

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Amy Berman Jackson (maiden name: Amy Sauber Berman)

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

United States District Judge for the District of Columbia

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.

Trout Cacheris, PLLC
1350 Connecticut Avenue, N.W., Suite 300
Washington, D.C. 20036

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

1954, Baltimore, Maryland

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.

1976 – 1979, Harvard Law School; J.D. (*cum laude*), 1979
1972 – 1976, Harvard College; A.B. (*cum laude*), 1976

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.

2000 – present
Trout Cacheris, PLLC
1350 Connecticut Avenue, N.W., Suite 300
Washington, D.C. 20036
Partner

1995 – 2000

Family Leave from Law Practice

1986 – 1994

Venable, Baetjer, Howard and Civiletti

575 7th Street, N.W.

Washington, D.C. 20004

Partner (1988 – 1995)

Associate (1986 – 1987)

1980 – 1986

United States Attorney's Office for the District of Columbia

555 4th Street, N.W.

Washington, D.C. 20530

Assistant United States Attorney

1979 – 1980

United States Court of Appeals for the Fourth Circuit

United States Courthouse

101 W. Lombard Street

Baltimore, Maryland 21201

Judicial Law Clerk to the Honorable Harrison L. Winter

Summer 1978

Verner, Liipfert, Bernhard, and McPherson (since dissolved)

Washington, D.C.

Summer Associate

Summer 1977

Frank, Bernstein, Conoway, and Goldman (since dissolved)

Baltimore, Maryland

Summer Associate

Summer 1976

BIC's Ice Cream (since closed)

Cambridge, Massachusetts

Counter Server

Other Affiliations (uncompensated)

2001 – 2003

District of Columbia Spring Valley Restoration Advisory Board

Board Member

2001 – 2003
Hebrew Day Institute
2200 Baltimore Road
Rockville, Maryland 20851
Member, Board of Directors

1986 – 1989
D.C. Rape Crisis Center
1625 K Street, N.W.
Washington, D.C. 20006
Member, Board of Directors

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

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

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

Superlawyers – Washington, D.C. (2010)
Washingtonian Magazine Top Lawyers (2010)
Department of Justice Special Achievement Awards (1985 & 1986)
Harvard College Dean's List (1973 – 1976)

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 (ABA)
ABA Criminal Justice Section, White Collar Crime Committee
 Co-chair, Department of Justice Liaison Subcommittee (2009 – present)
ABA Section of Litigation
 Member, Task Force on Jury Initiatives (1995 – 1998)
 Member, Task Force on Children (1993 – 1995)
 Co-Director, Division IV: Procedural (1991 – 1992)
 Co-Chair, Training the Advocate Committee (1989 – 1991)
 Member, Task Force on Training the Advocate (1987 – 1989)
 Representative to ABA Steering Committee on Post-Conviction Representation
 Member, Complex Crimes Committee
District of Columbia Bar
 Judicial Evaluation Committee (1988 – 1991)
 Chair (1992 – 1994)

Elected Delegate to the ABA House of Delegates (1986 – 1989)
District of Columbia Women's Bar Association
Judicial Endorsements Committee (1987 – 1989)
Federal Bar Association
Washington Bar Association
Bar Association of the District of Columbia

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.

District of Columbia, 1979
Virginia, 1986

There have been no lapses in either 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, 1992
United States Court of Appeals for the District of Columbia, 1983
United States Court of Appeals for the Fourth Circuit, 1980
United States Court of Appeals for the Fifth Circuit, 1993
United States District Court for the District of Maryland, 1980
United States District Court for the Eastern District of Virginia, 1986

These are all currently active with the exception of the Fifth Circuit, where I sought admission in connection with a single appeal. 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.

Assistant United States Attorneys' Association (1985 – 1994 & 2000 – present)
The Barristers (1987 – 1995, approximate)
D.C. Rape Crisis Center Board of Directors (1986 – 1989)
D.C. Spring Valley Restoration Advisory Board (2001 – 2003)
Hebrew Day Institute Board of Directors (2001 – 2003)

Hexagon, Inc. (1981 – 1986, approximate)
Interdisciplinary Council for Developmental and Learning Disorders
Parents' Steering Committee (1996 – 2001)
Special Olympics Northern Virginia Area 26 Council (1987 – 1989, approximate)

In addition, I have made occasional financial contributions over the years to various charitable organizations. Some of those organizations may have called me a "member" solely by virtue of my financial contribution.

- 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 in response to 11a above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin.

12. Published Writings and Public Statements:

To respond to the parts of Question 12 set out below, I searched my electronic calendar, the electronic and physical records I have retained of speeches and presentations (including videotape recordings and paper files), copies of applications completed in prior years listing panel presentations, and my memory.

- 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.

I searched my memory, my records, and the Internet to provide a list of publications that is as complete as possible, though there may be others I have been unable to identify:

6/6/07: Co-author, letter to the editor of USA Today concerning Congressman William J. Jefferson, from Robert Trout, Amy Berman Jackson, and Gloria B. Solomon. Copy supplied.

03/06: "Defending the Corporation and its Executives: We're Not 'In it Together' Anymore," 12th Annual Federal Procurement Institute, ABA Section of Public Contract Law. Copy supplied.

11/1/2004: Co-author, op-ed piece in *The Legal Times*: “Q: Who’s Better for Lawyers? A: John Kerry,” by Alan I. Baron and Amy Berman Jackson. Copy supplied.

2000: Co-author, “For Parents, By Parents, A Resource Guide.” Copy supplied.

4/7/1993: “Bank Fraud: The Institutional Response to a Criminal Investigation,” *The Review of Banking and Financial Services*. Copy supplied.

1992: “Cross Examination of an Expert Witness,” *The Practical Litigator*, Vol. 3, Number 1, ALI-ABA Jan. 1992. 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.

I have searched my memory, my records, and the Internet and have not identified any reports, memoranda, or policy statements that I prepared or to which I contributed. I have no recollection of particular reports from the various task forces and committees on which I have served. To prepare this answer, I consulted with the staff of the ABA Section on Litigation, which did not identify any such reports in the Section’s files. To the best of my knowledge, any reports—if they did exist—would have been issued by the Task Force on the Jury, which considered such matters as the need for clear and comprehensible jury instructions, and the Task Force on Children, which focused on the need for legal services for children in the juvenile justice and foster care systems.

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

I have not testified or issued an official statement on a matter of public policy or legal interpretation to a public body other than through the submission of legal pleadings in judicial proceedings on behalf of my clients.

Minutes of monthly meetings of the Washington, D.C. Spring Valley Restoration Advisory Board, on which I served as a member, can be found at: <http://www.nab.usace.army.mil/projects/WashingtonDC/springvalley/RAB/minutes.htm> (last visited June 15, 2010).

- 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.

I have not delivered any political or commencement speeches. I appeared on panels at the conferences listed below:

03/06: Ethics and Corporate Criminal Investigations—ABA Section of Public Contract Law Annual Federal Procurement Institute. Notes supplied.

4/22/05: The Boeing Company, Litigation Department. Notes supplied.

1998-2001: I moderated several panels sponsored by the Parents' Steering Committee of the Interdisciplinary Council for Developmental and Learning Disorders at the annual ICDL conference on autism. Video recording of the 1999 panel supplied. I have no other notes, transcript, or recording.

1998: I spoke at the investiture of the Honorable Natalia Combs Greene as a judge on the Superior Court of the District of Columbia. I have no notes, transcript, or recording.

1997: Scientific Fraud—ABA Criminal Justice Section National Institute on White Collar Crime, Fraud. Notes supplied.

1997: Tort Reform—D.C. Judicial Conference. I have no notes, transcript, or recording.

1996: Closing Arguments in a Products Liability Case—ABA Annual Meeting. I have no notes, transcript, or recording.

Late 1990s (I do not recall the specific year): Presentation to Johns Hopkins Medical School students on scientific research fraud as part of the class, "The Physician and Society." Notes supplied.

1994: Parallel Criminal, Administrative, and Civil Proceedings—ABA Litigation Section Annual Meeting. Notes supplied.

1994: Scientific Fraud Investigations—ABA Litigation Section Complex Crimes Committee Federal Enforcement Seminar. My notes for the talk were incorporated into the set of notes for Scientific Fraud: ABA Criminal Justice Section National Institute on White Collar Crime, Fraud: 1997, a copy of which is supplied.

1993: The Jury's Perspective on Women in the Courtroom—ABA Section of Litigation/Prentice Hall Conference on the Woman Advocate. Video recording supplied.

1993: Responding to a Criminal Investigation, Maryland CPA Association. Notes supplied.

1992: Responding to a Criminal Investigation, National Association of Minority Contractors. I have no notes, transcript, or recording.

1990: Trying an Employment Case—National Employment Law Institute. I have no notes, transcript, or recording.

1990: Cross Examination Workshop—ABA Section of Litigation, ABA Annual Meeting. I have no notes, transcript, or recording.

1988: Training the Advocate—ABA Section of Litigation, ABA Annual Meeting. I have no notes, transcript, or recording.

1987 – 1994 (approx): D.C. Rape Crisis Center Volunteer Training (annual presentation). Notes supplied.

1987 – 1993 “Dollars and Sense: Recent Developments in Government Contracting” —Fraud, Waste and Abuse Investigations, Venable, Baetjer & Howard/George Mason University School of Law (annual presentation). Notes supplied.

Although I searched my memory, my files, and the Internet to prepare as complete a list as possible, I may have given other speeches that I have been unable to identify.

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

I searched my memory, my files, and the Internet to prepare as complete a list as possible, though I may have given other interviews that I have been unable to identify. Copies of clips from the following interviews are supplied:

11/14/09: Vanguard (Lagos), “Ex-US Congressman Bags 13 Years Jail Term”

6/24/08: Talking Points Memo (Internet Blog), “Did the Feds Really Raid Sweeney’s Congressional Office?” at

http://tpmmuckraker.talkingpointsmemo.com/2008/06/fbi_told_sweeney_to_prese_rve_c.php (last visited June 15, 2010)

12/24/07: Baton Rouge Advocate, "Boy Scouts Watch Trial"

6/30/01: Milwaukee Journal Sentinel, "Browner's Computer Wiped Clean by EPA—Came Same Day Court Had Issued Order"

6/29/01: Associated Press, "Ex-EPA Head Browner Asked for Computer Files to be Deleted"

3/18/89: Richmond Times Dispatch, "Arlington Man Charged in Using Architect's Seals"

7/20/80: William Safire, "On Language"

Between 1995 and 2000, I appeared as an expert legal commentator on television on multiple occasions, explaining legal developments in such cases as the O.J. Simpson trial, the Unabomber attacks, the Whitewater Special Prosecutor investigation, and the investigation into the death of Chandra Levy. I appeared on CNN, MSNBC, Fox News, and local D.C. stations WUSA, WRC, and WTTG, and served as a panelist on CNN's "Burden of Proof." I also appeared on CBN in 1987 discussing date rape. Of those appearances, I have recordings of the following, for which I have supplied copies:

8/28/01: Fox News: Chandra Levy investigation

04/96: Phil Donahue Show: Jury Nullification

2/6/96: WRC-TV (NBC): Discussing O.J. Simpson telephone call to CNN's "Burden of Proof" the day before

10/3/95: WRC-TV (NBC): Simpson verdict

10/2/95: CNN "Burden of Proof:" Awaiting the Simpson verdict (excerpts)

9/13/95: WRC-TV (NBC): "Should O.J. Simpson take the stand?"

8/17/95: WRC-TV (NBC): "What do you think of the lawyers in the O.J. Simpson case?"

9/27/95: WUSA-TV (CBS): O.J. Simpson closing arguments

In addition, transcripts of the following appearances on CNN are available and supplied:

9/24/98: CNN "Upfront Tonight," Judiciary Committee Sets October 8th or 9th As Day On Which To Vote On Whether To Conduct An Impeachment Inquiry

9/9/98: CNN "Burden of Proof," Sentencing of Amy Grossberg and Brian Peterson

9/9/98: CNN "Worldview," Circuit Court Rules Promising Leniency for Testimony Illegal

5/31/97: CNN "Burden of Proof," Panel Discussion on the Timothy McVeigh Trial

5/10/97: CNN "Saturday Morning News," Guest Attorneys Review McVeigh Trial For Week Ending May 10, 1997 and Analyze Each Side's Apparent Trial Strategy

1/21/97: CNN "Burden of Proof," Attorneys Prepare For Closing Arguments In the O.J. Simpson Civil Trial

12/12/96: CNN "Burden of Proof," O.J. Simpson Talked To Police; See What He Had To Say

11/25/96: CNN "Inside Politics," O.J. Simpson's Second Day on the Witness Stand

7/31/96: CNN "Burden of Proof," Richard Jewell investigation

6/27/96: CNN "Burden of Proof," O.J. Simpson civil trial

4/9/96: CNN "Burden of Proof," More Evidence in the Unabomber Case

2/5/96: CNN "Burden of Proof," O.J. Simpson case – Simpson telephones

2/5/96: CNN, and O.J. Simpson Special Presentation, Part 2

1/15/96: CNN "Burden of Proof," O.J. Simpson verdict

11/8/95: CNN "Burden of Proof," Oklahoma City bomber case

10/18/95: CNN "Burden of Proof," Death of Selena

10/16/95: CNN "Burden of Proof," O.J. Simpson criminal trial

On December 5, 1985, when I was an Assistant United States Attorney, I appeared before the cameras after obtaining a conviction in *United States v. Paul Jordan*. A copy of the recording is supplied.

On June 9, 1978, I was a passenger on an Amtrak train that collided and derailed in Seabrook, Maryland, and I was interviewed by television news reporters when I arrived at Penn Station in Baltimore. No recordings are available.

On June 17, 1976 (approx.), the Harvard Crimson published an article by Nicholas Lemann recounting the college experiences of the four roommates in my freshman suite. I was interviewed in connection with the article. I have been unable to locate a copy of the article, including through searches of the Harvard Crimson website and archives.

Between 1974 and 1976 (approx.), while in college, I worked at WHRB-FM, the Harvard College radio station, and produced a bi-weekly interview show on women's affairs called "Accent on Women." No recordings are available, but I was not the subject of the interviews – I was asking the questions.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held any judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____
 - i. Of these, approximately what percent were:

jury trials:	_____%
bench trials:	_____% [total 100%]
civil proceedings:	_____%
criminal proceedings:	_____% [total 100%]
- b. Provide citations for all opinions you have written, including concurrences and dissents.
- 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).
- 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.
- e. Provide a list of all cases in which certiorari was requested or granted.

- 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.
 - 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.
 - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. 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.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:
- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
 - b. a brief description of the asserted conflict of interest or other ground for recusal;
 - c. the procedure you followed in determining whether or not to recuse yourself;
 - d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not served as a judge.

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

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

I have never held a paid or unpaid position in a political party or election committee. I was a member of the Lawyers' Committee for Bill Clinton in 1992, and did a small amount of fundraising in connection with President Barack Obama's election campaign.

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;

1979 to 1980: After graduating from law school, I served as a law clerk to the Hon. Harrison L. Winter of the United States Court of Appeals for the Fourth Circuit.

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

I have not practiced alone.

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

1980 – 1986

United States Attorney's Office for the District of Columbia
555 4th Street, N.W.
Washington, D.C. 20530
Assistant United States Attorney

1986 – 1995

Venable, Baetjer, Howard and Civiletti
575 7th Street, N.W.
Washington, D.C. 20004
Associate (1986 – 1988)
Partner (1988 – 1995)

2000 – present
Trout Cacheris, PLLC
1350 Connecticut Avenue, N.W., Suite 300
Washington, D.C. 20036
Partner

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

I have not served as a mediator or arbitrator.

b. Describe:

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

My law practice has always involved the courtroom. I have handled both civil and criminal cases, and I have seen the criminal law from the perspective of both the prosecution and the defense. My criminal caseload has involved everything from murder and rape on the prosecution side to government contracts fraud, public corruption, and antitrust violations on the defense side. My civil practice has ranged from commercial and real estate related litigation to representing plaintiffs in multi-district tort litigation and victims of sexual assault.

After my clerkship on the Fourth Circuit ended in 1980, I joined the United States Attorney's Office for the District of Columbia. There, it was my responsibility to seek justice on behalf of victims of crime, to advocate for the appropriate punishment for offenders, and to work with citizens and law enforcement in an effort to rid the community of drug trafficking and the violence associated with it.

Since leaving the U.S. Attorney's office in 1986, I have been engaged in the private practice of law. In place of the violent crimes and narcotics offenses I once prosecuted, I have focused on complex white collar matters and civil litigation. As a defense attorney, I have counseled clients when the facts supported a negotiated disposition, and I have also put the government to the test of proving its case in court beyond a reasonable doubt. I have litigated issues involving my clients' constitutional and procedural rights, and I have dealt with evolving investigative techniques such as subpoenas, search warrants, electronic eavesdropping, and undercover sting operations. My practice has also involved the Federal Sentencing Guidelines and their application in plea negotiations, pre-sentence investigations, and sentencing proceedings.

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

The United States Attorney for the District of Columbia has unique responsibility for both local and federal offenses, and for most of my time in the Office, I prosecuted local crimes. I tried approximately 50 cases to verdict before juries in D.C. Superior Court, and moved through the Misdemeanor, Appellate, Grand Jury, Chronic Offender, Felony II Trial, and Felony I Trial sections. In the Appellate section, I briefed and argued appeals in both the U.S. Court of Appeals for the District of Columbia Circuit and the District of Columbia Court of Appeals. I spent my last two years as an Assistant United States Attorney (1984-86) in the Felony I Trial section, devoted exclusively to first degree murders, rapes, and sexual assaults on children.

Since 1986, my practice has primarily involved federal litigation. My work at Venable included criminal and civil trials and appeals, with the primary emphasis on white collar criminal investigations. The federal enforcement actions I handled included procurement fraud, antitrust violations, environmental crime, and health care fraud. We represented businesses that were the subjects of grand jury investigations or administrative enforcement actions, and we were called upon to represent individual corporate officers and employees as well. I was involved in the representation of witnesses and targets in the Iran-Contra, Whitewater, and HUD Special Prosecutor investigations. Notable criminal matters included representing an individual charged in the Ill Wind government contracts fraud investigation and the jury trial of an electrical contractor charged with lying to the grand jury during the course of a nationwide bid rigging investigation. I briefed and argued cases in several federal circuits, and served as trial counsel for two military courts martial.

On the civil side, we represented plaintiffs in several cases arising out of airline and train crash disasters, and those representations involved multi-district litigation and federal class actions. Other civil matters included business and real estate disputes and breach of contract actions in both state and federal court, suits on behalf of individual victims of crime, and intellectual property litigation, which entailed seeking temporary restraining orders and injunctions.

My federal litigation practice has continued at Trout Cacheris, where since 2000, I have focused particularly on criminal matters but handled an array of civil cases as well. My cases have involved investigations and charges of bribery, conflict of interest, antitrust, bank fraud, and government contract fraud. In criminal matters, we tend to represent individuals rather than corporations or other entities, but we have handled commercial disputes and employment matters for a number of businesses in D.C., Maryland, and Virginia.

I served as co-counsel in *United States v. William J. Jefferson*, a public corruption case that was tried to a jury last summer. I have represented individuals involved in the Enron investigation and the Washington Teachers' Union embezzlement matter. Such criminal cases often entail parallel administrative and civil actions growing out of the same sets of facts and circumstances, so my federal practice has also involved Congressional hearings, SEC enforcement actions, bankruptcy proceedings, hearings before other administrative bodies, and civil lawsuits in federal and state court. Other civil litigation matters have included employment discrimination claims, derivative and class action suits alleging securities fraud, breach of contract actions, a products liability case, and legal malpractice, among others. I have continued my representation of victims of crime, and I have been asked to conduct internal investigations by organizations ranging from a law firm to an elementary school. At Trout Cacheris, I have also briefed and argued appeals in the United States Court of Appeals in both criminal and civil cases.

- 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.

Ninety percent of my time or more has been devoted to litigation. As an Assistant United States Attorney for the District of Columbia from 1980 to 1986, I appeared in court very frequently. Since then, the frequency has varied, but in the aggregate I have appeared in court occasionally. Full-blown trials are less common in private practice than they were when I was a prosecutor, but I have appeared in court regularly for evidentiary hearings, motions practice, sentencing proceedings, and appellate arguments. Due to the nature of our practice, a significant portion of my work has taken place outside the courtroom: federal enforcement matters involve considerable investigation, negotiation, and advocacy with the goal of avoiding trial altogether.

- i. Indicate the percentage of your practice in:

1. federal courts:
2. state courts of record:
3. other courts:
4. administrative agencies:

2005 to present: federal courts:	85%
state courts of record:	5%
other courts:	
administrative agencies:	10%

1986 to 2004: federal courts:	60%
state courts of record:	25%
other courts:	5%
administrative agencies:	10%

1980 to 1986: federal courts:	5%
state courts of record:	95%
other courts:	
administrative agencies:	

ii. Indicate the percentage of your practice in:

1. civil proceedings:
2. criminal proceedings:

2005 to present: civil proceedings:	30%
criminal proceedings:	70%

1986 – 2004: civil proceedings:	50%
criminal proceedings:	50%

1980 – 1986: civil proceedings:	
criminal proceedings:	100%

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

I have tried more than 60 cases to verdict, judgment, or final decision. I was sole counsel in nearly all of these cases, chief counsel in one, and associate counsel in about five.

i. What percentage of these trials were:

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

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

I have filed petitions for certiorari and oppositions to petitions for certiorari. I filed petitions in a death penalty appeal, but I have not yet argued before the Court.

Copies of the following pleadings are supplied:

2/24/09: *William J. Jefferson v. United States*, No. 08-1059, Petition for writ of Certiorari to the U.S. Court of Appeals for the Fourth Circuit

4/24/09: *William J. Jefferson v. United States*, No. 08-1059, Reply to brief in Opposition to Petition for writ of Certiorari

2/19/08: *United States v. Rayburn House Office Building, Room 2113*, No. 07-816, Brief in Opposition to Petition for writ of Certiorari

12/13/04: *Babbitt, et al., v. United States Court of Appeals for the D.C. Circuit*, No. 04-811, Petition for writ of Certiorari to the U.S. Court of Appeals for the D.C. Circuit

5/29/92: *Crandon, et al., v. United States*, No. 91-1908, Petition for writ of certiorari to the U.S. Court of Appeals for the Fourth Circuit

4/30/92: *Bunch v. Thompson*, No. 91-1757, Petition for writ of Certiorari to the U.S. Court of Appeals for the Fourth Circuit

6/11/92: *Bunch v. Thompson*, No. 91-1757, Petitioner's Reply Brief

7/22/92: *Bunch v. Thompson*, Petition for Rehearing

1/16/90: *Educational Development Network Corp., and Gerald Kress v. United States*, No. 89-1110, Petition for writ of Certiorari to the U.S. Court of Appeals for the 3rd Circuit

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) Representation of Defendant William J. Jefferson in *United States v. Jefferson*, No. 1:07CR209 (E.D. Va.) (T.S. Ellis, III, U.S.D.J.)

I represented the former Congressman from Louisiana, who was charged in June 2007 with bribery, fraud that deprived the citizens of his honest services, conspiracy, RICO,

money laundering, and violating the Foreign Corrupt Practices Act. We filed more than 20 pre-trial motions addressing significant legal questions raised by the 95 page indictment. The case did not involve any legislation, appropriations, or earmarks, so one issue for which I bore particular responsibility was whether a Member's use of his access or influence to assist private business ventures abroad could constitute an "official act" of a United States Congressman as that term is defined in the bribery statute. I argued motions to dismiss on those grounds and others. The case presented issues similar to those currently pending before the Supreme Court concerning the scope of the honest services statute, and we filed a motion to suppress arising out of the FBI's decision to take digital photographs of documents that fell outside the scope of the warrant during the execution of a search. In addition, we challenged the government's decision to prosecute in the Eastern District of Virginia a defendant who lived and worked in the District of Columbia.

The Jefferson matter was unusual in that it involved three pre-trial appeals. One concerned whether the prosecution could circumvent a Congressman's invocation of his Fifth Amendment act of production privilege by directing a subpoena for his records to a member of his staff instead. I briefed and argued that appeal. The other two raised novel questions related to the application of the Speech or Debate Clause, the constitutional privilege that protects the legislature against invasion or intimidation by the executive branch. The case involved the first search of a Congressman's office in the history of the United States, and we filed an emergency motion seeking the return of the seized records, arguing that the manner in which the search was conducted violated the Clause. A bipartisan group of Congressional leaders joined our challenge. The District Court upheld the search, but the D.C. Circuit reversed, agreeing with our contention that the method used to conduct the search violated the Constitution. The Supreme Court allowed that ruling to stand. I was the primary drafter of the District Court pleadings and the brief on appeal. We also sought Supreme Court review of an opinion by the Fourth Circuit concerning the power of the court to hear a challenge to an indictment when evidence of legislative activity that was privileged under the Clause had been presented to the grand jury.

The case was as complicated factually as it was legally. More than a dozen of the government's witnesses (of whom there were nearly 50 in total) testified under plea or immunity deals, and the investigation involved an undercover sting operation, hundreds of thousands of documents, and hours of secretly recorded telephone conversations and meetings. It took eight weeks to try the case, and the defendant was convicted of 11 counts and acquitted of five. I played a prominent role in the trial, cross examining about a third of the government's witnesses, including its expert. After sentencing, the court granted our motion for bond pending appeal, finding that the appeal of its rulings on "official acts" raised substantial questions which, if decided in favor of the defense, would result in the reversal of the conviction on every count.

My representation has lasted from 2005 to present. I am counsel of record with co-counsel Robert Trout and Gloria B. Solomon, Trout Cacheris, PLLC, 1350 Connecticut Ave., NW, Suite 300, Washington, D.C. 20036, Tel (202) 464-3300.

Principal counsel for the government are AUSA Mark D. Lytle and AUSA Rebeca Bellows, Justin W. Williams U.S. Attorney's Building, 2100 Jamieson Ave., Alexandria, VA 22314, Tel (703) 299-3700; and Charles E. Duross, U.S. Department of Justice, Criminal Division/Fraud Section, 10th & Constitution Ave., NW, Bond Building, 4th Floor, Washington, DC 20530, Tel (202) 514-2000.

Citations:

United States v. Rayburn House Office Building, Room 2113, 497 F.3d 654 (D.C. Cir. 2007), *cert. denied*, 128 S. Ct. 1738 (2008)

In re: Search of the Rayburn House Office Building Room No. 2113, 434 F. Supp.2d 3 (D.D.C. 2006)

United States v. Jefferson, 546 F.3d 300 (4th Cir. 2008), *cert denied* 129 S. Ct. 2383 (2009)

In re Grand Jury Subpoena: John Doe, No. 05GJ1318, 584 F.3d 175 (4th Cir. 2007) (unsealed 2009)

United States v. Jefferson, 615 F. Supp. 2d 448 (E.D. Va. 2009)

United States v. Jefferson, 594 F. Supp. 2d 655 (E.D. Va. 2009)

United States v. Jefferson, 623 F. Supp.2d 678 (E.D. Va. 2009)

United States v. Jefferson, 623 F. Supp.2d 683 (E.D. Va. 2009)

United States v. Jefferson, 571 F. Supp. 2d 696 (E.D. Va. 2008)

United States v. Jefferson, 562 F. Supp. 2d 687 (E.D. Va. 2008), *clarified on denial of reconsideration*, *United States v. Jefferson*, 634 F. Supp.2d 595 (E.D. Va. 2009)

United States v. Jefferson, 562 F. Supp. 2d 719 (E.D. Va. 2008)

United States v. Jefferson, 562 F. Supp. 2d 695 (E.D. Va. 2008)

United States v. Jefferson, 562 F. Supp. 2d 707 (E.D. Va. 2008)

United States v. Jefferson, 534 F. Supp. 2d 645 (E.D. Va. 2008), *aff'd*, *United States v. Jefferson*, 546 F.3d 300 (4th Cir. 2008)

United States v. Jefferson, No. 1:07CR209, 2008 WL 780699 (E.D. Va., Mar. 20, 2008)

United States v. Jefferson, No. 1:07CR209, 2009 WL 2447850 (E.D. Va., Aug. 8, 2009)

United States v. Jefferson, No. 1:07CR209, 2009 WL 2447845 (E.D. Va., Aug. 8, 2009)

- (2) Representation of an investment banker in Enron-related matters: *SEC v. Merrill Lynch & Co. Inc.*, No. H-03-0946 (S.D. Tex.) and *In Re Enron Corp. Securities, Derivative, and ERISA Litigation*, MDL 1446 (S.D. Tex.) (Melissa Harmon, U.S.D.J.)

Since 2002, I have been co-counsel representing a former Managing Director at Merrill Lynch and head of its Energy and Power Group, who had been involved in several transactions with Enron. We also represented his wife, who is the former Vice President for Corporate Communications at Enron.

Our client retained Trout Cacheris shortly after the fall of Enron in connection with an investigation being conducted by the House Permanent Subcommittee on Investigations into Enron's transactions with a number of investment banks, including Merrill Lynch, and we represented him in the parallel proceedings that ensued: the Department of Justice investigation, the SEC action, a New York Stock exchange investigation, and multiple civil class actions and securities derivative suits filed in federal and state courts.

The Enron related cases raised the question of whether one party to a financial transaction—in this case, the investment bank—could be held responsible for the other party’s failure to account for that transaction properly in its public financial disclosures, and whether the banks owed any duty to Enron’s investors which could have been breached. With respect to the individual bankers, the investigations also turned upon the extent to which they relied upon the advice of the bank’s in-house lawyers and internal vetting processes. There were factual questions to be considered related to the individuals’ level of involvement in the transactions, and whether they had knowledge of the ultimate terms of the deals or how Enron intended to account for them.

My representation has lasted from 2002 to present. I am counsel of record with co-counsel Robert Trout and Gloria B. Solomon, Trout Cacheris, PLLC, 1350 Connecticut Ave., NW, Suite 300, Washington, D.C. 20036, Tel (202) 464-3300. Opposing counsel in the criminal matter was Andrew Weissmann (then head of the Enron Task Force), now of Jenner & Block, 919 Third Ave., New York, NY 10022, Tel (212) 891-1650.

Citations:

In re Enron Corp. Sec., Derivative & ERISA Litig., 623 F. Supp. 2d 798 (S.D. Tex. 2009)
In re Enron Corp. Sec., Derivative & ERISA Litig., 610 F. Supp. 2d 600 (S.D. Tex. 2009)
In re Enron Corp. Sec., Derivative & ERISA Litig., 586 F. Supp. 2d 732 (S.D. Tex. 2008)
In re Enron Corp. Sec., Derivative & ERISA Litig., 540 F. Supp. 2d 759 (S.D. Tex. 2007)
In re Enron Corp. Sec., Derivative & ERISA Litig., 540 F. Supp. 2d 800 (S.D. Tex. 2007)
In re Enron Corp. Sec., Derivative & ERISA Litig., 491 F. Supp. 2d 690 (S.D. Tex. 2007)
In re Enron Corp. Sec., Derivative & ERISA Litig., 490 F. Supp. 2d 784 (S.D. Tex. 2007)
In re Enron Corp. Securities, 465 F. Supp. 2d 687 (S.D. Tex. 2006)
In re Enron Corp. Sec., Derivative & ERISA Litig., 463 F. Supp. 2d 628 (S.D. Tex. 2006)
In re Enron Corp. Sec., Derivative & ERISA Litig., 439 F. Supp. 2d 692 (S.D. Tex. 2006)
In re Enron Corp. Sec., Derivative & ERISA Litig., 236 F.R.D. 313 (S.D. Tex. 2006),
 rev'd and remanded, *Regents of Univ. of Cal. v. Credit Suisse First Boston (USA), Inc.*, 482 F.3d 372 (5th Cir. 2007) (The Court of Appeals overturned the trial court’s certification of the class; I worked with counsel for Merrill Lynch in briefing this issue.)
In re Enron Corp. Securities, 529 F. Supp. 2d 644 (S.D. Tex. 2006)
In re Enron Corp. Sec., Derivative & ERISA Litig., 388 F. Supp. 2d 780 (S.D. Tex. 2005)
In re Enron Corp. Sec., Derivative & ERISA Litig., 391 F. Supp. 2d 541 (S.D. Tex. 2005)
In re Enron Corp. Sec., Derivative & ERISA Litig., 229 F.R.D. 126 (S.D. Tex. 2005)
In re Enron Corp. Sec., Derivative & ERISA Litig., 228 F.R.D. 541 (S.D. Tex. 2005)
In re Enron Corp. Sec., Derivative & ERISA Litig., 511 F. Supp. 2d 742 (S.D. Tex. 2005)
In re Enron Corp. Sec., Derivative & ERISA Litig., 314 B.R. 354 (S.D. Tex. 2004)
In re Enron Corp. Sec., Derivative & ERISA Litig., 310 F. Supp. 2d 819 (S.D. Tex. 2004)
In re Enron Corp. Sec., Derivative & ERISA Litig., 284 F. Supp. 2d 511 (S.D. Tex. 2003)
In re Enron Corp. Sec., Derivative & ERISA Litig., 235 F. Supp. 2d 549 (S.D. Tex. 2002)
Newby v. Enron Corp., 188 F. Supp. 2d 684 (S.D. Tex. 2002)

- (3) Representation of Interior Department lawyer in *Cobell v. Norton*, No. 1:96 CV 01285 (D.D.C.) (Royce C. Lamberth, U.S.D.J.)

This class action suit brought concerning the Department of Interior's management of the Indian Trust accounts has been pending since 1996, and it has spawned at least 10 appeals. During 2000 and 2001, attorneys for the plaintiffs asked the court to issue orders to show cause why a number of individual government employees should not be held in contempt in connection with the case. The motions raised issues such as the availability of sovereign immunity and whether any of the named individuals, most of whom were career lawyers from either the Department of Interior or the Department of Justice, had ever been the subject of a specific order that could form the predicate for contempt. Over time, more than 50 individuals were named in contempt motions.

I was the lead lawyer for an attorney who was at that time the Deputy Associate Solicitor General of the Department of Interior. As time wore on, the group of lawyers for the individuals became more organized, and I became one of a handful of attorneys leading the group. When we became aware that the court appointed Monitor had conducted hours of *ex parte* communications with the plaintiffs' attorneys and with the witnesses, and that the court had engaged in over 120 hours of *ex parte* communications with the Monitor, a group of the named individuals filed a motion seeking the court's recusal from the contempt proceedings. The court denied the motion, *see Cobell v. Norton*, 237 F. Supp.2d 71 (D.D.C. 2003), and the Court of Appeals denied the individuals' petition for a writ of mandamus.

At a later time, on its own motion, the Court of Appeals reassigned the matter to another judge for other reasons. I was selected to speak on behalf of all of the named individuals at the first hearing before the new judge to whom the case was assigned. The court denied all of the pending motions for order to show cause on January 16, 2007.

My representation lasted from 2001 to 2007. I was lead counsel of record with co-counsel John Thorpe Richards, Jr., Trout Cacheris, PLLC, 1350 Connecticut Ave., NW, Suite 300, Washington, D.C. 20036, Tel (202) 464-3300. Robert D. Luskin, Patton Boggs, 2550 M Street, N.W., Washington, D.C. 20037, Tel (202) 457-6190; and Dwight Bostwick, Zuckerman, Spaeder, 1800 M Street, N.W., Washington, D.C. 20036, Tel (202) 778 – 1882, represented other individuals named in the contempt motions. Opposing Counsel was Keith Harper, Kirkpatrick Stockton, Suite 900, 607 14th St., N.W., Washington, D.C. 20005, Tel (202) 508 – 5844.

Citations:

Cobell v. Norton, 237 F. Supp.2d 71 (D.D.C. 2003)

In re Brooks, 383 F.3d 1036 (D.C. Cir. 2004), *cert. denied*, *Babbitt v. United States District Court for the District of Columbia*, 543 U.S. 1150 (2005).

- (4) Representation of The Boeing Company in *Space Technology Development Corp., v. The Boeing Company*, No. 1:05cv411 (E.D. Va.) (Leonie M. Brinkema, U.S.D.J)

Space Technology Development Corp. brought a breach of contract action against Boeing arising out of a letter of intent. We successfully moved to dismiss the matter for failure to state a claim, arguing that the letter was not a contract, but simply an agreement to agree. The trial court's holding was upheld on appeal, and the motion for rehearing was denied. I was the principal counsel at the District Court and on appeal, and I argued the case in the Fourth Circuit on the day after I argued the first Jefferson appeal: *In re Grand Jury Subpoena: John Doe*, No. 05GJ1318, 584 F.3d 175 (4th Cir. 2007).

My representation lasted from 2005 to 2007. I was lead counsel of record with co-counsel John Thorpe Richards, Jr., Trout Cacheris, PLLC, 1350 Connecticut Ave., NW, Suite 300, Washington, D.C. 20036, Tel (202) 464-3300. Opposing Counsel was Jan I. Berlage, Gohn, Hankey & Stichel, LLP, 201 N. Charles Street, Suite 2101, Baltimore, MD 21202, Tel (410) 752-9300.

Space Technology Development Corp., v. The Boeing Company, 209 Fed.Appx. 236, 2006 WL 3612816 (4th. Cir. December 12, 2006).

- (5) Representation of the Commonwealth of Virginia in *Commonwealth v. Campbell*, Cr. No. 89-2067-F-08 (Va. Cir. Ct.) (Hon. William W. Sweeney, J.)

In 1989, my partner, William D. Dolan, was appointed by the judges of the Circuit Court for the City of Norfolk to investigate charges that Judge Joseph A. Campbell had altered the traffic court docket to disguise the fact that the Commonwealth's attorney for Virginia Beach—whose driving record was a political issue—had been charged with a traffic offense. Mr. Dolan asked me to co-try the case with him in light of my experience as a prosecutor. We divided the key direct and cross-examinations, and I gave the closing argument.

The case presented a series of factual problems, as a number of the court clerks, concerned about their own involvement, had given inconsistent statements to investigators, and the court's own computer recorded the changes to the docket in a sequence different from that recalled by any witness. Legal questions were raised concerning the requisite intent, double jeopardy concerns, and other issues involved in the jury instructions.

After trial by jury, we obtained the first felony conviction of a sitting judge in the history of the Commonwealth.

My representation lasted from 1989 to 1990. I was counsel of record with co-counsel William D. Dolan, Venable, 8010 Towers Crescent Drive, Suite 300, Vienna, Virginia 22182, Tel (703) 760-1680. Principal opposing counsel were Wayne Lustig (now deceased); William P. Robinson, Jr. (now deceased); and Anthony Troy, Troutman Sanders, 1001 Haxall Point, Richmond, VA 23219, Tel (804) 697-1318.

- (6) Representation of Defendant in *United States v. Mahoney*, No. 88-0216 (D.D.C.) (Oliver Gasch, U.S.D.J.)

This perjury case grew out of a nationwide grand jury investigation of bid rigging in the electrical contracting industry. While represented by other counsel, Mr. Mahoney testified with immunity before the grand jury, and the Antitrust Division alleged that he did not testify truthfully concerning meetings of industry officials. The case was tried to a jury before Judge Gasch in 1988. I cross-examined several immunized witnesses and gave the closing argument. The defendant was convicted; I wrote the brief on appeal and handled the oral argument. The conviction was affirmed.

My representation lasted from approximately 1986 to 1990. I was counsel of record with co-counsel Gerard F. Treanor, Venable, 575 7th Street, N.W., Washington, D.C. 20004, Tel (202) 344-8115. Opposing Counsel was AUSA Stuart Berman, United States Attorney's Office for the District of Maryland, Southern Division, U.S. Courthouse, 6500 Cherrywood Lane, Greenbelt, MD 20770.

United States v. Mahoney, 893 F. 2d 400 (D.C. Cir. 1990)

United States v. Mahoney, No. 88-0216-OG, 1989 WL 7385 (D.D.C. January 26, 1989)

- (7) Representation of Petitioner in *Bunch v. Thompson*, a pro bono death penalty appeal.

Under the leadership of former Attorney General Benjamin R. Civiletti, Venable volunteered to take on a pro bono death penalty appeal, and I was lead counsel on the matter. We handled the federal habeas petition at the U.S. District Court for the Eastern District of Virginia, the Fourth Circuit, and the Supreme Court of the United States, and, with the support of the victim's family, prepared a clemency petition for the governor. When clemency was denied, we filed a second habeas petition, moving up through the Circuit Court of Prince William County, the Virginia Supreme Court, and the entire federal system again. We had no claim of innocence to pursue—the petition was based upon a violation of the defendant's *Miranda* rights that resulted in a confession. In the Fourth Circuit, we obtained a rare dissent from one member of the panel. Ultimately, the appeal was unsuccessful.

My representation lasted from approximately 1990 to 1992. I was lead counsel of record with co-counsel Maria H. Tildon (then at Venable), Carefirst Blue Cross Blue Shield, 10455 Mill Run Circle, Owings Mills, Maryland 21117, Tel (410) 998 – 6001; and Gerard F. Treanor and Karl A. Racine, Venable, 575 7th Street, N.W., Washington, D.C. 20004, Tel (202) 344-8115. Representing the government was John H. McLees, Jr., Assistant Attorney General, Office of the Attorney General, 900 East Main Street, Richmond, VA 23219, Tel (804) 786 – 2071.

Bunch v. Thompson, 949 F.2d 1354 (4th Cir. 1991), *cert. denied*, 505 U.S. 1230 (1992), *reh'g. denied*, 505 U.S. 1244 (1992)

- (8) Representation of Defendant in *United States v. Thomas* – Military court martial, Dover AFB (I have been unable to locate the Case Number, Judge, and opposing counsel)

An Air Force obstetrician, who had only recently completed her medical training, was charged with leaving her post when she left the hospital while a patient—a high ranking officer's wife—was in labor. Dr. Thomas departed the hospital at the end of her lengthy shift only after she had been informed that the physician relieving her was on his way, but the baby was born in the interim. Although there were no complications with the delivery, the doctor faced not only the end of the career she had just begun, but imprisonment for criminal dereliction of duty. We were able to obtain records from the hospital that reflected other officers' practices and used them to cross examine the government's witnesses about the scope of an obstetrician's duty under the circumstances. Our client was acquitted by the court. I handled several witnesses and made the argument to the court at the close of the government's case.

My representation lasted from approximately 1986 to 1988. I was counsel of record with co-counsel Gerard F. Treanor, Venable, 575 7th Street, N.W., Washington, D.C. 20004, Tel (202) 344-8115.

- (9) Representation of the United States in *United States v. Jordan*, Crim. No. F-1164-85 (D.C. Sup. Ct.) (Hon. Eugene M. Hamilton, J.)

Defendant Jordan was charged with two counts of first degree murder arising out of the deaths of the 3-year-old child of two D.C. police officers and her babysitter. The case raised difficult questions surrounding the admissibility of a confession and presented numerous issues arising out of the presence—or absence—of forensic evidence.

Mr. Jordan, an alcoholic, was questioned by Metropolitan Police officers. Since he was not in custody at the time the interview began, he was generally advised of his right to remain silent and his right to counsel, but the complete set of *Miranda* warnings was not read. Under questioning, he confessed to killing the babysitter and molesting and killing the child. After he had confessed and provided the officers with considerable detail that only the murderer would know, he was placed under arrest, and a formal *Miranda* waiver was executed.

As his stay at the police station wore on, Mr. Jordan began to exhibit signs of alcohol withdrawal. After his arrest, he agreed to be questioned again on videotape. By then, the withdrawal symptoms had worsened, and the physical effects of his illness were evident on the tape. Also, Mr. Jordan omitted or confused many of the details in the videotaped version of the interview. Thus, both the lengthy pre-trial hearings and the trial entailed considerable psychiatric testimony and legal argument as the defendant challenged the voluntariness of his confession and also sought to suppress it under *Miranda v. Arizona*.

The defendant was tied to the scene by several carpet fibers present on his clothing the day he was arrested, three weeks after the murders. However, his fingerprints were not among those found, and his blood, semen, and saliva were not found on the premises or

on the victim's clothing. The trial therefore also involved dueling experts in each of these fields of forensic science.

After the defendant was convicted of two counts of first degree murder, the Washington Post reported: "The jury had deliberated 15 hours over three days in the case that had produced some of the most emotional moments, hard-fought courtroom legal battles, and unusual legal twists in recent memory at D.C. Superior Court." I was sole counsel on every aspect of the matter, including a mid-trial emergency appeal.

My representation took place in 1985. I was the sole prosecutor assigned to the case. Defense counsel was James McComas (then Chief, Felony Trial Division, D.C. Public Defender Service), P.O. Box 227, Park Falls, WI 54552, Tel (715) 583-2269.

- (10) Representation of the United States in *United States v. King* (I have been unable to locate the Case Number) (D.C. Sup. Ct.) (Joseph M.F. Ryan, J.)

This was a retrial after a hung jury when the case was first tried by another prosecutor. The defendant was charged with second degree murder and assault with intent to kill while armed for an attack on his grandparents that resulted in his grandfather's death and severe injuries to his grandmother. This time, he was convicted.

My representation took place in 1984. I was the sole prosecutor assigned to the case. Defense counsel was Michele D. Roberts (then at the D.C. Public Defender Service), Akin Gump Strauss Hauer & Feld, PLLP, 1333 New Hampshire Avenue, N.W., Washington, DC 20036, Tel (202) 887-4306.

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 not engaged in any lobbying activities.

2010: On March 5, the D.C. City Council retained Trout Cacheris to assist in its investigation of alleged irregularities surrounding the award of over 80 million dollars' worth of contracts to individuals associated with the Mayor. This matter has just begun, but we will be reviewing the results of the Special Committee's investigation to date, assisting in taking additional testimony, and providing our independent analysis. This is a pro bono representation.

2008: Representation of Defendant Taneja in *United States v. Taneja*. Mr. Taneja came to Trout Cacheris when his mortgage company was sued civilly by Wells Fargo in April of 2008. The pleadings alleged a complicated mortgage fraud scheme, and we initiated

contact with the United States Attorney's Office to negotiate a resolution of the criminal prosecution that we anticipated would ensue. In the meantime, Mr. Taneja filed for bankruptcy. At the time of Mr. Taneja's plea to a \$50 million dollar scheme, the U.S. Attorney's Office for the Eastern District of Virginia announced that his was the largest bank fraud case in the history of the Office. I was co-counsel on this matter but undertook primary responsibility for preparing Mr. Taneja for and facilitating the multiple debriefing sessions with the Department of Justice, as well as interacting with the large and contentious group of attorneys for the many creditors. The representation involved extensive negotiations over the terms of the plea agreement and the preparation of sentencing memoranda. Mr. Taneja was sentenced to a term of seven years. The extent of the fraud, and the difficulties involved in defending a mortgage fraud case during a time of great public interest in the role of mortgage market in the collapse of the economy made this a significant matter.

2007 – present: Representation of the head of world wide sales and marketing for the cargo division of a Chilean airline in an international criminal antitrust investigation involving fuel surcharges. The investigation is ongoing, and I have had no contact with the prosecutor to date.

2006 – 2008: Representation of an industrial chemical company salesperson who was the target of a bribery investigation into her company's use of awards for volume purchases. The representation involved many meetings with the client to ascertain the facts, debriefing sessions with the prosecutors, and finally, a presentation in which we successfully urged the government to decline prosecution.

2006: Internal investigation: I had primary responsibility for a sensitive internal investigation at a major law firm looking into an employment dispute with a former partner. I interviewed a number of attorneys at the firm, reviewed emails and other documents, and reported our findings to the firm's general counsel and other members of the management team.

2005: Representation of Defendant in *United States v. Bedewi*. Dr. Bedewi, an internationally renowned engineering professor at George Washington University, was alleged to have overcharged the U.S. government more than \$700,000 on research contracts with the Department of Transportation. The matter resulted in a guilty plea and period of incarceration as well as a civil settlement of the false claims. I was involved in amassing and understanding the financial data, negotiating the terms of the plea and settlement, and preparing a sentencing memorandum.

2003 – 2004: Representation of the president of an industrial coal company in a criminal antitrust investigation: Our client was initially identified as a target of the criminal investigation, but he eventually testified before the grand jury and his testimony helped persuade the Antitrust Division that the matter did not warrant criminal prosecution.

2002 – 2005: Representation related to the embezzlement of funds from the Washington Teacher's Union by Barbara Bullock: I represented Ms. Bullock's sister, who had been a recipient of many of the ill-gotten luxury items, and our engagement began when the FBI

executed a search warrant at her home. My client cooperated with the federal investigation, and ultimately, the government did not bring charges against her. I also represented Ms. Bullock's sister in the parallel civil actions that were joined in *American Federation of Teachers v. Bullock*, No. 03-CV-79 (D.D.C.)

2001 – 2003: Representation of Plaintiff in Baycol MDL: We represented an individual in an action against Bayer, A.G., the manufacturer of the cholesterol lowering drug Baycol. Baycol was removed from the market in August 2001 due to reports of rhabdomyolysis, a severe and often fatal adverse reaction. Rhabdomyolysis involves muscle cell breakdown, which can lead to renal failure and other organ failure when the contents of the muscle cells enter the bloodstream. Elderly patients, especially those also taking another lipid lowering drug, were most susceptible to fatal rhabdomyolysis reactions. Our client began experiencing muscle weakness shortly after she began taking the medication, and her condition rapidly deteriorated. She reached the point where she could not move her arms and legs, and her muscle weakness compromised her ability to breathe, swallow, and open her eyes. She was close to death when her treating physicians recognized what was causing the problem. Our complaint was joined with others in the Baycol multi-district litigation, and the matter resulted in a negotiated settlement.

2001 – 2003: Representation of Carol Browner, the former Administrator of the U.S. Environmental Protection Agency: We represented Ms. Browner in connection with contempt proceedings in *Landmark Legal Foundation v. Environmental Protection Agency*, 272 F. Supp.2d 70 (D.D.C. 2003). In 2000, the plaintiffs brought a Freedom of Information Act action seeking agency records concerning certain proposed regulations. On January 19, 2001, the eve of the change in administrations, the plaintiffs sought an order from the court barring the destruction of any responsive records. The court issued the order, but on that same date, Ms. Browner requested that her hard drive be reformatted and wiped clean in anticipation of the transition. Ms. Browner did not have notice of the court's order at the time, and she did not utilize email during her term as EPA Administrator in any event. Based upon those facts, the court denied the plaintiffs' motion to hold Ms. Browner in contempt personally although it granted the motion for sanctions against the agency.

1992 – 1994 (approx): Representation of a doctor and his wife who were passengers on USAir flight 405: In March 1992, a plane leaving LaGuardia for Cleveland attempted to take off even though too much time had elapsed after the wings had last undergone de-icing. Our clients survived the crash that plunged the plane into Flushing Bay, but they were badly injured. The wife was one of the most seriously injured passengers not killed in the crash, and she underwent multiple operations to repair the damage to her legs. The husband sustained a shoulder injury. While the passengers were struggling to get out of the frigid waters, the fuel on the surface ignited, and both of our clients also suffered burns which required them to endure excruciating burn treatment. The passengers' cases were consolidated in the multi-district litigation for proceedings on the availability of punitive damages, but the cases were handled individually for purposes of compensatory damages. Our case raised particularly complicated and interesting valuation issues. The couple was quite wealthy, and the husband was eventually able to return to his radiology

practice, but his economic success had come from his entrepreneurial energy and creativity, which were severely dampened by the emotional effects of the crash. The wife did not lose any income, but she had been a dancer and tennis player, and her legs were permanently damaged. The matter was resolved after protracted negotiations.

1988 – 1992: Representation of Dr. Baltimore: I participated in Venable's representation of a Nobel prize winning biologist in connection with allegations of fraud in scientific research reported in an article which he co-authored. While Dr. Baltimore personally was not alleged to have engaged in any wrongdoing, he became the public face of the case due to his vociferous defense of his colleague, Dr. Imanishi-Kari. The matter was significant because it involved monitoring parallel Congressional, administrative, and criminal proceedings, as well as managing the many consequences of the publicity surrounding the charges. The Congressional committee investigating the matter brought in document examiners from the U.S. Secret Service, who performed an ink and paper analysis and accused Dr. Imanishi-Kari of falsifying data. The U.S. Attorney's office ultimately concluded that the Secret Service's analysis was flawed and unreliable, and no criminal charges were brought.

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.

Intensive Session in Trial Advocacy Skills: Georgetown Law Center/D.C. Bar CLE,
Team Member—2007, 2002, 1998, 1985 – 1990
Team Leader—1991-1993

National Institute for Trial Advocacy:
Washington, D.C. (Advanced Advocates Program) 2009
Gainesville, FL (Advanced Program) 1988
Lawrence, KS 1988—1989
Boulder, CO 1987
NITA Teacher Training Program

Harvard Law School – Instructor, Trial Advocacy Workshop 1984—1992
Emory Law School – Instructor, Trial Advocacy Workshop 1990
University of Texas – Instructor, Trial Advocacy Workshop 1989

I did not use syllabi in teaching these courses and so I have none to supply.

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 do not expect to derive any income from any deferred income arrangements. I have a pension plan at Trout Cacheris, which I would roll over into an individual IRA if I am confirmed. My capital investment in the firm would be returned to me pursuant to the firm's Operating Agreement.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I do not have plans to pursue outside employment during my service with the court.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

If confirmed, I would recuse myself from any matter in which a party is represented by Trout Cacheris (my current law firm) or Kelley Drye (where my husband is a partner).

At present, my husband and I own stock in a number of public companies. If confirmed, I will follow the guidance of the Administrative Office of U.S. Courts and of the District Court in undertaking any appropriate reinvestment into diversified funds. If I continue to own any individual stocks, I would recuse myself from any cases in which I have investments.

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

I would handle all matters involving potential conflicts of interest through careful adherence to the Code of Conduct for United States Judges as well as other

relevant Canons and statutory provisions, seeking to avoid not only actual conflicts of interest, but the appearance of any conflict. I would seek the advice of the Chief Judge and other more experienced jurists on the court if I was uncertain about what to do, and in close questions, I would err on the side of caution.

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.

At Trout Cacheris, I have worked on several matters for the non-profit organization, Food & Friends (approximately 25 hours). In 2005, I was retained by a small elementary school to look into allegations of inappropriate conduct by a teacher. The matter required great sensitivity in balancing the needs and sometimes conflicting views and concerns of the school students, their parents, the rest of the faculty, the school, and the teacher involved. This pro bono representation involved more than 30 hours of time. I currently represent a public charter school at a substantially reduced hourly rate (115 hours to date), and I also represented a group of young Bowie State College students in a small pro bono matter (25 hours).

On March 5, 2010, a Special Committee of the D.C. City Council engaged my partner, Robert Trout, and Trout Cacheris on a pro bono basis to assist it in its investigation of alleged irregularities surrounding the award of over 80 million dollars' worth of contracts to individuals associated with the Mayor. I am assisting in this effort. We have been reviewing the results of the Special Committee's investigation to date, assisting in taking additional testimony, and providing our independent analysis, and I have expended more than 150 hours on this matter to date. The work is likely to continue to occupy a substantial portion of my time for the next several months.

I also supervised and participated in a number of pro bono matters at Venable. In particular, I served as lead counsel when Venable undertook the pro bono representation of an indigent individual sentenced to death in Virginia. We pursued federal habeas relief at the U.S. District Court for the Eastern District of Virginia, the Fourth Circuit, and the U.S. Supreme Court, and prepared a clemency petition for the governor. When clemency was denied, we filed a second habeas petition, moving through the state system—the Circuit Court of Prince William County and Virginia Supreme Court—and the entire federal system again. Over the course of the representation, I personally spent more than 250 hours on the matter.

Also, I edited and supervised work on an amicus brief that Venable attorneys drafted pro bono for the Women's Legal Defense Fund, on the question of whether the prior sexual history of the victim of sexual misconduct by a doctor should be admissible in a professional disciplinary proceeding.

From 1996 to 2001, I served as a member of the Parents Steering Committee for the Interdisciplinary Council for Learning and Communication Disorders, creating written materials and panel presentations for parents of children with autism.

Finally, when I left the U.S. Attorney's office in 1986, I volunteered to serve a three-year term as a Board member for the D.C. Rape Crisis Center in an effort to continue my work on behalf of victims of crime. After my term ended, I assisted by training volunteers three times a year and taking many calls at no charge informing RCC counselors and clients about their legal rights and obligations. I devoted at least 200 hours to Rape Crisis Center matters.

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.

On May 15, 2009, I submitted an application to Congresswoman Eleanor Holmes Norton's District of Columbia Nominating Commission in response to the Commission's public solicitation of applications for the three vacancies on the court. I was interviewed by the Commission on July 3, 2009. The Commission recommended me to the Congresswoman, and she interviewed me on October 8, 2009. The Congresswoman then submitted my name, along with others, to the White House. In early November 2009, I updated my application to the Commission in connection with its announcement of the fourth vacancy on the court. I appeared before the Commission again on January 4, 2010.

Since March 7, 2010, I have been in contact with pre-nomination officials at the Department of Justice. I interviewed with attorneys from the White House Counsel's Office and the Department of Justice on April 13, 2010. On June 17, 2010, the President submitted my nomination to the Senate.

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

No.

AFFIDAVIT

I, **AMY BERMAN JACKSON**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

June 16, 2010
(DATE)

Amy Berman Jackson
(NAME)

Sharyn M. Ellerbe
(NOTARY)

Sharyn M. Ellerbe
Notary Public, District of Columbia
My Commission Expires 11/14/2011