UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   David Frank Hamilton

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

   United States Circuit Judge for the Seventh 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: United States District Court for the Southern District of Indiana
   46 East Ohio Street
   330 Birch Bayh United States Courthouse
   Indianapolis, Indiana 46204

   Residence: [redacted]

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

   1957; Bloomington, Indiana

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.

   1980 – 1983; Yale Law School, New Haven, Connecticut; J.D. 1983

   1979 – 1980; University of Tuebingen, Tuebingen, Germany
   Fulbright Scholarship – no degree

   1975 – 1979; Haverford College, Haverford, Pennsylvania; B.A. 1979

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

Full-time Positions

October 28, 1994 to present
United States District Court for the Southern District of Indiana
46 East Ohio Street
330 Birch Bayh United States Courthouse
Indianapolis, Indiana 46204
United States District Judge; Chief Judge since January 1, 2008

July 1991 to October 1994
Barnes & Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204
Partner

January 1989 to July 1991
Office of the Governor of the State of Indiana
206 State House
Indianapolis, Indiana 46204
Counsel to the Governor

October 1984 to January 1989
Barnes & Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204
Associate

September 1983 to September 1984
United States Court of Appeals for the Seventh Circuit
219 South Dearborn Street
Chicago, Illinois 60604
Law clerk to Judge Richard D. Cudahy

Summer 1983
Kirkland & Ellis
200 East Randolph
Chicago, Illinois 60601
Law clerk

Summer 1982
Barnes & Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204
Law clerk

Summer 1982
Latham & Watkins
(now located at 555 Eleventh Street, NW, Suite 1000)
Washington, D.C.
Law clerk

Summer 1981 (and part-time during 1981-82 academic year)
Jacobs, Grudberg & Belt
350 Orange Street
New Haven, Connecticut 06511
Law clerk

May -June 1979
Association of Community Organizations for Reform Now
Philadelphia, Pennsylvania
Fundraiser

Part-time Positions and Activities
2008 and 2009: Judge on selection panel for Hon. Richard D. Cudahy Prize, an annual writing competition on administrative law underwritten by donations from Judge Cudahy's former law clerks and staff, and sponsored by the American Constitution Society, 1333 H Street NW, 11th Floor, Washington, DC 20005

2006 to present: Associate director and advisory board member, Center for Constitutional Democracy in Plural Societies, Indiana University School of Law, 211 South Indiana Avenue, Bloomington, Indiana 47405

Spring 2004: Adjunct Professor of Law, Indiana University School of Law (course on federal jurisdiction), 211 South Indiana Avenue, Bloomington, Indiana 47405

1999 to 2007: Member, Board of Visitors, Indiana University School of Law, 211 South Indiana Avenue, Bloomington, Indiana 47405

1993 to 2008: Director of William E. Schmidt Foundation (charitable foundation established by and named for my mother's brother)

1991 to 1994: Partner, BT Building Company, a partnership that owned and operated the building where Barnes & Thornburg has its Indianapolis office

Spring 1988: Adjunct Professor of Law, Indiana University School of Law (course on antitrust law), 211 South Indiana Avenue, Bloomington, Indiana 47405

1987 to 1988: Vice president for litigation and board member, Indiana Civil Liberties Union, Indianapolis, Indiana

1985 to 1986: Treasurer and board member of Mapleton-Fall Creek Housing Development Corporation, a not-for-profit corporation established by several churches in Indianapolis

Fall 1982: Teaching assistant, Professor Peter Schuck, Yale Law School, 127 Wall Street, New Haven, Connecticut

Spring 1981: Research assistant, Assistant Dean Edward Dauer, Yale Law School, 127 Wall Street, New Haven, Connecticut

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 did not register for selective service; there was no registration requirement in effect for men my age.

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.

   2007 – Distinguished Barrister Award, Indiana Lawyer newspaper
   2007 – Lawdragon 500 Leading Judges in America
   Approximately 1998 – North Central High School, Alumni Hall of Fame
   Approximately 1996 – 40 Under 40, Indianapolis Business Journal
   1991 – Sagamore of the Wabash (award by Governor of Indiana)
   1979-80 – Fulbright Scholar, for study of theology at University of Tuebingen, Germany
   1979 – Phi Beta Kappa, B.A. magna cum laude, with departmental honors (philosophy) and high honors (religion) at Haverford College
   1975 – Magill-Rhoads Scholar, Haverford College
   1973 – Eagle Scout

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.

   2007 to present: Member, Judicial Conference Committee on Space and Facilities

   2000 to 2006: Member, Judicial Conference Committee on Criminal Law. Chair of Sentencing Subcommittee, approx. 2005-06

   1998 to present: Founding member, Sagamore American Inn of Court. President, 2001-03; Program Chair, 1998-2001.

1985 to present: Member, Seventh Circuit Bar Association

1985 to 1994: Member, Indiana State Bar Association

1985 to 1986: Member, Indianapolis Bar Association

1985 to 1994: Member, American Bar Association

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.

Indiana October 23, 1984
There has been no lapse 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.

Indiana Supreme Court; October 23, 1984

United States District Court for the Southern District of Indiana; October 23, 1984

United States Court of Appeals for the Seventh Circuit; February 26, 1985

Supreme Court of the United States; November 2, 1992

There have been no lapses in admission to any court.

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.

2006 to present – Associate director and advisory board member, Center for Constitutional Democracy in Plural Societies, Indiana University School of Law, Bloomington, Indiana

2004 to present – Lifetime Fitness (health club)

1999 to 2007 – Member, Board of Visitors, Indiana University School of Law, Bloomington, Indiana

1998 to present – Member, Lawyers Club of Indianapolis

1993 to 2008 – Director, William E. Schmidt Foundation

1995 to present – Member, Federal Judges Association

1987 to 1988 – Vice president for litigation and board member, Indiana Civil Liberties Union

1985 to 1986 – Treasurer and board member of Mapleton-Fall Creek Housing Development Corporation, a not-for-profit corporation established by several churches in Indianapolis

1984 to 2004 – Indianapolis Athletic Club, Indianapolis, Indiana (club closed and dissolved in 2004)

1973 to present – North United Methodist Church, Indianapolis, Indiana

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.

   The Indianapolis Lawyers Club is a social club of lawyers and judge that holds quarterly dinner meetings. I have been a member since 1998. The club membership was all male until sometime in the late 1980s, but women have been members, officers, and presidents before and throughout the time I have been a member. The other organizations also do not discriminate on any of the stated criteria.

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.

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

The Importance and Overuse of Policy and Custom Claims: A View from One Trench, 48 DePaul L. Rev. 723 (1999).

Dedication of Birch Bayh United States Courthouse, 37 Indiana L. Rev. 613 (2003). (remarks on Senator Birch Bayh's Senate career).

Naturalization Remarks – Excerpts from my remarks at a naturalization ceremony shortly after the terrorist attacks of September 11, 2001, published in the Indianapolis Star on November 4, 2001.

Letter to United States Sentencing Commission, September 4, 2007, urging the Commission to make retroactive its 2007 amendments to the Sentencing Guidelines adjusting the base offense level for crack cocaine offenses.

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

   I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

   Letter from Judicial Conference concerning HR 1528, June 2005, to House Judiciary Committee

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

   I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

   February 2, 2009 – Testimony before the Civil Rules Advisory Committee meeting in San Francisco regarding proposed amendments to Rule 56 of the Federal Rules of Civil Procedure.

In February 2006, Judge Paul Cassell, then Chair of the Judicial Conference Committee on Criminal Law, presented testimony to the House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security regarding legislative responses to the Supreme Court's decision in United States v. Booker holding the Sentencing Guidelines as advisory rather than mandatory. I was then a member of the committee and approved of the testimony before it was given.

