

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Edward Milton Chen

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

United States District Judge for the Northern District of California

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

Office: United States District Court
 450 Golden Gate Avenue, 15th Floor
 San Francisco, CA 94102

Residence: [REDACTED]

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

1953; Oakland, California.

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1976 – 1979, University of California Boalt Hall School of Law (now known as University of California, Berkeley School of Law); J.D.; June, 1979

1971 – 1975, University of California, Berkeley; A.B., June, 1975

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.

4/01 to current

United States District Court for the Northern District of California
450 Golden Gate Avenue, 15th Floor
San Francisco, CA 94102
United States Magistrate Judge

9/85 to 4/01

American Civil Liberties Union Foundation of Northern California
39 Drumm Street
San Francisco, CA 94111
Staff Attorney

12/82 to 9/85

Coblentz Patch Duffy & Bass
(formerly Jacob Sills & Coblentz, and Coblentz Cahen McCabe & Breyer)
One Ferry Building, Suite 200
San Francisco, CA 94111
Litigation Associate

6/81 to 8/82

United States Court of Appeals for the Ninth Circuit
Chief Circuit Judge James R. Browning
316 James R. Browning United States Courthouse
95 Seventh Street
San Francisco, CA 94103
Law Clerk

6/80 to 5/81

Asian Law Caucus
Minami Lew & Tamaki LLP
360 Post Street, 8th Floor
San Francisco, CA 94108
Volunteer Attorney

6/79 to 4/80

United States District Court for the Northern District of California
U.S. District Judge Charles B. Renfrew
450 Golden Gate Avenue, 15th Floor
San Francisco, CA 94102
Law Clerk

9/78 to 11/78

California Supreme Court
Justice Matthew O. Tobriner
Judicial Extern

6/78 to 8/78

Employment Law Center of the Legal Aid Society of San Francisco
600 Harrison St # 120
San Francisco, CA 94107
Law Clerk

6/77 to 8/77

San Francisco Neighborhood Legal Assistance Foundation
225 Bush St
San Francisco, CA 94104-4207
Law Clerk
Welfare Advocate (9/75 – 5/76)

9/75 – 5/76

University of California, Berkeley
Department of Asian American Studies
506 Barrows Hall #2570
Berkeley, CA 94720
Teaching Assistant

6/75 to 8/75

U.S. Department of Justice
Civil Rights Division, Appellate Section
950 Pennsylvania Avenue, NW
Washington, DC 20530
Summer Intern

Periodically, from 1975 to present

Board Member, Manager, Desk Clerk
Rose T.Y. Chen Holiday Lodge Motel,
Rose T.Y. Chen Administrative Trust, and
Rose T.Y. Chen Charitable Foundation

1992 to 2000

Board Member
Chinese Community Housing Corporation
1525 Grant Avenue
San Francisco, CA 94133

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

I have not served in the military.

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.

Judge of the Year, San Francisco Barristers Club, 2007

United States Attorney's Office, Asian Pacific American Heritage Month, Recognition, May 2005

Bay Area Asian Pacific American Law Students Association Conference, Building Bridges Lifetime Achievement Award, February 2005

Asian Pacific Bar Association of the Silicon Valley, Recognition, October 2004

United States Department of Justice, Asian Pacific American Heritage Month, Recognition, May 2003

Chinese Consolidated Benevolent Association & Chinese Consolidated Women's Association, Recognition, October 2002

California Law Review, Alumnus of the Year, 2002

Trailblazer Award, National Asian Pacific American Bar Association, 2001

Asian American Bar Association of the Greater Bay Area, Recognition, 2001

The Impact Fund, Recognition, April 2001

National Japanese American Historical Society, Day of Remembrance, Recognition, February 1999

Asian American Bar Association of the Greater Bay Area, Joe Morozumi Exceptional Legal Advocacy Award, 1998

Minority Bar Coalition Unity Award, November 1993

Order of the Coif, Boalt Hall, 1979

California Law Review, Associate Editor (top 5% of first year class selected), 1977

American Jurisprudence Awards in Contracts and Civil Procedure, 1977

Graduated with Great Distinction in General Scholarship, University of California, Berkeley, 1975

Phi Beta Kappa (Junior Year), University of California, Berkeley, 1973

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.

Ninth Circuit Pro Se Implementation Committee, Chair, 2005 – present
Ninth Circuit Task Force on Self-Represented Litigants
California Commission on Access to Justice, Federal Courts Committee;
Chair, 2004 – present
Federal Magistrate Judges Association
International Committee of the Federal Magistrate Judges Association
Diversity Committee of Federal Magistrate Judges Association
Edward J. McFetridge American Inn of Court
American Bar Association
Bar Association of San Francisco
Barristers Club
Asian American Bar Association of the Greater Bay Area
National Asian Pacific American Bar Association
California State Bar, Human Rights Committee, Member, 1987 - 1989
Asian American Bar Association of the Greater Bay Area
Board of Directors, 1988 - 1990
Ninth Judicial Circuit Historical Society

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.

Admitted to California State Bar in November 1980.

No lapses in membership until appointed as Magistrate Judge in April 2001.
Under the Constitution of California, a person serving as a judge of a court of record is not considered to be a member of the State Bar while in office. See California Constitution Article 6, § 9.

- 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.

California State Bar (1980)
United States District Court for the Northern District of California (1980)
United States District Court for the Central District of California (1982)
United States District Court for the District of Arizona (1983)
United States Court of Appeals for the Ninth Circuit (1982)
United States Court of Appeals for the Fifth Circuit (1995)
Supreme Court of the United States (1985)

There have been no lapses in membership until appointed as Magistrate Judge in April 2001.

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.

Academy of Science (circa 1995 – present)

SF Jazz (circa 2003 – present)

Asian Art Museum (circa 2003 – present)

Past Member:

Smithsonian Institution (National Member thru their magazine subscription, years unknown);

KQED (January 1980 – 2009, off and on);

Chabot Science and Space Center (years unknown);

American Civil Liberties Union (circa 1985 – 2001);

Sierra Club (circa 1980 – 2001);

NAACP (circa 1980 – 2001);

Amnesty International (years unknown);

San Francisco Zoo (circa 1993 – 2000).

- 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.

I am not a member, nor have I ever been a member, of any such organization.

12. Published Writings and Public Statements:

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

"The Judiciary, Diversity, and Justice for All," 91 *California Law Review* 1109 (2003).

"Statement on the Civil Liberties Implication of Official English Legislation Before the U.S. Senate Committee on Governmental Affairs," in *Language Ideologies*, Vol. 2 (R. Gonzalez, ed.) (Nat'l Council of Teachers of English) (2001).

Naming Names – Racism's Double Standard, ACLU of N. Cal., June 18, 1999, at http://www.aclunc.org/news/opinions/naming_names_-_racism's_double_standard.shtml.

"Labor & Immigration: Examining the Intersection," Speech: Labor Law & Language Discrimination, Asian Law Journal Symposium on Law & Labor, 6 *Asian Law Journal* 223 (May 1999).

Recent Developments: "Introduction to Petition to U.S. Commission on Civil Rights," 5 *Asian Law Journal* 353 (May 1998).

"Garcia v. Spun Steak Co.: Speak English-Only Rules and The Demise of Workplace Pluralism," 1 *Asian Law Journal* 155 (1994).

"Language Rights in the Private Sector," in *Language Loyalties: A Sourcebook on the Official English Controversy* (J. Crawford, ed.) (University of Chicago Press) (1992).

Preface to "The University of California Hate Speech Policy: A Good Heart in Ill-Fitting Garb," 12 *Hastings Communications and Entertainment Law Journal*, 593 (1990).

"Defending Malicious Prosecution Suits By Police Officers Against Civil Rights Plaintiffs" in *Civil Rights Litigation and Attorney Fees Annual Handbook*, Vol. Six (Clark Boardman 1990) (co-author).

"Common Law Privacy: A Limit On An Employer's Power to Test for Drugs," 12 *George Mason Law Review* 651 (1990) (co-author).

Op-Ed Piece, "Today's Immigrants Learn English as Fast as Yesterday's Did," *New York Times* (September 29, 1989).

"Challenging Employee Drug Testing: Useful Principles for Privacy Litigation" in *Civil Rights Litigation and Attorney Fee Annual Handbook*, Vol. IV (Clark Boardman 1988) (co-author).

"The 'English-Only' Movement" in *East Wind*, Vol. VI, No. 1 (Spr.-Sum., 1987) (co-author).

Comment, "The Case for Minority Participation in Reverse Discrimination Litigation," 67 *California Law Review* 191 (1979).

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

I served on the California State Bar Human Rights Committee between 1987 – 1989. The Committee reviewed various draft state legislation affecting human rights and the administration of justice. I believe those reports were reviewed by the State Bar, and if approved, were sent to the appropriate committee of the California legislature. The reports were drafted through a collaborative effort and not individually authored. I do not have access to those reports.

I served on the Ninth Circuit's Task Force on Self-Represented Litigants which rendered a report to the circuit in 2005.

- 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.

"Statement on the Civil Liberties Implication of Official English Legislation Before the U.S. Senate Committee on Governmental Affairs," in *Language Ideologies*, Vol. 2 (R. Gonzalez, ed.) (Nat'l Council of Teachers of English) (2001). Identical testimony was given before the House Subcommittee on Early Childhood, Youth and Families of the Committee on Economic and Educational Opportunities. This testimony was given in response to an invitation to testify about proposals to make English the official language of the United States.

Recent Developments: "Introduction to Petition to U.S. Commission on Civil Rights," 5 *Asian Law Journal* 353 (May 1998). The petition was filed on behalf of Asian American groups and leaders objecting to racially discriminatory practices and stereotypes made by elements of both major political parties as well as independent third party candidate and the media.

Also, I have testified before the United States Equal Employment Opportunity Commission (EEOC) on language and national origin discrimination and before the California State Senate and Assembly on language discrimination and employee privacy. I do not have those transcripts.

- 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.

Prior to taking the bench, I have given scores of speeches, lectures, panel discussions and presentations on a variety of issues. The subjects covered employee privacy rights and mandatory drug testing, employment discrimination laws, racial discrimination and profiling, language-based and national origin discrimination, and diversity. These speeches and presentations (between 1985 – 2001) were given to high school, college and law school students, conferences (such as annual conferences held by the ACLU, annual conference of the National Hispanic Bar Association, annual conference of the National Asian Pacific American Law Students' Association), seminars sponsored by the regional office of the Equal Employment Opportunity Commission, bar associations (such as the Bar Association of San Francisco and the Employment Section of the California State Bar), continuing education courses, annual conferences of the District Court for the Northern District of California, and labor and community groups (such as local unions). I do not have the text or notes from these speeches. However, I have a record of the following presentations at seminars, workshops, lectures, and conferences made while I was a practicing attorney:

New College of the Law, Class on Racism and the Law, 2/25/95, San Francisco, CA.

Harvard APALSA (Asian Pacific American Law Students Association) Annual Conference, Asian Pacific American Lawyers in Coalition, Panel on Public Interest Coalition Building and Litigation, 3/4/95, Cambridge, MA.

Equal Employment Opportunity Commission – New Approaches to Addressing National Origin Discrimination, 3/14/95, Washington, DC.

New Jersey State Bar Association – the California “Civil Rights” Initiative, 11/9/95, Cannot recollect location.

Chinese for Affirmative Action Conference on Civil Rights – Affirmative Action, Race Conscious Remedies and the Asian American Community, 5/3/96, San Francisco, CA.

Organization of Chinese Americans Annual National Convention – Asian Pacific Americans and Civil Rights Laws, 6/29/96, San Francisco, CA.

The Bench/Bar Media Committee of the Bar Association of San Francisco – The Constitutionality of Proposition 209, 1/22/97, San Francisco, CA.

National ACLU Biennial Conference – Legal Challenges to the Federal Welfare Reform Act, 1/7/97, Cannot recollect location.

