

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Daniel Paul Collins

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

United States Circuit Judge for the Ninth Circuit

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

Office: Munger, Tolles & Olson LLP
 350 South Grand Avenue, 50th Floor
 Los Angeles, California 90071

Residence: Altadena, California

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

1963; Brooklyn, New York

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

1985 – 1988, Stanford Law School; J.D., 1988

1981 – 1985, Harvard College; A.B., 1985

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2003 – present; 1996 – 2001; Summer 1988
Munger, Tolles & Olson LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071
Partner (1998 – 2001; 2003 – Present)
Associate (1996 – 1997)
Summer Associate (1988)

2018; 2017; 1998; 1997
Loyola Law School
919 Albany Street
Los Angeles, California 90015
Adjunct Professor (Federal Courts – Spring 2017 & Spring 2018; Appellate Advocacy –
Fall 1997 & Fall 1998)

2001 – 2003
Office of the Deputy Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Associate Deputy Attorney General

1992 – 1996
Office of the United States Attorney
Central District of California
312 North Spring Street
Los Angeles, California 90012
Assistant United States Attorney

1991 – 1992
Honorable Antonin Scalia
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543
Law Clerk

1989 – 1991
Office of Legal Counsel
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Attorney Adviser

1988 – 1989

Honorable Dorothy W. Nelson
United States Court of Appeals for the Ninth Circuit
125 South Grand Avenue
Pasadena, California 91105
Law Clerk

1986 – 1988 (except summers)

Robert Crown Law Library
Stanford Law School
559 Nathan Abbott Way
Stanford, California 94305
(Part-time job during law school, shelving books)

Summer 1987

Civil Division, Federal Programs Branch
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Summer Intern

Summer 1987

Covington & Burling LLP
850 Tenth Street, N.W.
Washington, D.C. 20001
Summer Associate

Summer 1986

Davis, Markel & Edwards
(now part of Hogan Lovells)
875 Third Avenue
New York, New York 10022
Summer Associate

Early Summer 1985

Governor's School of South Carolina
(formerly conducted at the College of Charleston)
College of Charleston
66 George Street
Charleston, South Carolina 29424
Teaching assistant and counselor for summer program

August 1985; Summers 1981, 1982, 1983
Morrow & Company
(now Morrow Sodali)
509 Madison Avenue, Suite 1206
New York, New York 10022
Proxy solicitor (placed telephone calls regarding receipt and return of proxy materials)

Other Affiliations (Uncompensated)

2017 – present
Friends of the Los Angeles County Law Library
301 West 1st Street
Los Angeles, California 90012
Member, Board of Directors

2008 – 2016
Saint Monica Academy
2361 Del Mar Road
Montrose, California 91020
Member, Board of Directors

Approximately 1997 – 2001 & 2004 – present
Munger, Tolles & Olson Foundation
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071
Member, Board of Directors

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

I have not served in the military. I registered for selective service upon turning 18.

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.

Chambers USA

Ranked in “Band 4” for Appellate, Nationwide (2009 – 2012; 2015 – 2017)
Ranked in “Band 4” for Litigation: Appellate, California (2016 – 2018)
Ranked in “Band 3” for Appellate, Nationwide (2013 – 2014)
Ranked in “Band 5” for Litigation: General Commercial, California (2011)

The Best Lawyers in America – Recognized for Appellate Practice (2015 – Present)

“Super Lawyers” – Listed as a “Top-Rated” lawyer in Appellate in Los Angeles (2012 – Present)

International Municipal Lawyers’ Association – Amicus Service Award (2017) (awarded for filing an amicus brief for IMLA)

Special Achievement Award, United States Department of Justice (1994)

Stanford Law School

J.D. awarded “with Distinction” (1988)

Order of the Coif (1988)

Member and Note Editor, *Stanford Law Review* (1986 – 1988)

Awarded *Stanford Law Review* Board of Editors’ Award for outstanding editorial contributions to the Review (1988)

Harvard College

A.B. awarded *summa cum laude* (1985)

First Marshal of Phi Beta Kappa (1984 – 1985)

John Harvard Scholarship (approximately 1982 – 1985)

National Merit Scholar (approximately 1981)

Detur Prize (approximately 1982 – 1983)

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

Advisory Committee on Evidence Rules, U.S. Judicial Conference (2014 – present)

Ad Hoc Subcommittee on Rule 702 (2018 – present)

American Bar Association (Approximately 1989 – 2011, with possible gaps)

I organized the appellate moot court at the April 1999 meeting of the Litigation Section, but I was ultimately unable to attend the event personally.

Association of Business Trial Lawyers (approximately 2004)

Central District of California Local Rules Advisory Committee (approximately 2010 – 2015)

Federal Bar Association (approximately 1995 – 2016, with likely significant gaps)

Federalist Society (1995 – present, with possible gaps)

Vice Chair for Publications of the Federalism and Separation of Powers Practice Group (1996 – 1999)

Executive Committee for the Los Angeles Lawyers Division (approximately 1997 – 2000)

James Madison Club (2010 – present)

Los Angeles County Bar Association (approximately one or more years in the 1990s)

Ninth Circuit and Central District of California Judicial Conferences
Lawyer Representative from the Central District of California (2008 – 2011)

Ninth Judicial Circuit Historical Society
Member, Advisory Council (2011 – Present)
Chair, Website Development Committee (2016 – 2017)

Public-Private Partnership for Justice Reform in Afghanistan (2007 – 2008)
Member, Executive Committee (approximately 2007 – 2008)

Supreme Court Historical Society (1995 – 1996, and perhaps other years)

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.

California, 1989
District of Columbia, 1991

There have been no lapses in membership.

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

Supreme Court of the United States, 1996
United States Court of Appeals for the Second Circuit, 2011
United States Court of Appeals for the Fourth Circuit, 2017
United States Court of Appeals for the Fifth Circuit, 2007
United States Court of Appeals for the Sixth Circuit, 2000
United States Court of Appeals for the Seventh Circuit, 2015
United States Court of Appeals for the Ninth Circuit, 1989
United States Court of Appeals for the Eleventh Circuit, 1998
United States Court of Appeals for the D.C. Circuit, 2004
United States Court of Appeals for the Federal Circuit, 2016
United States District Court for the Central District of California, 1989
United States District Court for the Northern District of California, 1996
United States District Court for the Southern District of California, 1999
California Supreme Court and other California state courts, 1989
District of Columbia Court of Appeals, 1991

My membership in the Eleventh Circuit bar lapsed due to inadvertent non-payment of the required renewal fee. I was re-admitted in 2011.

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.

City Club of Bunker Hill (2007 – 2010)

Downtown Lincoln Club of Los Angeles (approximately 2000 – 2001)

Flint Canyon Tennis Club (approximately 2007 – present)

Friends of the Los Angeles County Law Library
Board of Directors (2017 – present)

Los Angeles World Affairs Council (approximately 2007 – 2008)

Munger, Tolles & Olson Foundation
Member, MTO Foundation Committee (approximately 1997 – 2001 &
2004 – present)

Pasadena Republican Club (approximately 1990s – 2014) (sporadic membership,
with likely significant gaps)

St. Monica Academy
Board of Directors (2008 – 2016)

St. Philip the Apostle Church
Parish Pastoral Council (approximately 2005 – 2009)
Policy & Planning Committee, St. Philip the Apostle School
(2006 – 2007)

- 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.

St. Monica Academy is a Catholic school and a non-profit religious corporation, and membership on its Board of Directors was generally limited to practicing Catholics, although active members of another Christian church could also serve. Likewise, St. Philip the Apostle Church's various parish organizations were generally limited to Catholics (typically parishioners).

Otherwise, to the best of my knowledge, none of the organizations listed above currently discriminates 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.

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.

Symposium, *Antonin Scalia – A Justice in Full*, NATIONAL REVIEW (Feb. 29, 2016). Longer version supplied; version as published online available at <https://www.nationalreview.com/magazine/2016/03/14/justice-full/>.

With Kristin Linsley Myles, *The Future of International Human Rights Litigation*, LITIGATION (Am. Bar Ass'n), Vol. 32, No. 3, p.40 (Spring 2006). Copy supplied.

"Square Off" with Nadine Strossen and Barry Steinhardt: *Is Online Privacy Under Attack?*, OPTIMIZE Magazine (Jan. 2002). Copy supplied.

Lewis v. Casey: *A Case Study in How Standing Doctrines Help to Promote Judicial Restraint*, FEDERAL & SEPARATION OF POWERS NEWS (Federalist Soc'y), Vol. 1, No. 2, at p.5 (1997). Copy supplied.

Making Juries Better Factfinders, 20 HARV. J. LAW & PUB. POLICY 489 (1997). Copy supplied.

Farewell Miranda?, 1995 PUB. INTEREST L. REV. 185. Copy supplied.

Islamization of Pakistani Law: A Historical Perspective, 24 STAN. J. INT'L L. 511 (1988). Copy supplied.

Note, *Summary Judgment and Circumstantial Evidence*, 40 STAN. L. REV. 491 (1988). Copy supplied.

Comments for Newsletter of the St. Charles Jubilee Center's *Jubilee Times*, Vol. 5, No. 3 (May/June 1981). Copy supplied.

Two Lives, Xaverian High School X-Press (1981) (poem in high school literary publication). Copy supplied.

Letter to the Editor, N.Y. DAILY NEWS (Oct. 15, 1980). Copy supplied.

I was the Editor of the first three volumes (a total of seven issues) of the FEDERALISM AND SEPARATION OF POWERS NEWS, a publication of the Federalism and Separation of Powers Practice Group of the Federalist Society (1996 – 1999). Copies supplied.

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

Advisory Committee on Evidence Rules, *Report of Advisory Committee on Evidence Rules*, Nov. 15, 2018. Copy supplied.

Advisory Committee on Evidence Rules, *Report of Advisory Committee on Evidence Rules*, May 14, 2018. Copy supplied.

Advisory Committee on Evidence Rules, *Report of Advisory Committee on Evidence Rules*, Nov. 15, 2017. Copy supplied.

Advisory Committee on Evidence Rules, *Report of Advisory Committee on Evidence Rules*, May 7, 2017. Copy supplied.

Advisory Committee on Evidence Rules, *Report of Advisory Committee on Evidence Rules*, Nov. 7, 2016. Copy supplied.

Advisory Committee on Evidence Rules, *Report of Advisory Committee on Evidence Rules*, May 7, 2016. Copy supplied.

Advisory Committee on Evidence Rules, *Report of Advisory Committee on Evidence Rules*, Nov. 7, 2015. Copy supplied.

Advisory Committee on Evidence Rules, *Report of Advisory Committee on Evidence Rules*, May 7, 2015. Copy supplied.

Advisory Committee on Evidence Rules, *Report of Advisory Committee on Evidence Rules*, Nov. 15, 2014. Copy supplied.

I have been able to locate the following reports of the Local Rules Advisory Committee of the U.S. District Court for the Central District of California that were approved and submitted while I was a member of that Committee:

Local Rules Advisory Committee, United States District Court for the Central District of California, *Report on the Impact of the December 2011 Federal Rules Amendments on the Local Rules*, Sept. 1, 2011.

Local Rules Advisory Committee, United States District Court for the Central District of California, *Proposed Amendment to Local Rule 11-6*, Sept. 1, 2011.

Local Rules Advisory Committee, United States District Court for the Central District of California, *Proposed Amendments to Local Rules 23-3 and 26-1*, July 12, 2011.

Local Rules Advisory Committee, United States District Court for the Central District of California, *Proposed Local Rules on Electronic Filing*, Apr. 2011.

Local Rules Advisory Committee, United States District Court for the Central District of California, *Interim Report*, Oct. 28, 2010.

To the extent responsive, I recall that, as an Associate Deputy Attorney General, I contributed in the preparation of at least the following public reports, memoranda, or policy statements:

Memorandum from the Acting Deputy Attorney General, "Implementation of Department Policies Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing" (Sept. 23, 2003). Copy supplied.

Memorandum from the Attorney General, "Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing" (Sept. 22, 2003). Copy supplied.

