VA 22030

(703) 691-1235

Robert J. Stoney
Blankingship & Keith, PC
4020 University Dr., Suite 300
Fairfax, VA 22030
(703) 293-7230

Defense Counsel:

R. Harrison Pledger, Jr.
Bernard G. Feord, Jr.
4530 Walney Rd. #103
Chantilly, VA 20151
(703) 263-1711

Reid Robison
McAfee & Taft
211 N. Robinson Ave.
Two Leadership Square, 10th Floor
Oklahoma City, OK 73102
(405) 235-9621

(3) *Commonwealth v. Thornley*, No. CR05031289-00, Prince William Circuit Court
(1997)

I represented the defendant in this case, in which the defendant had significant substance abuse issues. The defendant was a frequent drug user and had resorted to prostituting herself to obtain cash so she could purchase drugs. The case allowed me to witness the extremely negative consequences and repercussions of substance abuse. The defendant was convicted, but I was able to get her into a drug treatment program. The dates of my representation were 1996 – 1997. I believe the case was heard by Judge Herman A. Whisenant, Jr.

Counsel for the Commonwealth:

Michael Dixon
9311 Lee Ave.
Second Floor
Manassas, VA 20110
(703) 792-6050

(4) *Commonwealth v. Shifflett*, No. CR05037629-00, Prince William Circuit Court
(1996)

I represented the defendant in this capital murder case and successfully argued a motion

to strike the capital portion of the indictment on the grounds that the statute did not address the conduct the defendant was alleged to have engaged in. The dates of my representation were 1994 – 1996. The case was heard by then-Judge LeRoy F. Millette, Jr. (Justice Millette was later appointed to the Supreme Court of Virginia and is currently on senior status).

Counsel for the Commonwealth:

Paul B. Ebert
Jim Willett
Commonwealth Attorney's Office
9311 Lee Ave.
Second Floor
Manassas, VA 20110
(703) 792-6050

(5) *Commonwealth v. Purvis*, No. CR05036439-00, Prince William Circuit Court (1995)

I represented the defendant in this case, who had been charged with driving after having been declared a habitual offender. The investigating officer testified that he initiated a traffic stop of the defendant due to a crooked inspection sticker. During my questioning, I had the officer draw a diagram of the sticker's position on the car, revealing that the sticker was minimally angled. Although the case law provided that a crooked sticker is evidence of an illegal inspection, I successfully argued that the investigating officer lacked reasonable suspicion to initiate a traffic stop because no other circumstances existed to support the charge. The dates of my representation were 1994 – 1995. The case was heard by Judge William D. Hamblen.

Counsel for the Commonwealth:

Mike Phipps
Commonwealth Attorney's Office
9311 Lee Ave.
Second Floor
Manassas, VA 20110
(703) 792-6050

(6) *Commonwealth v. Bittinger*, No. CR05022201-00, Prince William Circuit Court (1991)

I represented the defendant in this case, which involved a misdemeanor charge. I took the case to jury trial and my client was convicted. The case was and remains significant to me because I learned a great deal about the jury process, even though I was unsuccessful in persuading a jury to acquit my client. Following the verdict, I had the amazing opportunity to speak with several of the jurors about my performance during the trial and their thought processes in the deliberations. The entire experience was

extremely beneficial and helped me as I started my career in litigation. The dates of my representation were 1989 – 1991. The case was heard by Judge H. Selwyn Smith.

Counsel for the Commonwealth:

I am unable to recall the name and the court file does not reflect it either.

(7) *Commonwealth v. Fitch*, No. CR05027160-00, Prince William Circuit Court (1990)

I represented the defendant in this case, who had been accused of rape and sodomy by his fiancée. The defendant had previously been convicted of rape. During the preliminary hearing in general district court, the victim perjured herself, and when the case went to trial in circuit court, I used that testimony for my client's defense, and the case was dismissed on a motion to strike. The victim was later prosecuted for perjury. The dates of my representation were March 1999 – August 1990. The case was heard and decided by Judge William D. Hamblen.