Harvard APALSA (Asian Pacific American Law Students Association) Annual Conference – Panel on Language and National Origin Discrimination, 3/8/97, Panelist, Cambridge, MA.

National Conference of Women's Bar Associations – the Aftermath of Proposition 209, 8/1/97, Cannot recollect location.

Equal Employment Opportunity Commission (Region IX) Technical Assistance Program – Principles of Language and National Origin Discrimination, 9/17/97, Washington, DC.

U.C. Davis School of Law, Panel on Constitutionality of Proposition 209, 10/23/97, Panelist, Davis, CA.

Language Minority Rights Institute – the Unz Initiative and Language Rights Law, 3/27/98, San Francisco Bay Area, CA.

National Employment Lawyers Association Convention – the Legal Status of Affirmative Action, 6/25/98, San Francisco Bay Area, CA.

Asian Pacific American Systemwide Alliance Annual Dinner – The Consequences of Proposition 209, 9/19/98, San Francisco Bay Area, CA.

ACLU of Northern California Annual Conference – Language Discrimination and Civil Liberties, 9/19/98, San Francisco Bay Area, CA.

Golden Gate Law School Public Interest Clinic – Presentation on ACLU Litigation Strategies and Procedures, 9/29/98, Speaker, San Francisco, CA.

Language Rights Project MCLE Seminar – Legal Principles of Language Rights Litigation, 11/20/98, San Francisco Bay Area, CA.

National Asian Pacific American Bar Association Convention – Affirmative Action and the Asian Pacific American Community, 11/98, Cannot recollect location.

University of California, Berkeley School of Law, Boalt Hall Asian Law Journal Symposium on the Intersectionality of Labor and Immigration – Panel on Workers' Rights: Empowering Undocumented and Underprivileged Immigrants (Lectured on Language Discrimination), 2/6/99, Panelist, Berkeley, CA.

Asian Pacific American in Higher Education – Redefining Merit and Race Relations after Prop. 209, 3/12/99, Cannot recollect location.

Northern District of California Judicial Conference – New Trends in Civil Rights Litigation, 4/24/99, San Francisco Bay Area, CA.

National Lawyers' Guild Annual Conference – Issues in Civil Rights Litigation, 10/15/99, San Francisco Bay Area, CA.

National Association of Legal Defenders Association Annual Conference – Issues in National Origin Discrimination, 11/13/99, Cannot recollect location.

After taking the bench I have given presentations, speeches and panel discussions on a wide range of topics including electronic discovery, employment law, intellectual property, diversity in the judiciary, alternative dispute resolution and case management, and Asian American legal history. Below is a listing of the speeches/presentations. Except where noted, outlines and notes of the speeches and presentations are provided

Naturalization speeches, (while on criminal duty, speech given on various dates (twice annually) to those becoming American citizens at Masonic Auditorium), 2001 to approximately 2005, San Francisco, CA.

University of San Francisco School of Law, Public Interest Law Program, Public Interest Clearinghouse Commencement, 5/2/01, Speaker, San Francisco, CA.

Asian Pacific American Heritage Week, 5/31/01, (speech given to U.S. Attorney's Office), Speaker, San Francisco, CA.

University of San Francisco School of Law, Alternative Law Day, 9/22/01, Speaker, San Francisco, CA.

NAPALSA (National Asian Pacific American Law Student Association) Conference, 11/11/01, Speaker, Houston, TX.

Stanford Law School Presentation, 11/14/01, Speaker, Palo Alto, CA.

NAPABA (National Asian Pacific American Bar Association), Trailblazer Award, 11/16/01, Award Recipient. No notes/speech for this event. I conveyed my expression of gratitude for the award.

AABA (Asian American Bar Association of the Greater Bay Area), Annual Holiday Party, 12/13/01, Speaker, San Francisco, CA.

ABA's (American Bar Association) Equal Employment Opportunity Committee's Midwinter Meeting, Panelist, 3/21/02, San Diego, CA.

AABA Installation Dinner, 3/22/02, Speaker, San Francisco, CA.
University of California, Berkeley School of Law, California Law Review Annual Banquet, Speaker and Honoree, 4/11/02, Berkeley, CA.

Filipino American Bar Association Annual Dinner, 4/13/02, Speaker, South San Francisco, CA.

Santa Clara University School of Law, Public Interest and Social Justice Graduation, 5/16/02, Speaker, Santa Clara, CA.

Law Day at U.S. District Court, 5/29/02, San Francisco, CA.

General Accounting Office Diversity Month, 6/14/02, Speaker, San Francisco, CA.

Introduction of Honoree Dale Minami at Employment Law Center's Annual Luncheon, 6/18/02, San Francisco, CA.

Brown Bag Lunch with Externs of U.S. District Court, U.S. Attorney's Office, Federal Public Defender's Office, 7/1/02, Speaker, San Francisco, CA.

U.S. District Court Retreat – Pro Bono Counsel, 10/23/02, Panelist, Sonoma, CA.

India trip, legal presentations on ADR (Alternative Dispute Resolution) and case management, sponsored by ISDLS (The Institute for the Study and Development of Legal Systems), 1/21/03 – 1/31/03, Panelist/Speaker, Mumbai, Delhi, and Ahmadabad, India. No notes/speech for these programs. The subject matters were case management and ADR (alternative dispute resolution).

University of California, Berkeley School of Law, SABA (Southeast Asian Bar Association) Conference, 2/15/03, Speaker, San Francisco, CA.

University of California, Davis School of Law, APALSA (Asian Pacific American Law Students Association) Conference, 2/24/03, Speaker, Davis, CA.

Harvard APALSA (Asian Pacific American Law Students Association) Conference, 3/1/03, Speaker, Cambridge, MA.

Northern District Judicial Conference, Affirmative Action Panel, 5/4/03, Panelist, Santa Rosa, CA.

Induction of Honorable John True, Superior Court Judge, 11/14/03, Speaker, Oakland, CA.

AABA Civil Rights Committee, 2/19/04, Panelist, San Francisco, CA.

University of California, Berkeley School of Law, Externship Program, 3/15/04, Speaker, Berkeley, CA.

BASF (Bar Association of San Francisco) – Pro Bono Program Roundtable Discussion, 3/25/04, Panelist, San Francisco, CA.

University of San Francisco School of Law, Academic Support Program graduation, 5/22/04, Speaker, San Francisco, CA.

University of California Hastings College of the Law, APALSA (Asian Pacific American Law Students Association) Dinner, 5/22/04, Speaker, San Francisco, CA.

Stanford University School of Law, Diversity Panel Program, 9/27/04, Panelist, Palo Alto, CA.

APBA-SV (Asian Pacific Bar Association of Silicon Valley) Annual Dinner, 10/15/04, Speaker, Cupertino, CA.

Malaysia trip, legal presentations on I.P. enforcement, ADR, and case management, sponsored by ISDLS (The Institute for the Study and Development of Legal Systems), 11/28/04 – 12/6/04, Panelist/Speaker, Kuala Lumpur, Malaysia.

Annual Bay Area APALSA (Asian Pacific American Law Students Association) Conference – Santa Clara University School of Law, 2/5/05, Panelist, Santa Clara, CA. No notes/speech for this event. The subject matter was transition to the bench and the importance of diversity and the judiciary.

Federal Bar Association “Brown Bag Lunch” Speaker Series, 4/12/05, Speaker, San Francisco, CA.

Department of Education, OCI, Asian Pacific Islander Month – Federal Employees, 5/18/05, Speaker, San Francisco, CA.

University of California Hastings College of the Law, Public Interest Graduation, 5/20/05, Speaker, San Francisco, CA.

U.S. Attorney’s Office, Asian Pacific Heritage Month, 5/26/05, Speaker, San Francisco, CA.

“Brown Bag Lunch” session, Federal Public Defender, with court externs, 7/29/05, Speaker, San Francisco, CA. No notes/speech for this event, as this was an informal meeting to discuss the practice of federal criminal law.

California State Bar Convention, Diversity Award Reception, 9/10/05, Speaker, San Diego, CA.

Jordanian Delegation (via ISDLS with Steve Mayo) visiting U.S. District Court, 10/14/05, Speaker, San Francisco, CA.

BASF (Bar Association of San Francisco) Conference on Diversity in the Bay Area Legal Community, "The Importance of Building the Pipeline," 10/28/05, Panelist, San Francisco, CA.

Edward J. McFetridge American Inn of Court, Group Presentation, 12/14/05, Panelist, San Francisco, CA.

University of San Francisco School of Law, "Judge's Panel," 2/4/06, Panelist, San Francisco, CA. No notes/speech for this event. The subject matter was legal career and tips in the practice of law and appearances in court.

Annual Bay Area APALSA (Asian Pacific American Law Students Association) Conference, 2/4/06, Panelist, San Francisco, CA. No notes/speech for this event, but the subject matter was Asian Americans and the law.

Northern District Judicial Conference, "Litigating Morality in an Era of Secrecy" Panel, 4/28/06 – 4/30/06, Panelist, Santa Cruz, CA.

Operation Protect and Defend Annual Dinner, 5/4/06, Speaker, Sacramento, CA.

NELA (National Employment Lawyers Association) Convention, 6/25/06, Panelist, San Francisco, CA.

University of California, Berkeley School of Law, Thelton Henderson Center for Social Justice Gala, Introduction of Award Recipient, 9/15/06, Speaker, San Francisco, CA.

BASF's (Bar Association of San Francisco) Litigation Section Program – "The 2006 Electronic Discovery Amendments to the Federal Rules of Civil Procedure" MCLE Program, 11/8/06, Panelist, San Francisco, CA.

Federal Circuit Bar Association – Patent Law Conference at UC Berkeley, 2/16/07, Panelist, Berkeley, CA.

University of California, Berkeley School of Law, American Constitution Society, 3/6/07, Speaker, Berkeley, CA.

University of California Hastings College of the Law, "Clerkship Committee Panel, 3/6/07, Panelist, San Francisco, CA. No notes/speech for this event, but the subject matter was the value of judicial clerkships.

APAHE (Asian Pacific Americans in Higher Education) Convention, 5/4/07, Speaker, Oakland, CA.

Chinese Historical Society of America and Northern District Historical Society Event: Remembering 1882: Fighting for Civil Rights in the Shadow of the Chinese Exclusion Act, 5/9/07, Panelist, San Francisco, CA. No notes/speech for this event. The subject matter was early court decisions affecting Asian Americans.

AABA (Asian American Bar Association of the Greater Bay Area), Asian American Legal History, 5/30/07, Moderator, San Francisco, CA.

California Bar Swearing-in Ceremony, 6/11/07, Speaker, Oakland, CA.

BASF (Bar Association of San Francisco) Barrister's Club Annual Judges Reception, "Judge of the Year" Award, 7/12/07, Speaker, San Francisco, CA.

ABA (American Bar Association) Annual Meeting, "The Anatomy of a Bad Faith Case" Program, 8/11/07, Panelist, San Francisco, CA.

University of California Hastings Law School, Orientation for Incoming Students, 8/13/07, Speaker, San Francisco, CA.

BASF Barristers Club, 10/17/07, Speaker, San Francisco, CA. No notes/speech for this event, but the subject matter was legal careers and tips on the practice of law.

Malaysia trip, training Malaysian judges on mediation, sponsored by the government of Malaysia, 11/30/07 – 12/7/07, Panelist/Speaker, Kuala Lumpur, Malaysia.

ABTL (Association of Business Trial Lawyers), Interview with Major Tom Fleener, 5/27/08, Moderator, Palo Alto, CA.

BASF (Bar Association of San Francisco) Pro Bono Committee, Presentation, 9/11/08, Panelist, San Francisco, CA. Although there are no notes, I spoke about the Court's civil pro bono program.

Ninth Circuit Law Clerk Orientation, "Wisdom from the Trial Court," 9/24/08, Panelist, San Francisco, CA.