Memorandum from the Attorney General, "Department Principles for Implementing an Expedited Disposition or 'Fast-Track' Prosecution Program in a District" (Sept. 22, 2003). Copy supplied.

Memorandum from the Attorney General, "Department Policies and Procedures Concerning Sentencing Recommendations and Sentencing Appeals" (July 28, 2003). Copy supplied.

U.S. Department of Justice, Civil Rights Division, "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies" (June 2003). Copy supplied.

U.S. Department of Justice, "Race or Ethnicity as a Factor in Law Enforcement Operations: A Survey of Federal Agencies" (June 2003). Copy supplied.

Joint Report of the Secretary of Defense, the Attorney General, and the Director of Central Intelligence, "Report to Congress regarding the Terrorism Information Awareness Program: In response to Consolidated Appropriations Resolution, 2003, Pub. L. No. 108-7, Division M, § 111(b)" (May 20, 2003). Copy supplied.

Memorandum from the Deputy Attorney General, "Avoiding Collection an Investigative Use of 'Content' in the Operation of Pen Registers and Trap and Trace Devices" (May 24, 2002). Copy supplied.

Memorandum from the Deputy Attorney General, "Procedures for the Use of Classified Investigative Technologies in Criminal Cases" (Jan. 31, 2002). Copy supplied.

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

Minutes of Fall 2018 Meeting of Advisory Committee on Evidence Rules (Oct. 19, 2018) (statements made as member of Committee). Copy supplied.

October 19, 2018: Advisory Committee on Evidence Rules, "Conference on Proposed Amendments to Federal Rules of Evidence 702, 106, and 615," 87 Fordham L. Rev. 1 (2019) (forthcoming) (reproducing transcript). Copy supplied.

Minutes of Spring 2018 Meeting of Advisory Committee on Evidence Rules (Apr. 26-27, 2018) (statements made as member of Committee). Copy supplied.

Joint letter to Senate Judiciary Committee supporting nomination of Joseph H. ("Jody") Hunt to be the Assistant Attorney General for the Civil Division of the United States Department of Justice (Feb. 16, 2018). Copy supplied.

Minutes of Fall 2017 Meeting of Advisory Committee on Evidence Rules (Oct. 26, 2017) (statements made as member of Committee). Copy supplied.

Joint letter to Senate Judiciary Committee supporting nomination of Gregory G. Katsas to be a Circuit Judge on the United States Court of Appeals for the District of Columbia Circuit (Oct. 13, 2017). Copy supplied.

Joint letter to Senate Judiciary Committee supporting nomination of Gregory G. Katsas to be a Circuit Judge on the United States Court of Appeals for the District of Columbia Circuit (Oct. 12, 2017). I have been unable to locate a copy of the final letter.

Minutes of Spring 2017 Meeting of Advisory Committee on Evidence Rules (Apr. 21, 2017) (statements made as member of Committee). Copy supplied.

Minutes of Fall 2016 Meeting of Advisory Committee on Evidence Rules (Oct. 21, 2016) (statements made as member of Committee). Copy supplied.

October 21, 2016: Advisory Committee on Evidence Rules, “*Conference on Possible Amendments to Federal Rules of Evidence 404(b), 807, and 801(d)(1)(A)*,” 85 FORDHAM L. REV. 1517 (2017) (reproducing transcript). Copy supplied.

Minutes of Spring 2016 Meeting of Advisory Committee on Evidence Rules (Apr. 29, 2016) (statements made as member of Committee). Copy supplied.

In the Matter of: Public Hearing on Proposed Amendments to the Federal Rules of Evidence, Judicial Conference Advisory Committee on Evidence Rules (Feb. 12, 2016) (statements made as member of Committee). Copy supplied.

Minutes of Fall 2015 Meeting of Advisory Committee on Evidence Rules (Oct. 9, 2015) (statements made as member of Committee). Copy supplied.

Minutes of Spring 2015 Meeting of Advisory Committee on Evidence Rules (Apr. 17, 2015) (statements made as member of Committee). Copy supplied.

Minutes of Fall 2014 Meeting of Advisory Committee on Evidence Rules (Oct. 24, 2014) (statements made as member of Committee). Copy supplied.

Joint letter to Senate Judiciary Committee supporting nomination of Michelle Friedland to be a Circuit Judge on the United States Court of Appeals for the Ninth Circuit (Aug. 2, 2013). Copy supplied.

Letter to Senate and Senate Judiciary Committee supporting nomination of Paul J. Watford to be a Circuit Judge on the United States Court of Appeals for the Ninth Circuit (May 18, 2012). Copy supplied.

Hamdan v. Rumsfeld: Establishing a Constitutional Process: Hearing Before the Senate Comm. on the Judiciary, S. HRG. NO. 109-1056, at 57-58, 69, 105-08, 176-85 (July 11, 2006) (statement, testimony, and answers to written questions of Daniel P. Collins). Copy supplied.

Joint letter to Senate Judiciary Committee supporting nomination of John G. Roberts, Jr. to the U.S. Supreme Court (Sept. 1, 2005). Copy supplied.

USA Patriot Act: Hearings Before the Senate Select Comm. on Intelligence, S. HRG. NO. 109-341, at 212-20, 229, 232 (May 24, 2005) (statement and testimony of Daniel P. Collins). Copy supplied.

Oversight of the USA Patriot Act: Hearings Before the Senate Comm. on the Judiciary, S. HRG. NO. 109-168, at 336-38, 347-55, 361-62, 406-25 (May 10, 2005) (statement, testimony, and answers to written questions of Daniel P. Collins). Copy supplied.

Submitted Witness Statements for the Public Hearings of the United States Sentencing Commission, November 16-17, 2004 and February 15-16, 2005 at 318-27 (February 16, 2005 statement of Daniel P. Collins). Copy supplied.

Transcript of Proceedings of the Public Hearings of the United States Sentencing Commission, November 16-17, 2004 and February 15-16, 2005 at 170-72, 174, 179, 181 (Feb. 16, 2005 testimony of Daniel P. Collins). Copy supplied.

Implications of the Booker/Fanfan Decisions for the Federal Sentencing Guidelines: Hearing Before the House Comm. on the Judiciary, Subcomm. on Crime, Terrorism, and Homeland Security, 109th Cong. 24-28, 37-38, 43-44, 52 (Feb. 10, 2005) (statement and testimony of Daniel P. Collins). Copy supplied.

A Review of Counter-Terrorism Legislation and Proposals, Including the USA Patriot Act and the SAFE Act: Hearing Before the Senate Comm. on the Judiciary, S. HRG. NO. 108-803, at 50-55, 65-70, 140-52 (Sept. 22, 2004) (statement, testimony, and answers to written questions of Daniel P. Collins). Copy supplied.

Preventing and Responding to Acts of Terrorism: A Review of Current Law: Hearing Before the Senate Comm. on the Judiciary, S. HRG. NO. 108-915, at 37-40, 44-45, 48, 59-62, 120-29 (Apr. 14, 2004) (statement, testimony, and answers to written questions of Daniel P. Collins). Copy supplied.

Child Abduction Prevention Act and the Child Obscenity and Pornography Prevention Act of 2003: Hearing on H.R. 1104 and 1161 Before the House Comm. on the Judiciary, Subcomm. on Crime, Terrorism, and Homeland Security, 108th Cong. 5-32, 45-47, 49-51, 54-56 (March 11, 2003) (statement and testimony of Daniel P. Collins, Associate Deputy Attorney General, U.S. Department of Justice). Copy supplied.

Stopping Child Pornography: Protecting Our Children and the Constitution: Hearing Before the Senate Committee on the Judiciary, S. HRG. NO. 107-974, at 8-10, 15-21, 26-53, 94-113 (Oct. 2, 2002) (statement, testimony, and answers to written questions of Daniel P. Collins, Associate Deputy Attorney General, U.S. Department of Justice). Copy supplied.

Child Abduction Prevention Act: Hearing on H.R. 5422 Before the House Comm. on the Judiciary, Subcomm. on Crime, Terrorism, and Homeland Security, 107th Cong. 3-16, 23-26, 29-30 (Oct. 1, 2002) (statement and testimony of Daniel P. Collins, Associate Deputy Attorney General, U.S. Department of Justice). Copy supplied.

Identity Theft: Hearing Before the Senate Comm. on the Judiciary, Subcomm. on Technology, Terrorism, and Government Information, S. HRG. NO. 107-900, at 83-86, 95-100, 102 (July 9, 2002) (statement and testimony of Daniel P. Collins, Associate Deputy Attorney General, U.S. Department of Justice). Copy supplied.

Child Obscenity and Pornography Prevention Act of 2002 and the Sex Tourism Prohibition Improvement Act of 2002: Hearing on H.R. 4623 and H.R. 4477 Before House Comm. on the Judiciary, Subcomm. on Crime, Terrorism, and Homeland Security, 107th Cong. 3-13, 15, 17-25 (May 9, 2002) (statement and testimony of Daniel P. Collins, Associate Deputy Attorney General, U.S. Department of Justice). Copy supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

The following list reflects my best efforts to identify any public speeches or talks I have delivered since age 18.

February 14, 2018: Panelist, "Recollections of Justice Scalia," Federalist Society – Los Angeles Lawyers' Chapter. Flyer supplied, as well as two Justice Scalia opinions that I quoted and discussed during my remarks. I otherwise have no notes, transcript, or recording. The address of the Federalist Society – Los Angeles Lawyer's Chapter is c/o Joshua McDaniel, Horvitz & Levy LLP, 3601 West Olive Avenue, 8th Floor, Burbank, California, 91505.

December 14, 2017: Speaker, St. Monica Academy. I spoke about the Constitution's separation of powers to my daughter's eighth grade class at St. Monica Academy in Montrose, California. I have no notes, transcript, or recording. The address of St. Monica Academy is 2361 Del Mar Road, Montrose, California, 91020.

February 25, 2016: Speaker, Stanford Law School. I spoke at Stanford Law School, together with Benjamin J. Horwich and E. Martin Estrada, concerning legal careers in the U.S. government. I have no notes, transcript, or recording, but a flyer is supplied. The address of Stanford Law School is 559 Nathan Abbott Way, Stanford, California, 94305.

April 29, 2015: Speaker, St. Monica Academy Board of Directors town hall meeting with school community. I have no notes, transcript, or recording. The address of St. Monica Academy is 2361 Del Mar Road, Montrose, California, 91020.

March 2014: Speaker, St. Monica Academy. I spoke about *Clark v. Rameker*, No. 13-299 (U.S. S. Ct.) to high school students at St. Monica Academy in Pasadena, California. (The students were scheduled to attend the argument in that case on their upcoming trip to Washington, D.C.) Copy of handout sheet supplied. I otherwise have no notes, transcript, or recording. The address of St. Monica Academy is 2361 Del Mar Road, Montrose, California, 91020.

February 18, 2014: Speaker, St. Monica Academy Board of Directors town hall meeting with school community. I have no notes, transcript, or recording. The address of St. Monica Academy is 2361 Del Mar Road, Montrose, California, 91020.

April 19, 2013: Panelist, "Oral Argument Tactics," National Attorneys General Training and Research Institute, Los Angeles, California. I have no notes, transcript, or recording. The address of the Institute is 1850 M Street N.W., 12th floor, Washington, D.C. 20036.

February 28, 2011: Speaker, St. Monica Academy. I spoke about the Supreme Court to high school students at St. Monica Academy in Pasadena, California. I have no notes, transcript, or recording. The current address of St. Monica Academy is 2361 Del Mar Road, Montrose, California, 91020.

June 30, 2008: My firm co-hosted, together with the Los Angeles Chapter of the Federal Bar Association, a "Reception for the Attorney General of Afghanistan." As a then-member of the Executive Committee of the Public-Private Partnership for Justice Reform in Afghanistan, I may have provided introductory remarks, although I do not recall specifically whether I did. Email flyer announcing event supplied. I otherwise have no notes, transcript, or recording. The current address of the Los Angeles Chapter of the Federal Bar Association is Post Office Box 10065, Burbank, California, 91510.