Counsel for the Commonwealth:

Michael Dixon
9311 Lee Ave.
Second Floor
Manassas, VA 20110
(703) 792-6050

(8) *Commonwealth v. Lewis*, No. CR05027214-00, Prince William Circuit Court (1990)

I represented the defendant in this case, in which my client was charged with second-degree murder. The "battered spouse syndrome" defense had not yet been codified. At trial, I introduced evidence of previous incidents of abuse committed on my client by the victim. I then successfully argued to the judge that a jury instruction regarding that evidence should be admitted. The jury convicted my client of the lesser-included charge of manslaughter. The following year, the General Assembly passed a law allowing the admission of evidence of prior abuse. The dates of my representation were 1990 – 1992. The case was heard by Judge H. Selwyn Smith.

Counsel for the Commonwealth:

Richard A. Conway
Commonwealth Attorney's Office
9311 Lee Ave.
Second Floor
Manassas, VA 20110
(703) 792-6050

(9) *Commonwealth v. Vasquez*, No. CR05022515-00, Prince William Circuit Court

(1989)

This case was the first criminal matter that I handled as a litigator. I represented the defendant, who was a “mule” and charged with possession with the intent to distribute marijuana. The defendant was convicted after a guilty plea. The dates of my representation were 1988 – 1989. The case was heard by Judge H. Selwyn Smith.

Counsel for the Commonwealth:

Hon. LeRoy Millette
Supreme Court of Virginia (formerly with the Commonwealth Attorney’s Office)
P.O. Box 1315
100 N. Ninth St.
Richmond, VA 23219
(804) 786-6455

(10) *Commonwealth v. Hawes*, No. CR05024896-00, Prince William Circuit Court
(1989)

I represented the defendant in this case, in which the defendant was charged with grand larceny. The case was tried in a bench trial. I was able to get the charge dismissed by arguing that the property alleged to have been stolen was abandoned, thus negating the ability for a person to steal it. The dates of my representation were May 1989 – July 1989. The case was heard and decided by a substitute judge, whose name I believe was Middleton.

Counsel for the Commonwealth:

Hon. Mary Grace O’Brien
Court of Appeals of Virginia (formerly with the Commonwealth Attorney’s Office)
109 N. Eighth St.
Richmond, VA 23219
(804) 371-8428

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 never performed any lobbying activities for any organization.

I have been involved with the following legal committees during the course of my career:

Virginia Sentencing Commission (2012 – present)

I initially served on the Commission as a member, and am now currently the vice-chair. The Commission's principal aim is to collect statistics and data, and then utilize that information in formulating discretionary sentencing guidelines to assist trial judges in sentencing hearings.

Equal Access to Justice Committee of the Supreme Court of Virginia, Member (2014 – present)

I am currently a member of this Committee, which is concerned with ensuring that indigent individuals have easier access to the justice system. The Committee strives to achieve that goal through enhancing the circumstances for *pro se* litigants via various volunteer organizations that assist them. The Committee is not a policy-setting entity, but rather is focused on practical improvements.

Education Committee of the Judicial Council of the Supreme Court of Virginia, Member (2009 – 2017)

I previously served as a member of this Committee, which was responsible for setting up an annual CLE course for active judges on the Supreme Court of Virginia, Court of Appeals of Virginia, and the circuit courts.

Judicial Ethics Advisory Committee, Member (2009 – 2015)

I previously served as a member of this Committee, which seeks to regulate the ethical conduct of judges within the Commonwealth by providing guidance and advice through the issuance of advisory opinions regarding compliance of future conduct.

Chief Justice's Special Commission on the Rules of Discovery for Criminal Cases, Member (2014 – 2015)

I served as a member of this Commission, which collected data and statistics on developing and enhancing discovery rules for use in criminal matters within the Commonwealth of Virginia.

Virginia Bar Association, Criminal Law Section, Council Member (2009 – 2013)

I served as a member of this Council, which involved a colloquy between defense attorneys, prosecutors, and judges to develop rules regarding improved criminal practice in the Commonwealth of Virginia.

Chief Justice's Special Committee for Professionalism in the Bar and Bench, Member (2009 – 2012)

I served as a member of this Committee, which was responsible for promoting professionalism and civility amongst lawyers and judges within Commonwealth of Virginia.

Rules Committee of the Supreme Court of Virginia, Member (2008 – 2010)

I previously served as a member of this Committee, which collects data and feedback and then develops improved rules and practices for use in both civil and criminal matters within the Commonwealth of Virginia.