August 19, 2003 – As a member of the Criminal Law Committee, I testified before the United States Sentencing Commission regarding the implementation of the PROTECT Act of 2003, particularly with respect to departures under the then-mandatory Sentencing Guidelines.

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

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

Jan. 16, 2009 - Remarks at investiture ceremony for U.S. Magistrate Judge Debra M. Lynch.

Jan. 13, 2009 - The Federalist Society – Indianapolis chapter: "Textualism – Not Always the Last Word"; remarks on statutory interpretation as part of panel discussion.

Jan. 10, 2009 - Remarks at ceremonial oath of office for U.S. Representative Baron Hill, U.S. Courthouse in New Albany, Indiana. (No notes – welcomed visitors to courthouse and commented on peaceful transitions of power after elections in the United States.)

Dec. 12, 2008 - Federal Bar Association continuing legal education conference, Indianapolis, Indiana.

Nov. 21, 2008 - Groundbreaking for new U.S. Courthouse in Terre Haute, Indiana.

Nov. 13, 2008 - Indiana University Law School – Bloomington, course on Constitutional Design, remarks on judicial independence.

Oct. 15, 2008 - Panelist in Zionsville Public Library forum discussing Jeffrey Toobin's book The Nine, as part of annual "One Town, One Book" program for Zionsville, Indiana.

Sept. 12, 2008 - Remarks at investiture ceremony for U.S. District Judge William T. Lawrence.

May 19, 2008 - Seventh Circuit Conference, Chicago, Illinois – panel discussion on jury comprehension, education, and persuasion. No notes available; as a panel member, I responded to remarks of jury experts on their research findings.

May 1, 2008 - Law Day event for Indianapolis high school students.

March 19, 2008 - Zionsville High School Economics Club. Spoke regarding the constitutional drafting process for the Burmese opposition.

March 18, 2008 - Indianapolis Bar Association bar leader program.

March 6, 2008 - Remarks to legal writing classes at Suffolk University Law School, Boston, on legal writing.

Dec. 13, 2007 - CLE Presentation on federal practice – Marion County Bar Association, Indianapolis.

Nov. 20, 2007 - Indianapolis chapter of the American Constitution Society speech regarding the constitutional drafting process for the Burmese opposition.

Oct. 22, 2007 - Speaker at Red Mass Dinner of the St. Thomas More Society, Indianapolis, Indiana.

July 16-20, 2007 - Presentations on the Rule of Law, judicial independence, and courts in federal nations in constitutional design for State Constitutional Drafting Committees working under auspices of the Ethnic Nationalities Council (Burmese democratic opposition in exile) in Chiang Mai, Thailand, as part of work with Center for Constitutional Democracy in Plural Societies.

April 10, 2007 - Introduction for Hon. Lee H. Hamilton at Rotary Club meeting, Indianapolis, Indiana.

March 20, 2007 - Indianapolis Bar Association bar leader series.

Jan. 6, 2007 - Remarks at ceremonial oath for U.S. Representative Baron Hill, New Albany, Indiana.

Dec. 7, 2006 - Federal Bar Association seminar on federal practice, Indianapolis. No notes available; spoke to federal practitioners on court rules, updates, practices.

Nov. 10, 2006 - Presentation on judicial independence and parallel court structures in federal systems to members of the Federal Constitutional Drafting Committee of the Burmese democratic opposition in exile, in Bloomington, Indiana, as part of work with Center for Constitutional Democracy in Plural Societies.

Nov. 1, 2006 - Presentation on Rule of Law and judicial independence in constitutional design, to members of the Federal Constitutional Drafting Committee of the Burmese democratic opposition in exile, in Bloomington, Indiana, as part of work with Center for Constitutional Democracy in Plural Societies.

Oct. 25, 2006 - Federal Judicial Center workshop, panel on sentencing, Lake Geneva, Wisconsin.

Oct. 22 & 29, 2006 - North United Methodist Church, Indianapolis; Sunday School classes on "Thomas and 'Q': Early Collections of Sayings."

July 24, 2006 - National Sentencing Institute, Washington, D.C. – chair, introducing speakers and programs.

June 23, 2006 - Memorial Ceremony for Judge S. Hugh Dillin of the Southern District of Indiana.

June 2, 2006 - Federal Sentencing Guideline Seminar, Miami Beach, program on sentencing in firearm cases. No notes available.

May 16, 2006 - Indianapolis Bar Association bar leader program. No notes, but remarks very similar to remarks on March 18, 2008 and March 20, 2007.

March 5 & 12, 2006 - North United Methodist Church, Indianapolis. Sunday School presentation on "Church-State Relationships: Applying Eighteenth Century Principles in the Twenty-first Century."

Sept. 29, 2005 - Federal Judicial Center, Chicago. First and Seventh Circuit workshop: panel on sentencing issues. No notes available; this was an educational meeting for Circuit and District Judges from the two circuits.

July 30, 2005 - American Constitution Society national convention, Washington, D.C. – panel discussion on sentencing issues after United States v. Booker.

July 11, 2005 - National Sentencing Institute to respond to United States v. Booker, Washington, D.C.

May 27, 2005 - National Sentencing Guidelines Seminar – presentation on sentencing after United States v. Booker, San Francisco.

May 23, 2005 - Seventh Circuit Conference – introduction of Hon. Lee H. Hamilton as the principal speaker of the annual conference in Indianapolis, Indiana.

May 23, 2005 - Seventh Circuit Conference – presentation regarding early effects of United States v. Booker on sentencing practices, Indianapolis, Indiana.

May 20, 2005 - Indiana Bar Admission Ceremony, Indianapolis, Indiana.

Dec. 3, 2004 - Indianapolis Kiwanis Club re: federal courts.

Oct. 8, 2004 - Top Ten Tips for Federal Practice – continuing legal education talk in Indianapolis.

October 2004 - Speaker at Indiana University Law School – Indianapolis, course on judicial processes. (no notes; text of questions available)

July 21, 2004 - Remarks on investiture of new regional director of NLRB, Indianapolis, Indiana.

May 7, 2004 - Six Hot Topics in Federal Jurisdiction – continuing legal education presentation in Indianapolis, Indiana.

April 14, 2004 - Presentation of American Inn of Court professionalism award to Hon. Jon D. Krahulik, former Justice of the Indiana Supreme Court.

Dec. 19, 2003 - Federal Bar Association continuing legal education talk in Indianapolis – Practical Tips from the Bench. No notes available – this is an annual event in which judges rotate presentations on updates for court rules and practices.

Dec. 12, 2003 - Federal Community Defenders, Indianapolis – Federal Criminal Practice Seminar for federal criminal defense attorneys – remarks on sentencing policies and procedures.

Oct. 28, 2003 - Multi-District Litigation Transferee Judges Conference – Multiple State-wide Class Actions, remarks, Palm Beach, Florida.

Oct. 24, 2003 - Dedication of the Indianapolis Courthouse as the Birch Bayh United States Courthouse – reviewing Sen. Birch Bayh's Senate career.
Nov. 2002 - Indiana University School of Law, Bloomington, American Constitution Society chapter, remarks on federal sentencing law and practices – "Two Cheers for the Sentencing Guidelines" No notes available. I spoke to students and explained how guidelines work in a bank robbery, for example, then discussed advantages and disadvantages of mandatory guideline system.

Dec. 20, 2001 - CLE presentation: Trial and Civil Procedure Update, Indianapolis, Indiana

May 21, 2001 - Seventh Circuit Conference – panel discussion on the use of summary judgment after Reeves v. Sanderson Plumbing at annual conference in Indianapolis.

July 27, 2000 - Indianapolis Bar Association speech. Topic unknown. No notes available.

July 8, 1999 - Sidebar for Young Lawyers section of a bar association Topic unknown. No notes available.