June 12, 2008: In connection with the Public-Private Partnership for Justice Reform in Afghanistan, I participated in an afternoon discussion session of the “Afghan Criminal Justice Training Program” conducted at the S.J. Quinney College of Law. I have no notes, transcript, or recording. The address of the S.J. Quinney College of Law is 383 South University Street, Salt Lake City, Utah, 84112.

March 23, 2006: Panelist, “Military Tribunals on Trial,” American Enterprise Institute. Video available at www.c-span.org/video/?191743-1/military-tribunals-trial.

November 15, 2005: Panelist, “‘Original Intent’ or ‘Active Liberty’: The Legacy and Future for Business Regulation and Litigation, From Rehnquist to Roberts,” Association of Business Trial Lawyers, Los Angeles, California. Flyer announcing event supplied. I otherwise have no notes, transcript, or recording. The current address listed for the Association of Business Trial Lawyers of Los Angeles on their website is 8502 East Chapman Avenue, Suite 443, Orange, California, 92869.

November 9, 2005: I spoke at Whittier Law School on the Alien Tort Statute and international law as part of the Whittier Colloquia Series. I have no notes, transcript, or recording. The address of Whittier Law School is 3333 Harbor Boulevard, Costa Mesa, California, 92626.

October 27, 2005: Panelist, “Oral Argument Panel II,” Federal Bar Association Ninth Circuit Court of Appeals Appellate Practice Workshop, Pasadena, California. I participated in a panel discussion, and I also presented one side of a mock oral argument. Flyer announcing event supplied. I otherwise have no notes, transcript, or recording. The current address of the Los Angeles Chapter of the Federal Bar Association is Post Office Box 10065, Burbank, California, 91510.

April 1, 2005: Panelist, “How Long Can We Fail To Educate And Get The Support Of The Executive And Legislative Branches of Government?”, American Board of Trial Advocates and Federation of Defense & Corporate Counsel, in affiliation with Academy of Trial Lawyers, ABA Tort & Trial Practice Session, Association of Trial Lawyers of America, Association of Defense Trial Attorneys, Defense Research Institute, International Academy of Trial Lawyers, International Association of Defense Counsel, International Society of Barristers, National Center for State Courts, Trial Lawyers for Public Justice, and Federal District Judges Association, “The American Jury Trial—Do We Allow Its Death Or Lead Its Rebirth? A National Summit on the Present State and Future of the Seventh Amendment Right to Trial By Jury,” Las Vegas, Nevada. Flyer announcing event supplied. I otherwise have no notes, transcript, or recording. The address of the American Board of Trial Advocates is 2001 Bryan Street, Suite 3000, Dallas, Texas, 75201.

October 2, 2004: Panelist, "Who's Got the Power—International Law or Our Law?", Boalt Hall School of Law Reunion Program, Berkeley, California. Panelist biographies sheet supplied and partial copy of reunion program supplied. I otherwise have no notes, transcript, or recording. The address of U.C. Berkeley School of Law is 215 Bancroft Way, Berkeley, California, 94720.

May 2, 2004: Panelist, "Law in the State of Perpetual War: Secrecy, Security, and Civil Liberties in the Age of Anti-Terrorism," Northern District of California Judicial Conference, Santa Cruz, California. Program supplied. I otherwise have no notes, transcript, or recording. The Judicial Conference is conducted under the auspices of the United States District Court for the Northern District of California, and the address of the Office of the Clerk of that Court is 450 Golden Gate Avenue, San Francisco, California, 94102-3489.

August 2, 2003: Panelist, "Surveillance and Detention After September 11," American Constitution Society, Washington, D.C. Transcript supplied.

February 28, 2003: I served as a moot court judge for the American Bar Association Law Student Division at Round 2 of the 2003 D.C. Regional National Appellate Advocacy Competition. I have no notes, transcript, or recording of my remarks during the moot court. The address of the American Bar Association is 321 North Clark Street, Chicago, Illinois, 60654.

December 10, 2002: Panelist, "Can Civil Liberties Be Preserved During the War on Terrorism?", Association of Business Trial Lawyers of Northern California, San Francisco, California. Flyer supplied. I otherwise have no notes, transcript, or recording. The current address listed for the Association of Business Trial Lawyers of Northern California on their website is 663 South Rancho Santa Fe Road, San Marcos, California, 92078.

October 23, 2002: Panelist, "Spying at Home: Domestic Intelligence Since September 11," American Constitution Society, Washington, D.C. Notes supplied.

June 2, 2002: Remarks to Advisory Board, Electronic Privacy Information Center. Notes supplied.

January 31, 2002: Speaker, "Privacy Provisions of the Patriot Act," International Association of Privacy Officers, Washington, D.C. Press coverage, flyer and prepared remarks supplied (surviving copy of remarks reflects edits made to the beginning of the document in the course of preparing similar remarks for American Constitution Society event on October 23, 2002); *National Journal's Technology Daily* news report supplied.

July 23, 2001: Remarks, "Privacy and Technologies Conference," RAND Corporation, Washington, D.C. Prepared remarks supplied.

March 10, 2001: Panelist, "Federal Appellate Practice," Federal Bar Association (Los Angeles Chapter) "Taking the Step to Federal Court" Program, Los Angeles, California. Program outline and notes supplied. I otherwise have no notes, transcript, or recording. The current address of the Los Angeles Chapter of the Federal Bar Association is Post Office Box 10065, Burbank, California, 91510.

March 11, 2000: Panelist, "Federal Appellate Practice," Federal Bar Association (Los Angeles Chapter) "Taking the Step to Federal Court" Program, Los Angeles, California. I have no notes, transcript, or recording. The current address of the Los Angeles Chapter of the Federal Bar Association is Post Office Box 10065, Burbank, California, 91510.

March 6, 1999: Panelist, "Federal Appellate Practice," Federal Bar Association (Los Angeles Chapter) "Taking the Step to Federal Court" Program, Los Angeles, California. I have no notes, transcript, or recording. The current address of the Los Angeles Chapter of the Federal Bar Association is Post Office Box 10065, Burbank, California, 91510.

October 12, 1998: Panelist, "Class Action Suits Against the Tobacco Industry," 44th Annual Employee Benefits Conference, International Foundation of Employee Benefits Plans, Las Vegas, Nevada. Copy of my hand-out materials supplied. I otherwise have no notes, transcript, or recording. The current address of the International Foundation of Employee Benefits Plans is 18700 West Bluemound Road, Brookfield, Wisconsin, 53045.

March 7, 1998: Panelist, "Federal Appellate Practice," Federal Bar Association (Los Angeles Chapter) "Taking the Step to Federal Court" Program, Los Angeles, California. I have no notes, transcript, or recording. The current address of the Los Angeles Chapter of the Federal Bar Association is Post Office Box 10065, Burbank, California, 91510.

March 1, 1997: Panelist, "Federal Appellate Practice," Federal Bar Association (Los Angeles Chapter) "Taking the Step to Federal Court" Program, Los Angeles, California. Program outline supplied. I otherwise have no notes, transcript, or recording. The current address of the Los Angeles Chapter of the Federal Bar Association is Post Office Box 10065, Burbank, California, 91510.

February 24, 1996: Panelist, "Juries and the Criminal Justice System: What Role?", Federalist Society Symposium on Justice and the Criminal Justice Process, Stanford Law School, Stanford, California. Copies of notes for my talk, my notes of other panelists' remarks, and rough transcript of my remarks supplied. A revised and extended version of these remarks was published as "Making Juries Better Factfinders," 20 HARV. J. L. & PUB. POL. 489 (1997). Copy supplied.

October 1982: I spoke at an open meeting of the Harvard Corporation's Advisory Committee on Shareholder Responsibility urging the Committee not to adopt a policy to use its proxy votes to support a nuclear freeze. Notes and news article supplied.

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

John Roemer, "Judicial Profile: Paul J. Watford," DAILY JOURNAL, Jan. 28, 2015. Copy supplied.

Sometime in March 2013, I (among other passersby) was interviewed outside of Los Angeles's Cathedral of Our Lady of the Angels by (I believe) KABC Eyewitness News about the selection of a new Pope, and an excerpt was broadcast on the 11:00 P.M. newscast. I do not have a copy, transcript, or recording. The address of KABC Eyewitness News is ABC7 Broadcast Center, 500 Circle Seven Drive, Glendale, California, 91201.

Henry Meier, *Top Appellate Reversals – Boeing Satellite Systems International v. ICO Global Communications*, DAILY JOURNAL, Feb. 13, 2013. Copy supplied.

Carol J. Williams, "Lawyer Tapped for 9th Circuit," LOS ANGELES TIMES, Oct. 18, 2011. Copy supplied. Reprinted in multiple outlets.

Chitra Ragavan, "Change in Naming Interim U.S. Attorneys Was Benign, Former Justice Official Says," U.S. NEWS & WORLD REPORT, Apr. 12, 2007. Copy supplied.

Margaret Talev and Marisa Taylor, *Justice Dept. distances White House from firings of U.S. attorneys*, Knight Ridder Washington Bureau, Mar. 15, 2007. Copy supplied.

Nina Totenberg, *High Court Hears Challenge to Military Tribunals*, National Public Radio's Morning Edition, Mar. 28, 2006. Copy supplied.

Liz Valsamis, *Litigator is Home at Munger Tolles*, DAILY JOURNAL, Nov. 18, 2003).

Gary Fields, *Order to Cut Plea Bargains Draws Ire — Critics Say Ashcroft Policy Will Hamper Prosecutors, Overload Federal Courts*, WALL STREET JOURNAL, Sept. 23, 2003. Copy supplied.

Eric Lichtblau, *Ashcroft Limiting Prosecutors' Use of Plea Bargains*, NEW YORK TIMES, Sept. 23, 2003. Copy supplied.

David Goldstein, *Ashcroft curtails plea deals; Aim is to correct sentencing gaps*, KANSAS CITY STAR, Sept. 23, 2003. Copy supplied.

"Federal Sentencing Guidelines," C-SPAN's Washington Journal (Aug. 11, 2003). Video supplied.

"Department of Justice Press Conference Re: Efforts to Prevent Identity Theft," Federal News Service (May 2, 2002) (this transcript indicates that the Attorney General designated me to be available to answer questions after the press conference, but I have found no quotations or accounts of any remarks I made).

Linly Harris, *The New Privacy Czar*, STANFORD LAWYER (Spring 2002). Copy supplied.

Eric Rosenberg, *FBI's Use of E-Mail Wiretaps Probed*, Times Union, Albany, New York [Hearst Washington Bureau], Aug. 5, 2001. Copy supplied.

Marty Graham, *Lighting Up in Court*, CAL. L. WEEK, Feb. 15, 1999. Copy supplied.

Counties Given Go-Ahead on Tobacco Suit, The Issue: Reimbursement For Medical Costs, SAN JOSE MERCURY NEWS, Mar. 5, 1998. Copy supplied.

Sabin Russell, *Court OKs Counties' Tobacco Industry Suit*, SAN FRANCISCO CHRONICLE, Mar. 5, 1998. Copy supplied.

Mike Kataoka, *Appeals: Jury pool short on minorities; Recent changes in the U.S. District Court make it hard for minority defendants to get a fair trial, say two convicted bank robbers*, RIVERSIDE PRESS ENTERPRISE, Oct. 11, 1994. Copy supplied.

'85 Assembly Reps Upset After Meeting, THE HARVARD CRIMSON, Oct. 7, 1981. Copy supplied.

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

I have not held judicial office.

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

- i. Of these, approximately what percent were:

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

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

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

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

I have not held judicial office.

- 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.

15. **Public Office, Political Activities and Affiliations:**

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

I have never been a candidate for, or held, any elective public office. Since law school, I have held the following appointed positions:

Member, Advisory Committee on Evidence Rules, U.S. Judicial Conference (2014 – present). I was appointed to this position in 2014 by Chief Justice John G. Roberts, Jr., and reappointed by the Chief Justice in 2017.

Member, Local Rules Advisory Committee, U.S. District Court for the Central District of California (approximately 2010 – 2015). I was appointed to this position by the United States District Court for the Central District of California.