Sacramento Unity Bar Annual Dinner, Speaker, 10/30/08, Sacramento, CA.

University of San Francisco Law School, Swearing-in for USF Alumni/New Attorneys, 12/5/08, Speaker, San Francisco, CA.

U.S. Coast Guard, Asian Heritage Month, "Asian American/Pacific Island Observance: Leadership to Meet the Challenges of a Changing World," 5/28/09, Panelist, Alameda, CA.

Breakthrough San Francisco at SF Day School, "Career Day," 7/10/09, Speaker, San Francisco, CA. No notes/speech for this event, but I hosted a group of elementary and middle school students in my courtroom and talked to them about the judicial system and the legal profession.

- 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.

Below is a list of the clippings that I found through the Internet.

Amanda Bronstad, *Federal Courts React to Tide of Pro Se Litigants*, The National Law Journal, March 9, 2009, at

<http://www.law.com/jsp/article.jsp?id=1202428902779>.

Equal Access, Equal Justice: The Federal Pro Bono Project, VLSP Community Advocate Newsletter, June 2005, at

<http://www.maildogmanager.com/page.html?p=000001XDDtjF6PzrUbe205ya8rXUxajQ>. (linked from <http://www.sfbar.org/volunteer/newsletter.aspx>)

What Fred Korematsu Meant to Me, ACLU News (N. Cal.), Spring 2005, at

http://www.aclunc.org/news/print_newsletters/asset_upload_file378_3553.pdf.

Bill Wallace, Kevin Fagan, Joe Garofoli, *Weapons search in San Leandro; Rocket launchers sought in warehouse*, S.F. Chron., A1, Apr. 17, 2004, at

<http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2004/04/17/MNGLO66QR71.DTL&type=printable>.

Michael R. Triplett, *Judges Counsel Attorneys to Settle Cases, Deal With Confidentiality, Privacy Concerns*, Daily Labor Report No. 57, Page C-1, March

25, 2002, at www.bna.com/bnabooks/ababna/eeo/2002/eeo2002mid3.doc/

Donna Domino, *Card Carrying Member: A Former ACLU Counsel Figured He'd Never Make it to the Bench, but He was Wrong*, S.F. Daily Journal, November 27, 2001

Jason Hoppin, *Chen Gives Asian a Voice on the Bench*, The Recorder, May 15, 2001

Ryan Kim, *Asian magistrate is a first in S.F.*, S.F. Chron., Apr. 27, 2001, at

<http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2001/04/27/MNL225010.DTL>.

Maria Shim, *English-Only Workplace Suits Continue to Rise*, , American Lawyer Media, October 18, 2000, at <http://englishfirst.org/workplace/workplaceacluprop63.htm>

Federal Court Strikes Down English-Only Driving Test, ACLU News (N. Cal.), Jan./Feb. 2000, at http://www.aclunc.org/news/print_newsletters/asset_upload_file169_4424.pdf.

Fired Fresno Workers File Federal Suit for Language Discrimination, ACLU News (N. Cal.), Nov./Dec. 1999, at http://www.aclunc.org/news/print_newsletters/asset_upload_file439_4423.pdf.

Nursing Rights Workers Win Language Rights Settlement, ACLU News (N. Cal.), July/Aug. 1999, at http://www.aclunc.org/news/print_newsletters/asset_upload_file603_4421.pdf

Employee Wins \$55,000 in Accent Discrimination Complaint, ACLU News (N. Cal.), July/Aug. 1999, at http://www.aclunc.org/news/print_newsletters/asset_upload_file603_4421.pdf.

Perla Ni, *Accent Discrimination Claim Costs Company \$55,000*, Asian Week, June 17-23, 1999, at http://asianweek.com/061799/news_settlement.html.

Language Rights Victories in State, Federal Courts, ACLU News (N. Cal.), Mar./Apr. 1999, at http://www.aclunc.org/news/print_newsletters/asset_upload_file748_4419.pdf.

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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.

2001 – present: United States Magistrate Judge.

I was appointed by the U.S. District Court for the Northern District of California. The jurisdiction of the Court is defined by 28 U.S.C. § 636.

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

I have presided over 15 cases to verdict. This does not include other cases I have adjudicated through motions.

- i. Of these, approximately what percent were:

jury trials?	47%;
bench trials	53%

civil proceedings?	60%;
criminal proceedings?	40%

- 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).

1. *United States v. Gardner*, No. CR 07-454 PJH (EMC) (N.D. Cal.)

Case Description:

Defendant Latosha Gardner was indicted on one count of conspiracy to engage in sex trafficking of a minor under 18 U.S.C. § 371, and one count of sex trafficking of a minor under 18 U.S.C. § 1591. After holding a detention hearing, I granted Ms. Gardner pretrial release subject to certain conditions. Subsequently, the government asked that another condition be imposed-- *i.e.*, electronic monitoring -- as required by the Adam Walsh Child and Safety Protection Act of 2006. Ms. Gardner argued that the Adam Walsh Act was unconstitutional, contending, *inter alia*, that the conditions imposed by the Act (1) constituted excessive bail in violation of the Excessive Bail Clause of the Eighth Amendment, (2) violated procedural due process, and (3) violated separation of powers.

I rejected the Eighth Amendment argument because the government had a valid interest in imposing the electronic monitoring condition and, as applied to the facts of the case, the condition was not excessive in relation to the government's interest. I rejected the separation of powers claim in part because of the historic role the legislature has played in establishing bail. As for the procedural due process claim, I expressed concern about the fact that the Act imposed certain release conditions without a judicial determination, but ultimately concluded that Ms. Gardner failed to identify any protectible liberty interest which was deprived by the condition of electronic monitoring. *United States v. Gardner*, 523 F. Supp. 2d 1025 (N.D. Cal. 2007).

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2. *Environmental Prot. Info. Ctr. v. Blackwell*, No. C-03-4396 EMC (N.D. Cal.)

Case Description:

Plaintiff Environmental Protection Information Center ("EPIC") filed suit against Defendant the United States Forest Service alleging the Service violated

both the National Environmental Policy Act (“NEPA”) and the National Forest Management Act (“NFMA”) by authorizing a timber sale in the Mendocino National Forest, threatening the habitat of the northern spotted owl, the northern goshawk, the Pacific fisher, and the American pine marten.

I held that the Service violated both NEPA and NFMA, finding, *inter alia*, that the Service failed to meet NFMA monitoring obligations by relying on insufficiently reliable habitat capability models. *Environmental Prot. Info. Ctr. v. Blackwell*, 389 F. Supp. 2d 1174 (N.D. Cal. 2004).

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3. *Smith v. City of Oakland*, No. C-05-4045 EMC (N.D. Cal.)

Case Description:

Plaintiffs Torry Smith and Patricia Gray sued two police officers and the City of Oakland for violation of their civil rights in connection with a warrantless parole search of their home. The police allegedly planted a gun on Mr. Smith which resulted in his arrest, prosecution, and incarceration for 4½ months. I granted summary judgment and dismissed the City from the suit. *Smith v. City of Oakland*, No. C-05-4045 EMC, 2007 WL 2288328 (N.D. Cal. Aug. 9, 2007). The case against the officers was then tried to a jury. The jury found for the plaintiffs and awarded them over \$6 million in damages.

Subsequently, I denied the defendants’ post-trial motion for judgment as a matter of law and for new trial on liability but granted a remittitur reducing damages by approximately \$2.5 million. *Smith v. City of Oakland*, 538 F. Supp. 2d 1217 (N.D. Cal. 2008).

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4. *Velez v. Roche*, No. C-02-0337 EMC (N.D. Cal.)

Case Description:

Plaintiff Pauline Velez filed suit against the United States Air Force, alleging discrimination on the basis of gender. She asserted both disparate treatment and hostile working environment claims. I granted partial summary judgment. The rest of the case was tried to a jury. The jury found in favor of the Air Force on the disparate treatment claim, but in favor of Dr. Velez on the hostile work environment claim, and awarded over \$500,000 in damages.

The Air Force subsequently filed a post-trial motion challenging for judgment as a matter of law, for new trial and for remittitur. I granted the remittitur but denied the rest of the motions. *Velez v. Roche*, 335 F. Supp. 2d 1022 (N.D. Cal. 2004). No appeal was prosecuted on the merits. I awarded attorney's fees but applied several reductions. The Ninth Circuit, in an unpublished memorandum, remanded on the reduction of the lodestar and calculation of hourly rates. *Velez v. Roche*, No. 04-17425, 2007 WL 295502 (9th Cir. Jan. 19, 2007) (Wallace, J., concurring in part and dissenting in part).

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5. *Davis, Cowell & Bowe, LLP v. Social Sec'y Adm'n*, No. C-01-4021 EMC, 2002 U.S. Dist. LEXIS 9548 (N.D. Cal. May 16, 2002), vacated by 281 F. Supp. 2d 1154 (N.D. Cal. 2003)

Plaintiff sought injunctive relief under the Freedom of Information Act (“FOIA”) for the failure of the Social Security Administration (“SSA”) to comply with Plaintiff’s requests for records. Plaintiff sought records reflecting communications between the SSA and two third-party employers, including inquiries made to the SSA by the employers about their employee’s social security numbers and the SSA’s response to those inquiries. The SSA claimed that any such information would be exempt from disclosure as tax return information.

I granted summary judgment to the SSA. Title 26 U.S.C. § 6103 provided blanket protection to tax information, and the W-2 and W-3 forms from which information was sought by the law firm was collected pursuant to the authority granted to the IRS to collect taxes. The fact that the returns passed through the Administration before reaching the IRS did not gainsay the fact that the information was filed under compulsion and the threat of criminal penalties related to the IRS’s administration of tax laws. Nor did it negate the nexus between the data or information obtained and the furtherance of obligations controlled by the tax laws. Finally, the records sought were exempt from disclosure under 5 U.S.C.S. § 522(b)(3).

Subsequently, the parties appealed and then reached a resolution. I then vacated the summary judgment order because the parties had jointly moved for vacatur and the controversy had become moot by virtue of unilateral action taken by the prevailing party (*i.e.*, the SSA).

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6. *Visto Corporation v. Sproqit Technologies, Inc.*, No. C-04-0651 EMC (N.D. Cal.)

Case Description:

Plaintiff Visto Corporation brought suit against Defendant Sproqit Technologies, Inc. for infringement of its patent involving software for wireless devices such as smart phones. Sproqit counterclaimed for declaration of noninfringement and invalidity, tortious interference with prospective economic advantage, and defamation. I dismissed the counterclaims for interference and

defamation. *Visto Corp. v. Sproqit Technologies, Inc.*, 360 F. Supp. 2d 1064 (N.D. Cal. 2005). I denied Visto's motion for preliminary injunction. *Visto Corp. v. Sproqit Technologies, Inc.*, 413 F. Supp. 2d 1073 (N.D. Cal. 2006). I subsequently held a tutorial session followed by a claims construction hearing. I issued a partial ruling on the claims construction. *Visto Corp. v. Sproqit Technologies, Inc.*, 445 F. Supp. 2d 1104 (N.D. Cal. 2006). Before I ruled on the remaining claims, Visto extended to Sproqit a covenant not to sue. I then dismissed the claim and counterclaims as moot over Sproqit's objection and rejected Visto's request to vacate all interlocutory orders including the claims construction ruling. *Visto Corp. v. Sproqit Technologies, Inc.*, No. C-04-0651 EMC, 2006 WL 3741946 (N.D. Cal. Dec. 19, 2006). Finally, I denied Sproqit's request for attorney fees. *Visto Corp. v. Sproqit Technologies, Inc.*, No. C-04-0651 EMC, 2007 WL 160942 (N.D. Cal. Jan. 17, 2007).

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7. *Darling International v. Baywood Partners, Inc.*, No. C-05-3758 EMC (N.D. Cal.)