Dec. 3, 1998 - Indiana Lawyer program on EEO litigation, Indianapolis.

Oct. 28, 1998 - Panelist at Indiana University Law School, Bloomington, to discuss Prof. William Popkin's book on statutory interpretation.

Sept. 24, 1998 - CLE Presentation on federal practice, Indianapolis.

March 13, 1998 - DePaul University Law School, Chicago, Illinois: Symposium on Section 1983 Municipal Liability in Civil Rights Litigation. Formal paper published at 48 DePaul L. Rev. 723 (1999).

Jan. 21, 1998 - Floyd County Bar Association, remarks in New Albany, Indiana

Dec. 19, 1997 - Indiana State Bar Assoc. Young Lawyers Division – Roundtable – remarks on civility, Indianapolis.

Oct. 17, 1997 - Federal Criminal Defense Seminar, Indianapolis. No notes available; spoke to annual seminar for federal criminal defense attorneys sponsored by Federal Community Defender of Indiana.

June 13, 1997 - ICLEF program on employment discrimination, Indianapolis.

June 6, 1997 - Indiana Bar Admission remarks, Indianapolis.

May 9, 1997 - Indiana Civil Liberties Union – CLE lunch presentation regarding 42 U.S.C. § 1983, in Indianapolis. No notes available.

Dec. 16, 1996 - Zionsville High School – speak to government classes about role of federal courts. No notes available.

Oct. 18, 1996 - ICLEF seminar on employment litigation, Anderson, Indiana.

Oct. 4, 1996 - Speech to patent lawyers in Indianapolis on Markman decision in patent law.

Sept. 12, 1996 - Federal Bar Association federal practice seminar, Indianapolis.

April 8, 1996 - CLE presentation – Recent Seventh Circuit Developments in Civil Procedure and Evidence, Indianapolis.

Dec. 22, 1995 - Remarks upon swearing in of class of new Indiana State Police Troopers, Indianapolis.

Nov. 16, 1995 - CLE Presentation on Professionalism and Civility, Indianapolis.

Aug. 22, 1995 - Zionsville Lions Club, on federal courts.

June 9, 1995 - Indiana Bar Admission remarks, Indianapolis.

April 13, 1995 - CLE Presentation – Class Actions: A Judicial Perspective, in Indianapolis.

Naturalization Ceremonies: Over the past fourteen years, I have presided over approximately 20 to 25 naturalization ceremonies. At each ceremony, I have given a speech that has evolved slowly over those years. Available texts are collected together.

Seventh Circuit Conference: Each year at the Seventh Circuit Bar Association and Judicial Conference, my colleagues in the Southern and Northern Districts of Indiana and I participate in a panel discussion with attorneys who practice in our courts to discuss a variety of procedural and court administration issues. I do not have notes of these discussions.

There have been a number of other occasions at which I have spoken briefly, such as investitures of new judicial officers in the district and court visits by new lawyers and school groups, but I have not been able to locate notes from those events.

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.

Fox 59 News – March 3, 2008 regarding retroactive amendments to U.S. Sentencing Guidelines for crack cocaine cases. No copies available.

Indiana Lawyer – December 2007 regarding retroactive amendments to U.S. Sentencing Guidelines for crack cocaine cases. Article appeared in December 26, 2007 edition.

Indiana Lawyer – January 2008 regarding new role as chief judge. I do not recall any specific article appearing from that interview.

NUVO – March 8, 2006 issue.

UPN Focus – television interview with Judge John Daniel Tinder hosted by Milt Thompson. No copy available.

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.

On October 11, 1994, I was appointed United States District Judge for the Southern District of Indiana by President Clinton, following confirmation by the United States Senate on October 7, 1994. I entered duty in that office on October 28, 1994.

I have served as Chief Judge, United States District Court for the Southern District of Indiana, since January 1, 2008.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? Approximately 3000.

As a judge, I have presided over the closing of approximately 8,000 cases. Of that number, approximately 3,000 went to judgment based on a trial and/or decision I made, with roughly 1,150 written opinions available in electronic data bases. Approximately 150 to 200 have gone to verdict or decision after a trial.

i. Of these, approximately what percent were:

jury trials? 60%; bench trials 40%

civil proceedings? 60%; criminal proceedings? 40%

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

See attached lists of citations from Westlaw. (Two lists cover two date ranges because of the large number.) In addition to the cases on the lists, see Sefick v. United States, 1999 WL 778588 (N.D. Ill. 1999), in which I sat by designation in the Northern District of Illinois.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. Watkins v. Anderson, 92 F. Supp. 2d 824 (S.D. Ind. 2000). Granted writ of habeas corpus. Watkins was wrongly convicted of the rape and murder of a young girl. After the trial, early DNA tests showed it was nearly impossible for Watkins to have committed the crimes, but state courts rejected the conclusions from those tests. In the federal habeas proceedings, Watkins showed (a) that the DNA test results undermined the conviction and (b) that the prosecution had violated his constitutional rights under Brady v. Maryland by failing to disclose the statement of an eyewitness who described the girl's abduction by a man who did not fit Watkins' description and at a time when time-clock records showed that Watkins was at work. Watkins therefore met the stringent standards for habeas relief under the Anti-terrorism and Effective Death Penalty Act of 1996. The state filed an appeal but dismissed the appeal after a newer, more sophisticated DNA test confirmed the results I had relied upon. The State of Indiana did not attempt to re-try Watkins.

Counsel for petitioner Watkins were Joseph Cleary, Hammerle & Cleary, Indianapolis, Indiana, tel. 317-630-0137, and William E. Marsh, Federal Community Defender, Indianapolis, tel. 317-383-3520. Counsel for respondent were Michael A. Hurst and Thomas D. Perkins, Deputy Attorneys General. Mr. Hurst of Indianapolis is now at 317-598-8685. Mr. Perkins is still with the Office of the Indiana Attorney General and can be reached at 317-232-6201.

2. Nelson v. IPALCO Enterprises, Inc., 480 F. Supp. 2d 1061 (S.D. Ind. 2007). This was a class action under the Employee Retirement Income Security Act (ERISA) involving employee investments in the employer's stock as an investment option in a retirement savings plan. IPALCO owned the electric power company in Indianapolis. IPALCO was acquired by AES Corporation in 2001 in a stock-for-stock exchange. Several months after the closing of the acquisition, AES stock lost 90 percent of its value, with devastating effects on the retirement accounts of many IPALCO employees who had invested in company stock. The plaintiff class argued that the plan fiduciaries (1) should have removed company stock as an

investment option, (2) wrongfully promoted investment in company stock while they were selling their own company stock, and (3) wrongfully allowed the employer-match part of the plan assets to be converted into AES stock. Plaintiffs sought damages in excess of $100 million. I denied a motion to dismiss, 2003 WL 402253 (S.D. Ind. Feb. 13, 2003), certified a plaintiff class, 2003 WL 23101792 (S.D. Ind. Sept. 30, 2003), and denied cross-motions for summary judgment on the major issues, 2005 WL 1924332 (S.D. Ind. Aug. 11, 2005). After a bench trial, I found for defendants in the cited opinion. The Seventh Circuit affirmed. Nelson v. Hodowal, 512 F.3d 347 (7th Cir. 2008). The case was important not only because of the number of plaintiffs and the financial stakes but also because of the possible tension between company executives' fiduciary duties to employees under ERISA and their duties to all shareholders under federal securities laws.

Plaintiffs' counsel were Nicholas Styant-Browne, Steve Berman, and Andrew Volk of Hagens Berman Sobol Shapiro, Seattle, Washington, tel. 206-623-7292; and John R. Price, Indianapolis, Indiana, tel. 317-844-8822. Defense counsel were Dane Butswinkas and R. Hackney Wiegmann of Williams & Connolly, Washington, DC, tel. 202-434-5000; and James H. Ham III, Baker & Daniels, Indianapolis, Indiana, tel. 317-237-0300.