Associate Deputy Attorney General, U.S. Department of Justice (2001 – 2003). I was appointed to this position by Attorney General John Ashcroft.

Assistant U.S. Attorney for the Central District of California (1992 – 1996). I was formally appointed to this position by Attorney General Janet W. Reno.

Intern, Republican Study Committee, United States House of Representatives, Summer 1984. My recollection is that, as a formal matter, all Republican Study Committee interns were sponsored by a Member, and I believe that my internship was nominally sponsored by Congressman Jack Fields of Texas.

- 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.

Member, Finance Committee, Eastman for Attorney General (2010)

Member, Advisory Committee on the Constitution and the Courts, Mitt Romney for President (2008)

Fred Thompson for President

Member, Legal Policy Working Group (2007 – 2008)

State Co-Chair for California, Lawyers for Thompson (2007 – 2008)

As a teenager in the summer of 1980, I briefly volunteered (stuffing envelopes, etc.) at the Reagan for President campaign office in New York, New York.

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;

From 1988 to 1989, I served as a law clerk to the Honorable Dorothy W. Nelson, Circuit Judge for the United States Court of Appeals for the Ninth Circuit. From 1991 to 1992, I served as a law clerk to the Honorable Antonin Scalia, Associate Justice of the Supreme Court of the United States.

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

I have never practiced law 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.

Since graduation from law school, I have been affiliated with the following law firms and government agencies:

Summer 1988
Munger, Tolles & Olson LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071
Summer Associate

1989 – 1991
Office of Legal Counsel
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Attorney Adviser

1992 – 1996
Office of the United States Attorney
Central District of California
Criminal Division
312 North Spring Street
Los Angeles, California 90012
Assistant United States Attorney

1996 – 2001
Munger, Tolles & Olson LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071
Associate (1996 – 1997); Partner (1998 – 2001)

2001 – 2003
Office of the Deputy Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Associate Deputy Attorney General

2003 – Present
Munger, Tolles & Olson LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071
Partner

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

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

After completing my clerkship with Judge Dorothy W. Nelson, I worked from 1989 to 1991 as an Attorney Adviser in the Office of Legal Counsel at the U.S. Department of Justice in Washington, D.C. I researched and drafted opinions and other documents of the Office on a wide variety of topics, including federal ethics law, statutory construction, separation of powers, banking law, campaign finance law, and the First Amendment.

After completing my clerkship with Justice Scalia, I served as an Assistant U.S. Attorney in the Criminal Division of the Office of the U.S. Attorney for the Central District of California from 1992 until 1996. I prosecuted a variety of federal criminal cases, including eight jury trials (seven were tried to verdict; one case ended in a hung jury and was retried). The jury trials involved a range of different crimes, including kidnapping, armed bank robbery, postal robbery, drug trafficking, and illegal radio broadcasting. I also served in the Criminal Appeals Section, where I supervised the preparation of more than 100 criminal appellate briefs drafted by other prosecutors. I personally prepared and filed more than 35 appellate briefs, including three petitions for rehearing en banc and one brief on the merits after rehearing en banc was granted in a case. I argued 18 times before the Ninth Circuit, including one case before the en banc court.

Between April 1996 and June 2001, and again since November 2003, I have been an attorney at Munger, Tolles & Olson LLP in Los Angeles. I have been a partner since January 1998. My practice at the firm has focused on appeals and complex civil litigation. While at the firm, I have presented oral argument on appeal 41 times. Just under half of my appellate arguments at the firm (*i.e.*, 20) have been before the Ninth

Circuit. (Given that all of my appellate arguments in the U.S. Attorney's Office were before the Ninth Circuit, I have presented oral argument in the Ninth Circuit a total of 38 times over the course of my career, including two arguments before the en banc Ninth Circuit.) I have argued four times in the California Supreme Court, once in the Hawai'i Supreme Court, 14 times in the California Courts of Appeal, and once each in the Second and Fifth Circuits. I have also been involved in the briefing in these and many other appeals in several appellate courts, including the U.S. Supreme Court, the Ninth Circuit, and the California appellate courts. I have also drafted and argued a large number of motions at the trial court level, both in the federal district courts and the California state courts, including numerous dispositive motions (e.g., motions to dismiss or for summary judgment). I also took and defended many depositions during my earlier time at the firm (from 1996 – 2001).

At the firm, I have not restricted my practice to a particular subject matter area. The cases I have handled have involved a range of subject matters, including international law, antitrust law, environmental law, insurance law, contract law, tort law, administrative law, copyright law, state constitutional law, federal Indian law, federal jurisdiction, the First Amendment, preemption, California's Unfair Competition Law, and class certification standards. I have also participated as one of the counsel of record in two criminal appeals during my time at the firm.

From 2001 until 2003, I served as an Associate Deputy Attorney General in the Office of the Deputy Attorney General at the U.S. Department of Justice in Washington, D.C. During that same period I was also designated as the Department's Chief Privacy Officer, advising senior Department officials on privacy issues. While serving in the Deputy Attorney General's Office, I coordinated the Department's efforts on several major legislative and policy initiatives, and I testified multiple times before the Judiciary Committees of both the House and the Senate. In particular, I worked extensively on the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today ("PROTECT") Act of 2003, which included provisions to combat child pornography and child abuse and to reform federal sentencing laws, as well as on the Identity Theft Penalty Enhancement Act. I also assisted in coordinating the Department's 2003 review and revision of its policies on charging of criminal offenses, plea bargaining, sentencing recommendations, and sentencing appeals. I also participated in the formulation of the Civil Rights' Division's guidelines on prohibiting the use of racial profiling in federal law enforcement. I also handled a number of issues related to the Vienna Convention on Consular Relations, including presenting argument (together with several other lawyers from the State Department) during a preliminary proceeding in *Mexico v. United States (Avena)* in the International Court of Justice in The Hague. I also participated in

coordinating litigation implicating Departmental priorities, and I provided advice on a wide range of other legal, legislative, regulatory, or policy issues that confronted the Department, including issues concerning the separation of powers and military commissions.

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

At Munger, Tolles & Olson LLP, I have typically represented business entities (e.g., energy companies, product manufacturers, banks, and utilities), and I have on several occasions represented individuals and non-profit organizations. Although I have generally resisted specializing in any particular subject area, I have handled a significant number of matters involving transnational issues over the course of my career.

In my various positions at the U.S. Department of Justice, my clients were always the government, a government agency, or a government official.

- 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.

During my time at the U.S. Department of Justice in Washington, D.C., I served primarily in an advisory capacity, and I did not personally participate in very much litigation. Other than that, virtually the entirety of my practice has been in litigation. As an Assistant U.S. Attorney, I appeared in court frequently, an average of about 4-5 times per month. Since returning to Munger, Tolles & Olson LLP in 2003, my practice has been more heavily weighted towards appellate work, and so the frequency of court appearances has declined (as compared to my prior tenure at the firm). I would estimate that, over the last several years, I have appeared in court an average of 2-3 times a year. Over the course of my career, I have presented oral argument on appeal approximately 59 times, have argued dozens of motions at the trial-court level, and have tried seven jury trials to verdict.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 70% |
| 2. state courts of record: | 30% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 0% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 85% |
| 2. criminal proceedings: | 15% |

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

I have tried seven cases to verdict (one of these seven trials was a retrial of a case that I had previously tried and that had ended in a hung jury). All of these cases were criminal cases that I prosecuted in the Central District of California during my tenure at the U.S. Attorney's Office. I was sole counsel in all of these cases except one that I jointly tried with my then-colleague, who was lead counsel in that case.

- i. What percentage of these trials were:

- | | |
|--------------|------|
| 1. jury: | 100% |
| 2. non-jury: | 0% |

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

I have not argued before the Supreme Court of the United States, but I have appeared as the counsel of record for a party in the following cases:

Daniels v. Philip Morris USA Inc., No. 07-740 (brief in opposition)
Exxon Mobil Corp. v. FERC, No. 08-212 (brief in opposition and supplemental brief)
Galvis Mujica v. Occidental Petroleum Corp., No. 15-283 (brief in opposition)
In re Comer, No. 10-294 (brief in opposition)
Istituto per le Opere di Religione v. Alperin, No. 05-539 (petition for certiorari and reply)
Mohamed v. Jeppesen DataPlan, Inc., No. 10-778 (brief in opposition)
Occidental Petroleum Corp. v. Carijano, No. 12-385 (petition for certiorari and reply)

I have also appeared as the counsel of record for *amici curiae* in the following merits cases:

County of Los Angeles v. Mendez, 137 S. Ct. 1539 (2017)
Zubik v. Burwell, 136 S. Ct. 1557 (2016)
Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751 (2014)
United States v. Williams, 553 U.S. 285 (2008)
Hamdan v. Rumsfeld, 548 U.S. 557 (2006)
Dickerson v. United States, 530 U.S. 428 (2000)
City of Chicago v. Morales, 527 U.S. 41 (1999)

I have also appeared as additional counsel, for parties or *amici curiae*, in the following cases:

Northrop Grumman Corp. v. Green, No. 95-1730 (petition for certiorari and reply)
Northrop Grumman Corp. v. U.S. ex rel. Hyatt, No. 96-17 (petition for certiorari and reply)
United States v. Northrop Grumman Corp., No. 96-123 (brief in opposition)
Hughes Aircraft Co. v. U.S. ex rel. Schumer, 520 U.S. 939 (1997) (*amicus curiae* brief)
Lorillard Tobacco Co. v. Reilly, 533 U.S. 525 (2001) (petition for certiorari and reply; brief for petitioners on the merits and reply brief)
United States v. Georgia, 546 U.S. 151 (2006) (*amicus curiae* brief)
American Elec. Power Co., Inc. v. Connecticut, 564 U.S. 410 (2011) (*amicus curiae* brief)
Kiobel v. Royal Dutch Petroleum Co., 569 U.S. 108 (2013) (*amicus curiae* brief)
Native Village of Kivalina v. Exxon Mobil Corp., No. 12-1072 (brief in opposition)
Nestlé U.S.A., Inc. v. John Doe I, No. 15-349 (petition for certiorari and reply)

Copies of all of these briefs have been supplied.

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) *Galvis Mujica v. Occidental Petroleum Corp.*, 771 F.3d 580 (9th Cir. 2014)

Judges: Circuit Judges Bybee and Ikuta and District Judge Zilly (by designation)

In this long-running case brought under the Alien Tort Statute, 28 U.S.C. § 1350 (“ATS”) and California common law, the plaintiffs were three former Colombian citizens who sought to hold Occidental Petroleum Corporation and AirScan, Inc. liable for an allegedly unlawful bombing conducted by the Colombian military in Colombia in 1998. After briefing on the motion to dismiss was completed, the

United States Department of State filed a Statement of Interest expressing the view that continued adjudication of the suit in the U.S. would have an adverse impact on U.S. foreign policy. Relying on this statement, the district court (Rea, J.) ultimately dismissed the action under the political question doctrine and, in part, on additional grounds as well. I had significant responsibility for writing and arguing, in the district court, certain portions of the motions to dismiss that were granted by the district court. *See Galvis Mujica v. Occidental Petroleum Corp.*, 381 F. Supp. 2d 1164 (C.D. Cal. 2005).

I likewise had significant responsibility for writing Occidental's briefs on appeal and cross-appeal in the 9th Circuit. (Occidental filed a cross-appeal to the extent that the district court stated that it would not dismiss the suit on several additional grounds that might have changed the nature of the judgment, *e.g.*, *forum non conveniens*.) The Ninth Circuit initially remanded the case for consideration of an intervening en banc decision concerning the potential applicability of prudential exhaustion. *Galvis Mujica v. Occidental Petroleum Corp.*, 564 F.3d 1190 (9th Cir. 2009). The district court (Wu, J.) concluded that prudential exhaustion was inapplicable, *see Galvis Mujica v. Occidental Petroleum Corp.*, 2010 WL 11586833 (C.D. Cal. 2010), and the parties again appealed and cross-appealed. I argued the second appeal on behalf of Occidental. The Ninth Circuit affirmed the dismissal. *See Galvis Mujica v. AirScan Inc.*, 771 F.3d 580 (9th Cir. 2014). The panel majority upheld the dismissal of the ATS claims on the ground that they were impermissibly extraterritorial, and it upheld the dismissal of the state law claims under the doctrine of international comity. Judge Zilly would have upheld the dismissal of the state law claims on other grounds, and he would have reversed the dismissal of the ATS claims and remanded to permit the plaintiffs to replead those claims.

The Supreme Court denied the plaintiffs' petition for certiorari. *See Galvis Mujica v. Occidental Petroleum Corp.*, 136 S. Ct. 690 (2015).

Co-counsel for Occidental, and the principal attorneys for the other parties are listed below. Not all of the attorneys listed were involved in every phase of this case.

Co-Counsel for Occidental Petroleum Corp.:

John W. Spiegel
Munger, Tolles & Olson LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071
(213) 683-9152

Kristin A. Linsley
Gibson Dunn & Crutcher LLP
555 Mission Street, Suite 3000

San Francisco, California 94105-0821
(415) 393-8395
(formerly at Munger, Tolles.)

Manuel F. Cachán
Proskauer Rose LLP
2029 Century Park East, Suite 2400
Los Angeles, California 90067
(310) 284-4568
(formerly at Munger, Tolles)

Daniel L. Geyser
Geyser P.C.
4925 Greenville Avenue, Suite 200
Dallas, Texas 75206
(214) 800-2660
(Formerly at Munger, Tolles.)

Aimee A. Feinberg
Office of the Solicitor General
California Department of Justice
1300 I Street
Sacramento, California 95814
(916) 210-6003
(Formerly at Munger, Tolles.)

Newman A. Nahas
Alston & Bird
2200 Ross Avenue, Suite 2300
Dallas, Texas 75201
(214) 922-3525
(Formerly at Munger, Tolles.)

Eric C. Tung
Jones Day
555 South Flower Street, 50th Floor
Los Angeles, California 90071
(213) 243-2151
(Formerly at Munger, Tolles.)

Opposing Counsel for Plaintiffs Galvis Mujica, et al.:

Paul Hoffmann
Schonbrun Seplow Harris & Hoffman LLP
11543 West Olympic Boulevard
Los Angeles, California 90064

(310) 396-0731

Terry Collingsworth
International Rights Advocates
621 Maryland Avenue, N.E.
Washington, D.C. 20002
(202) 527-7997
(Formerly at the International Labor Rights Fund, and then at Conrad & Scherer LLP.)

Daniel M. Kovalik
United Steelworkers of America
60 Boulevard of the Allies
Pittsburgh, Pennsylvania 15222
(412) 562-2518

Bridget Arimond
Center for International Human Rights
Northwestern University Pritzker School of Law
357 East Chicago Avenue
Chicago, Illinois 60611
(312) 503-5280

Douglass Cassel
Notre Dame Law School
Post Office Box 780
Notre Dame, Indiana 46556
(574) 631-7895
(Formerly at Northwestern University.)

Counsel for Co-defendant AirScan, Inc.:

Thomas E. Fotopulos [Deceased]
(Formerly at Fotopulos & Fotopulos, P.A.)

Sara M. Fotopulos
Fotopulos & Fotopulos, P.A.
1885 Armstrong Drive
Titusville, Florida 32780
(321) 258-6871

Kenneth J. Berke
Berke Miller Law Group, LLP
23901 Calabasas Rd., Suite 1068
Calabasas, California 91302
(818) 591-4200

- (2) *Ameron Int'l Corp. v. Am. Home Assurance Co.*, 625 Fed. App'x 803 (9th Cir. 2015)

Judges: Circuit Judges Noonan, Wardlaw, and Murguia

I was lead counsel for Ameron International Corporation and Ameron B.V. (collectively "Ameron") in their appeal to the Ninth Circuit from the district court's grant of summary judgment to American Home Assurance Company ("AHAC") in this insurance coverage case. Ameron contended, *inter alia*, that AHAC was obligated under its policies to provide a defense to Ameron in a lawsuit (the "*Sable* action") against Ameron in Nova Scotia in which the owners of a Canadian gas project sought more than \$400 million from Ameron for allegedly defective coating materials used in the project. Another of Ameron's insurers (Greenwich Insurance Company ("Greenwich")), which had agreed to cover part of Ameron's defense costs, was a co-plaintiff with Ameron and sought to recover from AHAC some of the defense costs it had paid. The district court (Real, J.) granted summary judgment to AHAC, holding that Ameron's alleged awareness, prior to the inception of the AHAC insurance policy, of some of the alleged damage to some of the project facilities barred any coverage for any of the damage to any of the facilities in the project, and that AHAC therefore never had a duty to defend Ameron in the *Sable* action.

I took the lead in drafting Ameron's appellate briefs, and I argued the case in the Ninth Circuit on behalf of Ameron. (Greenwich was separately represented, and its counsel filed separate briefs and also presented oral argument in the Ninth Circuit.) In a unanimous ruling, the Ninth Circuit reversed the district court's grant of summary judgment to AHAC, ordered the entry of partial summary judgment in favor of Ameron and Greenwich on the duty-to-defend issue, and remanded the case. *See Ameron Int'l Corp. v. Am. Home Assurance Co.*, 625 Fed. App'x 803 (9th Cir. 2015). The Court held that, although Ameron knew that there had been some damage to the coating material and to the underlying steel at the offshore portions of the project, there were disputed issues of fact as to (1) whether Ameron had such knowledge with respect to the onshore facilities and the connecting pipelines; (2) whether that latter damage was separate and distinct from the corrosion at the offshore facilities; and (3) whether Ameron's provision of allegedly defective coating material was intentional or negligent. The Court held that, in light of these disputed issues, there was a "possibility" of coverage for at least some of the damage and therefore, under California law, AHAC had a duty to defend the *Sable* action.

Co-Counsel for Ameron International Corp.:

Cary B. Lerman
Munger, Tolles & Olson LLP
350 South Grand Avenue, 50th Floor

Los Angeles, California 90071
(213) 683-9163

Jeremy A. Lawrence
Munger, Tolles & Olson LLP
560 Mission Street, 27th Floor
San Francisco, California 94105
(415) 512-4093

Opposing Counsel for American Home Assurance Co.:

William T. Corbett, Jr.
Laura A. Brady
Coughlin Duffy LLP
350 Mount Kemble Avenue
Morristown, New Jersey 07962
(973) 267-0058
(At the time, both attorneys were at Drinker Biddle in Florham Park.)

Katie A. Richardson
600 Anton Boulevard, Suite 1400
Costa Mesa, California 92626
(Formerly at the Orange County office of Snell & Wilmer. The California Bar website still lists that office as her address.)

Amy M. Samberg
Foran Glennon Palandech Ponzi & Rudloff
400 East Van Buren Street, Suite 550
Phoenix, Arizona 85004
(520) 275-0572
(Formerly at the Tucson office of Snell & Wilmer.)

Counsel for co-appellant Greenwich Insurance Co.:

Max H. Stern
Jessica E. La Londe
Duane Morris LLP
Spear Tower, One Market Plaza, Suite 2200
San Francisco, California 94105-1127
(415) 957-3000

- (3) *Native Village of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849 (9th Cir. 2012)

Judges: Circuit Judges Thomas and Clifton and District Judge Pro
(by designation)

The plaintiffs, a Native Alaskan Village and an Alaskan city, alleged that the defendants (various oil, utility, and coal companies) were liable for contributing to global warming, which placed the city in peril of being eroded away. They asserted claims under federal common law and sought as much as \$400 million in damages to relocate the city. My firm worked with multiple firms to file a joint motion to dismiss in the district court on behalf of the oil company defendants. The district court (Armstrong, J.) dismissed the suit on the grounds that the claims raised nonjusticiable political questions and that the plaintiffs lacked Article III standing. *Native Village of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863 (N.D. Cal. 2009). The plaintiffs appealed. In their briefs on appeal, the defendants argued that the district court correctly dismissed the case on political question and standing grounds, and they also argued that, in light of an intervening U.S. Supreme Court decision, the plaintiffs' federal common law claims were displaced by the Clean Air Act. I argued the case in the Ninth Circuit on behalf of the defendants-appellees. The Ninth Circuit unanimously affirmed the dismissal on displacement grounds. *Native Village of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849 (9th Cir. 2012). The concurring judge (Judge Pro) would also have affirmed on standing grounds.

Co-counsel for Shell Oil Company:

Ronald L. Olson
Munger, Tolles & Olson LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071
(213) 683-9111

Jerome C. Roth
Munger, Tolles & Olson, LLP
560 Mission Street, 27th Floor
San Francisco, California 94105
(415) 512-4010

Benjamin J. Maro
Mattel, Inc.
333 Continental Boulevard, TWR 15-1
El Segundo, California 90245
(310) 252-3323
(Formerly at Munger, Tolles.)

Scott W. Coyle
Squire Patton Boggs
201 East Fourth Street, Suite 1900
Cincinnati, Ohio 45202
(513) 361-1257
(Formerly at Munger, Tolles.)

Opposing Counsel for Native Village of Kivalina:

Matthew F. Pawa
Benjamin A. Krass
Hagens Berman Sobol Shapiro LLP
1280 Centre Street, Suite 230
Newton Centre, Massachusetts 02459
(617) 641-9550
(At the time, both attorneys were at Pawa Law Group, P.C.)

Steve W. Berman
Barbara Mahoney
Hagens Berman Sobol Shapiro LLP
1301 Second Avenue, Suite 2000
Seattle, Washington 98101
(206) 623-7292

Reed R. Kathrein
Hagens Berman Sobol Shapiro LLP
715 Hearst Avenue, Suite 202
Berkeley, California 94710
(510) 725-3000

Christopher A. Seeger
Stephen A. Weiss
Seeger Weiss LLP
77 Water Street, 8th Floor
New York, New York 10005
(212) 584-0700

Gary E. Mason
Whitfield, Bryson & Mason LLP
5101 Wisconsin Avenue, N.W., Suite 305
Washington, D.C. 20016
(202) 429-2294
(Formerly at the Mason Law Firm LLP.)

Stephen D. Susman
Terrell W. Oxford
H. Lee Godfrey (Retired)
Eric J. Mayer
Susman Godfrey L.L.P.
1000 Louisiana Street, Suite 5100
Houston, Texas 77002
(713) 651-9366

Drew D. Hansen
Susman Godfrey L.L.P.
1201 Third Avenue, Suite 3800
Seattle, Washington 98101-3000
(206) 373-7384

Marc Morris Seltzer
Susman Godfrey L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, California 90067
(310) 789-3102

Dennis Reich
Reich & Binstock LLP
4625 San Felipe, Suite 1000
Houston, Texas 77027
(713) 352-7883

Brent J. Newell
Public Justice
475 14th Street, Suite 610
Oakland, California 94612
(510) 622-8209
(Formerly at the Center on Race, Poverty & the Environment.)

Heather Kendall-Miller
Native American Rights Fund
745 West 4th Avenue, Suite 502
Anchorage, Alaska 99501-3657
(907) 276-0680

Counsel for Co-Defendants BP America Inc.; and BP Products N. America Inc.:

Matthew Heartney
Arnold & Porter LLP
777 South Figueroa Street, 44th Flr.
Los Angeles, California 90017
(213) 243-4150

Michael B. Gerrard
Philip H. Curtis
Arnold & Porter LLP
250 West 55th Street
New York, New York 10019
(212) 836-8000

Counsel for Co-Defendants Chevron Corp. & Chevron U.S.A. Inc.:

Paul D. Clement
Kirkland & Ellis LLP
655 15th Street, N.W.
Washington, D.C. 20005
(202) 879-5000
(Formerly at Bancroft PLLC.)

Tracie J. Renfroe
Robert E. Meadows
King & Spalding LLP
1100 Louisiana, Suite 4000
Houston, Texas 77002-5213
(713) 751-3200

Jonathan L. Marsh
Jones Day
717 Texas, Suite 3300
Houston, Texas 77002-2712
(832) 239-3785
(Formerly at King & Spalding LLP.)

Counsel for Co-Defendant ConocoPhillips Company:

Andrew B. Clubok
Susan E. Engel
Latham & Watkins LLP
555 11th Street, N.W.
Washington, D.C. 20004-1304
(202) 637-2200
(At the time, both attorneys were at Kirkland & Ellis.)

Jeffrey Bossert Clark
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2701
(Formerly at Kirkland & Ellis.)

Counsel for Co-Defendant ExxonMobil Corporation:

John Daum [Deceased]
(Formerly at O'Melveny's L.A. office.)

Jonathan D. Hacker
O'Melveny & Myers LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5285

Counsel for Co-Defendants American Electric Power Company; American Electric Power Service Corp.; and Duke Energy Corp.:

Peter D. Keisler
David T. Buente, Jr.
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Quin M. Sorenson
34 North Stratton Street
Gettysburg, Pennsylvania 17325
(717) 645-2408
(Formerly at Sidley Austin.)

Counsel for Codefendants DTE Energy Company; Edison International; MidAmerican Energy Holdings Company; Pinnacle West Capital Corp.; and Southern Company:

Shawn Patrick Regan
Hunton Andrews Kurth LLP
200 Park Avenue
New York, NY 10166
(212) 309-1046

F. William Brownell
Norman W. Fichthorn
Allison D. Wood
Hunton Andrews Kurth LLP
2200 Pennsylvania Avenue, N.W.
Washington, D.C. 20037
(202) 955-1500

Counsel for Codefendants Dynegy Holdings, Inc.; and Reliant Energy Inc.:

Alexandra Walsh
Wilkinson Walsh & Eskovitz
2001 M Street, N.W., 10th Floor
Washington, D.C. 20036
(202) 847-4020
(Formerly at Baker Botts LLP.)

Jeremy Levin
BAE Systems, Inc.
1101 Wilson Boulevard, Suite 2000
Arlington, Virginia 22209
(703) 312-6955
(Formerly at Baker Botts LLP.)

Counsel for Codefendant The AES Corporation:

Rex Heinke
Akin Gump Strauss Hauer & Feld LLP
1999 Avenue of the Stars, Suite 600
Los Angeles, California 90067
(310) 229-1030

Richard K. Welsh
Alpha Trial Group, LLP
10880 Wilshire Boulevard, Suite 1126
Los Angeles, California 90024
(310) 562-4550
(Formerly at Akin Gump.)

Paul E. Gutermann (Retired)
Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(301) 775-2026

Counsel for Codefendant Xcel Energy Inc.:

Kevin P. Holewinski
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-3797

Michael L. Rice
Harrison Law LLC
One North LaSalle Street, Suite 2001
Chicago, Illinois 60602
(312) 638-8781
(Formerly at Jones Day.)

Thomas A. Rector
Lewis Brisbois Bisgaard & Smith LLP
333 Bush Street, Suite 1100
San Francisco, California 94104
(415) 262-8570
(Formerly at Jones Day.)

Counsel for Codefendant Peabody Energy Corporation:

Kathleen Taylor Sooy
Scott L. Winkelman
Tracy A. Roman
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2595
(202) 624-2500

- (4) *Boeing Satellite Systems Int'l Inc. v. ICO Global Communications (Operations) Ltd.*, No. B214659 (Cal. Ct. App., 2d Dist., Div. 8)

Judges: Justices Rubin, Flier, and Perren

I was lead counsel on appeal for The Boeing Company and one of its subsidiaries (collectively "Boeing") in their appeal of a \$603 million judgment obtained by ICO Global Communications (Operations) Ltd. ("ICO"), after a jury found in ICO's favor on claims of breach of contract, fraud, and tortious interference with contract and awarded compensatory and punitive damages. ICO's claims arose from its contracts with a Boeing subsidiary in which the subsidiary was to build a series of communications satellites and to arrange for their launch. After hundreds of pages of briefing and two oral arguments, the panel unanimously ordered the dismissal of all claims against Boeing. *See Boeing Satellite Systems Int'l Inc. v. ICO Global Communications (Operations) Ltd.*, 2012 WL 1238508 (Cal. Ct. App. Apr. 13, 2012).

The Court held that, for three reasons, the trial court erred to the extent that it had rejected Boeing's post-trial motions to set aside the various components of the jury's verdict. First, the Court concluded that, as a matter of law, ICO had waived its claim for breach of the satellite construction contract when, after the alleged

breach occurred, it agreed to a relevant amendment of that contract without arbitrating its claim for breach. Second, the Court held that ICO had failed to prove that Boeing's alleged fraud in connection with the separate launch contract was the legal cause of any damage to ICO. Third, for similar reasons, the Court held that ICO had failed to show that Boeing's alleged tortious interference in its subsidiary's contract with ICO was the legal cause of any damage to ICO. In addition, ICO cross-appealed the trial court's grant of JNOV to Boeing on ICO's claim for fraud in connection with the satellite construction contract, but the Court of Appeal affirmed that ruling. Accordingly, the Court of Appeal remanded the case with directions to enter judgment for Boeing on all causes of action.

Co-counsel for Boeing Satellite Systems, Int'l, Inc., et al.:

Brad D. Brian
Michael R. Doyen
Jonathan A. Altman
Munger, Tolles & Olson LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071
(213) 683-9100

Kristin A. Linsley
Gibson, Dunn & Crutcher LLP
555 Mission Street, Suite 3000
San Francisco, California 94105
(415) 393-8395
(Formerly at Munger, Tolles.)

Karen J. Ephraim
Elkins Kalt Weintraub Reuben Gartside, LLP
2049 Century Park East, Suite 2700
Los Angeles, California 90067
(310) 746-4467
(Formerly at Munger, Tolles.)

David S. Han
Pepperdine University Law School
24255 Pacific Coast Highway
Malibu, California 90263
(310) 506-6274
(Formerly at Munger, Tolles.)

Opposing Counsel for ICO:

Barry W. Lee
Manatt, Phelps & Phillips, LLP
One Embarcadero Center, 30th Fl.
San Francisco, California 94111
(415) 291-7400

Robert A. Zeavin [Deceased]
(Formerly at Manatt's L.A. office.)

Carol Hu
11505 Nebraska Avenue
Los Angeles, California 90025
(Formerly at Manatt's L.A. office.)

Becky S. James
James & Associates
23564 Calabasa Road, Suite 201
Calabasas, California 91302-1338
(310) 492-5104
(Formerly at Manatt's L.A. office.)

John L. Flynn
Jenner & Block
1099 New York Avenue, N.W., Suite 900
Washington, D.C. 20001
(202) 639-6000
(Formerly in-house counsel for ICO.)

The following additional counsel appeared for ICO after the Court of Appeal's decision:

Jerome B. Falk, Jr. (Retired)
1440 Summit Road
Berkley, California 94708
(Formerly at Arnold & Porter.)

Sara J. Eisenberg
S.F. City Attorney's Office
1390 Market Street, 7th Floor
San Francisco, California 94102
(415) 554-3857
(Formerly at Arnold & Porter.)

Steven L. Mayer
Arnold & Porter Kaye Scholer LLP
Three Embarcadero Center, 10th Floor
San Francisco, California 94111-4024
(415) 471-3163

Counsel for Respondent Eagle River (which was a party below, but was not a party to any of the claims on appeal):

Hon. Patrick A. Cathcart (Retired Superior Court Judge)
c/o Assigned Judges Program
455 Golden Gate Avenue
San Francisco, California 94102
(213) 200-4737
(Formerly at Adorno Yoss Alvarado & Smith, P.C.)

- (5) *Mohamed v. Jeppesen DataPlan, Inc.*, 614 F.3d 1070 (9th Cir. 2010) (en banc)

Judges: Chief Judge Kozinski and Circuit Judges Schroeder, Canby, Hawkins, Thomas, Fisher, Paez, Tallman, Rawlinson, Callahan, and Bea

I was the lead counsel for Defendant-Appellee Jeppesen DataPlan, Inc. (“Jeppesen”) in this suit brought under the Alien Tort Statute, 28 U.S.C. § 1350. The plaintiffs were five foreign nationals who alleged that they were subjected to forced disappearance and torture and other cruel, inhuman or degrading treatment in connection with an extraordinary rendition program allegedly conducted by the CIA in conjunction with other foreign governments. Plaintiffs alleged that Jeppesen, a flight-planning services company, provided such services, and other logistical support, in connection with the flights on which the plaintiffs were transported to the locations where they were allegedly detained and tortured. Plaintiffs claimed that, by virtue of these alleged activities, Jeppesen was directly and secondarily liable for the mistreatment that plaintiffs allegedly suffered in violation of international law.

Before Jeppesen responded to the complaint, the United States moved to intervene in the action in the district court, asserted the state secrets privilege, and moved for dismissal of the action with prejudice. The district court granted the government’s motion to intervene and its motion to dismiss. *Mohamed v. Jeppesen DataPlan, Inc.*, 539 F. Supp. 2d 1128 (N.D. Cal. 2008) (Ware, J.). The plaintiffs appealed, and a panel of the Ninth Circuit reversed. *See Mohamed v. Jeppesen DataPlan, Inc.*, 579 F.3d 943 (9th Cir. 2009), *amending* 563 F.3d 992 (9th Cir. 2009) (Hawkins, J., joined by Schroeder & Canby, JJ.). Both the U.S. and Jeppesen filed rehearing petitions, and the Ninth Circuit voted to grant rehearing en banc. *See* 586 F.3d 1108 (9th Cir. 2009). By a 6-5 vote, the en banc panel affirmed the district court’s dismissal of the action. The majority held that, although “it should be a rare case when the state secrets doctrine leads to

dismissal at the outset of the case,” “[t]his is one of those rare cases.” 614 F.3d at 1092. Judge Bea concurred, but also concluded that the case should have been dismissed under *Totten v. United States*, 92 U.S. 105 (1876), because the “very subject matter” of the action was a state secret. 614 F.3d at 1093. Judge Hawkins, joined by Judges Schroeder, Canby, Thomas, and Paez, dissented, concluding that the *Totten* bar was inapplicable and that it could not yet be determined whether the state secrets privilege required dismissal of the suit.

The U.S. Department of Justice took the lead in arguing for the application of the state secrets doctrine in the district court and on appeal. I was lead counsel for Jeppesen throughout the case, and I briefly presented argument before the en banc court as well.

Co-counsel for Jeppesen DataPlan, Inc.:

Hon. Paul J. Watford
U.S. Court of Appeals for the Ninth Circuit
125 South Grand Avenue
Pasadena, California 91105
(626) 229-7300
(Formerly at Munger, Tolles.)

Mark R. Yohalem
Munger, Tolles & Olson LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071
(213) 683-9188

Opposing Counsel:

Benjamin Elihu Wizner
Steven M. Watt
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, New York 10004
(212) 549-2500

Julia Harumi Mass
California Department of Justice
1515 Clay Street, Suite 2000
Oakland, California 94612
(510) 879-3300
(Formerly with the ACLU Foundation of Northern California.)

Counsel for the United States:

Douglas Neal Letter
Georgetown Univ. Law School
600 New Jersey Avenue, N.W.
Washington, D.C. (202) 662-9000
(Formerly at the United States Department of Justice.)

Sharon Swingle
U.S. Department of Justice
Civil Division, Appellate Staff
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 353-2689

Michael P. Abate
Kaplan Johnson Abate & Bird LLP
710 West Main Street, 4th Floor
Louisville, Kentucky 40202
(502) 540-8280
(Formerly at the United States Department of Justice.)