Case Description:

This case involved a contract dispute over an agreement by Defendant Baywood Partners, Inc. to purchase real property from Plaintiff Darling International. The property had substantial environmental problems and the contract provided for lengthy contingencies. The parties transacted with each other for a period of over 12 years, leaving their legal relationship ambiguous. I denied cross-motions for summary judgment. *Darling International, Inc. v. Baywood Partners, Inc.*, No. C-05-3758 EMC, 2006 WL 2374635 (N.D. Cal. Aug. 16, 2006). The case proceeded to a bench trial. I found that the original contract had been terminated but that Baywood was nonetheless entitled to specific performance (subject to certain equitable modifications) on the basis of waiver and estoppel. *Darling International, Inc. v. Baywood Partners, Inc.*, No. C-05-3758 EMC, 2007 WL 2088366 (N.D. Cal. July 13, 2007). I subsequently ruled on a number of post-trial motions and awarded attorney's fees to the prevailing party. *Darling International v. Baywood Partners, Inc.*, No. C-05-

3758 EMC, 2007 WL 2904035 (N.D. Cal. Oct. 2, 2007) (denying motion to amend complaint); 2007 WL 2904034 (N.D. Cal. Oct. 2, 2007) (denying motion to alter judgment or for new trial); 2007 WL 4532233 (N.D. Cal. Dec. 19, 2007) (granting attorneys' fees and costs). The case resolved without appeal.

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8. *Wham-O, Inc. v. Sport Dimension, Inc.*, No. C-04-5055 EMC (N.D. Cal.)

Case Description:

Plaintiff Wham-O, Inc. filed suit against Defendant Sport Dimension, Inc. for patent infringement. The patent involved the application of laminated art on a bodyboard. I granted summary judgment to Sport Dimension. I rejected Sport Dimension's assertion of prosecution history estoppel but granted summary judgment on the basis of the all limitations rule. *Wham-O, Inc. v. Sport Dimension, Inc.*, 398 F. Supp. 2d 1081 (N.D. Cal. 2005).

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9. *City of Ann Arbor Emples. Ret. Sys. v. Gecht*, No. C-06-7453 EMC (N.D. Cal.)

Case Description:

Plaintiff, a retirement system for employees of the City of Ann Arbor, was a shareholder of Electronics for Imaging, Inc. ("EFI"). Plaintiff filed a derivative suit and class action in state court against various officers and directors of EFI, alleging, *inter alia*, that Defendants breached their fiduciary duty by failing to disclose in EFI's 2006 proxy statement their practice of backdating stock options to their benefit and to shareholders' detriment. The case was removed to federal court. Plaintiff moved to remand. Defendant argued that removal was proper, based, *inter alia*, on the removal provision of the Securities Litigation Uniform Standards Act ("SLUSA"). Plaintiff asserted that removal was not appropriate because it was exempted from SLUSA's reach as a class action based on the statutory or common law of the issuer's state of incorporation (known as the Delaware carve-outs). After analyzing the statutory language, I concluded that the Delaware carve-out applied. However, I found that remand was not appropriate under 28 U.S.C. § 1441(b) because the only Defendant "joined and served" at the time of removal was diverse, and thus federal jurisdiction obtained. *City of Ann Arbor Emples. Ret. Sys. v. Gecht*, No. C-06-7453 EMC, 2007 WL 760568 (N.D. Cal. Mar. 9, 2007). The case was voluntarily dismissed without prejudice in favor of litigation in Delaware.

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10. *TK Power, Inc. v. Textron, Inc.*, No. C-04-5098 EMC (N.D. Cal.)

Case Description:

In this breach-of-contract/fraud action, Plaintiff TK Power, Inc. contended

that it had contracted with Defendant Textron, Inc. to develop and supply high frequency on-board battery chargers for golf carts. TK Power asserted that, after investing significant time and money into developing the charger, Textron repudiated the contract. Textron claimed that TK Power had failed to successfully develop the prototypes necessary to advance to the production stage. I denied Textron's motion for summary judgment, *TK Power, Inc. v. Textron, Inc.*, No. C-04-5098 EMC, 2006 WL 733494 (N.D. Cal. Mar. 22, 2006), and the case was tried to a jury. *TK Power, Inc. v. Textron, Inc.*, 433 F. Supp. 2d 1058 (N.D. Cal. 2006) (opining on the application of the UCC in deciding on jury instructions). The jury found for Textron on one claim and hung on two others. I denied Textron's post-trial motion for judgment as a matter of law. *TK Power, Inc. v. Textron, Inc.*, No. C-04-5098 EMC, 2006 WL 2032577 (N.D. Cal. July 18, 2006). Pursuant to the parties' stipulation, I entered verdicts on the remaining two claims. The case has resolved by settlement.

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- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
1. *TK Power, Inc. v. Textron, Inc.*, 433 F. Supp. 2d 1058 (N.D. Cal. 2006)

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2. *Wham-O, Inc. v. Sport Dimension, Inc.*, 398 F. Supp. 2d 1081 (N.D. Cal. 2005)

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3. *Velez v. Roche*, 335 F. Supp. 2d 1022 (N.D. Cal. 2004)

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4. *United States v. Gardner*, 523 F. Supp. 2d 1025 (N.D. Cal. 2007)

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5. *Garcia v. Coleman*, No. C-07-2279 EMC, 2009 WL 799393 (N.D. Cal., Mar. 24, 2009)

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6. *Visto Corp. v. Sprogit Techs., Inc.*, No. C-04-0651 EMC, 2006 U.S. Dist. LEXIS 96173 (N.D. Cal. Oct. 4, 2006)

Counsel for Plaintiff: Ronald Katz
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Counsel for Defendant: Devan Padmanabhan
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Minneapolis, MN 55402
(612) 340-2600

7. *Environmental Prot. Info. Ctr. v. Blackwell*, 389 F. Supp. 2d 1174 (N.D. Cal. 2004)

Counsel for Plaintiff: Peter M.K. Frost
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(541) 485-2471

Counsel for Defendant: Owen Martikan
United States Attorney
Northern District of California
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San Francisco, CA 94102
(415) 436-7241

8. *Fitzgerald v. Cassil*, 216 F.R.D. 632 (N.D. Cal. 2003)

Counsel for Plaintiff: Liza Cristol-Deman
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(650) 879-0141

Counsel for Defendant: Michael T. Kennick
Kennick & Associates
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Fullerton, CA 92832
(714) 992-6600

9. *City of Ann Arbor Emples. Ret. Sys. v. Gecht*, No. C-06-7453 EMC, 2007 U.S. Dist. LEXIS 21928 (N.D. Cal. Mar. 9, 2007)

Counsel for Plaintiff: Mary S. Thomas
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Wilmington, DE 19801
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Alan R. Plutzik
Bramson Plutzik Mahler & Birkhaeuser
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Counsel for Defendant:

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Wilson Sonsini Goodrich & Rosati
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(650) 493-9300

10. *North Pacifica, LLC v. City of Pacifica*, 274 F. Supp. 2d 1118 (N.D. Cal. 2003)

Counsel for Plaintiff:

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Warshaw & Pope
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Patrick J. McMahon
Gagen McCoy McMahon Koss Markowitz
& Raines
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Danville, CA 94526
(925) 837-0585

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

I am not aware of any cases in which certiorari was either requested or granted.

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

(1) *Genentech, Inc. v. Insmad, Inc.*, No. C-04-5429 CW (EMC), 233 F.R.D. 556 (N.D. Cal. 2006) and 234 F.R.D. 667 (N.D. Cal. 2006), *objections sustained* by 236 F.R.D. 466 (N.D. Cal. 2006).

I granted a request for an *in camera* review of documents in a patent infringement case to determine whether certain documents were protected by the attorney-client privilege. Subsequently, I ordered production of a portion of one of the documents over which the patentee had asserted privilege. The patentee objected to the rulings. The presiding judge sustained the objections. She held that an *in camera* review of documents was appropriate to determine whether the crime-fraud exception to the privilege was applicable – not whether there had been a waiver.

(2) *Navarro v. General Nutrition Corp.*, No. C-03-0603 SBA (EMC), 2004 U.S. Dist. LEXIS 24258 (N.D. Cal. Nov. 19, 2004), *adopted in part and rejected in part* by 2005 U.S. Dist. LEXIS 39726 (N.D. Cal. Sept. 22, 2005).

I prepared a report and recommendation in an employment case on two motions for attorney's fees. More specifically, I recommended that the plaintiff be awarded certain fees and that the defendant's fee request be denied in its entirety. The presiding judge awarded the plaintiff a smaller fee than I had recommended and further awarded the defendant a portion of its fees.

(3) *Velez v. Roche*, No. C-02-0337 EMC, 2004 U.S. Dist. LEXIS 29848 (N.D. Cal. Sept. 22, 2004), *rev'd* by 2007 U.S. App. LEXIS 2194 (9th Cir. Jan. 29, 2007).

In a Title VII case, I granted the plaintiff's motion for attorney's fees but reduced the award. The Ninth Circuit held that my 25% reduction of the lodestar required more specific substantiation and that my reduction in the hourly rate awarded was not justified as the hourly rates requested by the plaintiff were supported by sufficient evidence in the record. One judge dissented on the last point.

(4) *North Pacifica, LLC v. City of Pacifica*, No. C-01-4823 EMC, 234 F. Supp. 2d 1053 (N.D. Cal. 2002), and 2005 U.S. Dist. LEXIS 11442 (N.D. Cal. May 4, 2005), *aff'd in part and rev'd in part* by 2008 U.S. App. LEXIS 10257 (9th Cir. Cal., May 13, 2008).

In a § 1983 case brought by a real estate developer, I rejected the developer's substantive due process claim on summary judgment but, after a bench trial, ruled in its favor on the equal protection claim. The Ninth Circuit affirmed the dismissal of the substantive due process claim on different grounds. The appellate court also concluded that there was insufficient evidence to support the equal protection claim – *i.e.*, to establish that the city had intentionally singled out the developer for discriminatory treatment.

(5) *Brayton Purcell LLP v. Recordon & Recordon*, 361 F. Supp. 2d 1135 (2005), *aff'd* No. 07-15383, 2009 U.S. App. LEXIS 17389 (9th Cir. Aug. 5, 2009).

In this copyright infringement case, I denied the defendant's motion to dismiss for improper venue. Under the Copyright Act, a determination of proper venue requires a court to do, in essence, a personal jurisdiction analysis. I concluded that there was "personal jurisdiction" based on existing Ninth Circuit precedent, although I recognized that there was Ninth Circuit authority that arguably held to the contrary. On appeal, the Ninth Circuit affirmed my decision. There was, however, a dissent by Judge Reinhardt which concluded that "personal jurisdiction" was lacking.

- 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.

As a Magistrate Judge, I have served both as a presiding judge (*i.e.*, in cases in which all the parties have consented to my jurisdiction) and as a referral judge. The bulk of the referrals are discovery referrals.

For my consent cases, most of my opinions have been published, either in a published reporter or through an electronic publication (*i.e.*, WestLaw or Lexis).

For cases referred to me by other judges, many of my substantive opinions have been published, at least through an electronic publication. However, many of my discovery orders have not been published, either in a published reporter or through an electronic publication. I have heard over 325 cases referred to me. Most have resulted in unpublished orders. Many resulted in more than one unpublished order. I estimate that I have written between 200 – 300 orders that have not been published. Each of these orders is available through ECF (the Northern District of California's e-filing program).