3. In re AT&T Fiber Optic Cable Litigation, MDL No. 1313. The Judicial Panel on Multi-District Litigation assigned this multi-district litigation to me to manage the pretrial aspects of similar cases around the country. In this litigation, twenty-first century technology met nineteenth century law. Plaintiffs were thousands of owners of property adjoining railroad rights of way where AT&T had laid fiber optic telecommunications cables in the 1980s and 1990s. Plaintiffs alleged that laying the cables violated their property rights, asserting claims of trespass, slander of title, and unjust enrichment. Plaintiffs sought to pursue the claims with class actions, initially with a nationwide class, and later with a series of statewide classes. After some early procedural sparring, see In re AT&T Fiber Optic Cable Installation Litigation, 2001 WL 1397295 (S.D. Ind. Nov. 5, 2001) (denying motion to remand), a Seventh Circuit decision in a similar case showed that plaintiff classes could not be certified for litigation. The parties agreed to general principles for a series of statewide class action settlements, and the cases proceeded on that path over several years. During that time, I decided a series of contested issues. See, e.g., 2001 WL 1224726 (S.D. Ind. July 6, 2001) (denying leave to submit briefs under seal); 2002 WL 1364157 (S.D. Ind. June 5, 2002) (denying motion to compel production of settlement agreement between AT&T and its insurers); 2003 WL 22080739 (S.D. Ind. Aug. 21, 2003) (denying request for additional attorney fees).

On the merits of some claims, I decided Home on the Range v. AT&T Corp., 386 F. Supp. 2d 999 (S.D. Ind. 2005), which addressed how several federal land grant statutes from the nineteenth century – the Pacific Railroad Act of 1862, the

Northern Pacific Act of 1864, and the General Railroad Right of Way Act of 1875 – allocated property rights among the railroads, the adjoining landowners, and the United States government. That decision was not appealed and provided the foundation for a settlement for the plaintiff classes who own property adjoining federal land-grant railroads. In essence, the property owners adjoining railroads established under the earlier statutes did not have any interest in the railroad right of way. Property owners adjoining railroads built under the later General Railroad Right of Way Act had a limited property interest in the adjoining railroad rights of way. Most of the statewide class settlements have been fully implemented. The last few settlements are still in the final stages of distribution of claims. Baltimore County, Maryland opted out of the class settlement and that case remains pending against AT&T.

Plaintiffs' lead counsel were Henry J. Price, Price Waicukauski & Riley, Indianapolis, Indiana, tel. 317-633-8787 ; Nels Ackerson, Ackerson Kauffman Fex, Washington, DC, tel. 202-833-8833; and Daniel J. Millea, Zelle Hofmann, Minneapolis, Minnesota, tel. 612-336-9170. Lead defense counsel were B. Haven Walling, Jr., tel. 202-420-2658; Peter Morgan, tel. 202-420-2287; and Howard N. Feldman, tel. 202-420-4707 of Dickstein Shapiro, Washington, DC.

4. Eli Lilly & Co. v. Emisphere Corp., 408 F. Supp. 2d 668 (S.D. Ind. 2006). Eli Lilly entered into contracts for a joint biotechnology research program with Emisphere, a much smaller start-up company. After a bench trial, I found that Eli Lilly had breached the contracts by trying to appropriate for itself the intellectual property of Emisphere. Eli Lilly had conducted secret research projects that should have been joint projects and distributed Emisphere's confidential information to other scientists within Eli Lilly who were not entitled to access to it. Before a final determination of the remedy, the parties settled the case without an appeal.

Plaintiff's counsel were Donald E. Knebel and Dwight D. Lueck, Barnes & Thornburg, Indianapolis, Indiana, tel. 317-236-1313. Defendant's counsel were Colin A. Underwood, tel. 212-969-3350, and Aliza Ross, tel. 212-969-3142, both of Proskauer Rose, New York City, New York.

5. In re Lawrence Inlow Accident Litigation, No. IP 99-830. In terms of damages sought, this may have been one of the largest single-victim wrongful death cases in the U.S. Lawrence Inlow was the general counsel of Conseco Insurance. He was killed when he was hit in the head by a helicopter rotor blade as he was exiting a company helicopter on a windy day. At the time of his death, he was earning tens of millions of dollars each year. Several cases were consolidated into one case. I eventually granted summary judgment for the foreign helicopter manufacturer on the Inlow family's wrongful death claims. 2002 WL 970403 (S.D. Ind. April 16, 2002). I held that the danger posed by the decelerating blades under windy conditions was open and obvious and that the helicopter pilots were

"sophisticated intermediaries" under Indiana law, so that the manufacturer did not have a duty to warn passengers of the specific risk. The Seventh Circuit affirmed that decision. First National Bank and Trust Corp. v. American Eurocopter Corp., 378 F.3d 682 (7th Cir. 2004). In earlier decisions, I dismissed Inlow's life insurer's claim against the manufacturer, holding that the life insurer did not have standing to pursue its own wrongful death claim against an alleged tortfeasor, 2001 WL 1781927 (S.D. Ind. Dec. 13, 2001), and resolved a host of other issues to streamline the litigation, 2001 WL 331625 (S.D. Ind. Feb. 7, 2001). Those decisions were not appealed.

Counsel for the Inlow plaintiffs were James T. Crouse, Mineo & Crouse, Raleigh, North Carolina, tel. 919-861-0500; John R. Howie, Howie & Sweeney, Dallas, Texas, who has died. Counsel for Conseco was Joseph H. Yeager, Jr., Baker & Daniels, Indianapolis, Indiana, tel. 317-237-1278. Counsel for defendants were Stephen C. Johnson, Lillick & Charles (now Nixon Peabody), San Francisco, California, tel. 415-984-8222; and Martin E. Rose, Rose Walker, Dallas, Texas, tel. 214-752-8600.

6. Hinrichs v. Bosma, 400 F. Supp. 2d 1103 (S.D. Ind. 2005). On stipulated facts, I issued a permanent injunction directing the Speaker of the Indiana House of Representatives to take steps to ensure that official prayers to open legislative sessions were non-sectarian. I then denied a motion to amend the judgment, 2005 WL 3544300 (S.D. Ind. 2005), and denied a stay pending appeal, 410 F. Supp. 2d 745 (S.D. Ind. 2006). Initially, the Seventh Circuit denied a stay pending appeal and wrote that my decision was probably correct as to both the plaintiffs' taxpayer standing and the merits of the Establishment Clause issue. Hinrichs v. Bosma, 440 F.3d 393 (7th Cir. 2006). While the appeal was pending, the Supreme Court announced a more limited view of taxpayer standing in Establishment Clause cases in Hein v. Freedom from Religion Foundation, 127 S. Ct. 2553 (2007). Based on Hein, the Seventh Circuit changed course, held that the plaintiff taxpayers did not have standing to challenge the official sectarian prayers, and vacated the injunction. Hinrichs v. Speaker of House of Representatives, 506 F.3d 584 (7th Cir. 2007). The Seventh Circuit did not revisit the merits of the Establishment Clause issues.

Counsel for plaintiffs was Kenneth Falk, ACLU of Indiana, Indianapolis, Indiana, tel. 317-635-4059. Counsel for defendant were Thomas Fisher, Solicitor General of Indiana, 317-232-6201, and William Bock III, Indianapolis, Indiana, tel. 317-692-9000.

7. A Woman's Choice–East Side Women's Clinic v. Newman, 132 F. Supp. 2d 1150 (S.D. Ind. 2001). This was a challenge to Indiana legislation imposing a new informed-consent requirement for abortions that effectively required a woman to make two trips to an abortion clinic, one to be provided the information and a later trip for the procedure. I had initially granted a temporary restraining order

and then a preliminary injunction against enforcement of the statute. 904 F. Supp. 1434 (S.D. Ind. 1995). At the same time, I certified a question of state law, at the state's request, to the Indiana Supreme Court concerning the scope of the health exception to the new law's requirements. The state court answered the question, 671 N.E.2d 104 (Ind. 1996), and I responded by narrowing the scope of the preliminary injunction so as to enjoin only the requirement that required information be given "in the presence" of the woman at least 18 hours before the procedure. 980 F. Supp. 962 (S.D. Ind. 1997). The other portions of the law then took effect. The parties then undertook an extended discovery process to evaluate the effects of similar statutes in other states and to explore other issues. I held a court trial and received additional evidence in writing after the trial, and issued a permanent injunction tracking the narrowed scope of the preliminary injunction. 132 F. Supp. 2d 1150 (S.D. Ind. 2001). The Seventh Circuit reversed the permanent injunction. 305 F.3d 684 (7th Cir. 2002).

Counsel for plaintiffs were Simon Heller, then with the Center for Reproductive Law & Policy, New York City, tel. 646-549-3881, Kenneth J. Falk, ACLU of Indiana, Indianapolis, Indiana, tel. 317-635-4059, and Mary J. Hoeller, Indianapolis, Indiana, tel. 317-633-4002. Counsel for defendants were Jon Laramore, then a Deputy Attorney General and now with Baker & Daniels, Indianapolis, Indiana, tel. 317-237-0300, Arend J. Abel, also then a Deputy Attorney General and now with Cohen & Malad, Indianapolis, Indiana, tel. 317-636-6481.

8. Hoosier Environmental Council v. U.S. Department of Transportation, 2007 WL 4302642 (S.D. Ind. Dec. 10, 2007). The case was an environmental challenge to construction of a new interstate highway between Indianapolis and Evansville as part of Interstate 69. I held that the federal and state agencies had not acted arbitrarily or capriciously in selecting the preferred route for the highway. The case is interesting because of the approval of "tiering" for environmental analysis of the government decisions. "Tiering" allows the government to look at some issues on a broad scale initially, and to defer some of the more detailed environmental analysis (of a specific highway route, for example) to a second stage of analysis. My decision approving of the chosen route was not appealed. Early construction has begun near Evansville.

Counsel for plaintiffs were John N. Moore, Chicago, Illinois, tel. 312-782-9503/312-795-3706, and Michael K. Sutherlin, Indianapolis, Indiana, tel. 317-634-6313. Counsel for the federal defendants were Jill E. Zengler and Shelese M. Woods of the U.S. Attorney's Office, tel.317-226-6333. Counsel for the state defendants was Albert M. Ferlo, Akin Gump Strauss Hauer & Feld, LLP, Washington, DC, tel. 202-887-4000.

9. United States Securities and Exchange Commission v. Church Extension of the Church of God, 429 F. Supp. 2d 1045 (S.D. Ind. 2005). The financial arm of the

Church of God issued more than $85 million in bonds to church members. The stated purpose for the bonds was to help finance the construction and remodeling of churches all over the world. The leaders of the financial arm, however, began investing the church assets in much riskier real estate and other investments. The church's financial arm eventually became insolvent. The SEC brought a civil enforcement action in 2002. I have supervised a receivership to marshal as many assets as possible, which has included a number of related actions and written opinions. A jury trial in 2005 found that the two leaders of the financial arm had committed securities fraud over several years by misleading bond buyers as the financial position worsened. The cited opinion decided the civil sanctions against those two leaders, who were unusual among securities fraud defendants because they did not line their own pockets. But they were reckless with the money entrusted to them, and investors lost tens of millions of dollars. The challenge was to tailor the penalties to those unusual facts. The receivership should conclude in the near future after recovering more than $50 million for the church members who had invested in the fraudulent bonds.

Counsel for plaintiff SEC were Steven J. Levine and Tina K. Diamantopoulous, Chicago, Illinois, tel. 312-353-7390; counsel for defendants were Thomas M. Knepper and Jill Gladney, Chicago, Illinois, tel. 312-957-1300. Receiver was Jeff Marwil, Chicago, Illinois, tel. 312-962-3540. Counsel for bondholders was Elliott D. Levin, Indianapolis, Indiana, tel. 317-634-0300.

10. Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc. This is a patent case involving implantable cardiac defibrillators. I have issued approximately twenty substantive decisions in the case, and the case has been before the Federal Circuit on five occasions. After claim construction and extensive motion practice, the case was tried to a jury on four claims of two patents. The jury found that one patent was not infringed but the other was infringed, and the jury awarded $140 million. I set aside that verdict on multiple grounds and entered judgment for defendants. 2002 WL 1801525 (S.D. Ind. July 5, 2002). The plaintiffs did not appeal the loss of their $140 million verdict, but they sought to pursue just one method claim of the patent the jury had found not infringed. The Federal Circuit affirmed in part and reversed in part, ordering further proceedings on that one method claim. I later granted summary judgment for the defendants on the remaining claims. 483 F. Supp. 2d 734 (S.D. Ind. 2007). The Federal Circuit affirmed that decision in part and reversed in part. 2008 WL 5257333 (Fed. Cir. 2008), but that decision has been vacated and the Federal Circuit will rehear the case en banc regarding one damages issue that has divided that court.

Lead counsel for plaintiffs are J. Michael Jakes, tel. 202-408-4045 and Kara Stoll, tel. 202-408-4119 of Finnegan Henderson, Washington, DC; and Robert Stanley and John Schaibley of Baker & Daniels, Indianapolis, Indiana, tel. 317-237-0300. Lead counsel for defendants are Denis R. Salmon of Gibson Dunn & Crutcher, Palo Alto, California, tel. 650-849-5301; Mark A. Perry, Gibson Dunn, Washington, DC, tel. 202-887-3667; Jeffrey Olson, Sidley Austin Brown & Wood, Los Angeles, California, tel. 313-896-6041; Phillip Whistler, Ice Miller, Indianapolis, Indiana, tel. 317-236-2100.

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. Eckles v. Consolidated Rail Corp., 890 F. Supp. 1391 (S.D. Ind. 1995), aff'd, 94 F.3d 1041 (7th Cir. 1996). The issue of first or second impression was whether the Americans with Disabilities Act required an employer to provide a "reasonable accommodation" to one employee by violating the seniority rights of other employees under a collective bargaining agreement. The statutory language of the ADA did not address the issue. The legislative history showed that Congress had recognized the issue but had not reached any definite conclusion. I granted summary judgment for the defendants, finding that the ADA did not require the employer to violate the collective bargaining rights of the other employees. I reasoned that rights under collective bargaining agreements were so well established under federal law that they could not be limited by implication, without explicit limitation by Congress. The Seventh Circuit agreed and affirmed, and other circuits have followed the lead of Eckles.

   Counsel for plaintiff was Susan L. Kuss, now at Law Office of Susan L. Brach, LLC, Bluffton, SC, tel. 843-706-5977. Counsel for the defendant employer was Cynthia L. Wodock, Stewart & Irwin, Indianapolis, Indiana, telephone unknown; counsel for the union defendant were Kevin C. Brodar, United Transportation Union, Cleveland, Ohio, tel. 216- 228-9400; and Frederick W. Dennerline, III, Fillenwarth Dennerline Groth & Baird, Indianapolis, Indiana, tel. 317-353-9363.

2. Henderson v. Irving Materials, Inc., 329 F. Supp. 2d 1002 (S.D. Ind. 2004). Plaintiff Henderson was the first African-American cement truck driver at the defendant's facility. He sued for race discrimination under Title VII of the Civil Rights Act of 1964, alleging that co-workers and one supervisor had created a racially hostile work environment. I denied the employer's motion for summary judgment on the key claim, finding that the cumulative effect of the harassment was sufficient to allow a finding of a racially hostile work environment under Seventh Circuit law. I also found that some forms of facially non-racial harassment could be viewed as racial when taken in context of other harassment and historic forms of violence directed against African-Americans.

   Plaintiff's counsel was Denise H. LaRue, Haskin Lauter & LaRue, Indianapolis, Indiana, tel. 317-955-9500. Defendant's counsel was Paul H. Sinclair, Ice Miller, Indianapolis, Indiana, tel. 317-236-2100.

3. Eaton v. Onan Corp., 117 F. Supp. 2d 812 (S.D. Ind. 2000). This was one of the early cases challenging "cash balance" pension plans as a form of age discrimination. The question arose at the intersection of the Internal Revenue Code, the Age Discrimination in Employment Act, and the Employee Retirement Income Security Act. I granted summary judgment in favor of the pension plan and employer, concluding that cash balance pension plans are permissible under the law and are not inherently a form of unlawful age discrimination. This decision was not appealed, but the Seventh Circuit later agreed with this conclusion. See Cooper v. IBM Personal Pension Plan, 457 F.3d 636 (7th Cir. 2006).

Counsel for plaintiffs were William K. Carr, Denver, Colorado, tel. 303-296-6383; and William C. Barnard and Mary Doherty of Sommer & Barnard of Indianapolis. Mr. Barnard has died. Ms. Doherty is now with Taft Stettinius & Hollister, LLP in Indianapolis, tel. 317-713-3500. Counsel for defendant were Arthur P. Kalleres and Marc Sciscoe of Ice Miller, Indianapolis, Indiana. Mr. Kalleres has also died. Mr. Sciscoe's telephone number is 317-236-2100.

4. Watkins v. Anderson, 92 F. Supp. 2d 824 (S.D. Ind. 2000). See description above in Answer 13(b).

5. Doe v. Prosecutor, 566 F. Supp. 2d 862 (S.D. Ind. 2008). An Indiana law enacted in 2008 allowed law enforcement authorities to search the homes and computers of convicted sex offenders at any time, and without a search warrant, probable cause, or reasonable suspicion. The new law applied not only to offenders on parole or probation, but also to offenders who had completed their sentences. Two offenders who had completed their sentences brought a class action challenging the new law under the Fourth Amendment. I found that the pre-enforcement challenge to the law was ripe, and I held that the new law violated the Fourth Amendment as applied to offenders who had already completed their sentences, including any terms of probation or parole. There was no appeal.

Counsel for plaintiffs was Kenneth Falk, ACLU of Indiana, Indianapolis, Indiana, tel. 317-635-4059. Counsel for defendants was David A. Arthur, Deputy Attorney General, Indianapolis, Indiana, tel. 317-232-6201.

6. Zehner v. Trigg, 952 F. Supp. 1318 (S.D. Ind. 1997), aff'd, 133 F.3d 459 (7th Cir. 1997). Prisoners who alleged they had been exposed to asbestos while working in a prison kitchen sued for violation of their Eighth Amendment rights. No plaintiff had suffered any physical injury, but they sought damages for emotional distress. The Prison Litigation Reform Act of 1995 provided in 42 U.S.C. § 1997e(e): "No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury." Plaintiffs argued that the new legislation violated their constitutional rights under the Eighth and Fourteenth

Amendments. I granted judgment on the pleadings for the defense and upheld the constitutionality of the new statutory limit on damages. I concluded that although the new law limited remedies for constitutional violations, the limit was not so severe as to reach beyond the constitutional power of Congress or to violate other constitutional provisions. The Seventh Circuit affirmed.

Counsel for plaintiffs was John Emry, Franklin, Indiana, tel. 317-736-5800. Counsel for defendants was Wayne E. Uhl, Deputy Attorney General, now with Stephenson, Morow & Semler, Indianapolis, Indiana, tel. 317-844-3830.

7. Williams v. Humphreys, 125 F. Supp. 2d 881 (S.D. Ind. 2000). After federal welfare reform legislation established the Temporary Assistance for Needy Families (TANF) program, Indiana required that all children in families receiving TANF benefits assign to the state their rights to child support from non-custodial parents. But TANF also excluded from the benefit calculations many "after-born" children. The result was that TANF provided no benefits directly to those after-born children but required that those same children give up their child support rights to the state. I held that the policy requiring assignment of child support rights from those children amounted to an unconstitutional taking of private property for a public purpose without compensation. I issued a permanent injunction against the policy. There was no appeal.

Counsel for plaintiffs were Jacquelyn E. Bowie and Kenneth Falk, Indiana Civil Liberties Union, Indianapolis, Indiana, tel. 317-635-4059. Counsel for defendants was Frances Barrow, Deputy Attorney General, Indianapolis, Indiana, tel. 317-232-6201.

8. MCI, LLC v. Patriot Engineering & Environmental, Inc., 487 F. Supp. 2d 1029 (S.D. Ind. 2007). This is one of many recent cases involving accidental cuts of high-capacity fiber optic communications cables. Damages in such cases ordinarily should include the costs of repair and a reasonable sum for lost use of the cable. MCI and other telecommunication companies have pursued some much more aggressive damages theories. In this case, for example, the repairs took about eight hours and cost MCI $22,000. MCI sought damages of more than $630,000 based on the supposed rental costs for such high capacity cables. MCI used as evidence longer-term leases that included very high one-time or annual fees or deposits that amounted to 98 percent of the claimed loss-of-use damages. I rejected the attempt to base the damage calculation on cable leases with those high fees as unreasonable as a matter of law and granted summary judgment for the defendant on the issue. The parties later settled; there was no appeal.

Counsel for plaintiff MCI were Anthony J. Jorgenson and James John Proszek of Hall Estill Hardwick Gable Golden & Nelson, Tulsa, Oklahoma, tel. 918-594-0631, and Cathy Elliott, Bose McKinney & Evans, Indianapolis, Indiana, tel. 317-684-5248. Counsel for defendant Patriot were Jeffrey Musser, Scott Timberman, and James D. Witchger of Rocap Witchger LLP, Indianapolis, Indiana, tel. 317-577-5380.

9 Sakhrani v. Brightpoint, Inc., 78 F. Supp. 2d 845 (S.D. Ind. 1999). This was a relatively early case under the Private Securities Litigation Reform Act. The principal issue at this stage was whether the selection of a lead plaintiff in a securities case could be manipulated by having attorneys assemble an artificial "group" of investors who could pool their alleged losses to show that they had the largest stake in the case. I held that the statutory language allowing a "group of persons" to serve as lead plaintiff did not apply to a group of investors who had nothing in common with one another beyond their investment. I later granted the defendants' motion to dismiss the case, and there was no appeal.

Counsel for plaintiffs were Kevin J. Yourman, formerly with Yourman, Alexander & Parekh, LLP, Los Angeles, California, firm now closed; for information on cases, send fax to 310-601-4109; Michael D. Braun, now with Braun Law Group, Los Angeles, California, tel. 310-442-7755; James A. Knauer, Kroger Gardis & Regas, Indianapolis, Indiana, tel. 317-692-9000; and William C. Potter, II, Indianapolis, Indiana, tel. 317-625-4834. Counsel for defendants were James H. Ham, III, Baker & Daniels, Indianapolis, Indiana, tel. 317-237-0300; and Ira A. Finkelstein, now with Harnik Wilker & Finkelstein, New York, New York, tel. 212-599-7575.

10. Eco Mfg. LLC v. Honeywell Int'l, 295 F. Supp. 2d 854 (S.D. Ind. 2003), aff'd, 357 F.3d 649 (S.D. Ind. 2003). The familiar round Honeywell thermostat presented questions at the intersection of patent law and trademark law. Plaintiff Eco Manufacturing wanted to manufacture a round thermostat. Honeywell threatened to sue for trademark infringement. Honeywell had obtained a utility patent on the round thermostat design in the 1930s. As the utility patent was about to expire, Honeywell then obtained a design patent on the round design. After the design patent expired, Honeywell eventually managed to obtain a registered trademark on the round design. I denied Honeywell's request for a preliminary injunction that would have stopped Eco from using a similar round design. I found that the trademark was invalid and conflicted with patent law. After a utility patent expires, the public has a right to practice the patented invention. I also found that Honeywell had misled the Patent & Trademark Office when it obtained the trademark on the round design. The Seventh Circuit affirmed the denial of the preliminary injunction. The case later settled.

Counsel for plaintiff Eco were Michael Beck, David Lockman, and Paul Maginot of Maginot Moore & Bowman, Indianapolis, Indiana, tel. 317-638-2922. Counsel for defendant Honeywell was Paul R. Garcia, Kirkland & Ellis, Chicago, Illinois, tel. 312-861-2327.

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

Kauble v. Pension Ben. Guar. Corp., 1994 WL 722966 (S.D. Ind. 1994), aff'd mem., 94 F.3d 647 (7th Cir. 1996), cert. denied, 519 U.S. 1057 (1997).

Grossbaum v. Indianapolis-Marion County Bldg. Auth., 909 F. Supp. 1187 (S.D. Ind. 1995), aff'd, 100 F.3d 1287 (7th Cir. 1996), cert. denied, 520 U.S. 1230 (1997).

Eckles v. Consolidated Rail Corp., 890 F. Supp. 1391 (S.D. Ind. 1995), aff'd, 94 F.3d 1041 (7th Cir. 1996), cert. denied, 520 U.S. 1146 (1997).

K.R. by M.R. v. Anderson Comm. School Corp., 887 F. Supp. 1217 (S.D. Ind. 1995), rev'd, 81 F.3d 673 (7th Cir. 1996), cert. granted and judgment vacated, 521 U.S. 1114 (1997), on remand, 125 F.3d 1017 (7th Cir. 1997), cert denied, 523 U.S. 1046 (1998).

Harmon v. OKI Systems, 902 F. Supp. 176 (S.D. Ind. 1995), aff'd, 115 F.3d 477 (7th Cir.1997), cert. denied, 522 U.S. 966 (1997).

Estate of Cole by Pardue v. Fromm, 941 F. Supp. 776 (S.D. Ind. 1995), aff'd, 94 F.3d 254 (7th Cir. 1996), cert. denied, 519 U.S. 1109 (1997).

Fleenor v. Farley, 47 F. Supp.2d 1021 (S.D. Ind. 1998), aff'd, 171 F.3d 1096 (7th Cir. 1999), cert. denied, 528 U.S. 891 (1999).

Snyder v. United States, 1998 WL 1181015 (S.D. Ind. 1998), aff'd mem., 172 F.3d 53 (7th Cir. 1998), cert. denied, 528 U.S. 968 (1999).

Mead Johnson & Co. v. Abbott Laboratories, 41 F. Supp. 2d 879 (S.D. Ind. 1999), rev'd, 201 F.3d 883 (7th Cir. 2000), amended on denial of rehearing, 209 F.3d 1032 (7th Cir. 2000), cert. denied, 531 U.S. 917 (2000).

Sefick v. United States, 1999 WL 778588 (N.D. Ill. 1999) (sitting by designation), aff'd, 164 F.3d 370 (7th Cir. 1998), cert. denied, 527 U.S. 1035 (1999).

Watts v. Network Solutions, Inc., 1999 WL 778589 (S.D. Ind. 1999), aff'd mem., 202 F.3d 276 (7th Cir. 1999), cert. denied, 530 U.S. 1088 (2000).

Lowery v. Anderson, 69 F. Supp. 2d 1078 (S.D. Ind. 1999), reconsideration denied, 1999 WL 778587 (S.D. Ind. 1999), aff'd, 225 F.3d 833 (7th Cir. 2000), cert. denied, 532 U.S. 959 (2001).

American Amusement Mach. Ass'n v. Kendrick, 115 F. Supp. 2d 943 (S.D. Ind. 2000), rev'd, 244 F.3d 572 (7th Cir. 2001), cert. denied, 534 U.S. 994 (2001).

Midwestern Gas Transmission Co. v. McCarty, 120 F. Supp. 2d 1155 (S.D. Ind. 2000), rev'd, 270 F.3d 536 (7th Cir. 2001), cert. denied, 535 U.S. 1053 (2002).

Gregory-Bey v. Hanks, 2000 WL 1909642 (S.D. Ind. 2000), aff'd, 332 F.3d 1036 (7th Cir. 2003), cert. denied, 540 U.S. 1052 (2003).

United States v. Evans, 2001 WL 243287 (S.D. Ind. 2001), aff'd, 282 F.3d 451 (7th Cir. 2002), cert. denied, 537 U.S. 918 (2002).

A Woman's Choice-East Side Women's Clinic v. Newman, 132 F. Supp. 2d 1150 (S.D. Ind. 2001), rev'd , 305 F.3d 684 (7th Cir. 2002), cert. denied, 537 U.S. 1192 (2003).

Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc., 2002 WL 1801525 (S.D. Ind. 2002), aff'd in part and rev'd in part, 381 F.3d 1371 (Fed. Cir. 2004), cert. denied, 544 U.S. 1032 (2005).

Latner v. Delta-HA, Inc., 2002 WL 31255473 (S.D. Ind. 2002), aff'd mem., 72 Fed. Appx. 448 (7th Cir. 2003), cert. denied, 540 U.S. 1182 (2004).

United States v. Emerson, 501 F.3d 804 (7th Cir. 2007), cert. denied, 128 S. Ct. 1098 (2008).

Caskey v. Colgate-Palmolive Co., 438 F. Supp. 2d 954 (S.D. Ind. 2006), aff'd, 535 F.3d 585 (7th Cir. 2008), cert. denied, 129 S. Ct. 738 (2008).

United States v. McCotry, 2006 WL 2460757 (S.D. Ind. 2006), rev'd, 495 F.3d 795 (7th Cir. 2007), cert. denied, 128 S. Ct. 938 (2008).

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

1. United States v. Avila, No. 07-2404, — F.3d — , 2009 WL — (March 6, 2009). The Seventh Circuit affirmed the defendant's conviction in a methamphetamine conspiracy but vacated the sentence of 396 months because of an error in calculating the advisory sentencing guidelines.

2. United States v. Osborne, 551 F.3d 718 (7th Cir. 2009). The Seventh Circuit vacated and remanded a sentence in a child pornography case for further consideration of whether the defendant's prior conviction qualified as a conviction for "abusive sexual conduct involving a minor," which requires a mandatory minimum sentence of 15 years. I held that the defendant's prior conviction

qualified for the higher minimum sentence. In a case of first impression at the appellate level, the Seventh Circuit held that the state statute (making it criminal for a person 18 years old or older to have sexual contact with a person 14 or 15 years old) might have some "non-abusive" applications, so the court remanded for further consideration of the circumstances of the defendant's prior conviction.

3. Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc., 2008 WL 5257333 (Fed. Cir. Dec. 18, 2008). After an earlier remand for a partial new trial on one method claim of one patent, I granted summary judgment (a) to the plaintiffs on the issue of infringement, (b) to the defendants based on a finding of invalidity for anticipation, and (c) to each side on several damages issues. 483 F. Supp. 2d 734 (S.D. Ind. 2007). The Federal Circuit affirmed the finding of infringement, reversed the finding of invalidity, affirmed the findings on damages issues, and remanded for a trial on damages only. The Federal Circuit panel decision has been vacated, and the Federal Circuit will rehear the case en banc regarding one damages issue that has divided that court.