- (6) *Philip Morris USA, Inc. v. King Mountain Tobacco Co., Inc.*, 552 F.3d 1098 (9th Cir. 2009), *amended*, 569 F.3d 932 (9th Cir. 2009)

Judges: Circuit Judges Brunetti, McKeown, and W. Fletcher

I was lead counsel for Philip Morris USA Inc. (“PM USA”) in its interlocutory appeal in this lawsuit, in which PM USA asserted claims under the Lanham Act and state law against a cigarette company (King Mountain Tobacco Co. (“King Mountain”)) that allegedly infringed upon the trademark and trade dress of PM USA’s Marlboro brand of cigarettes. In response to PM USA’s federal action, King Mountain—which was established under the laws of the Yakama Indian Nation and was owned and operated by two enrolled members of the tribe—brought suit in Yakama Tribal Court, seeking declaratory relief that it was not infringing PM USA’s trademarks or trade dress. King Mountain asserted that, because PM USA contracted with stores on the Yakama Reservation to sell Marlboro cigarettes, PM USA had submitted itself to the jurisdiction of the tribal court. The district court (Whaley, J.) held that there was a colorable claim of jurisdiction in the tribal court, that PM USA’s federal action therefore should be stayed pending the tribal court’s determination of its jurisdiction, and that PM USA’s requests for injunctions against King Mountain should be denied.

I took the lead in briefing and arguing the interlocutory appeal in the Ninth Circuit. The Ninth Circuit reversed, holding that the Yakama Tribal Court had no colorable jurisdiction over the dispute, which involved a challenge to King

Mountain's sales of its cigarettes outside the Yakama Reservation. The panel majority held that, although PM USA had consensual commercial contacts with the Yakama Tribe, the claims in its federal action did not arise out of those consensual contacts, and those claims therefore did not fall within the defined circumstances in which a tribal court may assert jurisdiction over claims of a non-member of the tribe. *See Philip Morris USA, Inc. v. King Mountain Tobacco Co.*, 569 F.3d 932 (9th Cir. 2009). Judge Fletcher concurred in the judgment.

Co-counsel for Philip Morris USA Inc.:

Kelly M. Klaus
Munger, Tolles & Olson, LLP
560 Mission Street, 27th Floor
San Francisco, California 94105
(415) 512-4017

Adam B. Badawi
U.C. Berkeley School of Law
889 Simon Hall
Berkeley, California 94720
(510) 643-6116
(Formerly at Munger, Tolles.)

Leslie R. Weatherhead [Deceased]
(Formerly at Witherspoon, Kelley.)

William M. Symmes
Witherspoon Kelley
422 West Riverside Avenue, Suite 1100
Spokane, Washington 99201
(509) 755-2026

Roberta L. Horton
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Avenue, N.W.
Washington, D.C. 20001
(202) 942-5161

Opposing Counsel for King Mountain:

J. Michael Keyes
Dorsey & Whitney LLP
Columbia Center
701 Fifth Avenue, Suite 6100
Seattle, Washington 98104-7043
(206) 903-8757
(Formerly at Kirkpatrick & Lockhart Preston Gates Ellis LLP.)

Theresa L. Keyes
Keyes Legal, PLLC
421 Riverside Avenue, Suite 515
Spokane, Washington 99201
(509) 768-0025
(Formerly at Kirkpatrick & Lockhart Preston Gates Ellis LLP.)

Bart J. Freedman
Theodore J. Angelis
Kari Vander Stoep
K&L Gates LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104
(206) 623-7580

- (7) *Space Exploration Techs. Corp. v. Boeing Co.*, 281 Fed. App'x 769 (9th Cir. 2008)

Judges: Chief Judge Kozinski and Circuit Judges O'Scannlain and W. Fletcher

In this appeal, Space Exploration Technologies Corp. ("SpaceX") sought reversal of the district court's dismissal of its federal antitrust claims, and related state-law claims, against The Boeing Company ("Boeing") and Lockheed Martin Corporation ("Lockheed"). The gravamen of SpaceX's complaint was that Boeing and Lockheed allegedly had engaged in a "group boycott" against the U.S. Air Force by threatening to leave the Air Force's Evolved Expendable Launch Vehicle ("EELV") rocket program unless the Air Force awarded them subsidies and exclusive, long-term contracts. SpaceX alleged that, as a result of Boeing's and Lockheed's alleged anticompetitive conduct, SpaceX was effectively excluded from the then-most recent round of bidding for EELV launch contracts (the "Buy 3" contracts). After granting leave to amend, the district court ultimately dismissed the case for lack of Article III standing.

I was lead counsel for Boeing on the appeal, and I argued the case in the Ninth Circuit for Boeing. (Lockheed's counsel submitted separate briefs and also

presented argument.) The Ninth Circuit unanimously affirmed the district court's dismissal. SpaceX had previously brought and lost a suit against the United States over the EELV's "Buy 3" program, and the Ninth Circuit held that that litigation established that SpaceX's lack of participation in the Buy 3 program was caused by its own ineligibility to compete for those contracts and not by any alleged anti-competitive behavior. Beyond that, the Court concluded, SpaceX's allegations of injury and causation were too speculative, and its claims concerning future bidding were unripe.

Co-counsel for The Boeing Company:

Brad D. Brian
Fred A. Rowley, Jr.
Munger, Tolles & Olson LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071
(213) 683-9100

Jerome C. Roth
Munger, Tolles & Olson, LLP
560 Mission Street, 27th Floor
San Francisco, California 94105
(415) 512-4010

Scott M. McCaleb
Wiley Rein and Fielding LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-3193

Benjamin S. Sharp
Perkins Coie LLP
700 13th Street, N.W., Suite 600
Washington, D.C. 20005
(202) 434-1615

Opposing Counsel for SpaceX:

James P. Denvir III
Boies Schiller Flexner LLP
1401 New York Avenue, N.W.
Washington, D.C. 20005
(202) 895-7560

David Boies
Boies Schiller Flexner LLP
333 Main Street
Armonk, New York 10504
(914) 749-8200

Steven C. Holtzman
Boies, Schiller & Flexner LLP
1999 Harrison Street, Suite 900
Oakland, California 94612
(510) 874-1001

Kieran P. Ringgenberg
Ringgenberg Law Firm PC
299 3rd Street, Suite 106
Oakland, California 94607
(510) 775-1000
(Formerly at the Boies Schiller firm.)

Fred Norton
The Norton Law Firm
299 3rd Street, Suite 106
Oakland, California 94607
(510) 906-4901
(Formerly at the Boies Schiller firm.)

Counsel for Co-Defendant Lockheed:

David Marx, Jr. (Retired)
Former address:
McDermott Will & Emery LLP
444 West Lake Street
Chicago, Illinois 60606
(312) 372-2000

Raymond A. Jacobsen, Jr.
McDermott Will & Emery LLP
The McDermott Building
500 North Capitol Street, N.W.
Washington, D.C. 20001
(202) 756-8028

Robert P. Mallory (Retired)
8123 Calabar Avenue,
Playa Del Rey, California 90283
(Formerly at McDermott Will & Emery's L.A. office.)

Amy E. Hancock
Executive V.P. & General Counsel
American Beverage Association
1275 Pennsylvania Avenue, N.W., Suite 1100
Washington, D.C. 20004
(202) 463-6786
(Formerly at McDermott Will & Emery's D.C. office.)

- (8) *Mendoza v. State of California*, 149 Cal. App. 4th 1034 (2007)

Judges: Presiding Justice Klein and Justices Croskey and Kitching

This case involved a challenge, on state constitutional grounds, to the Gloria Romero Educational Reform Act of 2006 (the "Romero Act"). The Act altered the governance structure of the Los Angeles Unified School District ("LAUSD") by increasing the authority of the LAUSD Superintendent; by providing a role for a "Council of Mayors" (which included, inter alia, the Mayor of Los Angeles and the mayors of other cities served by LAUSD) in the selection and removal of the Superintendent; and by transferring authority over certain low-performing school to a "Mayor's Partnership" directed by the Mayor of Los Angeles. My firm represented a group of parents who intervened as defendants in the matter and who joined the City of Los Angeles and the State of California in defending the constitutionality of the Romero Act. The trial court invalidated the Act. The defendants and intervenors appealed, and the City and the intervenors filed joint briefs in the Court of Appeal. (The State filed separate briefs.) The Court of Appeal affirmed, holding that the provisions of the Act concerning the Council of Mayors and the Mayor's Partnership violated provisions of the California Constitution that allowed for elected school boards to govern school districts and that forbade the Legislature from transferring any part of the public school system to the control of an authority outside the public school system. *See Mendoza v. State of California*, 149 Cal. App. 4th 1034 (2007). I was part of the team that prepared the appellate briefs in this case, and I was the lead counsel on behalf of the appellants at the oral argument in the Court of Appeal.

Co-counsel for Intervenors Los Angeles Parents Union, *et al.*:

Vilma S. Martinez
c/o Pacific Council on Int'l Policy
725 S. Figueroa Street
Los Angeles, California 90017
(213) 221-2000
(Formerly at Munger, Tolles.)

Brad S. Phillips
Munger, Tolles & Olson LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071
(213) 683-9262

Hon. Paul J. Watford
U.S. Court of Appeals for the Ninth Circuit
125 South Grand Avenue
Pasadena, California 91105
(626) 229-7300
(Formerly at Munger, Tolles.)

Opposing Counsel for LAUSD and other petitioners:

Kevin S. Reed
General Counsel
University of Oregon
Eugene, Oregon 97403
(541) 346-3082
(Formerly at the LAUSD.)

Donald L. Davis
10766 Cushton Avenue
Los Angeles, California 90064
(310) 849-8785
(Formerly at the LAUSD.)

Georgina C. Verdugo
Post Office Box 926
Dana Point, California 92629
(Formerly at the LAUSD.)

Erin V. Peth
Chief Counsel
Cal. Senate Committee on Legislative Ethics
1020 North Street, Suite 554
Sacramento, CA 95814-5641
(Formerly at Olson, Hagel.)

Alisa Schlesinger
Writers Guild of America, West
7000 West 3rd Street
Los Angeles, California 90048
(323) 782-4521
(Formerly at Milbank, Tweed.)

Patricia J. Quilizapa
Senior Deputy General Counsel
Metropolitan Water District of Southern California
Post Office Box 54153
Los Angeles, California 90054
(213) 217-6000
(Formerly at Milbank, Tweed.)

Henry R. Kraft (Retired)
Post Office Box 10142
Newport Beach, California 92658
(Formerly at Parker & Covert.)

Deborah B. Caplan
Lance H. Olson
Olson, Hagel & Fishburn LLP
555 Capitol Mall, Suite 400
Sacramento, California 95814
(916) 442-2952

Fredric D. Woocher
Michael Strumwasser
Strumwasser & Woocher LLP
10940 Wilshire Boulevard, Suite 2000
Los Angeles, California 90024
(310) 576-1233

Gregory L. Evans
McGuireWoods LLP
355 South Grand Avenue, Suite 4200
Los Angeles, California 90071
(213) 892-4488
(Formerly at Milbank, Tweed.)

Paul M. Torres
Doll, Amir & Eley
1888 Century Park East, Suite 1850
Los Angeles, California 90067
(310) 557-9114
(Formerly at Milbank, Tweed.)

Counsel for City of Los Angeles:

Valerie L. Flores
Senior Assistant City Attorney
Office of the City Attorney
200 North Main Street, Room 800
City Hall East
Los Angeles, California 90012
(213) 978-8130

Rockard J. Delgadillo
DLA Piper LLP
633 W. 5th Street, Suite 3200.
Los Angeles, California 90071
(213) 694-3112

Harit U. Trivedi
Deputy City Attorney
Office of the City Attorney
200 North Main Street, Room 800
City Hall East
Los Angeles, California 90012
(213) 978-7100

Heather E. Davis
Deputy City Attorney
Office of the City Attorney
221 North Figueroa Street, Suite 1000
Los Angeles, California 90012
(213) 367-4590

Counsel for State of California:

Gregory M. Cribbs
Department of Justice
Office of the Attorney General
300 South Spring Street, 9th Floor
Los Angeles, California 90013
(213) 269-6259

Hon. Stacy B. Eurie
Judge, Superior Court for the County of Sacramento, Department 18
Gordon D. Schaber Courthouse
720 9th Street, 3rd Floor
Sacramento, California 95814
(916) 874-5245
(Formerly in the California Department of Justice.)

Hon. Christopher E. Krueger
Judge, Superior Court for the County of Sacramento, Department 54
Hall of Justice
813 6th Street, 2d Floor
Sacramento, California 95814
(916) 874-7848
(Formerly in the California Department of Justice.)

Susan K. Smith
Smith Legal Advisors LLC
Post Office Box 22171
Green Bay, Wisconsin 54305
(920) 689-3315
(Formerly known as Susan K. Leach and was in the California Department of Justice.)

Paul Henry Dobson
357 Canyon Falls Drive
Folsom, California 95630
(916) 215-2995
(Formerly in the California Department of Justice.)

- (9) *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001)

Judges: Chief Justice Rehnquist and Justices Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer

This matter involved review of a decision of the First Circuit rejecting the tobacco industry's arguments that certain Massachusetts regulations governing tobacco

advertising were preempted by the Federal Cigarette Labeling and Advertising Act and were unconstitutional under the First Amendment. Jeffrey S. Sutton (then of Jones Day) was counsel of record and argued the case for the petitioners. I was lead counsel for Philip Morris during the merits briefing and I took a key role in drafting the cigarette manufacturers' joint briefs in the case. (Separate briefs were filed by the cigarette manufacturers, the cigar makers, and a smokeless tobacco company.) In June 2001, by a vote of 5-4, the Supreme Court held that the challenged cigarette advertising restrictions were preempted and that certain cigar and smokeless advertising restrictions violated the First Amendment. The Court unanimously held that certain regulations governing tobacco sales practices (which were challenged only on First Amendment grounds) were constitutional.

Counsel of Record for Petitioners:

Hon. Jeffrey S. Sutton
U.S. Court of Appeals for the Sixth Circuit
85 Marconi Boulevard
Columbus, Ohio 43215
(619) 849-0134
(Formerly at Jones Day.)

Co-counsel for Petitioner Philip Morris Inc.:

Andrew L. Frey
Mayer Brown LLP
1221 Avenue of the Americas
New York, New York 10020
(212) 506-2635

Kenneth S. Geller
Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006
(202) 263-3225

Michael R. Doyen
Fred A. Rowley, Jr.
Munger, Tolles & Olson LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071
(213) 683-9100

Counsel for Petitioner R.J. Reynolds Tobacco Co.:

John Strauch (Retired)
Jones Day
901 Lakeside Avenue
Cleveland, Ohio 44114
(216) 586-7240

Hon. Gregory G. Katsas
U.S. Court of Appeals for the D.C. Circuit
333 Constitution Avenue, N.W.
Washington, D.C. 20001
(202) 216-7000
(Formerly at Jones Day.)

Jack W. Campbell IV
Executive Director
North Carolina Board of Pharmacy
6015 Farrington Road, Suite 201
Chapel Hill, North Carolina 27517
(919) 246-1050

John B. Connarton, Jr.
John B. Connarton, Jr., P.C.
85 Kendall Court
Bedford, Massachusetts 01730
(617) 512-9394
(Formerly at Connarton, Wood & Callahan.)

Counsel for Petitioner Lorillard Tobacco Company:

Richard M. Zielinski
Goulston & Storrs
400 Atlantic Avenue
Boston, Massachusetts 02110
(617) 574-4029
(Formerly at Hill & Barlow.)

Counsel for Petitioner U.S. Smokeless Tobacco Co.:

Peter J. McKenna (Retired)
Skadden, Arps, Slate, Meagher & Flom LLP,
4 Times Square
New York, New York 10036
(212) 735-3789

Eric S. Sarner
Praxair, Inc.
10 Riverview Drive
Danbury, Connecticut 06810
(203) 837-2114
(Formerly at Skadden.)

Counsel for Petitioners Altadis U.S.A., Inc., et al.:

Christopher Harris
James V. Kearney (Retired)
Latham & Watkins LLP
885 Third Avenue
New York, New York 10022
(212) 906-1200

Richard P. Bress
Latham & Watkins LLP
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004
(202) 637-2137

Counsel for Respondent Reilly, Attorney General of Mass.:

William W. Porter (Counsel of Record)
Office of the Attorney General
One Ashburton Place
Boston, Massachusetts 02108
(617) 727-2200

Susan Paulson
N.Y.C. Law Department
100 Church Street
New York, New York 10007
(212) 356-0821
(Formerly in the Office of the Mass. Attorney General.)

Thomas F. Reilly
Hunton Andrews Kurth LLP
125 High Street
Boston, Massachusetts 02110
(617) 648-2744
(Formerly the Attorney General of Massachusetts.)

- (10) *United States v. Van Poyck*, 77 F.3d 285 (9th Cir. 1996)

Judge (Trial): District Judge Rea handled most of the pretrial proceedings in the case, which was transferred to District Judge Hauk shortly before trial.

Judges (Appeal): Circuit Judges Hall and Noonan and District Judge Shubb (by designation)

In 1994, Mr. Van Poyck was tried and convicted, after a two-week jury trial involving approximately 24 witnesses, on two counts of armed bank robbery and one count of conspiracy to commit armed bank robbery. He was sentenced to 327 months incarceration. The case involved significant motions practice, including a motion to suppress statements made by the defendant over the detention center's telephone system (which recorded all calls other than to attorneys), and a motion to suppress certain statements on the ground that they were obtained as a result of an improper delay in arraignment. The Ninth Circuit affirmed the conviction and sentence, issuing a published opinion with respect to these two particular motions to suppress. *United States v. Van Poyck*, 77 F.3d 285 (9th Cir. 1996). I was the sole prosecutor in Van Poyck's case, handling all of the motions practice and the actual trial itself, and I argued the case for the U.S. in the Ninth Circuit.

Opposing Counsel at Trial:

Neison M. Marks
Office of the Federal Public Defender
450 S. Australian Avenue, Suite 500
West Palm Beach, Florida 33401
(561) 833-6288
(Formerly at the Federal Public Defender's Office in L.A.)

Opposing Counsel on Appeal:

Benjamin A. Brin
Brin Legal-Financial
7301 Vista Del Mar, #10
Playa del Rey, California 90293
(213) 675-4940

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.)

Since 2014, I have been a member of the Advisory Committee on Evidence Rules, which considers proposals for amending the Federal Rules of Evidence. I was appointed to the Committee in 2014 by Chief Justice John G. Roberts, Jr., and I was reappointed in 2017.

I have taught as an Adjunct Professor at Loyola Law School in Los Angeles in Fall 1997 and 1998 (Appellate Advocacy) and again in Spring 2017 and Spring 2018 (Federal Courts).

While serving in the Deputy Attorney General's Office, I coordinated the Department's efforts on several major legislative and policy initiatives, and I testified multiple times before the Judiciary Committees of both the House and the Senate. In particular, I worked extensively on the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today ("PROTECT") Act of 2003, which included provisions to combat child pornography and child abuse and to reform federal sentencing laws, as well as on the Identity Theft Penalty Enhancement Act. I also assisted in coordinating the Department's 2003 review and revision of its policies on charging of criminal offenses, plea bargaining, sentencing recommendations, and sentencing appeals. I also participated in the formulation of the Civil Rights' Division's guidelines on prohibiting the use of racial profiling in federal law enforcement. I also handled a number of issues related to the Vienna Convention on Consular Relations, including presenting argument (together with several other lawyers from the State Department) during a preliminary proceeding in *Mexico v. United States (Avena)* in the International Court of Justice in The Hague. I also participated in coordinating litigation implicating Departmental priorities, and I provided advice on a wide range of other legal, legislative, regulatory, or policy issues that confronted the Department, including issues concerning the separation of powers and military commissions. While serving in the Deputy Attorney General's Office, I was also designated as the Department's Chief Privacy Officer, advising senior Department officials on privacy issues.

As an Attorney Adviser in the Office of Legal Counsel, I researched and drafted opinions and other documents of the Office on a wide variety of topics, including federal ethics law, statutory construction, separation of powers, banking law, campaign finance law, and the First Amendment.

I have never acted or registered as a lobbyist.

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.

In Spring 2017 and in Spring 2018, I co-taught Federal Courts at Loyola Law School in Los Angeles, California. This course covered the federal court system in depth, addressing the scope of federal jurisdiction, choice of law in the federal system, the power of the federal courts to create substantive law, and the role of the federal courts in enforcing federal law against state officials. Other topics included *Pullman* abstention,

Younger abstention, the Anti-Injunction Act, and other doctrines (including the Eleventh Amendment and sovereign immunity) that limit the power of the federal courts in cases that affect the states, their courts, and their officials. The course also included an overview of the role of Section 1983 actions in ensuring compliance by state and local officials with federal law, as well as a brief overview of writs of habeas corpus. Syllabi supplied.

In Fall 1997 and Fall 1998, I co-taught Appellate Advocacy at Loyola Law School in Los Angeles, California. The course covered the basics of appellate practice and included brief-writing and oral-advocacy exercises. Fall 1997 syllabus supplied.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I am a participant in Munger, Tolles & Olson LLP's defined-contribution plans and cash balance defined-benefit plan. Under the terms of the firm's cash balance defined-benefit plan, I would receive a lump-sum payment at the time I withdraw from the firm equal to my account balance under the plan at such time; if confirmed, I intend to roll over that balance into an individual retirement account that had no connection to the firm. Similarly, with respect to the firm's defined-contribution plans, if confirmed, I would sever any connection to these plans by rolling over the balances into individual retirement accounts that had no connection to the firm. Upon withdrawal from the partnership, a partner is entitled to receive a "fair share" of firm net income for the current year, reflecting the partner's contributions to date, less any amounts previously distributed. In addition, a partner withdrawing from the firm is entitled to a return of the partner's capital contributions. The current value of my capital contributions to the firm is reflected in the attached Net Worth Statement.

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 have no such plans, commitments, or agreements if confirmed. I might, in the future, consider again teaching a law school class as an adjunct, but I would not do so during my initial service as a judge.

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.

Most of the potential conflict-of-interest issues that may arise will likely come from my prior practice. I would recuse myself from particular matters in which I was involved at any time during my practice. I would also recuse myself from matters involving my former firm for an appropriate number of years following any appointment. Possibly, some of my former clients may be involved in federal litigation, and I would recuse myself from those cases if required or appropriate. It is also possible that there could be cases raising discrete legal issues that I had litigated during my practice, and I would recuse myself from such matters if required or appropriate. I would likewise recuse myself from any particular matters in which I was involved during my time in government, and to the extent required or appropriate, I would also recuse myself from matters raising discrete legal issues in which I was personally involved during my government service.

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

If confirmed, I will address all actual or potential conflicts of interest by reference to 28 U.S.C. § 455, the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

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

Over the years, I have filed several *amicus curiae* briefs on behalf of numerous non-profit organizations in the U.S. Supreme Court. I also devoted over 275 hours in representing a criminal defendant pro bono in the Arizona Court of Appeals in his appeal from his criminal convictions for negligent homicide; he ultimately elected to abandon his appeal on the eve of oral argument. I have also on occasion supervised, or provided advice to, others at my law firm who were working on various pro bono matters, and I have

participated in moot courts for multiple pro bono matters.

26. **Selection Process:**

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

On May 31, 2017, I was contacted by the White House Counsel's Office about whether I was interested in being considered for the vacancy on the Ninth Circuit. Since then, I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy in the U.S. Department of Justice. On June 8, 2017, I interviewed in person with attorneys from the White House Counsel's Office and the U.S. Department of Justice's Office of Legal Policy in Washington, D.C. On August 4, 2017, I was contacted by telephone by the Chair of Senator Feinstein's judicial advisory committee. On September 1, 2017, I submitted to that committee a completed written questionnaire. On November 29, 2017, I met with members of that committee in San Diego, California. On February 12, 2018, I was contacted by a member of Senator Harris's judicial advisory committee. In response to a request from the members of Senator Harris's judicial advisory committee for any updates to the materials I had submitted to Senator Feinstein's judicial advisory committee, I provided updated and supplemental responses to Senator Harris's judicial advisory committee on March 7, 2018. On March 13, 2018, I met with members of Senator Harris's judicial advisory committee in Newport Beach, California. On October 10, 2018, the President announced his intention to nominate me. On November 13, 2018, my nomination was submitted to the Senate. After my nomination was returned to the President on January 3, 2019, the President on January 30, 2019, announced his intention to renominate me, and my nomination was submitted to the Senate on February 6, 2019.

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

No.