Virginia State Bar, Professionalism Faculty, Member (1996 – 1998)

I previously served as a member of this entity, which developed the syllabus for the annual professionalism course that is mandatory for all newly sworn attorneys within the Commonwealth of Virginia.

Virginia State Bar, Fifth District Disciplinary Subcommittee, Member (1992 – 1996)

I previously served as a member of this subcommittee, which evaluated allegations of misconduct by attorneys within the Commonwealth of Virginia, and adjudicated those allegations in the form of public and private admonitions and reprimands.

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.

From approximately 2009 to present, I have taught Trial Advocacy at Antonin Scalia Law School (formerly George Mason University School of Law). Syllabus supplied.

From approximately 2012 to present, I have taught Preparing to be a Law Clerk/First Year Associate at Antonin Scalia Law School (formerly George Mason University School of Law). The class teaches students how to prepare for the process of becoming a law clerk and the expectations of a first year associate. Syllabus supplied.

From 2004 to 2013 and 2015 to present, I have taught Criminal Courts and Administration of Justice at George Mason University (undergraduate college). The class teaches students about the criminal justice system and the courts. Syllabus supplied.

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.

I currently have a deferred compensation account through the Commonwealth of Virginia. Additionally, I will receive monthly payments from my Virginia Retirement System Partial Lump Sum Option (PLOP) account for the next 47 years. Beyond these, I have no deferred income.

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.

If confirmed, I hope to be able to continue teaching and officiating football games. I have made no commitments or agreements to do so.

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 statement of net worth.

24. **Potential Conflicts of Interest:**

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

My daughters, Devon E. A. Heath and Peyton E. Simmons, are members of the Virginia State Bar. I would never hear a case involving my children or either of their employers. If I was assigned to a case in which either of my daughters or their employers were involved, I would raise the conflict, *sua sponte*, as soon as I became aware of such involvement. I would alert both the Chief Judge and the Clerk of our Court so that the case could be timely reassigned to a different judge. If any other matter were to arise that involved an actual or potential conflict of interest, I would handle it by careful and diligent application of the Code of Conduct for United States Judges, as well as any other relevant canon or statutory provision.

- b. Explain how you will resolve any potential conflict of interest, including the

procedure you will follow in determining these areas of concern.

If confirmed, I will carefully review any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct of United States Judges, and any other laws, rules, and practice governing such circumstances.

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.

Since I became a judge in 1998, I have served a more limited role with pro bono work, but I remain very active at my church, working with the youth group as a mentor. In total, I currently support nine different missions in my church. I estimate that I have committed approximately 2-3 hours per week on these activities.

Before I became a judge, I committed time to participate in several areas.

I served on the board of directors of Didlake, an organization that assists special needs adults in finding and maintaining employment. During my time there, I estimate that I committed approximately 1-2 hours per week.

I also worked with the American Heart Association, participating in the "Cardiac Arrest" program, an initiative in which members of community would be "arrested" and then bail themselves out based upon contributions raised through the American Heart Association. My participating was as the mock judge. I estimate that I have committed approximately 1-2 hours per week during that program.

Additionally, I am a frequent lecturer at CLE events throughout the Commonwealth, on a year-round basis. The topics have ranged from appellate procedure and education to domestic relations practice. I estimate that I have committed approximately 1 hour per week to these programs.

Finally, throughout my tenure as a judge, I have served as a member of the Virginia Judicial Conference Committee on Education, which acts to create and implement programs for the annual judicial conference, and for attorneys in locations throughout the Commonwealth. I estimate that I have committed approximately 1-2 hours per week toward this work.

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.

Once Judge Gerald Lee officially retired, I submitted an application packet to the Virginia State Bar in mid-September 2017. The Virginia State Bar Judicial Candidate Evaluation Committee performed a preliminary review of all the applicants. I was fortunate enough to receive approval to proceed from that committee. Next, I began interviewing with various bar associations throughout the Commonwealth, and received an endorsement from each one, and in many cases I received the highest endorsement. In November 2017, I interviewed with Senator Mark Warner and Senator Timothy Kaine of Virginia. Also in November 2017, I interviewed with attorneys from the Office of White House Counsel and the Office of Legal Policy at the Department of Justice. On June 18, 2018, the President submitted my nomination to the Senate.

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

No.