4. Gaylor v. Astrue, 2008 WL 4206360 (7th Cir. Sept. 8, 2008), reversed my decision affirming the Social Security Administration's denial of disability benefits. 2007 WL 968733 (S.D. Ind. 2007). The Seventh Circuit found that the Administrative Law Judge had not sufficiently explained his decision. The case was remanded to the SSA for further proceedings.

5. Chapman v. Airleaf Publishing Book Selling, 2008 WL 3977527 (7th Cir. Aug. 28, 2008). I dismissed this pro se copyright case for failure to state a claim upon which relief could be granted. 2007 WL 2751780 (S.D. Ind. 2007). The Seventh Circuit held that the case was so lacking in merit that the dismissal should have been for lack of subject matter jurisdiction instead.

6. United States v. Woolsey, 535 F.3d 540 (7th Cir. 2008). The Seventh Circuit affirmed convictions after trial in a drug and firearm case, but on the government's cross-appeal, remanded for imposition of mandatory life sentence for a 55 year old defendant, as opposed to the 25 year sentence I had imposed. The issue was whether a 1974 conviction under the old Youth Corrections Act should be treated as expunged or whether it should count toward the "three strikes" sentencing law in 21 U.S.C. § 851. I had treated it as expunged because it should have been expunged but was not. The Seventh Circuit disagreed.

7. Bright v. Hill's Pet Nutrition, Inc., 510 F.3d 766 (7th Cir. 2007). The Seventh Circuit affirmed in part and reversed in part the jury verdict for the defense in a trial for alleged sexual harassment and Family and Medical Leave Act violations. The Seventh Circuit remanded for a new trial on the sexual harassment claim because I excluded some evidence from plaintiff that the court deemed relevant.

8. CSX Transportation, Inc. v. Appalachian Railcar Services, Inc., 509 F.3d 384 (7th Cir. 2007). The Seventh Circuit reversed my grant of summary judgment for defendant in a commercial dispute over whether CSX could recover payments it had mistakenly made for damage to railcars based on its misunderstanding of whether the rail accident had occurred on CSX track. 2006 WL 2264004 (S.D. Ind. 2006). The parties later settled.

9. United States v. Cannon, 253 Fed. Appx. 590 (7th Cir. 2007). The defendant pled guilty to conspiring to rob another drug dealer of cocaine. I sentenced him to 270 months in prison, plus 60 months in prison for a supervised release violation from an earlier case, without objection to the supervised release portion of the sentence. The Seventh Circuit had initially dismissed his appeal, 182 Fed. Appx. 558 (7th Cir. 2006), but both the defendant and the government later realized that because of the felony classification from the earlier case, the statutory maximum for the supervised release violation was 24 months. The Seventh Circuit vacated the 60-month sentence and remanded for a new sentence. I sentenced the defendant to 24 months on the supervised release violation, and the Seventh Circuit affirmed.

10. Hinrichs v. Speaker of House of Representatives, 506 F.3d 584 (7th Cir. 2007). On stipulated facts, I issued a permanent injunction directing the Speaker of the Indiana House of Representatives to take steps to ensure that official prayers to open legislative sessions were non-sectarian. Hinrichs v. Bosma, 400 F. Supp. 2d 1103 (S.D. Ind. 2005). Initially, the Seventh Circuit denied a stay pending appeal and wrote that my decision was probably correct as to both the plaintiffs' taxpayer standing and the merits of the Establishment Clause issue. Hinrichs v. Bosma, 440 F.3d 393 (7th Cir. 2006). While the appeal was pending, the Supreme Court announced a more limited view of taxpayer standing in Establishment Clause cases in Hein v. Freedom from Religion Foundation, 127 S. Ct. 2553 (2007). Based on Hein, the Seventh Circuit changed course, held that the plaintiff taxpayers did not have standing to challenge the official sectarian prayers, and vacated the injunction. The Seventh Circuit did not revisit the merits of the Establishment Clause issues.

11. Evory v. RJM Acquisitions Funding LLC, 505 F.3d 769 (7th Cir. 2007). Plaintiffs alleged that debt collectors' letters offering to settle for a specific discount by a specific date were misleading because the debt collectors actually would have been willing to settle for less money and at any time. I held that these allegations did not state a viable claim under the Fair Debt Collection Practices Act. Headen v. Asset Acceptance, LLC, 458 F. Supp. 2d 768 (S.D. Ind. 2006), and 383 F. Supp. 2d 1097 (S.D. Ind. 2005). The Seventh Circuit held that the theory was viable and reversed the dismissal. After remand, two of the cases are going forward with certified plaintiff classes.

12. United States v. Hollingsworth, 495 F.3d 795 (7th Cir. 2007). The Seventh Circuit affirmed one defendant's criminal conviction and sentence, but reversed my order

suppressing evidence against the other defendant. In the affirmance, the court found that I erred by admitting evidence from the suppression hearing and had made an Apprendi error in imposing the sentence, but that both errors were harmless. I granted a motion to suppress by the other defendant, where the police had obtained a search warrant for her apartment by twice interrogating her elementary school-age daughter in private at the public school. I held that such tactics under the circumstances violated the family's constitutional right of privacy. United States v. McCotry, 2006 WL 2460757 (S.D. Ind. 2006). The Seventh Circuit reversed the suppression of evidence, finding no constitutional violation. That defendant then pled guilty.

13. Wieland v. Buss, 185 Fed. Appx. 527 (7th Cir. 2006). The habeas corpus petitioner pled guilty to aggravated battery. He argued that he would not have pled guilty if his lawyer had explained the potential sentences more accurately. I denied his petition for a writ of habeas corpus, concluding that the state courts had not acted unreasonably in applying Supreme Court precedent. Wieland v. Davis, 1:04-cv-991 (S.D. Ind. July 27, 2005). The Seventh Circuit reversed and granted the writ, holding that the attorney's performance was ineffective and had prejudiced the defendant, and that the state courts had acted unreasonably in denying relief.

14. Brown v. Bartholomew Consolidated School Corp., 442 F.3d 588 (7th Cir. 2006). I affirmed a state administrative ruling in a special education case under the Individuals with Disabilities Education Act. 2005 WL 552194 (S.D. Ind. 2005). By the time the parents' appeal was ripe, the case had become moot. The Seventh Circuit ordered dismissal for lack of jurisdiction as moot.

15. Norfleet v. Webster, 439 F.3d 392 (7th Cir. 2006). I granted summary judgment for three defendants in this pro se case challenging medical care in a federal prison, but denied summary judgment for two defendants – a doctor and physician's assistant. Cause No. 1:03-cv-458 (S.D. Ind. Dec. 29, 2004). The Seventh Circuit reversed the denial of summary judgment for the doctor and physician's assistant, finding no issue of fact as to whether they could have acted with deliberate indifference to the prisoner's serious medical need.

16. United States v. Graves, 418 F.3d 739 (7th Cir. 2005). The Seventh Circuit affirmed convictions in this crack cocaine distribution case but remanded for re-sentencing because the sentence was imposed when the Sentencing Guidelines were still mandatory, before United States v. Booker, 543 U.S. 220 (2005). On remand, I imposed the same 30-year sentence, which was affirmed in a later appeal. 184 Fed. Appx. 579 (7th Cir. 2006).

17. United States v. Miller, 405 F.3d 551 (7th Cir. 2005). The Seventh Circuit affirmed convictions in this "ecstasy" distribution case but vacated for re-sentencing to reconsider whether the defendant might qualify under new case law

for a "minor role" adjustment under Sentencing Guidelines. I imposed the same sentence on remand, finding that the defendant did not play a minor role in the drug distribution.

18. