

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Andrew David Hurwitz

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

United States Circuit Judge for the Ninth Circuit

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

Arizona Supreme Court
1501 West Washington Street
Phoenix, Arizona 85007

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

1947; New York, New York

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.

1968 – 1972, Yale Law School; J.D., 1972 (Member of class of 1971, graduated one semester after entering class because of military service)

1964 – 1968, Princeton University; A.B., *cum laude*, 1968

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.

2003 – present
Arizona Supreme Court
1501 West Washington Street
Phoenix, Arizona 85007
Vice Chief Justice (2009 – present)
Justice (2003 – 2009)

1977 – 1980; 1988; 1994 – 1995; 2001; 2004 – present
Sandra Day O'Connor College of Law
(formerly known as Arizona State University College of Law)
1100 South McAllister Avenue
Tempe, Arizona 85287
Adjunct Professor (1977 – 1980; 1988; 2004 – present)
Distinguished Visitor from Practice (2001)
Visiting Professor of Law (1994 – 1995)

1974 – 1980; 1983 – 2003
Osborn Maledon, PA (and predecessor firms, Meyer Hendricks Victor Osborn &
Maledon, PA and Martori Meyer Hendricks & Victor, PA)
2929 North Central Avenue, 21st Floor
Phoenix, Arizona 85012
Shareholder (1977 – 1980; 1983 – 2003)
Associate (1974 – 1977)

January – April 1988
Office of Arizona Governor Rose Mofford
1700 West Washington Street
Phoenix, Arizona 85007
Chief of Staff (volunteer capacity, while on leave from law firm)

1980 – 1983
Office of Arizona Governor Bruce Babbitt
1700 West Washington Street
Phoenix, Arizona 85007
Chief of Staff

1973 – 1974
Hon. Potter Stewart (deceased)
Supreme Court of the United States
1 First Street NE
Washington, D.C. 20543
Law Clerk

1972 – 1973

Hon. J. Joseph Smith (deceased)

United States Court of Appeals for the Second Circuit

450 Main Street

Hartford, Connecticut 06103

Law Clerk

January – August 1972

Hon. Jon O. Newman

United States District Court for the District of Connecticut

(now Senior Judge, United States Court of Appeals for the Second Circuit)

450 Main Street

Hartford, Connecticut 06103

Law Clerk

Summer 1971

Orrick Herrington & Sutcliffe

405 Howard Street

San Francisco, California 94105

Summer Clerk

Summer 1971

Lewis & Roca

40 North Central Avenue, Suite 1900

Phoenix, Arizona 85004

Summer Clerk

September 1969 – January 1970; June – September 1970

Jacobs Grudberg & Belt

350 Orange Street

New Haven, Connecticut 06503

Law Clerk

Summer 1968

New Jersey Department of Community Affairs

101 South Broad Street

Trenton, New Jersey 08608

Summer Intern

Other Affiliations (uncompensated):

1992 – 2003

Children's Action Alliance

4001 North Third Street, Suite 160

Phoenix, Arizona 85012

Board of Directors (1999 – 2003)

Secretary (2002 – 2003)

1989 – 2003

Arizona State University Research Park

8750 South Science Drive

Tempe, Arizona 85284

Board of Directors

1994, 1996, 1998

Arizona Court of Appeals, Division I

State Courts Building

1501 West Washington

Phoenix, Arizona 85007

Judge Pro Tempore

1992 – 1993

Arizona Board of Regents

220 North Central Avenue, Suite 230

Phoenix, Arizona 85004

President

1986 – 1988

Arizona Center for Law in the Public Interest

202 East McDowell Road, Suite 153

Phoenix, Arizona 85004

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.

Connecticut Army National Guard/US Army Reserve, April 1969 to May 1975; last rank Specialist 5; Honorable Discharge

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.

500 Leading Judges in America, *Lawdragon* Magazine (2006)

Best Lawyers in America (1995 – 2005)

America's Leading Lawyers for Business, Chambers USA (2003)

Willard H. Pedrick Lecture, Sandra Day O'Connor College of Law, Arizona State University (1999)

Top score, State of Arizona Bar Examination (July 1974)

Note & Comment Editor, Yale Law Journal (1971 – 1972)

Benjamin N. Cardozo Prize for Best Brief in Moot Court (appeals), Yale Law School (1970)

Phi Beta Kappa, Princeton University (1968)

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.

Advisory Committee on Federal Rules of Evidence

American Bar Association

American Bar Foundation

Life Fellow (2009 – present)

Fellow (2004 – 2009)

American Judicature Society

American Law Institute

Arizona Courts Ad Hoc Committee on Rules of Evidence

Chair (2010 – 2011)

Arizona Foundation for Legal Services and Education (formerly Arizona Bar Foundation)

Sustaining Fellow (2004 – present)

Commission on Technology of the Arizona Judicial Council
Chair (2009 – present)
Chair, E-Court Subcommittee (2006 – present)

Horace Rumpole Inn of Court

Maricopa County Bar Association

National Conference of Bar Examiners, Torts Drafting Committee

Pima County Commission on Trial Court Appointments
Acting Chair (2005 – 2009)

State Bar of Arizona

Committee on Rules of Professional Conduct (1985 – 1990)
Examination and Bar Review Committee (1986 – 1987)
Supreme Court Board of Governors Liaison (2003 – 2005)
Task Force on Professionalism (2005)

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.

Connecticut, 1973
Arizona, 1974

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, 1976
United States Court of Appeals for the Second Circuit, 1977
United States Court of Appeals for the Seventh Circuit, 1987
United States Court of Appeals for the Ninth Circuit, 1975
United States District Court for the District of Arizona, 1975
United States District Court for the District of Connecticut, 1977
United States Tax Court, 1987

There have been no lapses in membership.

11. **Memberships:**

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

Arizona Board of Regents (1988 – 1996)

President (1992 – 1993)

Ad Hoc Committee on University Access and Retention (1989)

Committee on Enrollment Growth (1993 – 1994)

Arizona Center for Law in the Public Interest

Board of Directors (1986 – 1988)

Arizona State University Research Park

Board of Directors (1989 – 2003)

Arizona Town Hall (1992 – 2004)

Children's Action Alliance

Board of Directors (1999 – 2003)

Secretary (2002 – 2003)

City of Phoenix

Chair, Street Environment Committee (1989 – 1990)

Chair, Neighborhood Improvement Committee (1986 – 1988)

Northern Arizona Princeton University Alumni Association (1983 – present)

Phoenix Swim Club (approx. 2001 – present)

Princeton Alumni Schools Committee (1983 – present)

United States Masters Swimming Association (approx. 2001 – present)

University Club of Phoenix (late-1980s to 1990s)

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

implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

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

Possible Responses to the ACTL/IAALS Report: The Arizona Experience, 43 Ariz. St. L.J. 461 (2011). Copy supplied.

Justice Respectfully Disagrees with Robb, Arizona Republic, Oct. 27, 2009. Copy supplied.

Ring Cycle, Arizona Attorney (Mar. 2006). Copy supplied.

Jon O. Newman and the Abortion Decisions: A Remarkable First Year, 46 N.Y.L. Sch. L. Rev. 231 (2002-2003). Copy supplied.

Dear Al: It's Time to Avert Crisis, Arizona Republic, Dec. 1, 2000. Copy supplied.

Everyone Needs to Contribute to Civility, Arizona Business Gazette, Apr. 29, 1999. Copy supplied.

Diversity Works for Law Schools, Society, Arizona Business Gazette, Apr. 22, 1999. Copy supplied.

Universities Not Awash in Money, Arizona Republic, June 28, 1993. Copy supplied.

Graduation Rates: The Dilemma and the Challenge, Phoenix Gazette, Nov. 30, 1992. Copy supplied.

A Threat to Phoenix's Future, Phoenix Gazette, Mar. 12, 1987. Copy supplied.

Taxpayer Suits and the Aggregation of Claims: The Vitiating of Flast by Snyder, 79 Yale L.J. 1577 (1970). Copy supplied.

The Jurisprudence of Arthur J. Goldberg, Senior Thesis Presented to the Faculty of the Department of Politics and the Woodrow Wilson School of Public and International Affairs, Princeton University, Apr. 16, 1968. 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.

Since 2010, I have served as chair of the Arizona Courts Ad Hoc Committee on Rules of Evidence. The committee issued a set of proposed revisions to the Arizona Rules of Evidence. Proposal supplied.

In 2010, Arizona Supreme Court Chief Justice Berch wrote a tribute to retiring Chief Justice McGregor, which I and the other justices signed. Copy supplied.

As a member of the Arizona Supreme Court, I endorsed *The Sedona Conference Cooperation Proclamation*, which advocates cooperation by parties in the discovery process. Copy supplied.

As a member of the Advisory Committee on the Federal Rules of Evidence, I voted to update the Evidence Rules in October 2007. A copy of a memo that includes the proposals with my and other committee members' comments on the proposals is supplied.

While I was a member of the Advisory Committee on the Federal Rules of Evidence, the committee also submitted reports to the Standing Committee on Rules of Practice and Procedure in 2005 and 2009. Copies supplied.

Since 2006, I have served on the e-Court subcommittee of the Arizona Judicial Council Commission on Technology and, since 2009, have also served as chair of the Commission. Each year, the Commission releases an Information Technology Strategic Plan and I have served since the release of the Fiscal Year 2007 report. Reports for FY 2007-2011 are available at <http://www.azcourts.gov/cot/HistoricalMaterials.aspx>. The report for FY 2012 is available at <http://www.azcourts.gov/cot/StrategicPlans.aspx>. I do not play a role in creating these reports, but do, as a commissioner, authorize the filing of the reports with the Arizona Judicial Branch.

Report of the Task Force on Professionalism, Mar. 21, 2005. Copy supplied.

In 1994, I led an effort to require annual reports from Arizona universities on whether they were meeting certain goals, known as the "Hurwitz Measures," with respect to undergraduate education. Meeting minutes from the 1994 discussion of

the goals are supplied, along with executive summaries of the 1995 and 1996 reports on the goals.

In 1993 and 1994, I chaired a statewide commission on enrollment growth in Arizona universities. A copy of the final report is supplied.

Our Common Commitment: Enhancing Ethnic Minority Integration and Achievement in Arizona's Universities, Arizona Board of Regents, Ad Hoc Committee on University Access and Retention, September 1989. 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.

Since 2009, I have made comments and given several presentations about my work on Arizona court committees to the Arizona Judicial Council on several occasions. Meeting minutes supplied.

On January 13, 2003, May 5, 2002, and March 7, 2002, I appeared before the Commission on Appellate Court Appointments to interview for a spot on the Arizona Supreme Court. I have no notes, transcripts or recordings, but press coverage of the January 2003 appearance is supplied.

In January 1993, in my capacity as a member of the Arizona Board of Regents, I testified before the Arizona Senate Education Committee in support of separating university tuition and fee revenues from state funding. I have been unable to obtain a transcript or recording, but press coverage is supplied.

On April 14, 1988, I testified before the Arizona Senate Government Committee about Governor Mofford's support for a state holiday to honor Martin Luther King, Jr. I have been unable to obtain a transcript or recording, but press coverage is supplied.

In 1984 or 1985, I wrote a letter on behalf of a client to the Arizona Department of Health Services regarding scientist Woodrow Monte's petition to ban NutraSweet. I do not have a copy of the original letter, but press coverage is supplied.

Between 1988 and 1996, I served on the Arizona Board of Regents. I often offered my policy views and also participated in voting on policies before the Board. Meeting minutes from July 1994 to the end of my tenure in 1996 are available at <http://tinyurl.com/azregents>. Additional press coverage of my statements on policy matters during meetings is also supplied.

In addition to the January 1993 instance listed above, I have testified before committees of the Arizona legislature on several other occasions in my capacity as a member of the Arizona Board of Regents concerning higher education issues. I have no copies of any such testimony. I have contacted the Arizona House of Representatives and Arizona Senate, and have been informed that their databases only identify those who testified before legislative committees since 2002, and that a search of those databases does not reveal my name as one who provided testimony. I have been informed that the only way to determine who provided testimony before the effective date of the databases is to search the minutes of each committee in each house of the legislature year by year.

- 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.

October 28, 2011 – Symposium on the Restyled Federal Rules of Evidence, Williamsburg, Virginia. I have no notes, transcript, or recording. The presentation was sponsored by the Marshall-Wythe School of Law, College of William & Mary, P.O. Box 8795, Williamsburg, Virginia 23187 and the Advisory Committee on the Federal Rules of Evidence, Administrative Office of the U.S. Courts, One Columbus Circle, NE, Suite 4-170, Washington, DC 20544.

October 12, 2011 – Comments for Bar Orientation, State Bar of Arizona, Phoenix, Arizona. A copy of my remarks is supplied.

October 6, 2011 – Updates to the Rules of Evidence, Presentation to the State Bar of Arizona, Phoenix, Arizona. A copy of my PowerPoint presentation is supplied. Copy of recording supplied.

June 23, 2011 – Rules of Evidence, Presentation to Arizona Judicial Conference, Paradise Valley, Arizona. A copy of my PowerPoint presentation is supplied.

April 27, 2011 – Presentation to the Yavapai County Bar Association, Prescott, Arizona. A copy of my PowerPoint presentation is supplied.

April 14, 2011 – Presentation to the Arizona Association of Defense Counsel, Phoenix, Arizona. A copy of my PowerPoint presentation is supplied.

February 25, 2011 – Nuts and Bolts Seminar, State Bar of Arizona, Phoenix, Arizona. A copy of my notes is supplied. Copy of recording supplied.

February 25, 2011 – State Bar Seminar on the Economic Loss Rule, Phoenix, Arizona. A copy of my notes is supplied. Copy of recording supplied.

February 23, 2011 – Presenter of CLE on the Rules of Evidence, Yavapai County Bar Association. I handed out a copy of the rules proposal supplied in response to 12(b).

January 21, 2011 – Swore in Superior Court Judge Peter Thompson, Phoenix, Arizona. I administered the Oath of Office and did not make additional remarks. I have no notes, transcript or recording. The address of the Superior Court is 201 West Jefferson, Phoenix, Arizona 85003.

January 21, 2011 – Presentation to the Forensic Science Academy, Phoenix, Arizona. I handed out a copy of the rules proposal supplied in response to 12(b) and additional handouts that are supplied.

October 29, 2010 – Presentation to the American College of Trial Lawyers, Phoenix, Arizona. A copy of my notes is supplied. Copy of recording supplied.

July 21, 2010 – Tour of the Arizona Supreme Court and dinner with members of Gen Next. I have no notes, transcript or recording. The address of Gen Next is 4100 MacArthur Boulevard, Suite 325, Newport Beach, California 92660.

July 15, 2010 – Panel on Pleading, State Bar of Arizona CLE by the Sea, Coronado, California. A copy of my notes is supplied. Copy of recording supplied.

July 15, 2010 – *Arizona Appellate Practice*, Presentation at CLE by the Sea. Copy of recording supplied.

June 25, 2010 – Meet the Justices panel, 2010 Arizona Supreme Court Review, State Bar of Arizona. I believe a recording of this event was made, and will supply a copy if I am able to obtain it.

June 12, 2010 – *New Topics in Evidence*, Presentation at the State Bar Convention, Tucson, Arizona. A copy of my PowerPoint presentation is supplied.

May 14, 2010 – Speech at the Graduation of the State Bar Leadership Institute, Phoenix, Arizona. A copy of my notes and press coverage are supplied.

May 11, 2010 – Presentation at the Duke Conference on Civil Litigation, Advisory Committee on Civil Rules, Durham, North Carolina. A copy of a report summarizing the event is supplied.

April 27, 2010 – Speech at Phoenix School of Law, Arizona Government Symposium, Phoenix, Arizona. Remarks supplied.

April 15, 2010 – Speech to the Federal Bar Association, Tucson, Arizona. A copy of my notes is supplied.

April 9, 2010 – *Meet the Bench*, Phoenix, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the State Bar of Arizona, 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

March 23, 2010 – Speech to the Yale Club of Phoenix, Tempe, Arizona. A copy of my notes is supplied.

February 12, 2010 – *The Federal Rules Amendment Process*, Presentation to the Federal District Conference, Phoenix, Arizona. A copy of my notes is supplied.

February 10, 2010 – Remarks to the Maricopa County Justices of the Peace, Phoenix, Arizona. A copy of my notes is supplied.

January 22, 2010 – Speech to the State Bar Appellate Section, Phoenix, Arizona. A copy of my notes is supplied.

January 8, 2010 – Brief Remarks for “We the People,” Phoenix, Arizona. A copy of my remarks is supplied.

November 19, 2009 – Arizona Supreme Court Technology Broadcast Introduction. Recording available at http://azcourts.gov/educationservices/COJETClassroom/VideoCenter/Broadcasts.aspx#BC_ITYGTDW.

October 28, 2009 – Remarks at the Condemnation Summit, Phoenix, Arizona. A copy of my notes is supplied.

October 13, 2009 – Speech to the Federalist Society (debate about judicial selection methods), Phoenix, Arizona. A copy of my notes is supplied and a letter to the editor that I wrote based on my remarks is supplied in response to 12(a).

September 10, 2009 – Remarks to the Bench and Bar Luncheon, Phoenix, Arizona. A copy of my notes is supplied.

June 19, 2009 – *2009 Updates in Evidence*, Presentation to the Arizona Judicial Conference, Phoenix, Arizona. I have no notes, transcript or recording. The address of the Arizona Supreme Court is 1501 West Washington, Phoenix, Arizona 85007.

June 6, 2009 – *An Inside Look at the Supreme Court*, Speech to the Arizona Association of Defense Counsel, Scottsdale, Arizona. A copy of my notes is supplied.

May 27, 2009 – *The Best Judges or the Best Judges Money Can Buy? Judicial Selection and Judicial Independence*, Speech to the Valley Citizens League, Phoenix, Arizona. A copy of my remarks is supplied.

May 15, 2009 – Commencement Speech, Sandra Day O'Connor College of Law at Arizona State University, Tempe, Arizona. A copy of my remarks is supplied.

April 30-May 1, 2009 – Faculty during 11th Annual Complex Litigation Conference focusing on attorney-client privilege, Sedona Conference. I spoke about Federal Rule of Evidence 502. I have no notes, transcript or recording. The address of the Sedona Conference is 5150 North 16th Street, Suite A-215, Phoenix, Arizona 85016.

April 18, 2009 – Remarks to the American College of Trial Lawyers, Sedona, Arizona. A copy of my notes is supplied.

April 2-3, 2009 – Remarks at Wake Forest Symposium on the Third Restatement of Torts, Winston-Salem, North Carolina. A copy of my notes and an audio recording are supplied. In the recording, my remarks begin around 58:30.

April 7, 2009 – *Insiders Perspective on the U.S. Supreme Court*, State Bar Presentation, Phoenix, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the State Bar of Arizona, 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

April 7, 2009 – Speaker at Unprofessional Conduct CLE, State Bar of Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the State Bar of Arizona, 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

March 2009 – Remarks, State Bar seminar Solo Practitioner/Small Firms. A copy of my notes is supplied.

February 6, 2009 – *Statutory Interpretation and the Role of the Judiciary*, State Bar CLE, Phoenix, Arizona. A copy of my notes is supplied.

February 5, 2009 – Judge for final round of First Amendment & Media Law Moot Court Competition, ABA Forum on Communications Law. I have no notes, transcript or recording. The address of the ABA Forum is MS 18.2, 321 North Clark Street, Chicago, Illinois 60654.

January 30, 2009 – Remarks during the Chris Nakamura Judicial Outreach Workshop. I have no notes, transcript or recording, but Pima County Bar

coverage is supplied. The address of the Bar Association is 177 North Church Avenue, #101, Tucson, Arizona 85701.

November 14, 2008 – Speech to the State Bar Leadership Academy, Phoenix, Arizona. A copy of my notes is supplied.

November 10, 2008 – Speech to the Scottsdale Rotary Club, Scottsdale, Arizona. A copy of my remarks is supplied.

November 7, 2008 – Remarks at the Investiture of G. Murray Snow, U.S. District Court for the District of Arizona, Phoenix, Arizona. A copy of my remarks is supplied.

November 4, 2008 – Panelist, Panel on Merit Selection, State Bar of Arizona, Tempe, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the State Bar of Arizona, 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

November 2008 – Speech to the Scottsdale Bar Association, Scottsdale, Arizona. A copy of my notes is supplied.

October 21, 2008 – *The First Amendment: Why it Matters*, Remarks at the Walter Cronkite School of Journalism, Phoenix, Arizona. I have no notes, transcript or recording. The presentation was sponsored by the Walter Cronkite School of Journalism, Arizona State University, 555 North Central Avenue, Phoenix, Arizona 85004.

October 16, 2008 – *An Inside Look at the Supreme Court*, Speech to the Arizona Courts Association, Parker, Arizona. A copy of my notes is supplied.

September 20, 2008 – *Defining and Encouraging Lawyer Professionalism: The Recent Arizona Experience*, Speech to the American Bar Association Section of Environment, Energy and Resources. A copy of my remarks is supplied.

June 16, 2008 – *Laying the Foundation for Evidentiary Law*, presentation to the Arizona Judicial Conference, Phoenix, Arizona. A copy of the outline of the course is supplied.

May 22, 2008 – Q&A Panel, Supreme Court Review CLE, Phoenix, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the State Bar of Arizona, 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016. Copy of recording supplied.

April 24, 2008 – Speech regarding Larry Hammond's Receipt of the Justice Award, American Judicature Society, Scottsdale, Arizona. A copy of my remarks is supplied.

April 11, 2008 – Special Action Procedure CLE, State Bar of Arizona seminar, Phoenix, Arizona. A copy of my notes is supplied.

April 8, 2008 – *Unprofessional Conduct*, Remarks to the Scottsdale Bar Association, Scottsdale, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the Scottsdale Bar Association, 7145 East First Street, Scottsdale, Arizona 85251.

February 2008 – Remarks on Supreme Court law clerks, “Conversations on the Supreme Court” course, James E. Rogers College of Law. I have no notes, transcript or recording. The address of the College of Law is P.O. Box 210176, Tucson, Arizona 85721.

January 7, 2008 – Remarks at New Judge Orientation, Phoenix, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the Supreme Court of Arizona, 1501 West Washington Street, Phoenix, Arizona 85007.

December 1, 2007 – Speaker on *Ring v. Arizona* during a “Stories from the Gavel: Arizona Case Law” lecture series, Arizona Historical Society, Tucson, Arizona. A copy of my outline is supplied.

December 2007 – Ring Lecture, Federal Bar Association. I used the same outline as supplied for the December 1, 2007 event.

December 2007 – Death Penalty Seminar, Federal Public Defenders Office, Phoenix, Arizona. A copy of my notes is supplied.

November 2007 – *Is it Ethical to be Unprofessional*, Webcast on Professionalism, State Bar of Arizona, Phoenix, Arizona. A copy of my notes is supplied. Copy of recording supplied.

September 12, 2007 – *Managing the Capital Case in Arizona*, presentation to the National Judicial College, Phoenix, Arizona. A copy of my PowerPoint presentation is supplied.

September 7, 2007 – *The Supreme Court Rules Process and Notable Actions from the Most Recent Rules Agenda*, Bench and Bar Luncheon. A copy of my notes is supplied.

September 2007 – Remarks at Law Clerk Orientation, Phoenix, Arizona. A copy of my notes is supplied.

August 8, 2007 – Speech to the Court Services Division, Phoenix, Arizona. A copy of my notes is supplied.

June 21, 2007 – *Marbury v. Madison*, remarks at the Arizona Judicial Conference. I have no notes, transcript, or recording. The presentation was sponsored by the Judicial College of Arizona, 1501 West Washington, Phoenix, Arizona 85007.

May 8, 2007 – Moderator for a panel on a book by Clint Bolick that dealt with judicial activism versus judicial deference, Federalist Society, Phoenix Chapter. I have no notes, transcript or recording. The Society does not have a physical address, but its current president is Paul Avelar, 398 South Mill Avenue, Suite 301, Tempe, Arizona 85281.

May 4, 2007 – Q&A Panel, Supreme Court Review CLE, Tempe, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the State Bar of Arizona, 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

May 2, 2007 – Discussed selection of state court judges with winners of the Law Day Essay contest, co-sponsored by the Arizona Supreme Court, Maricopa Bar Association and Arizona Foundation for Legal Services and Education. I have no notes, transcript or recording. The address of the Arizona Supreme Court is 1501 West Washington Street, Phoenix, Arizona 85007. The address of the Maricopa Bar Association is 303 East Palm Lane, Phoenix, Arizona 85004. The address of the AFLSE is 4201 North 24th Street, Suite 210, Phoenix, Arizona 85016.

May 2007 – Discussed separation of powers with students from Glendale Mountain Ridge's *We the People* team for a Law Day event. I have no notes, transcript or recording. The address of Mountain Ridge is 22800 North 67th Avenue, Glendale, Arizona 85310.

Spring 2007 – Judge for the final round of the James E. Rogers College of Law Moot Court program. I have no notes, transcript or recording. The address of the College of Law is P.O. Box 210176, Tucson, Arizona 85721.

February 27, 2007 – Administered Oath of Office to State Representative Jonathan Paton. I have no notes, transcript or recording. The address of the House of Representatives is 1700 West Washington, Room 341, Phoenix, Arizona 85007.

December 18, 2006 – Speaker, Arizona Criminal Justice Information Sharing Symposium. I believe this event was sponsored by the Arizona Supreme Court. I have no notes, transcript or recording. The address of the Supreme Court is 1501 West Washington Street, Phoenix, Arizona 85007.

December 2006 – State Bar Motion Practice CLE, Phoenix, Arizona. A copy of my notes is supplied.

November 11, 2006 – Panelist for discussion of capital punishment, Council of Appellate Lawyers, American Bar Association. I have no notes, transcript or recording, but ABA coverage is supplied. The address of the ABA is 321 North Clark Street, Chicago, Illinois 60654.

November 2006 – Business Roundtable Meeting, Phoenix, Arizona. A copy of my notes is supplied.

October 10, 2006 – *An Inside Look at the Supreme Court*, Speech to the Arizona Trial Lawyers Association, Tucson, Arizona. A copy of my notes is supplied.

September 18, 2006 – Panel discussion on “The Rights and Responsibilities of an Independent Judiciary” during a Constitution Day event, James E. Rogers College of Law. Video of the event is available at <http://www.law.arizona.edu/frontpage/events/constitutionday2006.cfm>.

September 2006 – Speech to the Federalist Society Mixer, Phoenix, Arizona. A copy of my notes is supplied.

August 14, 2006 – Speech to First Year Students at the Arizona State University College of Law, Phoenix, Arizona. A copy of my notes is supplied.

June 14, 2006 – *An Ethical Conundrum for Government Attorneys – Who's Your Client*, speech to the National Conference of Regulatory Attorneys, Scottsdale, Arizona. A copy of my notes is supplied.

May 6, 2006 – Speech to the Primerus Convocation, Scottsdale, Arizona. A copy of my notes is supplied.

March 8, 2006 – *An Inside Look at the Supreme Court*, speech to the J. Reuben Clark Law Society, Phoenix, Arizona. A copy of my notes is supplied.

March 3, 2006 – Remarks at the Dobbs Symposium on Economic Torts, Tucson, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by University of Arizona College of Law, P.O. Box 210176, Tucson, Arizona 85721.

February 24, 2006 – *Advanced Evidence; The Confrontation Clause and Crawford*, speech to Limited Jurisdiction Judges (New Judge Orientation), Phoenix, Arizona. A copy of my notes is supplied.

December 2005 – Remarks at National Association of Attorneys General Seminar, Phoenix, Arizona. A copy of my notes is supplied.

December 2005 – Remarks on Motion Practice, State Bar of Arizona Seminar. A copy of my notes is supplied.

November 18, 2005 – Brief Remarks upon receiving a plaque from the State Bar of Arizona Board of Governors for serving as the Board’s Supreme Court Liaison. I have no notes, transcript or recording. The address of the State Bar is 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

June 18, 2005 – Remarks during awards luncheon of the State Bar of Arizona Annual Convention. I have no notes, transcript or recording, but bar coverage is supplied. The address of the State Bar is 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

June 17, 2005 – Remarks during a seminar on “Civil Rights in Wartime: From *Korematsu* to *Hamdi* and Beyond,” State Bar of Arizona Appellate Practice Section, State Bar of Arizona Annual Convention. I have no notes, transcript or recording, but press coverage is supplied. The address of the State Bar is 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

June 16, 2005 – Host of “Stump the Lawyer” during State Bar of Arizona Annual Convention. I have no notes, transcript or recording. The address of the State Bar is 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

June 15, 2005 – Remarks on insurance disclosure decision, Arizona State Bar Board of Governors meeting. Meeting summary supplied.

June 2005 – Remarks to Spirit of the Senses, Phoenix, Arizona. A copy of my notes is supplied.

May 2005 – Remarks regarding Japanese Internment and Executive Power, State Bar Convention, Tucson, Arizona. A copy of my notes is supplied.

April 9, 2005 – *An Inside Look at the Supreme Court*, speech to the Arizona Association of Defense Counsel, Las Vegas, Nevada. A copy of my notes is supplied.

March 17, 2005 – Talk at the Federal Bar Association, Phoenix, Arizona. A copy of my notes is supplied.

January 19, 2005 – Speech to the Apache Junction Rotary Club, Apache Junction, Arizona. A copy of my notes is supplied.

November 18, 2004 – Speaker at “More Sex, Murder, and the Media,” State Bar of Arizona CLE. Copy of recording supplied.

September 2004 – Speech to the Arizona Chamber of Commerce Public Policy Committee, Phoenix, Arizona. A copy of my notes is supplied.

June 25, 2004 – *The United States Supreme Court: The Year in Review*, Remarks at the Arizona Judicial Conference, Tucson, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the Judicial College of Arizona, 1501 West Washington, Phoenix, Arizona 85007.

May 1, 2004 – Served as a moot court judge for an oral argument reenactment of *Brown v. Board of Education*, Office of the Governor of Arizona and the Hayzel B. Daniels Bar Association. I have no notes, transcript or recording. The address of the Office of the Governor is Executive Tower, 1700 West Washington Street, Phoenix, Arizona 85007. The Hayzel B. Daniels Bar is now known as the Arizona Black Bar, whose address is P.O. Box 628, Phoenix, Arizona 85001.

April 16, 2004 – Q&A Panel, Supreme Court Review CLE, Phoenix, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the State Bar of Arizona, 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

April 2004 – Remarks On Supplemental Briefs and Oral Arguments (Location and sponsor unknown). A copy of my notes is supplied.

March 2004 – Remarks at the Phoenix Chamber of Commerce Public Policy Committee meeting in support of a merit system for judicial selection. I have no notes, transcript or recording, but press coverage is supplied. The address of the Chamber of Commerce is 201 North Central Avenue, Phoenix, Arizona 85004.

January 15, 2004 – *Reflection from Our Justice*, remarks to the Appellate Practice Section, Phoenix, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the State Bar of Arizona, 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

January 5, 2004 – Performed swearing-in ceremony for Phoenix Mayor Phil Gordon. I have no notes, transcript or recording. The address of the Phoenix Mayor's Office is 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003.

October 23, 2003 – Remarks for Bar Admission Ceremony, Phoenix, Arizona. A copy of my remarks is supplied.

October 17, 2003 – *Changes in the Capital Sentencing Law*, Panel Member, Tucson, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the State Bar of Arizona, 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

October 15, 2003 – Brown Bag Lunch CLE/COJET Session, Phoenix, Arizona. A copy of my remarks is supplied.

September 17, 2003 – Speech to the Yavapai County Bar Association. I have no notes, transcript, or recording. The presentation was sponsored by the Yavapai County Bar Association, P.O. Box 11679, Prescott, Arizona 86304.

September 16, 2003 – Speech to the Arizona Chapter of American Corporate Counsel, Phoenix, Arizona. A copy of my notes is supplied.

August 16, 2003 – Speech to First Year Students at the Arizona State University College of Law, Tempe, Arizona. A copy of my notes is supplied.

July 18, 2003 – Remarks on *Ring* and Other Criminal Law Issues, CLE By the Sea, San Diego, California. I have no notes, transcript, or recording. The presentation was sponsored by the State Bar of Arizona, 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

June 17, 2003 – *Open Forum for Appellate Court Judges*, Arizona Judicial Conference, Phoenix, Arizona. A copy of my outline is supplied.

June 17, 2003 – *Supreme Court Update*, remarks to the Arizona Judicial Conference, Phoenix, Arizona. A copy of my notes is supplied.

April 17, 2003 – Speech to the Federal Bar Association, Phoenix, Arizona. A copy of my remarks is supplied.

April 17, 2003 – Q&A Panel, Supreme Court Review CLE. I have no notes, transcript, or recording. The presentation was sponsored by the State Bar of Arizona, 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

March 17, 2003 – Remarks at Investiture, Tempe, Arizona. A copy of my remarks is supplied.

March 13, 2003 – Speech, Larry Hammond's Receipt of the Learned Hand Award, Phoenix, Arizona. A copy of my remarks is supplied.

March 3, 2003 – *Gubernatorial Transitions*, speech to the Harvard Club of Phoenix, Phoenix, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the Harvard Club of Phoenix, P.O. Box 34496, Phoenix, Arizona 85067.

October 3, 2002 – Discussion of the *Ring* decision with Kent Cattani, Federalist Society at the Arizona State University College of Law. I have no notes, transcript or recording. The Society does not have a physical address, but its current president is Paul Avelar, 398 South Mill Avenue, Suite 301, Tempe, Arizona 85281.

October 19, 2001 – *Effective Oral Advocacy*, remarks to the Arizona Appellate Practice Institute, Phoenix, Arizona. A copy of my materials is supplied.

February 15, 2001 – Presentation about representation of the PGA tour, Federal Bar Association Phoenix Chapter. I have no notes, transcript or recording, but FBA coverage is supplied. The FBA Phoenix Chapter does not have a physical address.

April 5, 1999 – *Willard H. Pedrick Lecture*, Arizona State University College of Law, Tempe, Arizona. A copy of the lecture is supplied.

December 14, 1995 – ASU Winter Graduation Remarks, Tempe, Arizona. A copy of my remarks is supplied.

December 1995 – ASU West Winter Graduation Remarks, Phoenix, Arizona. A copy of my remarks is supplied.

October 12, 1995 – Remarks to the Judicial College of Arizona, Phoenix, Arizona. A copy of my outline is supplied.

March 24, 1995 – *Remarks on Appellate Oral Advocacy*, Speech to the Arizona Appellate Practice Institute, Phoenix, Arizona. A copy of my remarks is supplied.

November 5, 1993 – Remarks on the Dedication of Law Library (ASU), Tempe, Arizona. A copy of my remarks is supplied.

October 27, 1993 – *Defending a Deposition* (Sponsor and Location Unknown). A copy of my notes is supplied.

May 14, 1993 – Remarks at Northern Arizona University Commencement, Flagstaff, Arizona. A copy of my remarks is supplied.

February 12, 1993 – *So, You Want to Be an Appellate Lawyer?*; *Remarks on Appellate Strategy*, presentation to the State Bar of Arizona Appellate Practice Institute, Phoenix, Arizona. A copy of my remarks is supplied.

August 1992 – Arizona State University Summer Graduation Remarks. A copy of my remarks is supplied.

May 1991 – Arizona State University (ASU) Graduation Remarks, Tempe, Arizona. A copy of my remarks is supplied.

December 21, 1990 – Arizona State University (ASU) Graduation Remarks. I have no notes, transcript or recording, but press coverage is supplied.

As a member and later as President of the Arizona Board of Regents from 1988 to 1996, I regularly gave remarks on behalf of the Board at the commencement ceremonies of the three state universities and on other occasions. Other than those remarks listed above, I gave a number of other speeches, but have been unable to identify the dates and locate any notes, recordings and reports of these speeches. The address of the Arizona Board of Regents is 220 North Central Avenue, Suite 230, Phoenix, Arizona 85004.

I have administered the Oath of Office to a number of officials on multiple occasions. Other than the occasions listed above, I have been unable to identify the dates of the other times I have appeared at these events.

Additionally, I have also judged a number of moot court competitions and provided feedback to participants. Other than the occasions listed above, I have been unable to identify the dates of the other competitions.

Public Q&A Sessions

The Arizona Supreme Court typically goes “on the road” several times a year to hear oral arguments at locations throughout the State. After the conclusion of arguments, the Justices normally take questions from the audience, and during those sessions, typically lasting for about one-half hour, I would have answered a question or two about the Court’s operations. Based on agendas and public announcements, I have identified the following list of public question and answer sessions. I have no notes or transcripts. Unless otherwise indicated, video is available for recordings from 2007 to present at <http://azcourts.gov/AZSupremeCourt/LiveArchivedVideo.aspx>. In each case the sponsoring organization was the Arizona Supreme Court, 1501 West Washington Street, Phoenix, Arizona 85007.

September 22, 2011, James E. Rogers College of Law, University of Arizona (Tucson, Arizona).

March 22, 2011, Sandra Day O’Connor College of Law at Arizona State University (Tempe, Arizona).

November 2, 2010, James E. Rogers College of Law, University of Arizona (Tucson, Arizona).

September 27, 2010, Nogales High School (Nogales, Arizona).

April 13, 2010, James E. Rogers College of Law, University of Arizona (Tucson, Arizona).

February 11, 2010, Sandra Day O’Connor College of Law at Arizona State University (Tempe, Arizona).

March 24, 2009, Sandra Day O'Connor College of Law at Arizona State University (Tempe, Arizona).

November 6, 2008, James E. Rogers College of Law, University of Arizona (Tucson, Arizona). Video not available.

September 25, 2008, Glassford Hill Middle School (Prescott Valley, Arizona).

April 29, 2008, Payson High School (Payson, Arizona).

March 25, 2008, Sandra Day O'Connor College of Law at Arizona State University (Tempe, Arizona). Video not available, but press coverage is supplied.

October 31, 2007, James E. Rogers College of Law, University of Arizona (Tucson, Arizona).

October 2, 2007, Coolidge High School (Coolidge, Arizona).

April 18-19, 2007, Kingman High School (Kingman, Arizona).

November 1, 2006, James E. Rogers College of Law, University of Arizona (Tucson, Arizona). Press coverage supplied.

October 3, 2006, Chinle Community Center (Chinle, Arizona).

November 1, 2005, James E. Rogers College of Law, University of Arizona (Tucson, Arizona).

September 29, 2005, Kofa High School (Yuma, Arizona).

April 26, 2005, Coconino High School (Flagstaff, Arizona).

April 20, 2005, Buena High School (Sierra, Vista, Arizona).

November 4, 2004, Rincon High School (Tucson, Arizona). Press coverage supplied.

October 28, 2004, Eastern Arizona College (Thatcher, Arizona).

April 29, 2004, Prescott High School (Prescott, Arizona).

January 13, 2004, Mesa High School (Mesa, Arizona).

- 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.

Because I have held several public positions, I have had frequent interactions with the press, both formal and informal. An exhaustive search of my personal records and various electronics databases revealed the following list of articles for which I was interviewed or offered a comment:

Jim Walsh, *Municipal Court Praised for Case Management Goal*, Arizona Republic, June 29, 2011. Copy supplied.

Richard Ruelas, *Anti-Federal Health Care, Circa 1960s*, Arizona Republic, Apr. 17, 2010. Copy supplied.

Ginger Thompson, *Napolitano Appears to Straddle Political Divide*, New York Times, May 19, 2009. Copy supplied.

Christian Palmer, *Arizona Supreme Court Chief Justice McGregor Announces Retirement During State of Judiciary Address*, Arizona Capitol Times, Mar. 27, 2009. Copy supplied.

Richard de Uriarte, *Mail in My Vote?!*, Arizona Republic, Oct. 31, 2006. Copy supplied.

I was interviewed by Todd Peppers for his books, *Courtiers of the Marble Palace* (Stanford University Press, 2006). The page on which my interview was incorporated is supplied.

Tim Eigo, *Openness and Accomplishment*, Arizona Attorney, July/Aug. 2005. Copy supplied.

Kim Smith, *Legacy of "Good Judgment,"* Arizona Daily Star, July 2, 2005. Copy supplied.

Judiciary Discipline Going Public, Arizona Republic, June 13, 2005. Copy supplied.

Susan Mercer Hinrichs, *McGregor Ready for Challenge as State's New Chief Justice*, Arizona Republic, Apr. 11, 2005. Copy supplied.

Skip Card, *Court of Dreams*, New York State Bar Journal, Mar./Apr. 2005. Copy supplied.

Michael Kiefer, *Justices May Weigh Same-Sex Marriage*, Arizona Republic, May 25, 2004. Copy supplied.

Howard Fischer, *Hurwitz to Join Ariz. Supreme Court Monday*, Arizona Daily Star, Mar. 16, 2003. Copy supplied.

David Pittman, *Babbitt: Environmental Steward or Sellout?*, Tucson Citizen, Mar. 15, 2003. Copy supplied.

Barry Cohen, *Court Nominee Balances Devotion to Law, Politics*, Jewish News of Greater Phoenix, Feb. 21, 2003. Copy supplied.

C.T. Revere, *Q&A: Andrew Hurwitz*, Tucson Citizen, Jan. 31, 2003. Copy supplied.

Chip Scutari and Robbie Sherwood, *State Supreme Court Gets New Justice*, Arizona Republic, Jan. 28, 2003. Copy supplied.

Howard Fischer, *Phoenix Lawyer Gets High Court Slot*, Arizona Daily Star, Jan. 28, 2003. Copy supplied.

Paul Davenport, *Lawyer Who Argued against Napolitano in Death Penalty Case Goes to State High Court*, Associated Press, Jan. 27, 2003. Copy supplied.

C.T. Revere and Shella Calamba, *High Court Vacancy*, Tucson Citizen, Jan. 22, 2003. Copy supplied.

Barrett Marson, *Napolitano Transition Goes Into Full Swing*, Arizona Daily Star, Nov. 12, 2002. Copy supplied.

Paul Davenport, *Transition Team Leaders Say Party Ties Not a Factor for Napolitano Picks*, Associated Press, Nov. 11, 2002 (quotes re-printed in multiple outlets). Copy supplied.

Paul Davenport, *Transition Veterans Head Team for Governor-Elect*, Associated Press, Nov. 11, 2002. Copy supplied.

On October 16, 2002, I gave an interview to David Kader about the *US West* case. The interview was referenced in Kader's article, *The Arizona Supreme Court: Its 2001-2002 Decisions*, 35 Ariz. St. L.J. 311 (2003). Copy of the article supplied.

ABC Wins Appeal over Hidden Camera Investigation of Medical Lab, Reporter's Committee for Freedom of the Press, Sept. 24, 2002. Copy supplied.

Howard Fischer, *State Laws Give Little Privacy*, Arizona Daily Star, Sept. 21, 2002. Copy supplied.

- John Gibeaut, *Death Penalty a Lively Issue*, 88 A.B.A.J. 30 (Aug. 2002). Copy supplied.
- Joan Huls, *Ring Cycle Continues: Arizona Capital Sentencing at U.S. Supreme Court*, 38 Arizona Attorney 24 (July/Aug. 2002). Copy supplied.
- John Gibeaut, *States Revisit Death Sentence Cases*, 1 ABA Journal eReport 25, June 28, 2002. Copy supplied.
- Paul Duggan, *New Rulings Don't Fling Open Death Row Doors*, Washington Post, June 27, 2002. Copy supplied.
- David Lindorff, *Another Strike against the Death Penalty*, Salon.com, June 25, 2002. Copy supplied.
- Ruling Buys Time for Death Row Prisoners*, Arizona Republic, June 25, 2002. Copy supplied.
- Joan Biskupic, *Jury, not Judge, Must Rule on Death*, USA Today, June 25, 2002. Copy supplied.
- Interview on Fox on the Record with Greta Van Susteren, Fox News Network, June 24, 2002. Transcript supplied.
- Dave Lindorff, *Antonin Scalia's Crisis of Conscience*, Salon.com, June 12, 2002. Copy supplied.
- High Court Focuses on Death Penalty*, Corrections Professional, May 24, 2002. Copy supplied.
- William E. Gibson, *Justices Weigh Case That Could Affect Up to 870 on Death Row*, Orlando Sentinel, Apr. 23, 2002 (re-printed in multiple outlets). Copy supplied.
- Sergio Bustos, *Supreme Court to Decide Whether 1997 Death Sentence Was Fair*, USA Today, Apr. 22, 2002. Copy supplied.
- Robbie Sherwood, *Arizona Faces Supreme Court*, Arizona Republic, Apr. 21, 2002. Copy supplied.
- Foster Klug, *Ariz. Case Could Affect Death Penalty*, Associated Press, Apr. 21, 2002 (re-printed in multiple outlets). Copy supplied.
- Tony Mauro, *Court Set for Life or Death Argument*, Daily Report, Apr. 15, 2002 (re-printed in multiple outlets). Copy supplied.

- Joseph Barrios, *Should It Be Up to the Judge?*, Arizona Daily Star, Mar. 5, 2002. Copy supplied.
- Robbie Sherwood, *Napolitano Faces Test in Top Court*, Arizona Republic, Feb. 17, 2002. Copy supplied.
- Judge, Jury and Executioner: Arizona Death Row Case Could Have an Effect on Montana Law*, Missoula Independent, Jan. 17 – Jan. 24, 2002. Copy supplied.
- Tony Mauro, *Apprendi Opens Doors to Questions*, New Jersey Law Journal, Jan. 18, 2002 (re-printed in multiple outlets). Copy supplied.
- Tribes Weighing Casino Initiative*, Arizona Republic, July 12, 2001. Copy supplied.
- Judge Rules Hohokam Irrigation Can Sell Electricity*, Associated Press, Dec. 20, 2000. Copy supplied.
- Anne Brady, *Phone Battle Is Heating Up in Arizona – Qwest Hopes to Strengthen Its Competitive Position in Local-Service Market*, Wall Street Journal, Sept. 13, 2000. Copy supplied.
- Tom Collins, *Qwest*, Tucson Citizen, Aug. 11, 2000. Copy supplied.
- Kathleen Ingley, *3 Initiatives Face Legal Challenges*, Arizona Republic, Aug. 3, 2000. Copy supplied.
- Jodi Weisberg, *Blackmun Remembered by Local Legal Community*, Arizona Journal, Mar. 22, 1999. Copy supplied.
- Hull Picks Lawyer as New State Gaming Director*, Associated Press, Jan. 15, 1999. Copy supplied.
- ABC Show Lawsuit Mostly Dismissed*, Associated Press, Dec. 18, 1998 (re-printed in multiple outlets). Copy supplied.
- Jerry Kammer, *Do Media Have Right to Lie? Lawsuit against ABC Asks*, Times-Picayune, Dec. 10, 1998. Copy supplied.
- Pila Martinez, *Regent Davis to Quit, Join NAU*, Arizona Daily Star, Feb. 10, 1998. Copy supplied.
- Cellular and PCS Strategies Collide in Phoenix*, Communications Today, Aug. 11, 1997. Copy supplied.

- Howard Fischer, *Cellular Phone Spat Goes to Court Over 'Roaming'*, Arizona Daily Star, Aug. 8, 1997. Copy supplied.
- Susan C. Thomson, *Arizona Official Seen as 'Quiet,' 'Affable'*, St. Louis Post-Dispatch, Mar. 9, 1997. Copy supplied.
- John Schwartz, *Defense Lawyer a Hit in Courtroom*, Business Journal-Phoenix & the Valley of the Sun, Feb. 23, 1996. Copy supplied.
- John Schwartz, *Philosophies Vary as Law Firms Regroup*, Business Journal-Phoenix and the Valley of the Sun, May 26, 1995. Copy supplied.
- Alisa Wabnik, *Bottom Line: Uncertainty Reigns on How to Meet Costs of Growth*, Arizona Daily Star, May 3, 1995. Copy supplied.
- Alisa Wabnik, *Growing Pains: Enrollment Surge May Push In-State Students Elsewhere*, Arizona Daily Star, Apr. 30, 1995. Copy supplied.
- Alisa Wabnik, *Journalism, Statistics Edging Toward UA Ax*, Arizona Daily Star, Jan. 19, 1995. Copy supplied.
- Alisa Wabnik, *Clinton Considering Naming Pacheco to U.S. Advisory Post*, Arizona Daily Star, Feb. 17, 1994. Copy supplied.
- Karen D. Stein, *Adventure in Form*, Architectural Record, Jan. 1994. Copy supplied.
- John Dougherty, *Star Gate*, Phoenix News Times, June 16, 1993. Copy supplied.
- Jane Erikson and Janet Kornblum, *ASU School of Medicine is Proposed – Minorities Targeted for Training, Service*, Arizona Daily Star, June 11, 1993. Copy supplied.
- Geoffrey A. Campbell, *Bruce Babbitt, Prospect for Supreme Court, Would Bring States' Rights Philosophy to Post*, Bond Buyer, June 11, 1993. Copy supplied.
- Mike Dorsher, *Peers Praise Finalists as Fair Budget Cutters*, Wisconsin State Journal, May 23, 1993. Copy supplied.
- Darrin Hostetler, *The Prof Is In the Pudding*, Phoenix New Times, May 5, 1993. Copy supplied.
- Pauline B. Yearwood, *Catch 22 at ASU: Education Dollars Eroding Statewide*, Greater Phoenix Jewish News, Apr. 23, 1993. Copy supplied.

NAU Puts Cuts on Hold, Prescott Courier, Oct. 22, 1992. Available at <http://tinyurl.com/nauputs>.

Maureen O'Connell, *State Regents Decide to Delay Setting Tuition*, Arizona Daily Star, Oct. 9, 1992. Copy supplied.

Arizona St Woes, Associated Press, Sept. 3, 1992. Copy supplied.

Ray Schultze, *President of Regents Respected*, Phoenix Gazette, July 20, 1992. Copy supplied.

Ray Schultze, *Regents Head: Universities Need Stable Funding*, Phoenix Gazette, July 20, 1992. Copy supplied.

Kris Mayes, *Hurwitz Set to Confront Regent Issues*, State Press, June 18, 1992. Copy supplied.

Untitled, Associated Press, Feb. 6, 1992. Copy supplied.

Lourdes Medrano Leslie, *Symington Plan for Universities' Budget Surprises Regents*, Arizona Daily Star, Jan. 14, 1992. Copy supplied.

Philip Martin, *When Heads Rolled at DPS*, Phoenix New Times, Dec. 4, 1991. Copy supplied.

Mary K. Reinhart, *Symington Proposes Abolition of Board of Regents – Calls for Trustees for Each University*, Arizona Daily Star, Oct. 10, 1991. Copy supplied.

William H. Carlile, *'Mother Mofford' Happy to Not be Governor Anymore*, San Francisco Examiner, Mar. 10, 1991. Copy supplied.

Darrin Hostetler, *Blowing the Whistle on the Regents*, Phoenix New Times, June 13, 1990. Copy supplied.

Bishop Told to Distance Herself from Husband, Prescott Courtier, May 8, 1990. Available at <http://tinyurl.com/bishoptold>.

Coor Gets Top Money, Prescott Courier, June 15, 1989. Available at <http://tinyurl.com/coorget>.

Student Leaders Blast Hike, Mohave Daily Miner, Nov. 6, 1988. Available at <http://tinyurl.com/studentleaders>.

Mofford Says She Didn't Intend Disclosure Omissions, Prescott Courier, May 1, 1988. Available at <http://tinyurl.com/moffordsays>.

Mecham Aides Quit, Another Will Leave, Prescott Courier, Apr. 8, 1988.
Available at <http://tinyurl.com/mechamaides>.

Larry Lopez, *Mofford Orders Mecham's Personal Staff Off the Payroll*,
Associated Press, Apr. 6, 1988. Copy supplied.

Ric Clarke, *Pulling a Switch: Mofford's Team Made Changes Work Smoothly*,
Mesa Tribune, Mar. 20, 1988. Copy supplied.

Mofford Has Witness Tampering Report, Prescott Courier, Mar. 17, 1988.
Available at <http://tinyurl.com/moffordhas>.

Larry Lopez, *Acting Governor's Chief Aide Advised Impeachment Witness*,
Associated Press, Mar. 15, 1988. Copy supplied.

Lori Weinraub, *Untitled*, United Press International, Mar. 15, 1988. Copy
supplied.

Lori Weinraub, *Untitled*, United Press International, Mar. 14, 1988. Copy
supplied.

Untitled, Associated Press, Feb. 26, 1988. Copy supplied.

Larry Lopez, *Mecham, Mofford Clash*, Associated Press, Feb. 19, 1988 (re-
printed in multiple outlets). Copy supplied.

Laurie Asseo, *Acting Governor Takes Over Duties of Impeached Mecham*,
Associated Press, Feb. 8, 1988 (re-printed in multiple outlets). Copy supplied.

Susan Yoachum, *Babbitt Haunted by Use of Guard in 1983 Strike*, San Jose
Mercury News, Feb. 2, 1988 (re-printed in multiple outlets). Copy supplied.

Susan Caba, *Bruce Babbitt Former Governor Strives to Put His 'Image' Across*,
St. Louis Post-Dispatch, Jan. 27, 1988. Copy supplied.

Howard LaFranchi, *Bruce Babbitt*, Christian Science Monitor, Jan. 14, 1988.
Copy supplied.

Susan Caba, *Bruce Babbitt*, Philadelphia Inquirer, Jan. 10, 1988. Copy supplied.

Rebecca Trounson, *Bruce Babbitt/Babbitt Struggles to Become More Than Just
Blip in Polls*, Houston Chronicle, Dec. 13, 1987. Copy supplied.

John E. Yang, *Professorial Babbitt Offers Few Simple Solutions, Stresses Power
of Ideas over Personal Alliances*, Wall Street Journal, Oct. 15, 1987. Copy
supplied.

Dee Michaelis, *Housing-Upkeep Standards OK'd as Phoenix Battles Against Blight*, Arizona Republic, Feb. 4, 1987. Copy supplied.

Jeff South & Ray Schultze, *Miracle Needed to Save "War Zone"*, Phoenix Gazette, May 7, 1986. Copy supplied.

Ronald Brownstein, *Babbitt's New Politics*, National Journal, Mar. 9, 1985. Copy supplied.

Arizona Governor Stresses Children's Issues, New York Times, Feb. 10, 1985. Copy supplied.

Unions' Counterproposal Said Probably Acceptable, Kingman Daily Miner, Aug. 25, 1983. Available at <http://tinyurl.com/unionscounterproposal>.

Aid is Sought for Jobless Farm Workers in Arizona, New York Times, July 31, 1983. Copy supplied.

Panel Selection in the Works, Kingman Daily Miner, May 13, 1983. Available at <http://tinyurl.com/panelselection>.

State Budget Woes Mount, The Courier, Nov. 28, 1982. Available at <http://tinyurl.com/aidissought>.

Les Schlangen, *Truckers Press for Lower Tax*, The Courier (Associated Press), July 12, 1982. Available at <http://tinyurl.com/truckerspress>.

Bright and Brief, Associated Press, Apr. 19, 1982. Copy supplied.

Steve Twomey, *A Valley of Hope Becomes Hellish*, Philadelphia Inquirer, Nov. 8, 1981. Copy supplied.

John M. Crewdson, *Nominee for High Court: A Record Defying Labels*, New York Times, July 12, 1981. Copy supplied.

Editorial, *Give the Lottery a Fair Chance*, Phoenix Gazette, Nov. 7, 1980. Copy supplied.

Joel Nilsson, *Babbitt Aides Say Transportation, Health Care on List of 6 Key Issues*, Arizona Republic, Jun. 15, 1980. Copy supplied.

Parenti Defies Suspension, Kingman Daily Miner, Dec. 22, 1980. Available at <http://tinyurl.com/parentidefies>.

Parenti Fate Still Unsettled, Prescott Courier, Dec. 21, 1980. Available at <http://tinyurl.com/parentifate>.

Joel Nilsson, *Chief of Staff to be Named to Relieve Babbitt of Details*, Arizona Republic, May 27, 1980. Copy supplied.

Babbitt Calls for Cooperation on Emergency-Care Program, Arizona Republic, Mar. 19, 1980. Copy supplied.

Joel Nilsson, *Phoenix-Mesa Trip by Rail Excites Many*, Arizona Republic, Feb. 24, 1980. Copy supplied.

John Winters, *120 Globe Residents Asked to Evacuate*, Arizona Republic, Jan. 22, 1980. Copy supplied.

Marilyn Taylor, *Governor Declares Globe Emergency*, Arizona Republic, Jan. 17, 1980. Copy supplied

Babbitt Will Limit Time for Cleanup of Globe Asbestos, Arizona Republic, Jan. 11, 1980. Copy supplied.

Bill King, *Top Aide to Babbitt Will Stress Planning*, Arizona Republic, Dec. 31, 1979. Copy supplied.

Anthony J. Sommer, *Long-Sought Fellow Ivy Leaguer Finally Joins Bruce Babbitt Team*, Phoenix Gazette, Dec. 15, 1979. Copy supplied.

Lawyer is Named Babbitt Aide, Arizona Republic, Dec. 14, 1979. Copy supplied.

Thomas D. Williams, *New Supreme Court Clerk Sees Three Levels of Federal Bench*, Hartford Courant, Nov. 2, 1972. 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.

Judge Pro Tempore, Arizona Court of Appeals (Division 1). I served on two panels of the Court of Appeals (an intermediate appellate court) in 1993 and 1996, under a program in which private practitioners were appointed to serve with two sitting judges in an effort to reduce the court's backlog. I was appointed in each case to do so by the presiding judge of the court of appeals. This is the intermediate appellate court in Arizona, which has jurisdiction over appeals from virtually all judgments of the superior court, a court of general trial jurisdiction.

Justice, Arizona Supreme Court, March 2003 to present (Vice Chief Justice, July 2009 – present). I was appointed by the Governor and retained in a 2006 general election for a

six year term. The Court has discretionary appellate jurisdiction over all cases decided in the Arizona Court of Appeals, special action (extraordinary writs jurisdiction), and direct appeal jurisdiction over death penalty cases and certain elections appeals. We also have discretionary jurisdiction in appeals involving attorney and judicial discipline.

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

I have only served as an appellate judge

- i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	0% [total 100%]
civil proceedings:	0%
criminal proceedings:	0% [total 100%]

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

See attached list of cases.

- 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). Not applicable

1. *Citizen Publishing Co. v. Miller (Elleithe)*, 210 Ariz. 513, 115 P.3d 107 (2005).

The issue in this case was whether a suit for intentional infliction of emotional distress could lie against a newspaper for printing a letter to the editor stating: "We can stop the murders of American soldiers in Iraq . . . Whenever there is an assassination or another atrocity we should proceed to the closest mosque and execute five of the first Muslims we encounter." The suit was filed by two plaintiffs on behalf of a putative class of Islamic-Americans in the circulation area of the *Tucson Citizen*. The trial judge refused to dismiss the intentional infliction claim and the court of appeals, by a split vote, declined to exercise special action (mandamus) jurisdiction, thus leaving the trial court's decision standing.

The Court unanimously held (in an opinion I authored) that the letter to the editor was protected by the First Amendment, and did not constitute either an incitement to imminent lawless action, fighting words, or a true threat of violence.

Counsel: David J. Bodney, Steptoe & Johnson, LLP, 201 East Washington Street, Suite 1600, Phoenix, Arizona 85004, 602-257-5212 (for Citizen Publishing Co.); Herbert Beigel, Herbert Beigel & Associates, 63561 East Vacation Drive, Tucson, Arizona 85379, 520-797-9188 (for Elleithee, et al.).

2. *Kromko v. Ariz. Bd. of Regents*, 216 Ariz. 190, 165 P.3d 168 (2007).

The issue in this case was whether tuition charged at three Arizona state universities during the 2003-04 academic year violated a state constitutional provision requiring that the “instruction furnished shall be as nearly free as possible.” The suit was filed on behalf of a putative class of students against the Board of Regents, which under the state constitution governs the universities and sets tuition.

The Court unanimously held (in an opinion I authored) that the suit presented a nonjusticiable political question, entrusted to another branch of state government for resolution, in part because there were no judicial standards by which the issue could be decided.

Counsel: Paul Gattone, Payson & Gattone, 360 South Covenant, Tucson, Arizona 85701, 602-623-4466 (for Kromko, et al.); Paula S. Bickett, Daniel P. Schaack, Office of the Attorney General, 1275 West Washington Street, Phoenix, Arizona 85007, 602-542-4266 (for Board of Regents, et al.).

3. *State Farm Ins. Cos. v. Premier Manufactured Sys., Inc.*, 217 Ariz. 222, 172 P.3d 410 (2007).

The issue in this case was whether liability among tortfeasors in strict product liability actions is joint and several or several only.

The Court unanimously held (in an opinion I authored) that a statute adopted by the Arizona Legislature abolishing joint and several liability in all but certain cases extended to products liability actions, and that in such actions, liability is several only.

Counsel: John D. Sittu, Belknap & Sittu, PC, 11010 North Tatum Boulevard, Suite 103, Phoenix, Arizona 85028, 602-264-2223 (for State Farm); Stanley G. Feldman, Haralson Miller Pitt Feldman & McAnally, PC, One South Church Avenue, Suite 900, Tucson, Arizona 85701, 520-792-3836 (for amicus Arizona Trial Lawyers Association (argued)); Robert L. Greer, Baird Williams & Greer, 6225 North 24th Street, Suite 125, Phoenix, Arizona 85016, 602-256-9400 (for Premier Manufactured Systems).

4. *Seisinger v. Siebel*, 220 Ariz. 85, 203 P.3d 483 (2009).

The issue in this case was whether a statute which prescribed qualifications for expert witnesses in medical malpractices cases conflicted with Arizona Rule of Evidence 702, and was therefore unconstitutional as encroaching upon the Arizona Supreme Court's preemptive rule making powers.

In a 4-1 decision (I authored the majority opinion), the Court held that (a) there was a direct conflict between the statute and the Evidence Rule; but (b) the statute was substantive in nature, and therefore did not violate the Arizona Constitution's separation of powers doctrine. The court also held that the statute, being substantive, did not apply retroactively to the case before it, which had been filed before the statute became effective and involved events prior to that date. One judge (sitting by designation with our Court) concurred only in the result, concluding that the challenged statute was unconstitutional.

Counsel: James J. Syme, Jr., 13210 West Van Buren, #102, Goodyear, Arizona 85338, 623-932-2070 (for Seisinger); Eileen GilBride, Jones Skelton & Hochuli, PLC, 2901 North Central Avenue, Suite 800, Phoenix, Arizona 85012, 602-263-1700 (for Seibel).

5. *State v. Western Union Fin. Svcs., Inc.*, 220 Ariz. 567, 208 P.3d 218 (2009).

The issue in this case was whether an Arizona court could seize Western Union money transfers sent from other states to Mexico.

In a 4-1 decision (I authored the majority opinion) the Court held that because the state court was solely seeking to exercise in rem jurisdiction over the wire transfers, and the transfers were not located within the state, the warrant was not enforceable. The Court noted that the State could have sought to exercise in personam jurisdiction over Western Union and sought court orders concerning the wire transfers, but could not proceed simply against the transfers themselves to establish jurisdiction. One judge (sitting by designation with our Court) dissented.

Counsel: Karl M. Tilleman, Steptoe & Johnson, LLP, 201 East Washington Street, Suite 1600, Phoenix, Arizona 85004, 602-257-5244, and Charles G. Cole, Steptoe & Johnson, LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036, 202-429-3000 (for Western Union); Cameron Holmes, Office of the Attorney General, 1275 West Washington, Phoenix, Arizona 85007, 602-542-8482 (for State).

6. *Turken v. Gordon*, 223 Ariz. 342, 224 P.3d 158 (2010).

The issue in this case was whether an agreement between the City of Phoenix and a private developer violated the Gift Clause of the Arizona Constitution,

which prohibits governmental entities from making “any donation or grant, by subsidy or otherwise” to any private corporation.

The Court unanimously held (in an opinion I authored) that the particular agreement likely violated the Gift Clause. The opinion sought to clarify the Court’s previous Gift Clause jurisprudence. However, because the City and the developer had relied on our previous jurisprudence in structuring the agreement, the Court decided to apply its clarification of previous law prospectively only. The Court therefore affirmed the dismissal of the plaintiff’s claims in this particular case.

Counsel: Clint Bolick, Goldwater Institute, 500 East Coronado Road, Phoenix, Arizona 85004, 602-462-5000 (for Turken, et al.); Timothy Berg, Fennemore Craig PC, 3003 North Central Avenue, Suite 2600, Phoenix, Arizona 85012, 602-916-5421, and Lisa T. Hauser, Gammage & Burnham, Two North Central Avenue, 15th Floor, Phoenix, Arizona 85004, 602-256-4462 (for Gordon, et al.).

7. *State v. Gant*, 216 Ariz. 1, 162 P.3d 640 (2007), *aff’d sub nom. Arizona v. Gant*, 556 U.S. 332 (2009).

This case presented an important and unsettled Fourth Amendment issue: Whether a warrantless search of an arrestee’s car is constitutional when the arrestee is handcuffed and seated in the back of a patrol car under the supervision of a police officer, and the scene is otherwise secured.

A divided (3-2) Arizona Supreme Court held that the search-incident-to arrest exception to the Fourth Amendment’s warrant requirement, as explicated in *Chimel v. California*, 395 U.S. 752 (1969), and *New York v. Belton*, 453 U.S. 454 (1981), did not justify the search. The Supreme Court of the United States granted certiorari and affirmed the opinion of our Court, which was written by Justice Rebecca White Berch and in which I joined.

Counsel: Randall M. Howe (currently an Assistant United States Attorney), 40 North Central Avenue, Suite 1200, Phoenix, Arizona 85005, 602-514-7689 (for the State); Thomas F. Jacobs, 271 North Stone Avenue, Tucson, Arizona 85701, 520-628-1622 (for Gant).

8. *Gibson v. Kasey*, 214 Ariz. 141, 150 P.3d 228 (2007).

The issue in this case was whether persons who are prescribed drugs owe a duty of care to others to whom they give the drugs. The trial court had held that the defendant, who allegedly had caused the death of a coworker by furnishing prescription drugs to her at an office party, could not be liable in negligence, as he owed the woman no duty of care. The intermediate appellate court held that a duty existed because the harm was foreseeable.

In a unanimous opinion (authored by Justice Scott Bales) our Court held that the trial court had erred. The opinion rejected the notion that foreseeability played any role in the duty determination. I concurred in the opinion of the Court, but wrote separately to suggest that Arizona consider in a future case adopting the approach of the Third Restatement of Torts, which recognizes that any actor generally had a duty to exercise reasonable care when the actor's conduct creates a risk of physical harms to others, and that a no-duty determination ought to be made by common law courts only when a strong policy against potential liability could be identified.

Counsel: James F. Brook, James F. Brook & Associates, 7150 East Camelback Road, Suite 415, Scottsdale, Arizona 85251, 480-990-0104 (for Gibson); Christopher Robbins, currently with Ehmann DeCiancio, PLLC, 1250 West Washington, Tempe, Arizona, 85281, 602-889-2440 (for Kasey).

9. *Ariz. Together v. Brewer (Protect Marriage Arizona)*, 214 Ariz. 118, 149 P.3d 742 (2007).

This case involved the “separate amendment” rule of the Arizona Constitution, which requires that if more than one proposed constitutional amendment is submitted to the voters at an election, each proposed amendment must be submitted in such a way as to allow the voters to vote for or against them separately. A long line of Arizona cases had held that a single proposed amendment that dealt with more than one subject could not be placed on the ballot under this rule. The proposed amendment at issue in *Arizona Together* sought to define “marriage” and prohibit the State from providing a legal status for unmarried persons similar to that of marriage.

In a unanimous decision (authored by Chief Justice Ruth McGregor), the Court held that the proposed amendment did not violate the “single subject rule” and could be placed on the ballot. In so doing, the Court sought to clarify its previous “single subject” jurisprudence, which had focused on whether a voter who favored one provision of a proposed amendment could reasonably be expected to view another provision as dependant on the first. I had previously suggested that the “reasonable voter test” was unworkable in *Clean Elections Inst., Inc. v. Brewer*, 290 Ariz. 241, 248, 99 P.3d 570, 577 (2004) (concurring opinion) and the Court adopted that suggestion in *Arizona Together*. I joined the majority opinion, but wrote separately to emphasize that the Court's inquiry should be limited to whether various provisions of a proposed amendment were logically related to each other.

Counsel: Peter A. Gentela, Arizona House of Representatives, 1700 West Washington, Suite H, Phoenix, Arizona 85007, 602-926-5544, and Benjamin Bull, Alliance Defense Fund, 15100 North 90th Street, Scottsdale, Arizona, 85260, 480-444-0200 (for Protect Marriage Arizona); Lisa T. Hauser,

Gammage & Burnham, Two North Central, 15th Floor, Phoenix, Arizona 85004, 602-256-4462, and Charles Blanchard, Department of the Air Force, 1740 Air Force Pentagon, Washington, D.C. 20330, 703-697-0941 (for Arizona Together).

10. *Lofts at Fillmore Condo. Ass'n v. Reliance Commercial Constr., Inc.*, 218 Ariz. 574, 190 P.3d 733 (2008).

The issue in this case was whether the purchaser of a home can sue a home-builder who was not the vendor of the residence under an implied warranty of workmanship and habitability.

The Court unanimously held (in an opinion I authored) that the absence of contractual privity did not bar the suit. This was an issue of first impression and of practical significance in Arizona, because homebuilders will often sell their products to a separate company which markets the buildings, and there is thus often no privity between the construction company and the original buyer.

Counsel: John F. McGuire, 2550 Fifth Avenue, San Diego, California 92103, 619-618-2984, and Curtis S. Ekmark, Ekmark & Ekmark LLC, 6720 North Scottsdale Road, Suite 261, Scottsdale, Arizona 85253, 480-922-9292 (for Lofts at Fillmore); Jeffrey D. Holland, The Statesmen Group, 9300 East Raintree Drive, Suite 200, Scottsdale, Arizona 85260, 480-248-3300 and Kyle A. Israel, Israel & Gerity, PLLC, 3300 North Central Avenue, Suite 2000, Phoenix, Arizona 85012, 602-274-4400 (for Reliance Commercial).

- 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. *Citizen Publishing Co. v. Miller (Elleithe)*, 210 Ariz. 513, 115 P.3d 107 (2005). Counsel: David J. Bodney, Steptoe & Johnson, LLP, 201 East Washington Street, Suite 1600, Phoenix, Arizona 85004, 602-257-5212 (for Citizen Publishing Co.); Herbert Beigel, Herbert Beigel & Associates, 63561 East Vacation Drive, Tucson, Arizona 85379, 520-797-9188 (for Elleithe, et al.).

2. *Kromko v. Ariz. Bd. of Regents*, 216 Ariz. 190, 165 P.3d 168 (2007). Counsel: Paul Gattone, Payson & Gattone, 360 South Covenant, Tucson, Arizona 85701, 602-623-4466 (for Kromko, et al.); Paula S. Bickett, Daniel P. Schaack, Office of the Attorney General, 1275 West Washington Street, Phoenix, Arizona 85007, 602-542-4266 (for Board of Regents, et al.).

3. *State Farm Ins. Cos. v. Premier Manufactured Sys., Inc.*, 217 Ariz. 222, 172 P.3d 410 (2007). Counsel: John D. Sittu, Belknap & Sittu, PC, 11010 North Tatum Boulevard, Suite 103, Phoenix, Arizona 85028, 602-264-2223 (for State Farm); Stanley G. Feldman, Haralson Miller Pitt Feldman & McAnally, PC, One South Church Avenue, Suite 900, Tucson, Arizona 85701, 520-792-3836 (for amicus Arizona Trial Lawyers Association (argued)); Robert L. Greer, Baird Williams & Greer, 6225 North 24th Street, Suite 125, Phoenix, Arizona 85016, 602-256- 9400 (for Premier Manufactured Systems).
4. *Lofts at Fillmore Condo. Ass'n v. Reliance Commercial Constr., Inc.*, 218 Ariz. 574, 190 P.3d 733 (2008). Counsel: John F. McGuire, 2550 Fifth Avenue, San Diego, California 92103, 619-618-2984, and Curtis S. Ekmark, Ekmark & Ekmark LLC, 6720 North Scottsdale Road, Suite 261, Scottsdale, Arizona 85253, 480-922-9292 (for Lofts at Fillmore); Jeffrey D. Holland, The Statesmen Group, 9300 East Raintree Drive, Suite 200, Scottsdale, Arizona 85260, 480-248-3300 and Kyle A. Israel, Israel & Gerity, PLLC, 3300 North Central Avenue, Suite 2000, Phoenix, Arizona 85012, 602-274-4400 (for Reliance Commercial).
5. *Seisinger v. Siebel*, 220 Ariz. 85, 203 P.3d 483 (2009). Counsel: James J. Syme, Jr., 13210 West Van Buren, #102, Goodyear, Arizona 85338, 623-932-2070 (for Seisinger); Eileen GilBride, Jones Skelton & Hochuli, PLC, 2901 North Central Avenue, Suite 800, Phoenix, Arizona 85012, 602-263-1700 (for Seibel).
6. *State v. Western Union Fin. Svcs., Inc.*, 220 Ariz. 567, 208 P.3d 218 (2009). Counsel: Karl M. Tilleman, Steptoe & Johnson, LLP, 201 East Washington Street, Suite 1600, Phoenix, Arizona 85004, 602-257-5244 and Charles G. Cole, Steptoe & Johnson, LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036, 202-429-3000 (for Western Union); Cameron Holmes, Office of the Attorney General, 1275 West Washington, Phoenix, Arizona 85007, 602-542-8482 (for State).
7. *Turken v. Gordon*, 223 Ariz. 342, 224 P.3d 158 (2010). Counsel: Clint Bolick, Goldwater Institute, 500 East Coronado Road, Phoenix, Arizona 85004, 602-462-5000 (for Turken, et al.); Timothy Berg, Fennemore Craig PC, 3003 North Central Avenue, Suite 2600, Phoenix, Arizona 85012, 602-916-5421, and Lisa T. Hauser, Gammage & Burnham, Two North Central Avenue, 15th Floor, Phoenix, Arizona 85004, 602 256-4462 (for Gordon, et al.).
8. *Jones v. Sterling*, 210 Ariz. 308, 110 P.3d 1271 (2005). Counsel: Lee Brooke Phillips, 323 North Leroux Street, Suite 101, Flagstaff, Arizona 86001, 928-779-1560 (for Jones, et al.); Cari McConeghy-Harris, 9280 South Kyrene, Suite 119, Tempe, Arizona 82584, 480-223-5896, and Sheila Polk, Yavapai

County Attorney, 255 East Gurley, Prescott, Arizona 86301, 928-771-3344
(for State parties in interest).

9. *Planning Group of Scottsdale, L.L.C. v. Lake Mathews Mineral Props., Ltd.*, 226 Ariz. 262, 246 P.3d 343 (2011). Counsel: George Paul, Lewis and Roca, 40 North Central Avenue, Suite 1900, Phoenix, Arizona 85004, 602-262-5326 (counsel for Planning Group); Daniel P. Beeks, Sherman & Howard, LLC, 2800 North Central Avenue, Suite 1100, Phoenix, Arizona 85004, 602-240-3000 (counsel for Lake Mathews).
 10. *Fushek v. State*, 218 Ariz. 285, 183 P.3d 536 (2008). Counsel: Michael Manning, Stinson Morrison Hecker, 1850 North Central Avenue, Suite 2100, Phoenix, Arizona 85004, 602-279-1600, and Thomas M. Hoidal, 111 West Monroe Street, Phoenix, Arizona 85003, 602-254-0202 (counsel for Fushek); Dianne Gunnels Rowley, Maricopa County Attorneys' Office, 301 West Jefferson Street, Phoenix, Arizona 85003, 602-506-3411 (for State).
- e. Provide a list of all cases in which certiorari was requested or granted.
- State v. Styers*, 227 Ariz. 186, 254 P.3d 1132 (2011) (Hurwitz, J., dissenting), *cert. denied*, Oct. 31, 2011 (No. 11-6674)
- State v. Dixon*, 226 Ariz. 545, 250 P.3d 1174 (2011), *cert. denied*, Oct. 17, 2011 (No. 11-5816)
- State v. Delahanty*, 226 Ariz. 502, 250 P.3d 1131 (2011), *cert. denied*, Oct. 3, 2011 (No. 10-10453)
- State v. Gomez*, 226 Ariz. 165, 244 P.3d 1163 (2010), *cert. denied*, 131 S. Ct. 2460 (2011)
- State v. Gallardo*, 225 Ariz. 560, 242 P.3d 159 (2010), *cert. denied*, 131 S. Ct. 1796 (2011)
- State v. Chappell*, 225 Ariz. 229, 236 P.3d 1176 (2010), *cert. denied*, 131 S. Ct. 1485 (2011)
- State v. Villalobos*, 225 Ariz. 74, 235 P.3d 2177 (2010), *cert. denied*, 131 S. Ct. 901 (2011)
- State v. Womble*, 225 Ariz. 91, 235 P.3d 244 (2010), *cert. denied*, 131 S. Ct. 832 (2010)
- State v. Hargrave*, 225 Ariz. 1, 234 P.3d 569 (2010), *cert. denied*, 131 S. Ct. 317 (2010)

State v. Garcia, 224 Ariz. 1, 226 P.3d 370 (2010), *cert. denied*, 131 S. Ct. 75 (2010)

State v. Kuhs, 223 Ariz. 376, 224 P.3d 192 (2010), *cert. denied*, 131 S. Ct. 228 (2010)

State v. Kiles, 222 Ariz. 25, 213 P.3d 174 (2009), *cert. denied*, 130 S. Ct. 3274 (2010)

State v. Speer, 221 Ariz. 449, 212 P.3d 787 (2009), *cert. denied*, 130 S. Ct. 1520 (2010)

State v. Bearup, 221 Ariz. 163, 211 P.3d 684 (2009), *cert. denied*, 130 S. Ct. 2372 (2010)

State v. Valverde, 220 Ariz. 582, 208 P.3d 233 (2009), *cert. denied*, 130 S. Ct. 640 (2009)

Mayer Unified School Dist. v. Winkleman, 219 Ariz. 562, 201 P.3d 523 (2009), *cert. denied*, 130 S. Ct. 363 (2009)

State v. Martinez, 218 Ariz. 421, 189 P.3d 348 (2008), *cert. denied*, 129 S. Ct. 494 (2008)

State v. Boggs, 218 Ariz. 325, 185 P.3d 111 (2008), *cert. denied*, 129 S. Ct. 764 (2008)

State v. McCray, 218 Ariz. 252, 183 P.3d 503 (2008), *cert. denied*, 555 U.S. 841 (2008)

State v. Cruz, 218 Ariz. 149, 181 P.3d 196 (2008), *cert. denied*, 129 S. Ct. 900 (2009)

State v. Velazquez, 216 Ariz. 300, 166 P.3d 91 (2007), *cert. denied*, 553 U.S. 1014 (2008)

State v. Garza, 216 Ariz. 56, 163 P.3d 1006 (2007), *cert. denied*, 552 U.S. 1107 (2008)

State v. Gant, 216 Ariz. 1, 162 P.3d 640 (2007), *aff'd*, 556 U.S. 332 (2009)

State v. Andriano, 215 Ariz. 497, 161 P.3d 540 (2007), *cert. denied*, 552 U.S. 923 (2007)

State v. Morris, 215 Ariz. 324, 160 P.3d 203 (2007), *cert. denied*, 552 U.S. 1106 (2008)

State v. Smith, 215 Ariz. 221, 159 P.3d 531 (2007), *cert. denied*, 552 U.S. 985 (2007)

State v. Hampton, 213 Ariz. 167, 140 P.3d 950 (2006), *cert. denied*, 549 U.S. 1132 (2007)

State v. McGill, 213 Ariz. 147, 140 P.3d 930 (2006) (Hurwitz, J., concurring in part and dissenting in part), *cert. denied*, 549 U.S. 1324 (2007)

State v. Ellison, 213 Ariz. 116, 140 P.3d 899 (2006), *cert. denied*, 549 U.S. 1000 (2006)

State v. Berger, 212 Ariz. 473, 134 P.3d 378 (2006) (Hurwitz, J., concurring), *cert. denied*, 549 U.S. 1252 (2007)

In re General Adjudication of All Rights to Use Water in Gila River System and Source, 212 Ariz. 64, 127 P.3d 882 (2006), *cert. denied*, 549 U.S. 1156 (2007)

State v. Johnson, 212 Ariz. 425, 133 P.3d 735 (2006), *cert. denied*, 549 U.S. 1022 (2006)

State v. Newell, 212 Ariz. 389, 132 P.3d 833 (2006), *cert. denied*, 549 U.S. 1056 (2006)

In re General Adjudication of All Rights to Use Water in Gila River System and Source, 212 Ariz. 64, 127 P.3d 882 (2006), *cert. denied*, 549 U.S. 1156 (2007)

Maricopa-Stanfield Irr. & Drainage Dist. v. Robertson, 211 Ariz. 485, 123 P.3d 1122 (2005), *cert. denied*, 547 U.S. 1163 (2006)

In re Hamm, 211 Ariz. 458, 123 P.3d 652 (2005), *cert. denied*, 547 U.S. 1149 (2006)

State v. Cromwell, 211 Ariz. 181, 119 P.3d 448 (2005), *cert. denied*, 547 U.S. 1151 (2006)

State v. Anderson, 211 Ariz. 59, 116 P.3d 1219 (2005), *cert. denied*, 546 U.S. 895 (2005)

State v. Glassel, 211 Ariz. 33, 116 P.3d 1193 (2005), *cert. denied*, 547 U.S. 1024 (2006)

State v. Martinez, 210 Ariz. 578, 115 P.3d 618 (2005), *cert. denied*, 546 U.S. 1044 (2005)

State v. Roseberry, 210 Ariz. 360, 111 P.3d 402 (2005), *cert. denied*, 546 U.S. 945 (2005)

State v. Anderson, 210 Ariz. 327, 111 P.3d 369 (2005), *cert. denied*, 546 U.S. 895 (2005)

State v. Carreon, 210 Ariz. 54, 107 P.3d 900 (2005), *cert. denied*, 546 U.S. 854 (2005)

State v. Hampton, 208 Ariz. 241, 92 P.3d 871 (2004), *cert. denied*, 549 U.S. 1132 (2007)

In re Peasley, 208 Ariz. 27, 90 P.3d 764 (2004), *cert. denied*, 543 U.S. 928 (2004)

Kerr v. Killian, 207 Ariz. 181, 84 P.3d 446 (2004), *cert. denied sub nom. Moran v. Hibbs*, 543 U.S. 810 (2004)

Petersen v. City of Mesa, 207 Ariz. 35, 83 P.3d 35 (2004), *cert. denied*, 543 U.S. 814 (2004)

- 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.

None.

- 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.

I have not authored an unpublished opinion while on the Arizona Supreme Court. I authored two unpublished memorandum decisions while serving as a Judge Pro Tempore for the Arizona Court of Appeals in 1993 and 1996. I have copies of those decisions and assume they also can be located at the office of the clerk of the Court of Appeals.

- 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.

Federal Constitution

State v. Dean, 206 Ariz. 158, 76 P.3d 429 (2003)

State v. Hampton, 208 Ariz. 241, 92 P.3d 871 (2004), *cert. denied*, 549 U.S. 1132 (2007)

State v. Brown (McMullen), 209 Ariz. 200, 99 P.3d 15 (2004)

State v. Anderson, 210 Ariz. 327, 111 P.3d 369 (2005), *cert. denied*, 546 U.S. 895 (2005)

Jones v. Sterling/State, 210 Ariz. 308, 110 P.3d 1271 (2005)

Citizen Publishing Co. v. Miller (Elleithee), 210 Ariz. 513, 115 P.3d 107 (2005)

State v. Fell (Sanders), 210 Ariz. 554, 115 P.3d 594 (2005)

State v. Henderson, 210 Ariz. 561, 115 P.3d 601 (2005) (Hurwitz, J., concurring)

State v. Anderson, 211 Ariz. 59, 116 P.3d 1219 (2005), *cert. denied*, 546 U.S. 895 (2005)

State v. Gomez, 211 Ariz. 494, 123 P.3d 1131 (2005)

State v. Brown (McMullen), 212 Ariz. 225, 129 P.3d 947 (2006)

State v. Berger, 212 Ariz. 473, 134 P.3d 378 (2006) (Hurwitz, J., concurring), *cert. denied*, 549 U.S. 1252 (2007)

State v. McGill, 213 Ariz. 147, 140 P.3d 930 (2006) (Hurwitz, J., concurring in part and dissenting in part), *cert. denied*, 549 U.S. 1324 (2007)

State v. Hampton, 213 Ariz. 167, 140 P.3d 950 (2006), *cert. denied*, 549 U.S. 1132 (2007)

State v. Rayes (Reynaga), 214 Ariz. 411, 153 P.3d 1040 (2007)

State v. Price, 217 Ariz. 182, 171 P.3d 1223 (2007) (Hurwitz, J., concurring)

State v. Western Union Fin. Svcs., Inc., 220 Ariz. 567, 208 P.3d 218 (2009)

State v. Speer, 221 Ariz. 449, 212 P.3d 787 (2009), *cert. denied*, 130 S. Ct. 1520 (2010)

State v. Lynch, 225 Ariz. 27, 234 P.3d 595 (2010)

State v. Villalobos, 225 Ariz. 74, 235 P.3d 2177 (2010), *cert. denied*, 131 S. Ct. 901 (2011)

In re MH-2008-00867, 225 Ariz. 178, 236 P.3d 405 (2010)

State v. Gomez, 226 Ariz. 165, 244 P.3d 1163 (2010), *cert. denied*, 131 S. Ct. 2460 (2011)

Planning Group of Scottsdale, L.L.C. v. Lake Mathews Mineral Props., Ltd., 226 Ariz. 262, 246 P.3d 343 (2011)

State v. Delahanty, 226 Ariz. 502, 250 P.3d 1131 (2011), *cert. denied*, Oct. 3, 2011 (10-10453)

State v. Dixon, 226 Ariz. 545, 250 P.3d 1174 (2011), *cert. denied*, Oct. 17, 2011 (No. 11-5816)

State v. Styers, ___ Ariz. ___, ___ P.3d ___, 2011 WL 2582791 (2011) (Hurwitz, J., dissenting), *cert. denied*, Oct. 31, 2011 (No. 11-6674)

Arizona Constitution

Clean Elections v. Brewer, 209 Ariz. 241, 99 P.3d 570 (2004) (Hurwitz, J., concurring)

McKaney v. Foreman ex rel. County of Maricopa, 209 Ariz. 268, 100 P.3d 18 (2004) (Hurwitz, J., dissenting)

Ariz. Together v. Brewer (Protect Marriage Arizona), 214 Ariz. 118, 149 P.3d 742 (2007) (Hurwitz, J., concurring)

Kromko v. Ariz. Bd. of Regents, 216 Ariz. 190, 165 P.3d 168 (2007)

State Farm Ins. Cos. v. Premier Manufactured Sys., Inc., 217 Ariz. 222, 172 P.3d 410 (2007)

Fushek v. State, 218 Ariz. 285, 183 P.3d 536 (2008)

Seisinger v. Siebel, 220 Ariz. 85, 203 P.3d 483 (2009)

Ariz. Minority Coalition for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n, 220 Ariz. 587, 208 P.3d 676 (2009) (Hurwitz, J., concurring)

Turken v. Gordon, 223 Ariz. 342, 224 P.3d 158 (2010)

McLaughlin v. Bennett, 225 Ariz. 351, 238 P.3d 619 (2010) (Hurwitz, J., concurring)

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

I have never sat by designation on a federal court of appeals.

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

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

My court does not have an automatic recusal system. I utilize Rule 2.11 of the Arizona Code of Judicial Conduct to determine whether I should recuse myself in any specific case. On occasion, I have consulted with the Chief Justice and other Justices of the Court on recusal issues. On rare occasions, I have consulted with the Director of the Arizona Judicial Conduct Commission for advice.

In the following list of recusals, I have included all cases resulting in opinions from the time I have served on the Court, and all petitions for review (a request that the Supreme Court review a case) from 2006 to the present, as I do not have ready access to orders on petitions for review prior to that date. (If review was granted, the case would have resulted in an opinion, so the listing includes all cases actually decided by the Court from 2003 to the present.)

***Ring* remand cases**

In 2002, I argued *Ring v. Arizona*, 536 U.S. 584 (2002), in which the Supreme Court held that a jury trial was required to establish the aggravating circumstances that make a defendant eligible to receive the death penalty. After *Ring* was remanded to the Arizona Supreme Court for further proceedings, that Court decided to conduct a consolidated proceeding in which it considered issues arising from that decision

common to capital defendants whose cases were still on direct appeal. I was appointed by the Court as lead counsel for those defendants, filed a consolidated brief on their behalf, and argued the case to the Court. (Counsel for individual defendants signed onto the brief and had the opportunity in later Supreme Court proceedings to argue issues specific to their individual cases). The Court issued its opinion in the remand cases in 2003, after I had joined the Court. *State v. Ring*, 204 Ariz. 534, 65 P.3d 915 (2003) (commonly referred to in Arizona as *Ring III*, to distinguish it from the U.S. Supreme Court decision and the original opinion on Ring's direct appeal.) Since joining the Court, I have recused myself in each case involving a defendant involved in *Ring III*. I have done so *sua sponte*. The following is a list of *Ring III* recusals:

State v. Cropper, 206 Ariz. 153, 76 P.3d 424 (2003)
State v. Ring, 206 Ariz. 150, 76 P.3d 421 (2003)
State v. Rutledge, 206 Ariz. 172, 76 P.3d 443 (2003)
State v. Prasertphong, 206 Ariz. 167, 76 P.3d 438 (2003)
State v. Nordstrom, 206 Ariz. 242, 77 P.3d 40 (2003)
State v. Prince, 206 Ariz. 24, 75 P.3d 114 (2003)
State v. Sansing, 206 Ariz. 232, 77 P.3d 30 (2003)
State v. Prasertphong, 210 Ariz. 496, 114 P.3d 828 (2005)
State v. Lehr, ___ Ariz. ___, 54 P.3d 379 (2011)
State v. Prince, 226 Ariz. 516, 250 P.3d 1145 (2011)
State v. Cropper, 223 Ariz. 522, 225 P.3d 579 (2010)
State v. Moore, 222 Ariz. 1, 213 P.3d 150 (2009)
State v. Dann, 220 Ariz. 351, 207 P.3d 604 (2009)
State v. Armstrong, 218 Ariz. 451, 189 P.3d 378 (2008)
State v. Pandeli, 215 Ariz. 514, 161 P.3d 557 (2007)
State v. Tucker, 215 Ariz. 298, 160 P.3d 177 (2007)
State v. Harrod, 218 Ariz. 268, 183 P.3d 519 (2008)
State v. Grell, 212 Ariz. 516, 135 P.3d 696 (2006)
State v. Murdaugh, 209 Ariz. 19, 97 P.3d 844 (2004)
State v. Moody, 208 Ariz. 424, 94 P.3d 1119 (2004)
State v. Armstrong, 208 Ariz. 345, 93 P.3d 1061 (2004)
State v. Davolt, 207 Ariz. 191, 84 P.3d 456 (2004)
State v. Huerstel, 206 Ariz. 93, 75 P.3d 698 (2003)
State v. Dann, 205 Ariz. 557, 74 P.3d 231 (2003)
State v. Lamar, 205 Ariz. 431, 72 P.3d 831 (2003)
State v. Rutledge, 206 Ariz. 172, 76 P.3d 443 (2003)
State ex rel. Thomas v. Hon. Steinle (Hall), CV-10-0248-PR (petition for review)
State v. Davolt, CR-10-0065-PR (petition for review)
State v. Murdaugh, CR-08-0322-PC (execution warrant)
State ex rel. Thomas v. Hon. Duncan/Wayne Prince, CV-08-0126-PR (petition for review)
State ex rel. Thomas v. Hon. Duncan/Wayne Prince, CV-08-0126-PR (petition for review)
State v. Keith Royal Phillips, CR-07-0074-PR (petition for review)

State v. Davolt, CR-07-0321-PR (petition for review)
State v. Charles Franklin Long, CR-07-0368-PR (petition for review)
Scott Douglas Nordstrom v. Hon. Nichols/State, CV-08-0015-PR (petition for review)
Moody v. Munger/State, CV-07-0429-PR (petition for review)
Moody v. Hons. Munger/Kearney/State, CV-08-0041-PR (petition for review)
State ex rel. Thomas v. Hon. Heilman/Cropper, CV-08-0048-PR (petition for review)
State v. Moody, CR-06-0340-PC (petition for review)
Christopher Huerstel v. Hon. Dawley/State, CV-06-0170-PR (petition for review)
Moody v. Munger, CV-09-0355-SA (special action)
Moody v. Munger/State of Arizona, CV-08-0335-SA (special action)
Moody v. Munger/State of Arizona, CV-08-0240-PR (petition for review)

Other recusals

Solimeno v. Yonan, CV-10-0104-PR (petition for review denied). I recused myself *sua sponte* because one of the lawyers, a close personal friend, had described the case to me when he was trying it. I have since told lawyers not to discuss any case they have in state court, even if not currently before our court, with me.

Havasupai Tribe v. Ariz. Bd. of Regents, CV-09-0007-PR (petition for review denied). I recused myself *sua sponte* because the suit involved, *inter alia*, actions allegedly undertaken by Arizona State University while I served as a member of the Board of Regents, the governing body for State Universities.

Northeast Phoenix Holdings v. Mark Winkleman/Jaren, CV-08-0138-PR (petition for review denied). I recused myself *sua sponte* because I had represented one of the parties in a related matter.

Goddard, et al. v. Hon. Fields, CV-07-0096-PR (petition for review granted but case later dismissed after settlement). I recused myself *sua sponte* because a close friend (the wife of the attorney general) was named as a party in her personal capacity.

Valder Law Offices v. Keenan Law Firm, CV-06-0114-PR (petition for review denied). I recused myself *sua sponte* because I had been co-counsel to the Valder firm in private practice in a related matter).

Kraft v. PGA Tour, Inc., CV-06-0056-PR (petition for review denied) I recused myself *sua sponte* because a party was represented by my former firm and I had done substantial work for the PGA Tour while a lawyer at that firm.

Joffe v. Acacia Mortgage Corp., CV-05-0399-PR (petition for review denied). I recused myself *sua sponte* because a party was represented by my former firm and the case had originated while I was still practicing there.

Mullin v. Brown, CV-05-0281-PR (petition for review denied). I recused myself *sua sponte* because a close personal friend was a party in this legal malpractice action.

Ariz. Fair and Legal Redistricting v. Hon. Fields, CV-06-0073-PR (petition for review). I recused myself *sua sponte* because the Hopi Tribe, which my firm had represented the previous four years and for which I had done substantial work in private practice, was a party.

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.

Chief of Staff to Governor Bruce Babbitt, January 1980 to October 1983; appointed by Gov. Babbitt.

City of Phoenix, Neighborhood Improvement Committee, Chair, 1986 to 1988; appointed by Mayor Goddard and City Council.

Chief of Staff to Governor Rose Mofford, January 1988 to April 1988; appointed by Gov. Mofford.

Arizona Board of Regents, 1988 to 1996, President (1992 to 1993); appointed by Gov. Mofford.

City of Phoenix, Street Environment Committee, Chair, 1989 to 1990; appointed by Mayor Goddard and City Council.

Co-chair of Transition Committee for Governor Janet Napolitano, November 2002 to January 2003, appointed by Gov. Napolitano.

Member, Advisory Committee on the Federal Rules of Evidence, 2004 to 2010, appointed by Chief Justice Rehnquist and reappointed by Chief Justice Roberts.

- 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.

Before becoming a judge, I regularly volunteered for various political campaigns, usually providing advice to candidates or raising funds. The campaigns in which I played a significant role are listed below. Except as noted below, I do not recall having any formal title. I may have been called upon from time to time to provide

advice to other candidates, but I have no records or recollection of specific occasions. I have never held an office in a political party.

Bruce Babbitt: 1982 gubernatorial campaign and 1986 presidential campaign (legal advice and fundraising).

Terry Goddard: mayoral campaigns, 1984, 1986, 1988, 1990; gubernatorial campaign, 1990; attorney general campaign, 2002 (legal advice and fundraising).

Eddie Basha: gubernatorial campaign, 1994 (legal advice and fundraising).

Ed Pastor: Honorary Co-Chair of campaign for U.S. Congress, 1990 (fundraising)

Sam Coppersmith: U.S. Congress campaign, 1992 (fundraising); U.S. Senate campaign, 1994. In the Senate campaign, I served as an uncompensated lawyer for the campaign in connection with legal proceedings relating to a recount of the primary election vote and engaged in some fundraising (legal advice and fundraising).

Art Hamilton: Secretary of State campaign, 1998.

Chris Cumiskey: Secretary of State campaign, 2002, Chairman (responsible for strategy and campaign finance reports; also legal advice and fundraising).

Janet Napolitano: Attorney General campaign, 1998 (fundraising); gubernatorial campaign, 2002 (fundraising and advice regarding transition planning).

16. Legal Career: Answer each part separately.

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

I served as a law clerk to Judge Jon O. Newman, United States District Court for the District of Connecticut, from January 1972 to August 1972.

I served as a law clerk to Judge J. Joseph Smith (deceased), United States Court of Appeals for the Second Circuit, from 1972 to 1973.

I served as a law clerk to Justice Potter Stewart (deceased), Supreme Court of the United States, from 1973 to 1974.

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

I have never 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.

1974 – 1980; 1983 – 2003

Osborn Maledon, PA (and predecessor firms, Meyer Hendricks Victor Osborn & Maledon, PA and Martori Meyer Hendricks & Victor, PA)

2929 North Central Avenue, 21st Floor

Phoenix, Arizona 85012

Associate (1974 – 1977)

Shareholder (1977 – 1980; 1983 – 2003)

1980 – 1983

Office of Arizona Governor Bruce Babbitt

1700 West Washington Street

Phoenix, Arizona 85007

Chief of Staff

January – April 1988

Office of Arizona Governor Rose Mofford

1700 West Washington Street

Phoenix, Arizona 85007

Chief of Staff (volunteer capacity, while on leave from law firm)

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

Under a local court rule, lawyers practicing in Maricopa County are occasionally appointed to arbitrate civil cases where the amount in controversy is less than a stated amount. As a lawyer, I was appointed in several such cases, but I do not have records concerning these cases, none of which was significant.

b. Describe:

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

I practiced law at the Osborn Maledon firm and its predecessors from 1974 to 2003, with several breaks for public service. The majority of my practice was civil litigation, although I did some criminal trial work and

some notable criminal appellate work. In the late 1970s, I began to do an increasing amount of appellate work, and by the time I left the firm in 2003 to join the bench, a majority of my work was in the appellate area. After leaving state service in 1983, I also began to do a significant amount of state administrative law practice, particularly with respect to state land and procurement issues, and that work continued throughout my tenure at the firm. In the 1980s and 1990s, I did a significant amount of work in the areas of telecommunications and media law. I also developed a sub-specialty in Indian law and in Indian gaming matters. I also did state elections work, particularly with respect to initiatives and referenda.

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

At the outset of my career, I typically represented individuals and small businesses in civil litigation matters. As my career progressed, although I continued to represent individuals and small businesses, I began increasingly to represent larger entities such as AT&T, Lucent Technologies, the American Broadcasting Company, Arizona Public Service Company, and Clorox, to name a few. My representation of these entities included litigation, administrative proceedings, and other advice. I also represented municipal governments and other entities, including the City of Phoenix, the Central Arizona Water Conservation District, and the Arizona State Compensation Fund. These representations often involved election law and constitutional litigation. I developed an Indian law practice, and represented, both in litigation and in connection with a statewide initiative, the Salt River Pima Maricopa Indian Community. I also did state lands work for the Hopi Tribe. A large part of my appellate practice involved referrals from attorneys who had tried cases – in various subject matter areas – and wished to retain independent counsel on appeal.

- 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.

Approximately 90 percent of my practice was in litigation. I appeared in court frequently throughout my time in private practice.

- i. Indicate the percentage of your practice in:
 - 1. federal courts: 25%
 - 2. state courts of record: 50%
 - 3. other courts:
 - 4. administrative agencies: 25%

- ii. Indicate the percentage of your practice in:
1. civil proceedings: 98%
 2. criminal proceedings: 2% (appellate)
- 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 do not have precise records, but I estimate that I tried more than 40 cases to final decision. I was sole or chief counsel in the great majority (roughly 90 percent) of these cases.

- i. What percentage of these trials were:
1. jury: 35%
 2. non-jury: 65%
- 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 argued two cases before the Supreme Court of the United States: *Bowen v. Public Agencies Opposed to Social Security Entrapment*, 477 U.S. 41 (1986), and *Ring v. Arizona*, 536 U.S. 584 (2002). In *Bowen*, I had submitted, along with Benna Ruth Solomon, then of the State and Local Legal Center, an amicus brief on behalf of the Council of State Governments, the U.S. Conference of Mayors, the International City Management Association, the National Association of Counties, and the National League of Cities. I was then asked by the appellees to do the oral argument. In *Ring*, I submitted a certiorari petition, an opening brief and a reply brief. Copies of the briefs and oral argument transcripts are supplied.

I also submitted briefs in the following cases, copies of which are supplied:

PGA Tour, Inc. v. Martin, 532 U.S. 661 (2001) (certiorari petition, the opening brief and the reply brief).

Shoen v. Shoen, 176 F.3d 1150 (9th Cir. 1999), *cert. denied*, 528 U.S. 1075 (2000) (opposition to certiorari).

O'Melveny & Myers v. F.D.I.C., 512 U.S. 79 (1994) (amicus brief in support of the petition for certiorari on behalf of my law firm, then known as Meyer, Hendricks, Victor, Osborn & Maledon).

State v. Herrera, 176 Ariz. 9, 859 P.2d 119 (1993), *cert. denied*, 510 U.S. 966 (1993) (certiorari petition).

State of Missouri v. Jenkins, 495 U.S. 33 (1990) (amicus brief on behalf of the National Governors' Association, the National League of Cities, the National Conference of State Legislatures, the National Association of Counties, the Council of State Governments, the United States Conference of Mayors and the International City Management Association).

Georges v. Glick, 856 F.2d 971 (7th Cir. 1988), *cert. denied*, 489 U.S. 1097 (1989) (opposition to certiorari).

Ewing v. State, 155 Ariz. 200, 745 P.2d 947 (1987), *appeal dismissed*, 486 U.S. 1002 (1988) (motion to dismiss).

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. *Bowen v. Public Agencies Opposed to Social Security Entrapment*, 477 U.S. 41 (1986).

This case arose out of an attempt by California agencies and political subdivisions to withdraw from the Social Security System. Amendments to the Social Security Act in 1950 permitted voluntary participation by states in the System, and also allowed withdrawal upon two years' notice. California entered the system after those amendments, and signed agreements with the federal government allowing withdrawal by participating agencies and political subdivisions on such notice. In 1983, however, the Act was amended to provide that no terminations would thereafter be allowed.

A three-judge district court held the 1983 Amendments unconstitutional. I was asked by the State and Local Legal Center in early 1986 to write an amicus brief on behalf of the Council of State Governments, the U.S. Conference of Mayors, the International City Management Association, the National Association of Counties, and the National League of Cities. The brief was filed in March, 1986.

After the amicus brief was filed, the appellees (the State of California and a number of state agencies/subdivisions) asked me to argue the case to the Court. I did so on April 28, 1986. The Court issued its opinion on June 19, 1986, reversing the judgment of the district court.

My co-counsel was Benna Solomon, then with the State and Local Legal Center, now Deputy Corporation Counsel of the City of Chicago. Her address and telephone number are 30 North LaSalle Street, Chicago, Illinois 60602, 312-744-7150.

Opposing counsel was then-Assistant Attorney General Richard Willard, currently at Steptoe & Johnson, 1330 Connecticut Avenue, NW, Washington DC 20036, 202-429-6263.

2. *State Compensation Fund v. Symington*, 174 Ariz. 188, 848 P.2d 273 (1993).

This case involved an emergency “budget balancing” bill enacted by the Arizona Legislature in 1992. Under the bill, an “alternative minimum tax” was imposed on the income received by the State Compensation Fund, an agency formed to provide worker’s compensation insurance to Arizona employers. The Fund contended that the tax violated a provision of the Arizona Constitution forbidding special legislation.

I was hired by the Fund in early 1993, when the tax was to become effective, to challenge its validity. I filed an original action (called a special action under Arizona procedure) in the Arizona Supreme Court, which accepted discretionary jurisdiction because of the importance of the question presented and because the issue was of first impression. The tax would have significantly affected premiums for many state employers. On February 23, 1993, the Court issued an opinion invalidating the tax.

I was lead counsel for the Fund, but was assisted by Mark Fuller, now at Gallagher & Kennedy, 2575 East Camelback Road, Phoenix, Arizona 85016, 602-530-8185.

Opposing counsel was Rebecca White Berch, who was then the Arizona Solicitor General. She is currently Chief Justice of the Arizona Supreme Court. Her address is 1501 West Washington, Phoenix, Arizona 85007, and her telephone number is 602-452-3535.

3. *US West Communications, Inc. v. Arizona Corporation Commission*, 201 Ariz. 242, 34 P.3d 351 (2001).

This case involved the constitutionality of regulations promulgated by the Arizona Corporation Commission concerning deregulation of local telephone services. I represented AT&T, starting with administrative proceedings before the Commission, then in the Superior (trial) Court, the Court of Appeals, and eventually before the Arizona Supreme Court.

The central issue was whether the Arizona Constitution required competitive telephone rates and charges to be set in the traditional method, under which the Commission first determines the fair value of a utility’s property and then allows a reasonable rate of return on that value. The Commission’s regulations instead relied largely on the market to set rates among competitive carriers. US West, the incumbent monopolist, challenged those regulations and

licenses issued by the Commission to various competitive local exchange carriers (“CLECs”), including AT&T.

Although a number of CLECs were involved in the case, I wrote the brief on behalf of the group and argued the case in the courts. The Superior Court upheld the regulations and licenses, but the Court of Appeals reversed in part. *US West Communications, Inc. v. Arizona Corporation Commission*, 198 Ariz. 208, 8 P.3d 396 (Ct. App. 2000). I wrote a petition for review, which was granted by the Supreme Court; the Court also granted US West’s cross-petition. After oral argument, the Court held that although the Arizona Constitution mandated the Commission to determine the fair value of a utility’s Arizona property, competitive rates were not required to be determined on the old rate-of-return method.

My co-counsel was Joan Burke, 1650 North First Avenue, Phoenix, Arizona 85003, 602-535-0396. The other CLECs were separately represented, but provided input on the briefing and oral arguments. I collaborated mostly with Thomas H. Campbell, Lewis & Roca, 40 North Central, Phoenix, Arizona 85004, 602-262-5723.

Opposing counsel was Timothy Berg, Fennemore Craig PC, 3003 North Central Avenue, Suite 2600, Phoenix, Arizona 85012, 602-916-5421.

4. *Salt River Pima-Maricopa Indian Community v. Hull*, 190 Ariz. 97, 945 P.2d 818 (1997).

This case involved the efforts of my client, the Salt River Pima-Maricopa Indian Community (SRPMIC), to enter into a gaming compact with the State under the Indian Gaming Regulatory Act. An Arizona statute permitted the State to enter into gaming compacts with Indian tribes, but after signing compacts with sixteen tribes, the Governor refused to sign further compacts. The Arizona voters then adopted an initiative measure in 1996 requiring the Governor to sign a “standard gaming compact” with any tribe upon request. The initiative defined a standard compact. In late 1996, SRPMIC submitted a standard form of compact to Governor Symington and requested that he sign it on behalf of the State. The Governor instead tendered to the tribe a compact containing various non-standard provisions. On behalf of SRPMIC, co-counsel and I filed an original special action in the Arizona Supreme Court, seeking an order that the Governor sign the standard compact. I argued the case to the Supreme Court on behalf of SRPMIC.

The Court held that the Governor was obligated to enter into the standard compact, and rejected his arguments that the 1996 initiative violated separation of powers. The Court also rejected the Governor’s arguments that there was no such thing as a standard compact. The Court left open, however, whether the Indian Gaming Regulatory Act permitted the Tribe to engage in all gaming specified in the standard compact.

My co-counsel were Thomas L. Hudson, Osborn Maledon, 2929 North Central Avenue, 21st Floor, Phoenix, Arizona 85012, 602-640-9000, and Philip J. Shea, 845 North Third Avenue, Phoenix, Arizona 85003, 602-254-3383.

Opposing counsel were Ian Macpherson, currently at Ryan Rapp & Underwood, 3200 North Central Avenue, Suite 1600, Phoenix, Arizona 85012, 602-280-1000; Lisa T. Hauser, Gammage & Burnham, Two North Central Avenue, 15th Floor, Phoenix, Arizona 85004, 602-256-4462; and Thomas J. Dennis, currently at The Office of Legal Advocate, 3800 North Central Avenue, Suite 1500, Phoenix, Arizona 85012, 602-506-4111.

5. *Sears v. Hull*, 192 Ariz. 65, 961 P.2d 1013 (1998).

This case involved an issue left open in *Salt River Pima-Maricopa Indian Community v. Hull*, 190 Ariz. 97, 945 P.2d 818 (1997) – whether the provisions in the standard Indian gaming compact allowing casino-style gaming were illegal because Arizona did not generally allow such gaming by non-Indians. Shortly before the 1997 decision was entered, several residents of a community near the SRPMIC reservation filed suit in Superior Court, contending that the compacts were illegal for this reason. I represented SRPMIC in the trial proceedings. The trial judge found the compact illegal and enjoined the Governor from entering into the standard compact with SRPMIC.

I filed a notice of appeal on behalf of SRPMIC; the State also appealed. The Supreme Court granted a motion to transfer the appeal directly to that court, bypassing the intermediate Court of Appeals. I briefed and argued the case in the Supreme Court. After hearing oral argument, the Court reversed and vacated the injunction entered by the trial court, holding that the plaintiffs had no standing to challenge the compact. SRPMIC thereafter entered into a compact with the State and has since conducted very substantial gaming operations, the proceeds from which have greatly benefited the Community.

The State was represented by Thomas J. Dennis, currently at The Office of Legal Advocate, 3800 North Central Avenue, Suite 1500, Phoenix, Arizona 85012, 602-506-4111. The Governor was represented by Lisa Daniel Flores, now a Judge of the Superior Court, Maricopa County Superior Court, 201 West Jefferson, Phoenix, Arizona 85003, 602-372-0825.

Opposing counsel was Neil Vincent Wake, now a United States District Judge, who can be reached at United States District Court for the District of Arizona, 401 West Washington, Phoenix, Arizona 85003, 602-322-7640.

6. *Medical Laboratory Management Consultants v. American Broadcasting Cos.*, 981 F. Supp. 1487 (D. Ariz. 1996); 30 F. Supp. 2d 1182 (D. Ariz. 1998), *aff'd*, 306 F.3d 806 (9th Cir. 2002).

This case involved a news report about the pap smear industry broadcast by the American Broadcasting Companies (“ABC”) on the national news show “Prime Time Live,” hosted by Diane Sawyer. As part of the broadcast, ABC submitted pap smears to various laboratories under fictitious names and then compared the results reached by each laboratory with previous readings of the pap smears. The suit was filed in 1995 in Maricopa County Superior Court by a Phoenix laboratory that was one of the subjects of the show, along with the manager of the laboratory, who was surreptitiously videotaped while in the laboratory’s

corporate offices speaking to undercover ABC reporters. The suit made various tort and common law claims against ABC, Ms. Sawyer, and others, including defamation, invasion of privacy, fraud, and intrusion upon seclusion. My firm was retained to represent the defendants and we did so throughout the proceedings. I was lead counsel.

The suit was removed to the United States District Court for the District of Arizona. In 1996, Judge Roslyn O. Silver denied the plaintiffs' motion to remand, and, after the defendants filed a motion to dismiss, dismissed several claims. After two years of intensive discovery, Judge Silver granted our motion for summary judgment on all but one claim; plaintiffs later voluntarily dismissed that claim and appealed.

The Ninth Circuit affirmed in 2002. The opinion held that (1) the visit to the laboratory's administrative offices by ABC's undercover representatives did not intrude upon a reasonably expected seclusion under Arizona law; (2) the secret videotaping of conversation with the laboratory manager by the undercover representatives for future public broadcast did not intrude on an objectively reasonable expectation of privacy; (3) the alleged trespass was not the legal cause of publication damages allegedly suffered by the laboratory; and (4) the news broadcast was substantially true. I argued the case to the Ninth Circuit.

My co-counsel were Diane M. Johnsen, now a Judge of the Arizona Court of Appeals, Division One, 1501 West Washington, Phoenix, Arizona 85007, 602-542-1432, and Jean Zoeller, Vice President Litigation, ABC, 500 South Buena Vista, Suite 108C, Burbank, California 91521, 818-560-8410.

Opposing counsel was Neville L. Johnson, now of Johnson & Johnson, LLP, 439 North Canon Drive, Suite 200, Beverly Hills, California 90210, 310-975-1080.

7. *Ring v. Arizona*, 536 U.S. 584 (2002).

The issue in this case was whether the aggravating circumstances that must be found in order to subject a murder defendant to a potential sentence of death can be found by a judge, rather than a jury. Ring had been convicted of felony murder and sentenced to death after a superior court judge found two statutory aggravating circumstances. The Arizona Supreme Court vacated the finding of one aggravator, but affirmed the death sentence, rejecting Ring's argument that the Sixth and Fourteenth Amendments required that a jury, not a judge, find the existence of the aggravating circumstance. The Arizona court acknowledged that recent Supreme Court decisions, such as *Apprendi v. New Jersey*, 530 U.S. 466 (2000), suggested that Arizona's capital sentencing scheme might be unconstitutional, but felt bound by *Walton v. Arizona*, 497 U.S. 639 (1990), which had upheld the Arizona statute against an identical attack.

In the fall of 2001, I was asked by Ring's counsel to file a certiorari petition on Ring's behalf. We filed the petition in September, 2001 and the petition was granted in January, 2001. The case was argued on April 22, 2002, with a compacted briefing schedule.

I argued the case on behalf of Ring. The Court overruled *Walton*, and held that the Sixth and Fourteenth Amendments required that a jury, not a judge, find the aggravating circumstances that were necessary to subject a defendant to a capital sentence. The case was significant because it affected death penalty proceedings not only in Arizona, but in a number of other states. The Court remanded Ring's case to the Arizona Supreme Court for further proceedings.

My co-counsel were John A. Stookey, Osborn Maledon, 2929 North Central Avenue, 21st Floor, Phoenix, Arizona 85012, 602-640-9382, and Daniel L. Kaplan, now a Federal Public Defender, 850 West Adams Street, Suite 201, Phoenix, Arizona 85007, 602-382-2767.

Opposing counsel was Janet Napolitano, then Attorney General of Arizona, and now Secretary of the Department of Homeland Security, Washington, D.C. 20528, 202-282-8000.

8. *State v. Ring*, 204 Ariz. 534, 65 P.3d 915 (2003).

After the Supreme Court's decision in *Ring v. Arizona*, 536 U.S. 584 (2002), which invalidated Arizona's death penalty scheme and required that aggravating circumstances that make a capital defendant eligible for the death penalty must be found by a jury, not a judge, the Supreme Court of Arizona appointed me in the summer of 2002 as lead counsel for all defendants under a death sentence whose cases were still on direct appeal. The court ordered those defendants to brief issues common to their cases raised by the United States Supreme Court's decision. Among those many issues were: (1) whether *Ring* error could be harmless; (2) whether a new sentencing proceeding was required where one aggravating factor had been found by the jury (or involved a prior conviction) but another had not; (3) whether any resentencing was barred by double jeopardy; (4) whether aggravating factors could be found by a jury other than the trial jury; (5) whether the Arizona Constitution provided a broader right to jury trial on aggravating factors than the United States Constitution; and (6) whether certain aggravating circumstances, even if not expressly found by the trial jury, were implicit in the verdict.

I drafted a consolidated brief, which then received comment from counsel representing the 27 other defendants whose cases were on direct appeal. After revising the brief, I argued the case to the Arizona Supreme Court, whose opinion was not issued until after I joined the bench. After the opinion was issued, counsel for individual defendants filed additional briefs in each case. With very few exceptions, the Court concluded (in opinions from which I recused myself) that the individual defendants (including Ring) were entitled to new sentencing proceedings.

My primary co-counsel were John A. Stookey, Osborn Maledon, 2929 North Central Avenue, 21st Floor, Phoenix, Arizona 85012, 602-640-9382, and Daniel L. Kaplan, now a Federal Public Defender, 850 West Adams Street, Suite 201, Phoenix, Arizona 85007, 602-382-2767.

Opposing counsel was Kent E. Cattani, Office of the Attorney General, 1275 West Washington, Phoenix, Arizona 85007, 602-542-8589.

9. *PGA Tour, Inc. v. Martin*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 532 U.S. 661 (2001).

The issue in this case was whether the PGA Tour, a professional golf association, was required by the Americans with Disabilities Act to allow a professional golfer with a malformed right leg to ride a golf cart in its competitive tournaments. My firm, Osborn Maledon, represented the PGA Tour, and my partner William J. Maledon represented the Tour at trial. In January, 1998, the United States District Court for the District of Oregon entered a permanent injunction requiring the Tour to allow use of the golf cart; the Tour appealed. I was asked to be lead counsel on appeal, had the lead role in drafting the briefs, and argued the case to the Ninth Circuit in 1999. That court issued its decision in March, 2001, affirming the judgment of the district court.

The Tour hired H. Bartow Farr III, as lead counsel in preparing a petition for certiorari, and I worked closely with him on the petition for certiorari. After certiorari was granted in the fall of 2000, I continued to work closely with Mr. Farr on the briefs, on which my name appears, and was intensively involved in the oral argument preparation. The case was argued in January 2001, and the Supreme Court issued its opinion in May of that year, affirming the Ninth Circuit.

Co-counsel were William J. Maledon, Osborn Maledon, 2929 North Central Avenue, 21st Floor, Phoenix, Arizona 85012, 602-640-9000, and H. Bartow Farr III, Farr & Taranto, 1220 19th Street, N.W., Suite 800, Washington, DC 20036, 202-775-0184.

Opposing counsel was Roy L. Reardon, Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, New York 10017, 212- 55-2840

10. *Toscano v. Professional Golfers Association*, 258 F.3d 978 (9th Cir. 2001).

This was an antitrust case brought by a professional golfer against the PGA and sponsors of Senior PGA Tournaments. The golfer alleged that by agreeing to abide by PGA Senior Tour rules, which allowed some golfers with historically good tournament records to be eligible for Tour events even if they had not achieved recent tournament success, the sponsors had entered into a combination in restraint of trade with each other and the Tour. (These rules allowed certain very popular golfers, such as Arnold Palmer, automatic entry in Senior Tour events, thus helping to boost attendance.) My partner William J. Maledon represented the sponsors and the Tour in the trial court, which entered a summary judgment in favor of the sponsors in 1999. The golfer appealed in late 1999, and I was asked to be lead counsel for the sponsors on appeal (the claims against the Tour were not summarily adjudicated). I drafted the briefs in coordination with trial counsel and argued the case to the Ninth Circuit in June, 2001.

The Ninth Circuit issued its opinion in August, 2001, holding that the sponsors had not violated the Sherman Act by agreeing to abide by the PGA Tour regulations. The decision was important to the continued success of the Senior Tour, as the presence of the golfers made eligible by the events were among the Tour's most popular participants.

Co-counsel were William J. Maledon and Brett L. Dunkelman, Osborn Maledon, 2929 North Central Avenue, 21st Floor, Phoenix, Arizona 85012, 602-640-9000.

Opposing counsel was Paul R. Smith, Bowman & Stella, 800 West Airport Freeway, Suite 860, Irving, Texas 75062, 214-922-0220.

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.)

Apart from the litigation activities already detailed, I would rank as most significant my participation as counsel for the Salt River Tribe and the Arizona Indian Gaming Association in a statewide initiative campaign in 2002. That campaign, which was successful, guaranteed the ability of all Arizona tribes to engage in gaming for the foreseeable future, even after then-existing compacts expired. I served as chief legal advisor for the Association during the campaign, had a lead role in the drafting of the complex initiative, and worked closely with the Association's consultants on strategy. The initiative prevailed by a narrow margin in November 2002, and has provided the structure for the continuation of Indian gaming and effective state regulation of such gaming activities.

After leaving state government service in 1983, I was occasionally called upon by those doing lobbying in my firm or other firms to assist in presentations to state agencies or the state legislature. I assisted a lawyer in another firm in pursuing legislation on behalf of Searle Corporation with respect to regulation of aspartame in the early 1980s. I pursued applications for planning permits, leases and sales in the State Land Department while in private practice during the 1980s and 1990s. While not typically viewed as lobbying, these activities arguably were covered by the Arizona lobbying law, so my firm (as a matter of precaution) typically registered all lawyers as lobbyists, and listed as lobbying clients all clients we represented in state agency non-litigation matters. The 1999 records of the Arizona Secretary of State (the last year available on line) indicate that the firm or I registered as lobbying for Jaren Associates and Ridgeway Oil Corporation, each of which I represented in connection with state land leases or purchases.

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

I have regularly taught at the Arizona State University College of Law (now the Sandra Day O'Connor College of Law) since arriving in Phoenix in 1974. From 1977 to 1980, I

taught professional responsibility and Supreme Court litigation as an adjunct professor. The former course covered both ethics and professionalism and the latter focused on cases then pending before the Court. I cannot locate syllabi for those courses; the law school did not in those days require syllabi, and I believe that none were prepared.

After two terms in Government service, I returned as an adjunct professor to the College of Law in 1988, teaching a course on the legislative process, which focused both on the legal aspects of legislation and how legislation was pursued in Arizona. I cannot locate syllabi for those courses; the law school did not in those days require syllabi, and I believe that none were prepared.

In 1994 and 1995, as part of my firm's sabbatical program, I spent an academic year in residence at the law school as a visiting professor of law, teaching the first-year civil procedure courses to a small section. These courses covered, among other things, both jurisdiction and rules-based issues. I have not retained syllabi.

In the fall of 2001, again on sabbatical, I served as a Distinguished Visitor from Practice at the law school, again teaching civil procedure. I have not retained a syllabus.

I resumed teaching as an adjunct professor in the fall of 2002, again teaching civil procedure. In 2004, I taught a course on the federal courts, which focused on federal statutory and constitutional jurisdictional issues. From 2005 to 2010, I taught a civil procedure course each fall. I have retained syllabi for the 2004 federal courts course and the 2005-2010 civil procedure courses, and they are supplied. In 2010 and 2011, I also taught an appellate oral advocacy seminar, in which students prepare and then argue an actual case to a panel of lawyers and judges. The course does not have a syllabus.

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 anticipate any such income or benefits.

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 presently have such plans.

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.

The most likely area of conflict would be cases in which I had sat on the Arizona Supreme Court, particularly habeas corpus cases. I would recuse myself in any case in which I had a prior judicial involvement. Because I have been out of law practice since 2003, I do not believe there are any other categories of cases that are likely to present conflicts-of-interest. I would of course recuse myself from a case involving any company in which I had shareholdings.

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

relations matters), I devoted substantial time to a number of appellate pro bono ventures. The two most significant were:

1. *Bowen v. Public Agencies Opposed to Social Security Entrapment*, 477 U.S. 1 (1986). In *Bowen*, I had submitted, along with Benna Ruth Solomon, then of the State and Local Legal Center, an amicus brief on behalf of the Council of State Governments, the U.S. Conference of Mayors, the International City Management Association, the National Association of Counties, and the National League of Cities. I was then asked by the appellees to do the oral argument. I have no access to my time records, but I estimate that I devoted several months of time to the matter (in the area of 400–500 hours).
2. *Ring v. Arizona*, 536 U.S. 584 (2002). In *Ring*, I was asked by counsel who had handled the appeal in the Arizona Supreme Court on behalf of Mr. Ring to file a certiorari petition. I did so (with help from others in my firm), and after certiorari was granted, filed as counsel of record an opening and reply brief. I also orally argued the case. After the Court held in Ring's favor, I was appointed by the Arizona Supreme Court to brief and argue on remand a consolidated action involving issues arising from the Court's decision common to all death row defendants whose cases were still on direct appeal. *See State v. Ring*, 204 Ariz. 534, 65 P.3d 915 (2003). I devoted the better part of a year to the *Ring* cases, and estimate that I spent about 1500 hours on them.

In addition to my pro bono litigation practice, I have devoted, both as an attorney and as a judge, substantial time to uncompensated teaching at the Sandra Day O'Connor College of Law at Arizona State University. I was in residence as a professor twice (once for a semester and once for an entire academic year) and have taught as an adjunct professor in most years over the past several decades. I am certain that this teaching has involved thousands of hours. I have also lectured at a great number of continuing legal education events, both as an attorney and later as a judge.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

There is no selection commission in Arizona to recommend candidates for nomination to the United States Court of Appeals for the Ninth Circuit.

I received a phone call from an attorney with the White House Counsel's Office on July 25, 2011 to discuss my interest in being considered as a candidate for

nomination. Since August 8, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 12, 2011, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On November 2, 2011, the President submitted my nomination to the Senate.

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

No.

AFFIDAVIT

I, Andrew David Hurwitz, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

11/1/11

(DATE)

Andrew David Hurwitz

(NAME)

Marcie Kanefield

(NOTARY)