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

1. *United States v. Gardner*, 523 F. Supp. 2d 1025 (N.D. Cal. 2007)
2. *Doe I v. Liu Qi*, 349 F. Supp. 2d 1258 (N.D. Cal. 2004) (report and recommendation, ultimately adopted by presiding judge)
3. *Smith v. City of Oakland*, No. C-05-4045 EMC, 538 F. Supp. 2d 1217 (N.D. Cal. 2008)
4. *Khanna v. State Bar of Cal.*, 505 F. Supp. 2d 633 (N.D. Cal. 2007)

5. *Board of Trs. v. Doctors Med. Ctr. of Modesto, Inc.*, No. C-07-1740 EMC, 2007 U.S. Dist. LEXIS 64016 (N.D. Cal. Aug. 17, 2007)
6. *Adibi v. California State Bd. of Pharm.*, 461 F. Supp. 2d 1103 (N.D. Cal. 2006)
7. *Napa Valley Publ. Co. v. City of Calistoga*, 225 F. Supp. 2d 1176 (N.D. Cal. 2002)
8. *Cuviello v. City of Oakland*, No. C-06-5517 MHP (EMC), 2007 U.S. Dist. LEXIS 59833 (N.D. Cal. Aug. 14, 2007) (report and recommendation, ultimately adopted by presiding judge)
9. *North Pacifica, LLC v. City of Pacifica*, No. C-01-4823 EMC, 234 F. Supp. 2d 1053 (N.D. Cal. 1002) and Order dated 10/23/03, Docket No. 64.
10. *Rev. Charles Mayfield v. City of Oakland*, No. C-07-0583 EMC, 2007 U.S. Dist. LEXIS 59947 (N.D. Cal. Aug. 6, 2007); 2007 U.S. Dist. LEXIS 83983 (N.D. Cal. Nov. 2, 2007)
11. *Cuviello v. City of Oakland*, No. C-06-5517 MHP (EMC) (N.D. Cal. July 20, 2009) (Docket No. 218) (report and recommendation)
12. *Brayton Purcell LLP v. Recordon & Recordon*, 361 F. Supp. 2d 1135 (2005), *aff'd* No. 07-15383, 2009 U.S. App. LEXIS 17389 (9th Cir. Aug. 5, 2009).

- 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 not 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.

I maintain a standing recusal list of individuals and entities consistent with Code of Conduct for United States Judges. These include entities in which I (in any management capacity) own stocks, law firms which I have retained to handle personal and business matters, and close friends. I also review the parties and counsel in each case to ensure I do not have a close relationship to any of the parties, identified witnesses, or counsel that would interfere with my neutrality or compromise the appearance of justice.

I have identified the Coblenz law firm as a party whose involvement would automatically trigger my disqualification. This is a firm where I formerly worked and which continues to represent me in personal matters. I previously identified the ACLU, a former employer, as a party whose involvement would automatically trigger my disqualification.

I also recuse myself in cases in which a party is represented by an attorney (Thomas Frankovich) who had previously filed a lawsuit against a restaurant and a family limited liability company (of which I am a member and manager.) The LLC owned the building in which the restaurant was located.

I have recused myself in the following cases:

1. 8/17/01; CR01-0125 WDB; United States of America v. Benjamin Moore. I recused myself sua sponte. I had contributed to a victim's fund for a child mauled by two pit bulls. The owner of the dogs appeared in federal court on an unrelated charge. I recused to insure the appearance of fairness.
2. 10/17/01; C01-1344 SBA (EMC); Under Seal; I recused myself sua sponte. The defendant in this case was Marin County Office of Education/Special Education and my son was (and still is) in the County special education program. It is a small program and because I had met many of the staff, I felt it was appropriate to recuse myself to insure the appearance of fairness. I have identified this defendant as a party whose involvement in a case would automatically trigger my disqualification.
3. 3/26/02; C02-0080 CW (EMC); Alex S. v. Tamalpais Union High Sch. Dist. I recused myself sua sponte for the reasons stated above as to Case No. C01-1344.

4. 5/9/02; C02-1402 PJH; Lee v. Nierras
I recused myself sua sponte because one of the defendants in the case was the law firm of which one of the named partners is a personal friend.
5. 5/9/02; C02-2543 WHA; Zatopa v. Lowe
I recused myself sua sponte. One of the defendants in the case was represented by, inter alia, the Coblenz law firm, where I formerly worked and which continues to represent me in personal matters.
6. 6/28/02; C02-2665 EMC; Chowdhury v. Northwest
I recused myself sua sponte. The plaintiff was represented by, inter alia, the ACLU of Northern California, where I formerly worked. At the time I was assigned the case, my employment with the ACLU had ended approximately a year earlier.
7. 6/26/02; C02-2878 EMC; Chan v. Intuit
I recused myself sua sponte. One of the defendants in the case was represented by, inter alia, the Coblenz law firm.
8. 7/25/02; C02-2755 EMC; Butler v. Igasaki
I recused myself sua sponte because I know the defendant personally.
9. 11/5/02; C01-0881 PJH (EMC); Scully v. Japan Senior Citizens Welfare Org'n
I recused myself sua sponte as one of the defendants in the case was represented by, inter alia, the Coblenz law firm.
10. 1/16/03; C03-0199 EMC; Lau v. Chan
I recused myself sua sponte. The defendant is the brother-in-law of my courtroom deputy.
11. 3/6/03; C02-5901 VRW; Lepp v. Kelly
I recused myself sua sponte in this case because I had issued the search warrant.
12. 7/24/03; C01-4298 PJH (EMC); ECast Inc. v. Touchtunes Music Corp.
I recused myself sua sponte as one of the defendants in the case was represented by, inter alia, the Coblenz law firm.
13. 11/14/03; C02 5971 JSW; Boston Telecomm. v. Wood
I recused myself sua sponte as one of the defendants in the case was represented by, inter alia, the Coblenz law firm.
14. 11/25/03; C03-5145 EMC; McGehee v. Cae McGehee Inc.
I recused myself sua sponte as one of the defendants in the case was represented by, inter alia, the Coblenz law firm.

15. 4/5/04; C04-1135 MMC (EMC); Maverick Recording Co. v. Does
I recused myself sua sponte as one of the defendants in the case was represented by, inter alia, the Coblenz law firm.
16. 4/20/04; C02-3703 MMC (EMC); Anditon v. Correctional Officer Mark Priest
I recused myself sua sponte as one of the defendants in the case was represented by, inter alia, the Coblenz law firm.
17. 5/17/04; C03-4084 MJJ (EMC); Arista Records, Inc. v. Williams
I recused myself sua sponte as one of the defendants in the case was represented by, inter alia, the Coblenz law firm.
18. 6/14/04 & 6/18/04; C04-0527, C04-0551; Williams v. Peralta Community College
The pro se plaintiff asked to revoke her consent to proceeding before a magistrate judge. Her request to revoke consent was made only after I made a substantive ruling against her. I denied the plaintiff's request because she did not provide any valid reason as to why she should be permitted to withdraw her consent. See Dixon v. Ylst, 990 F.2d 478, 480 (9th Cir. 1993) ("Once a civil case is referred to a magistrate judge under section 636(c), the reference can be withdrawn by the court only 'for good cause shown on its own motion, or under extraordinary circumstances shown by any party.' There is no absolute right, in a civil case, to withdraw consent to trial and other proceedings before a magistrate judge."). Subsequently, the plaintiff objected to my ruling, arguing that I was prejudiced, that I had misled her, and that I had violated her rights. I construed her objection as a request to disqualify, which I denied because she did not provide any facts to support her assertions.
19. 8/6/04; C04-0493 MEJ (EMC); Li v. Nostalgia Entertainment Co.
I recused myself sua sponte. One of the defense attorneys (Paul Justi) represented me in a personal matter.
20. 11/12/04; C02-1068 CW (EMC); Janvrin Holdings Ltd. v. Hilsenrath
I recused myself sua sponte. One of the defendants in the case was represented by, inter alia, the Coblenz law firm.
21. 1/5/05; C02-2338 EMC; Drax Holdings v. Apodaca
I recused myself sua sponte. One of the plaintiffs was represented by a law firm where my career law clerk's husband works and is a partner. My career law clerk is the only law clerk I have.
22. 1/13/05; C04-4195 WHA; Northern California River Watch v. City of Santa Rosa
The defense attorneys from the Downey Brand law firm alerted me (via a filed letter) that the firm represents me in my individual capacity. Because of that representation, I recused myself.

23. 4/1/05 & 8/1/05; C03-0437 EMC; Hamann v. City of Oakland
The pro se plaintiff filed a letter which asked me to disclose all potential conflicts or disqualify myself immediately. This letter was filed only after I denied her request for reconsideration of the prior presiding judge's denial of temporary injunctive relief. I construed the letter as a request for disqualification.
- I denied the request for disqualification because the plaintiff had not provided any argument or evidence as to why there should be disqualification. See 12-63 Moore's Fed. Prac. -- Civ. ' 63.20[8][c] ("Disqualification of a judge is not required on the basis of remote, contingent, indirect, or speculative interests. Recusal statutes are not intended to give litigants a veto power over sitting judges, or a vehicle for judge shopping.").
- Subsequently, the plaintiff appeared to make another request for temporary injunctive relief, which I again denied. The plaintiff then sent a letter to the District's Executive Committee, asking for reassignment to a district court judge. For the plaintiff's benefit, I construed her letter as a request for disqualification. I denied the request because the allegations in the plaintiff's letter (i.e., that I was involved in a conspiracy against her) were not substantiated.
- Thereafter, the plaintiff moved to withdraw her consent to proceeding before me. Judge Henderson of this District denied the request. He also denied a request for reconsideration.
24. 7/12/05; CR05-70534 MAG; Under Seal
I recused myself sua sponte (with knowledge and consent of the U.S. Attorney's Office) from certain bail and pretrial matters because the investigation involved criminal charges against various individuals, one of whom was an employee or associate of a commercial tenant which leased space in a building owned by a family real estate partnership in which I have an interest.
25. 12/19/05; C05-5206 CRB; Under Seal
I recused myself sua sponte in this forfeiture case because I had issued the search warrant.
26. 11/1/06; C05-1330 CW (EMC); Putnam v. Putnam Lovell Group NBF Secs., Inc.
I recused myself sua sponte because the defendants were represented by, inter alia, a law firm which at the time was representing my family in a business matter.
27. 11/29/06; C03-5376 SBA (EMC); U.S. Fidelity & Guaranty Co. v. Scott Cos.
I recused myself sua sponte because the defendants were offering evidence from an expert (an appraiser) that I have employed for family business matters. After the parties submitted a joint letter asking me to withdraw my recusal order and indicating that defendants would no longer be offering evidence from that

particular expert, I withdrew the recusal order and heard the case with the parties' consent.

28. 4/27/07; C07 2271 SBA; Reyes v. Alcantar
I recused myself sua sponte. One of the defendants in the case was represented by, inter alia, the Coblentz law firm.
29. 5/24/07; C06 6497 EMC; G v. Kentfield School District
I recused myself sua sponte for the reasons stated above as to Case No. C01-1344 (#1 above.) The defendant in this case was Marin County Office of Education/Special Education and my son was (and still is) in the County special education program.
30. 3/31/08; C07-4005 EMC; Chang v. Rockridge Manor Condo.
The pro se plaintiff filed a motion for recusal after I issued a substantive ruling against her. I denied the request because the plaintiff was claiming bias based solely on an adverse ruling I had issued. She did not substantiate any claim of extrajudicial bias. See *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966) (explaining that "[t]he alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case").
31. 4/21/08; C08-1173 EMC; Eidex Family Partnership, L.P. v. Justice
The pro se plaintiff sought to revoke consent to proceeding before a magistrate judge after I issued an opinion stating that there was no subject matter jurisdiction over the case. I denied the plaintiff's request because the sole basis of his request was his dissatisfaction with my ruling. Subsequently, Judge White of this District also denied the plaintiff's request for reassignment. Judge White later denied a request for reconsideration.
32. 2/10/09; C09-0564 EMC; 625 3rd Street Associates, LP v. Alliant Credit Union
I recused myself sua sponte. One of the defendants in the case was represented by, inter alia, the Coblentz law firm.
33. 8/4/09, C07-5569 MHP, Alphaville Design, Inc. v. Knoll, Inc. I recused myself sua sponte. Plaintiff is represented by, inter alia, the Coblentz law firm.

In addition, I have recused myself sua sponte from a number of cases in which a party is represented by a particular attorney, Thomas Frankovich**. Mr. Frankovich had previously filed a lawsuit against a restaurant and a family limited liability company of which I am a member and manager. The LLC owned the building in which the restaurant was located. These cases include

1/24/05; C04-4075 EMC; Connally v. Packaging Store
1/27/05; C04-2919 MJJ (EMC); Connally v. Red Boy Pizza
6/20/05; C04-4462 MJJ (EMC); Loskot v. Extended Stay CA, Inc.

8/30/05; C05-1752 EMC; Loskot v. Howard Johnson
 4/20/07; C07 2099 SI; Ramirez v. Star Restaurant Cotati
 4/20/07; C07 2100 JSW; Yates v. Foster Freeze Berkeley
 5/7/07; C07 2410 SI; Connally v. Phyllis's Giant Burger
 5/14/07; C07 2525 MMC; Yates v. D & A Café
 1/24/08; C08 0356 JSW; Yates v. Unicorn Pan Asian Cuisine
 2/6/08; C08 0736 MMC; Heatherly v. Washoe House Inc.
 4/29/08; C08 2163 PJH; Connally v. All Star Doughnuts
 4/29/08; C08 2165 SI; Yates v. Twice is Nice
 6/3/08; C08 2292 PJH; Connally v. Depot Garden Cafe
 6/3/08; C08 2545 CW; Yates v. Sushi Bistro Inc.
 8/19/08; C08 3914 CW; Yates v. Tequila Grill
 9/17/08; C08-4251 EMC; Loskot v. Americas Best Value Inn
 10/3/08; C08 4574 CRB; Yates v. Thai Me Up, Inc.
 11/5/08; C08 4875 CRB; Yates v. 3407 Sacramento Street LLC
 12/8/08; C08 5365 CW; Yates v. Rose Wing Properties
 3/24/09; C09-1189 EMC; Yates v. Ignacio Properties LLC
 4/7/09; C09-1450 EMC; Jankey v. Silver Spur
 6/5/09, C09-2438 EMC, Jankey v. Milano Pizza
 6/29/09, C08-5319 EMC, Yates v. Sutter Health

**I have attempted to locate all of the ADA cases filed by Mr. Frankovich from which I recused myself. There may, however, be additional cases from which I recused myself, based on Mr. Frankovich's involvement, that are not listed on the log. The frequency of Mr. Frankovich's cases as they appear on my recusal list is illuminated by the Ninth Circuit's decision in *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047 (9th Cir. 2007) (affirming district court decision from the Central District of California, which declared a client of Mr. Frankovich a vexatious litigant and imposing on the client – as well as Mr. Frankovich's law firm – a sanction which required them to obtain leave of court before filing another ADA complaint in that district).

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.

None.

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

I am a member of the Democratic Party and have been since I registered to vote in 1971. I have never held any office in any political party or held a position or played a role in any political campaign with two exceptions. I held a house fund raiser for Art Agnos, candidate for mayor of San Francisco in or about 1987. I served as Co-chair of Californians Against Proposition 63 in 1986 without compensation. This was a campaign organized to oppose a statewide proposition to make English the "official" language of California. I co-chaired a group of community organizations and individuals in overseeing the campaign which was managed by a paid campaign manager.

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 clerk to the Honorable James R. Browning,
United States Court of Appeals for the Ninth Circuit, from June 1981 to August 1982.

I served as a clerk to the Honorable Charles B. Renfrew, United States District Court for the Northern District of California, from June 1979 to April 1980.

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

I have not practiced alone.

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

4/01 to current
United States District Court for the Northern District of California
450 Golden Gate Avenue, 15th Floor
San Francisco, CA 94102
United States Magistrate Judge

9/85 to 4/01
American Civil Liberties Union Foundation of Northern California
39 Drumm Street
San Francisco, CA 94111
Staff Attorney

12/82 to 9/85

Coblentz Patch Duffy & Bass
(formerly Jacob Sills & Coblentz, and Coblentz Cahen McCabe & Breyer)
One Ferry Building, Suite 200
San Francisco, CA 94111
Litigation Associate

6/81 to 8/82

United States Court of Appeals for the Ninth Circuit
Chief Circuit Judge James R. Browning
316 James R. Browning United States Courthouse
95 Seventh Street
San Francisco, CA 94103
Law Clerk

6/80 to 5/81

Asian Law Caucus
Minami Lew & Tamaki LLP
360 Post Street, 8th Floor
San Francisco, CA 94108
Volunteer Attorney

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

I did not serve as a mediator or arbitrator prior to taking the bench. As a Magistrate Judge, I have served as a settlement judge. The Magistrate Judges of the Northern District of California are deeply involved in our court's alternative dispute resolution program. We are regularly referred, as a substantial part of our caseload, cases for settlement conferences which typically entail conferences which last for several hours and sometimes several days through multiple sessions. In the past eight years, I have held several hundred settlement conferences in connection with settlement efforts in nearly 500 cases. The subject matters of cases include such diverse matters as environmental law, admiralty, ERISA, intellectual property (patent, copyright and trademark), disability discrimination, contracts, torts, wage and hour laws, family medical leave, employment discrimination, civil rights, consumer rights, attorney's fees entitlement, and insurance coverage. Below is a sample of cases I have settled.

1. *Denise Young, et al. v. Tosco Corporation*, No. C-98-1325 MHP (N.D. Cal.)
William Sumter, et al. v. Tosco Corporation, No. C-98-1326 MHP (N.D. Cal.)
Bud Johnson v. Tosco Corporation, No. C-98-1327 MHP (N.D. Cal.)

Case Description:

This was a mass tort case brought by 500 individuals against Tosco refinery stemming from plant explosions and fires. Three related cases were brought by employees directly injured by the explosion, employees indirectly exposed to toxic fumes or otherwise traumatized, and neighbors who believed that they had been subjected to release of toxic materials. My settlement efforts entailed a "town hall" style meeting to explain to the plaintiffs the legal status of the case, the terrain of the legal and factual issues they would have to negotiate, and the advantages of alternative dispute resolution. I then worked with counsel for both parties to devise an orderly and efficient strategy to handle the settlement process. Claims were strategically grouped and settled in seriatum. Although most of the claims were settled globally by a sum certain, nearly 100 claims had to be settled individually.

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Counsel for Defendant:

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Weinberg Wheeler Hudgins Gunn & Dial
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Atlanta, GA 30326
(404) 876-2700

William Mulvihill
Boornazian Jenson & Garthe
555 12th Street, Suite 1800
Oakland, CA 94607
(510) 834-4350

2. *Sterling M. Enterprises, Inc. v. Lee's Sandwiches International, Inc.*, No. C-05-4477 MHP (N.D. Cal.)

Case Description:

This was a trademark infringement suit brought by the owner of a chain of delicatessens in San Francisco seeking to prevent the entry into the City of a similarly named Vietnamese sandwich chain originating from San Jose.

Counsel for Plaintiff: James M. Wagstaffe
Kerr & Wagstaffe LLP
100 Spear Street, Suite 1800
San Francisco, CA 94105
(415) 371-8500

Counsel for Defendant: Marc M. Gorelnik
Townsend and Townsend and Crew LLP
Two Embarcadero Center, 8th Floor
San Francisco, CA 94111
(415) 576-0200

3. *Equal Employment Opportunity Commission / Abdellatiff Hadji v. Albion River Inn, Inc.*, No. C-06-5356 SI (N.D. Cal.)

Case Description:

This suit was brought by the EEOC on behalf of a restaurant employee claiming national origin discrimination and retaliation when he was fired for refusing to apologize to a customer who subjected him to ethnic epithets. The parties negotiated a detailed consent decree.

Counsel for Plaintiff: William R. Tamayo
U.S. Equal Employment Opportunity Commission,
San Francisco District Office
350 The Embarcadero, Suite 500
San Francisco, CA, 94105-1260
(415) 625-5600

Counsel for Plaintiff-
Intervenor: Robert Rubin
Lawyers' Committee for Civil Rights of the San
Francisco Bay Area
131 Steuart Street, Suite 400
San Francisco, CA 94105
(415) 543-9444

Counsel for Defendant: Raymond N. Stella Erlach
Law Offices of Raymond N. Stella Erlach
One Maritime Plaza, Fourth Floor
San Francisco, CA 94111
(415) 788-3322

4. *Ramona Ford, Angelina Ford v. City of Oakland*, No. C-03-3304 MJJ (N.D. Cal.)

Case Description:

Plaintiffs were shot with simulated bullets fired by Oakland police officers during unrest following an AFC Championship game in Oakland. One suffered facial scarring. Plaintiffs sought damages and fees.

Counsel for Plaintiff: Wayne J. Johnson
P.O. Box 19157
Oakland, CA 94619
(510) 451-1166

Counsel for Defendant: Randolph W. Hall
Oakland City Attorney's Office
One Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612
(510) 273-3601

5. *Steve M. Castillo v. Charles D. Marshall, Warden, et al.*, No. C-94-2847 MJJ (N.D. Cal.)

Case Description:

In this suit, an inmate of the California Department of Corrections challenged his identification as a prison gang member and sought changes to the gang validation criteria and procedures used by state prison officials. Settlement entailed negotiation of significant policy changes.

Counsel for Plaintiff: Charles F.A. Carbone
PMB 212
3128 16th Street
San Francisco, CA 94103
(415) 531-1980

Counsel for Defendant: Gregory S. Walston
The Walston Legal Group
222 Columbus Avenue, Suite 408
San Francisco, CA 94133
(415) 956-9200
Rochelle C. Holzmann
California State Attorney General's Office
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
(415) 703-5853

6. *Charles Davis, et al., v. CA Health and Human Services*, No. C-00-2532 SBA (N.D. Cal.)

Case Description:

In this class action suit, plaintiffs challenged the institutionalization of people with disabilities in need of long term care at Laguna Honda Hospital in San Francisco. Plaintiffs contended that the city and the state failed to ensure that such individuals receive the most integrated settings appropriate to their individual needs. A comprehensive settlement incorporated significant policy changes.

Counsel for Plaintiff: Kimberly Swain
Elissa Gershon
Disability Rights California
1330 Broadway #500
Oakland, CA 94612-2509
(510) 267-1200

Counsel for Defendant: Ellen Shapiro
Blake Loeb
City Attorney's Office
City & County of San Francisco
Fox Plaza
1390 Market Street, Sixth Floor
San Francisco, CA 94102-5408
(415) 554-3879 (Ms. Shapiro)
(415) 554-9657 (Mr. Loeb)

Beverly R. Meyers
California State Attorney General's Office
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
(415) 703-5853

7. *Semiconductor Energy Laboratory Company, Ltd. v. Acer Incorporated, et al.*, No. C-02-2800 WHA (N.D. Cal.)

Case Description:

This was a patent infringement suit involving multiple international parties in which the parties had a substantial financial stake. The patent concerned LCD technology.

Counsel for Plaintiff: Donald K. Harris
Jenner & Block LLC
One IBM Plaza

330 N. Wabash, Suite 4500
Chicago, IL 60611
(312) 222-9350

Counsel for Defendant: William H. Wright
Orrick Herrington & Sutcliffe
777 South Figueroa Street, Suite 3200
Los Angeles, CA 90017-5855
(213) 629-2020

8. *Claudia Koch dba Zazou v. Anthropologie, Inc., Anthropologie Direct LLC, Urban Outfitters, Inc.*, No. C-03-3602 SI (N.D. Cal.)

Case Description:

This action was brought by a fabric design asserting copyright violation by a major retailer. The case involved multiple parties and cross claims.

Counsel for Plaintiff: Megan E. Gray
Gray Matters
2017 Kalorama Road,
NW, Suite 3
Washington, DC
20009
(202) 265-2738

Counsel for Defendant: Kenneth E. Keller
Krieg Keller Sloan Reilley & Roman LLP
114 Sansome Street, 4th Floor
San Francisco, CA 94104
(415) 249-8330

9. *Xiufang Situ, et al., v. Michael O. Leavitt*, No. C-06-2841 TEH (N.D. Cal.)

Case Description:

This was a nationwide class action lawsuit brought against the U.S. Secretary of Health & Human Services seeking to compel the United States government to ensure access to prescription drug benefits under the new Medicare law. Settlement required multiple conferences from which policy changes evolved.

Counsel for Plaintiff: Gill Deford
Center for Medicare Advocacy, Inc.
P.O. Box 350
Willimantic, CT 06226
(860) 456-7790

Counsel for Defendant: John R. Griffiths
United States Department of Justice, Civil Division,
Federal Programs Branch
20 Massachusetts Avenue, N.W.
Washington, DC 20530
(202) 415-4652

10. *Dave Alba, et al. v. City and County of San Francisco*, No. C-05-1667
TEH (N.D. Cal.)

Case Description:

In this suit, Plaintiffs, a group of 350 peace officers for the San Francisco Sheriff's Department, sued the City for violation of the Fair Labor Standards Act. They contended the City excluded certain non-discretion incentive pay in computing their "regular rate" of pay for overtime purposes. I presided over two settlement conferences and facilitated settlement of all claims.

Counsel for Plaintiff: David P. Mastagni
Will M. Yamada
Mastagni, Holstedt, Amick, Miller, Johnsen &
Uhrhammer
1912 I Street
Sacramento, CA 95811
(916) 446-4692

Counsel for Defendant: Jonathan C. Rolnick
Office of the San Francisco City Attorney
1390 Market Street, 5th Floor
San Francisco, CA 94102-5408
(415) 554-3815

b. Describe:

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

Since 2001, I have served as a Magistrate Judge for the United States District Court for the Northern District of California. My prior practice was in civil litigation, divided between state and federal courts. I engaged in complex constitutional and statutory litigation with the American Civil Liberties Union Foundation of Northern California between 1985 and 2001. I practiced commercial civil litigation between 1982 and 1985 with the Coblenz law firm in San Francisco. I also handled some criminal defense work at the firm.

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

At the Coblentz law firm from 1982 – 1985, most of my clients were commercial entities and individuals engaged in business litigation. A small percentage involved criminal defense as the firm had a small criminal practice (about 5% of the cases). At the ACLU Foundation of Northern California between 1985 – 2001, I represented a range of clients who sought to vindicate their civil rights and liberties, including students and protestors denied free speech, consumers, employees and businesses subject to discrimination, and citizens subject to wrongful arrest, excessive force, or denial of due process.

- 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.

While at the Coblentz firm 100% of my work was in litigation. I appeared in court frequently (weekly or monthly). At the ACLU of Northern California, I appeared in court less frequently; 3 – 4 times per year.

- i. Indicate the percentage of your practice in:

- 1. federal courts; 50%
- 2. state courts of record; 50%
- 3. other courts;
- 4. administrative agencies

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings; 90-95%
- 2. criminal proceedings. 5-10%

- 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 tried 2 cases to verdict, both as associate counsel. Other cases were either settled or resolved by motion.

- i. What percentage of these trials were:

- 1. jury: 50%
- 2. non-jury: 50%

- 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 filed a brief in opposition to the petition for certiorari in *Vickers v. Ricketts*, 798 F.2d 369 (9th Cir. 1986), *cert. denied*, 479 U.S. 1054 (1987).

I filed amicus briefs on behalf of the ACLU in the following cases:
Richmond v. J. A. Croson Co., 488 U.S. 469 (1989)
Skinner v. Railway Labor Executives' Association, 489 U.S. 602 (1989)
Arizonans for Official English v. Arizona, 520 U.S. 43 (1997).

I served as co-counsel in *Alexander v. Sandoval*, 532 U.S. 275 (2001).

While my name may have appeared on other Supreme Court briefs as a staff attorney of the ACLU Foundation of Northern California, the above cases are the only ones in which I took an active role.

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. *Korematsu v. United States*, No. CR-27635 W (N.D. Cal.); District Judge Marilyn Hall Patel

I was co-counsel for Fred Korematsu in his coram nobis petition to overturn his 1942 conviction for violating the WW II order relocating Japanese Americans to internment camps. The petition was brought after documents were discovered establishing that, during the original criminal proceeding and appeals, the federal government had withheld from the courts exculpatory documents inconsistent with its claim of military justification for the relocation order. I conducted extensive legal research on constitutional standards against claims of military justification and national security and other procedural aspects of the case, as well as applicability of fee shifting statutes to *coram nobis* proceedings. Judge Patel granted the petition and vacated the conviction without trial, finding that the United States had essentially confessed error. *Korematsu v. United States*, 584 F. Supp. 1406 (N.D. Cal. 1984).

Co-counsel: Dale Minami
Minami Tamaki LLP
360 Post Street, 8th Floor
San Francisco, CA 94108-4903
(415) 788-9000

Opposing Counsel: Victor D. Stone
United States Department of Justice
Office of Enforcement Operations
1301 New York Avenue NW, #1111
Washington, D.C. 20530
(202) 616-0728

2. *Browne v. Sedgwick Detert Moran & Arnold*, No. 570710-2 (Alameda County Superior Court)

I represented the plaintiffs in a legal malpractice suit. The plaintiffs, entertainment lawyers in New York, had been named in a breach of contract/fraud suit brought by Fantasy Records against our clients and jazz recording artists The Blackbirds. An insurance defense firm was retained by the carrier to defend. As a result of complicated (and somewhat convoluted) legal maneuvers, a default judgment of \$12.5 million was entered against our clients. The Coblenz law firm was brought in to resolve the lawsuit at policy limits of \$1 million. We then represented our clients in a legal malpractice action. I was charged with the primary responsibility for discovery. After extensive discovery, the malpractice action was settled without dispositive motions or trial. No judge had been assigned to the case.

Co-counsel: Charles R. Breyer
District Judge
United States District Court
450 Golden Gate Avenue, 19th Floor
San Francisco, CA 94102
(415) 522-3660

Opposing Counsel: William Chapman
Chapman Popik & White
650 California Street, 19th Floor
San Francisco, CA 94108
(415) 352-3000

3. *Kim v. Northwest Mutual Life Insurance Company*, No. C-95-2178 DLJ (N.D. Cal.);
District Judge D. Lowell Jensen

This was a class action challenging defendant's policy of refusing to consider for life insurance applicants who were not proficient in English. The complaint asserted claims under the California Unruh Civil Rights Act, the insurance code, and unfair business practices law as well, under Section 1981 of the federal Civil Rights Act. I took the lead in preparing the legal analysis for the case. Shortly after the case was filed, the parties entered into protracted settlement negotiations. The parties eventually agreed to a comprehensive settlement which was approved by the court. A settlement class was certified.

Co-counsel: Christopher Ho
Legal Aid Society -- Employment Law Center
600 Harrison Street, Suite 120
San Francisco, CA 94107
(415) 864-8848

Harry Bremond
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304
(650) 493-9300

Robert Fabela
Office of the City Attorney
City Of San Jose
200 East Santa Clara Street
San Jose, CA, 95113-1905
(408) 535-1900

Opposing Counsel: George Riley
O'Melveny & Myers
Embarcadero Center West
275 Battery Street, Suite 2600
San Francisco, CA 94111
(415) 984-8700

4. *Price v. Pacific Refining Co.*, No. 292000 (Contra Costa County Superior Court);
Superior Court Judge Richard Flier, Superior Court Judge Peter Spinetta

I, along with co-counsel Brad Seligman and John True, represented oil refinery workers who were subjected to unannounced suspicionless drug testing. I had primary responsibility for developing the legal analysis in the then-emerging privacy law under the California Constitution. I also conducted extensive discovery and developed expert evidence. The court granted a preliminary injunction enjoining random drug testing and certified the plaintiff class. Subsequently, the case was settled. The defendant agreed to

restrict testing to that based on individualized suspicion, compensate the named plaintiffs and the plaintiff class, and pay plaintiffs' attorneys' fees.

Co-counsel: John M. True, III
Superior Court Judge
Alameda County Superior Court, Department 512
Hayward Hall of Justice
24405 Amador Street
Hayward, CA 94544
(510) 690-2721

Brad Seligman
The Impact Fund
125 University Avenue
Berkeley, CA 94710
(510) 834-3473

Opposing Counsel: James Hargarten
100 Robinhood Drive
San Francisco, CA 94127
(415) 239-1109

5. *Kirk v. Hesselroth*, No. C-82-6732 SAW (N.D. Cal.), No. 89-15188 (9th Cir.); District Judge Stanley Weigel; Circuit Judge Thomas Tang, Circuit Judge Robert R. Beezer, District Judge Albert Stephens (by designation)

I, along with James Petruzzi of Pillsbury Madison and later Alan Marks (solo practitioner), represented the plaintiff who was erroneously arrested as a result of inaccurate computer records for failing to register as a sex offender. District Judge Stanley Weigel found that the plaintiff's Fourth Amendment rights, but not his right to due process, were violated, and that the defendant officer's claim of qualified immunity raised questions of fact. *Kirk v. Hesselroth*, 707 F. Supp. 1149 (N.D. Cal. 1989). The ruling was appealed by the defendant. I argued the case before the Ninth Circuit. The Ninth Circuit affirmed. *Kirk v. Hesselroth*, 914 F.2d 262 (9th Cir. 1990) (unpublished opinion). The case was then tried by co-counsel and a defense verdict rendered.

Co-counsel: James Petruzzi
Mason & Petruzzi
4900 Woodway #745
Houston, TX 77056
(713) 840-9993

Opposing Counsel: Scott Emblidge
Moscone Emblidge & Quadra LLP
Mills Tower #2100

220 Montgomery Street
San Francisco, CA 94104
(415) 362-3591

6. *Ramirez v. Bohannon Development Co.*, No. C-93-1651 FMS (N.D. Cal.); District Judge Fern M. Smith, Magistrate Judge (now District Judge) Phyllis J. Hamilton

In this suit, I represented Latino youths who contended they were detained, interrogated, and ejected from a shopping mall because their physical appearance and clothing fit an alleged gang profile. The lawsuit claimed that the mall violated state and federal civil rights laws. As lead counsel of a team of public interest and private firms, I framed the legal analysis and supervised discovery. The case was settled without trial or dispositive motion. Attorney fees were granted on motion.

Co-counsel: Richard Abramson
SRI International
333 Ravenwood Ave
Menlo Park, CA 94025
(650) 859-6068

Opposing counsel: Gary M. Lepper
Law Offices of Gary M. Lepper
1600 S. Main Street, Suite #305
Walnut Creek, CA 94596-5340
(925) 256-6180

7. *People ex rel. Gallo v. Acuna*, No. H011802 (California Court of Appeal), No. S046980 (California Supreme Court); Superior Court Judge Robert Michael Foley; Appellate Court Justice Franklin D. Elia, Appellate Court Justice Eugene M. Primo, Appellate Court Justice Patricia Bamattre-Manoukian; California Supreme Court Chief Justice Ronald M. George, California Supreme Court Justice Janice R. Brown (authored the opinion), California Supreme Court Justice Marvin R. Baxter, California Supreme Court Justice Kathryn Mickle Werdegarr, California Supreme Court Justice Joyce L. Kennard, California Supreme Court Justice Ming W. Chin, California Supreme Court Justice Stanley Mosk

The City of San Jose brought one of the first gang injunction suits against a number of individuals alleged to be members of a street gang. The suit contended that illegal and other annoying conduct of the gang caused a public nuisance in particular areas within the city and sought a preliminary and permanent injunction against gang members from associating in public with other gang members and from engaging in a host of activities (talking with passengers in cars, wearing gang colors, intimidating residents, etc.). I, along with a legal team of public interest and private law firms, represented the defendants, contending that the injunction sought violated the First Amendment and due process. I was lead counsel in framing the legal issues and along with co-counsel

conducted discovery. The Superior Court granted the preliminary injunction. The Court of Appeal reversed in part and narrowed the injunction. *People ex rel. Gallo v. Acuna*, 48 Cal. App. 4th 641 (1995). The California Supreme Court reversed the Court of Appeal and reaffirmed the injunction. *People ex rel. Gallo v. Acuna*, 14 Cal. 4th 1090 (1997). No trial was held.

Co-counsel: Amitai Schwartz
2000 Powell Street, Suite #1286
Emeryville, CA 94608-1805
(510) 597-1775

Opposing counsel: Joan Gallo
Hopkins & Carley
The Letitia Building
70 South First Street
San Jose CA 95113-2406
(408) 286-9800

8. *Garcia v. Spun Steak Company*, No. C-91-1949 RHS (N.D. Cal.); No. 91-16733 (9th Cir.); District Judge Robert Schnacke; Circuit Judge Diarmuid F. O'Scannlain, Circuit Judge John T. Noonan, Jr., Circuit Judge Robert Boochever

I represented two employees and the local union of a meat packing plant. The employees were disciplined for violating the company's English-only rule prohibiting employees from speaking Spanish in connection with work. The suit contended the policy violated Title VII of the Civil Rights Act of 1964 and the EEOC regulations promulgated thereunder as a form of national origin discrimination. Along with public interest and private co-counsel, I served as lead counsel in fashioning the legal claim and developing expert evidence; I also shared discovery responsibilities. District Judge Robert Schnacke granted summary judgment to the plaintiffs. The Ninth Circuit (per Judges Diarmuid F. O'Scannlain and John T. Noonan, Jr., with Judge Robert Boochever dissenting) reversed. *Garcia v. Spun Steak Company*, 998 F.2d 1480 (9th Cir. 1993).

Co-counsel: Christopher Ho
Legal Aid Society -- Employment Law Center
600 Harrison Street, Suite 120
San Francisco, CA 94107
(415) 864-8848
William Orrick, III
Coblentz Patch Duffy & Bass
One Ferry Building, Suite 200
San Francisco, CA 94111
(415) 391-4800

Opposing Counsel: James A. Carter

Carter Carter & Fries
44 Montgomery Street, Suite #2500
San Francisco, CA 94104
(415) 989-4800

9. *Coalition for Economic Equity v. Wilson*, No. C-96-4024 TEH (N.D. Cal 1996); 946 F. Supp. 1480 (N.D. Cal. 1996); *rev'd* 122 F.3d 692 (9th Cir. 1997); *cert. denied* 522 U.S. 963 (1997); District Judge Thelton E. Henderson; Circuit Judge Diarmuid F. O'Scannlain, Circuit Judge Edward Leavy, Circuit Judge Andrew J. Kleinfeld

In this case, a class of business, labor, and civil rights groups and individuals, supported by a number of public agencies, challenged the constitutionality of California's Proposition 209 which barred race and gender-conscious affirmative action programs in government. The plaintiffs contended that by enacting a state constitutional amendment which disabled state and local agencies from implementing voluntary affirmative action programs designed to prevent and remedy discriminatory and/or exclusionary practices, Proposition 209 interfered with women and minorities' access to local, regional and state government in seeking remedial legislation. The suit contended that by distorting and burdening the political process for women and minorities, Proposition 209 violated the Equal Protection Clause under *Hunter v. Erickson*, 393 U.S. 385 (1969) and *Washington Seattle School District No. 1*, 458 U.S. 457 (1982). The suit also contended that by prohibiting agencies from enacting voluntary affirmative action to prevent discrimination, Proposition 209 conflicted with Title VII and Title VI of the Civil Rights Act of 1964 which encourage voluntary compliance. The District Court (Henderson, J.) ruled in favor of the plaintiffs and enjoined Proposition 209. *CEE v. Wilson*, 946F. Supp. 1480 (N.D. Cal. 1996). The Ninth Circuit reversed and upheld the constitutionality of Proposition 209. 122 F.3d 692 (9th Cir. 1997). The Supreme Court denied *certiorari*. 522 U.S. 963 (1997). I shared responsibility for briefing and argument before the District Court, and briefing in the appellate courts.

Co-counsel: Mark D. Rosenbaum
ACLU Foundation of Southern California
1313 West Eighth Street
Los Angeles, CA 90017
(213) 977-9500

Opposing counsel: Floyd Shimomura
Law Offices of Floyd D. Shimomura
719 Fairview Drive
Woodland, CA 95695
(916) 712-6842

Linda Cabatic
California State Attorney General's Office
Office of Administrative Hearings

2349 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833
(916) 263-0774

10. *The People v. M.S.*, No. 116304 (San Francisco Superior Court), No. A055072 (California Court of Appeal), No. 2035200 (California Supreme Court), 10 Cal. 4th 698 (1995); California Supreme Court Chief Justice Malcolm M. Lucas, California Supreme Court Justice Kathryn M. Werdegar (authored the opinion), California Supreme Court Justice Armand Arabian, California Supreme Court Justice Marvin R. Baxter, California Supreme Court Justice Ronald M. George, California Supreme Court Justice Stanley Mosk

Defendant juveniles were charged with hate crimes under California Bane Act. The charges arose out beatings occurring in the Castro District of San Francisco. The juveniles challenged the constitutionality of the hate crimes laws, as violative of the First Amendment and Due Process. I authored the amicus brief of the ACLU supporting the victims and the prosecution, defending the constitutionality of the statutes. The California Supreme Court upheld the constitutionality of the hate crimes laws and agreed with the arguments made by the ACLU, and specifically cited our brief in distinguishing violence and threats of violence proscribed by the statute from fighting words and incitement. See 10 Cal. 4th at 714, n.6 and accompanying text.

Prosecutor: Ronald S. Matthias
California State Attorney General's Office
455 Golden Gate Avenue, Suite #11000
San Francisco, CA 94102-3664
(415) 703-5500

Defense counsel: Jean Allan
132 Vicksburg Street
San Francisco, CA 94114
(No contact number provided on State Bar website as of February 2009)

Donna Teshima
Family Youth & Children's Services
Berkeley Mental Health
3282 Adeline Street
Berkeley, CA 94703
(510) 981-5280

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s).

(Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have not performed any lobbying activities other than providing policy positions of the ACLU to legislative bodies.

As a Magistrate Judge, I preside through verdict or other disposition over civil cases in which parties have consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c). In our district, Magistrate Judges are on the draw for newly filed cases. At any given time, I typically have a consent docket of about 100 cases (including cases in which consents are pending). I have tried 15 cases to verdict. I also adjudicate motions assigned by District Judges, typically involving discovery and other pretrial matters. I also serve as a settlement judge in matters referred to Magistrate Judges for settlement. I serve as criminal duty judge two months of every year, during which time I handle all preliminary matters up through indictment, including initial appearances, arraignments, and bail determinations. I retain all misdemeanor cases that appear during my duty through judgment and sentencing. I also grant or deny applications for arrest warrants, search warrants, seizure warrants, pen registers, trap and trace devices, tracking devices, and other investigative requests within Magistrate Judge jurisdiction. I have also empanelled criminal grand juries, adjudicated suppression motions, and taken felony pleas. Finally, Magistrate Judges are involved in court administrative matters. I have served as chair of the Court's Pro Se Committee, am currently the liaison judge for pro bono matters and serve on the Court's Committee on Non-Appropriated Funds. I was responsible for the production of the District Court's *Handbook for Litigants without a Lawyer*. I was appointed by former Chief Judge Mary M. Schroeder to the Ninth Circuit Task Force on Unrepresented Litigants and later appointed Chair of the Implementation Committee which succeeded the Task Force. I also chair the Federal Courts Committee of the California Commission on Access to Justice.

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 not held a formal teaching position at a law school. I have guest lectured on a variety of topics at Boalt, Hastings, and Golden Gate on such topics as employment law, constitutional law, and judicial externships. Also, as my resume indicates, I have lectured and participated in panels at numerous continuing education seminars on topics including electronic discovery, employment law, intellectual property, and Asian American legal history. I have also lectured on case management and alternative dispute resolution ("ADR") in India and trained judges of the High Court on mediation in Malaysia. I have been invited to teach as a visiting lecturer at the University of Hawaii School of Law for its "J-Term" in 2010. I have been asked by the Federal Judicial Center to teach a class on implicit bias and judicial decision-making during the 2009 orientation for new magistrate judges.

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.

ACLU Foundation of Northern California pension plan – the plan provides defined retirement 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 intend to continue to oversee property management staff who manage family assets. My compensation will be below the maximum established by the Code of Conduct for United States Judges (*i.e.*, 15% of judicial salary).

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

See attached Financial Disclosure Report

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

See attached Net Worth Statement

24. **Potential Conflicts of Interest:**

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

I do not anticipate any relationships or arrangements that are likely to present a conflict-of-interest other than those already on my recusal list described below.

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

I maintain a standing recusal list of individuals and entities consistent with Code of Conduct for United States Judges. These include entities in which I (in any management capacity) own stocks, law firms which I have retained to handle

personal and business matters, and close friends. I also review the parties and counsel in each case to ensure I do not have a close relationship to any of the parties, identified witnesses, or counsel that would interfere with my neutrality or compromise the appearance of justice.

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

Before entering law school, I served as an intern in the Appellate Section of the Division of Civil Rights, U.S. Department of Justice. As a law student, I served as an extern and/or volunteer to San Francisco Neighborhood Legal Services Foundation, Employment Law Center, and the Asian Law Caucus. As an attorney with Coblenz Patch Duffy & Bass, I provided pro bono legal services to an indigent inmate on death row in Arizona (Robert Vickers) at the request of the NAACP Legal Defense and Educational Fund, Fred Korematsu in challenging his World War II conviction for violating the Japanese internment order, and various indigent clients of the Bar Association of San Francisco Volunteer Legal Services Program. In private practice, I devoted 15% of my billable time on pro bono matters. As a staff attorney at the ACLU Foundation of Northern California where I was employed full time for more than 15 years, legal services were provided free of charge.

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.

Senator Feinstein announced an invitation for applications for position of District Judge. I submitted an application form provided by the Senator's Office on February 5, 2009. I was interviewed by the Senator's Judicial Advisory Committee for the Northern District of California on February 20, 2009. I was then interviewed by David S. Casey, Senator Feinstein's Statewide Coordinator for the Judicial Advisory Process, on March 5, 2009. I was then contacted on March 30, 2009 by staff from the U.S. Department of Justice, Office of Legal Policy, and sent pre-nomination paperwork to complete. I have had subsequent

conversations with that office regarding the process and paperwork. I was interviewed by staff members of White House counsel and Associate Attorney General Tom Perrelli and Department of Justice staff on May 22, 2009. My nomination was submitted to the Senate on August 6, 2009.

- 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.

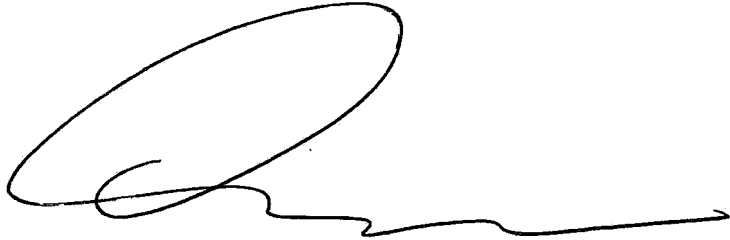
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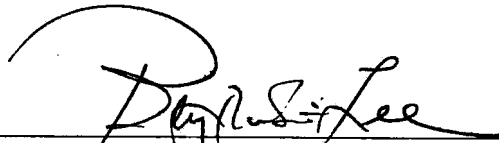
I, Edward Milton Chen, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

8/20/09

(DATE)



(NAME)



(NOTARY)

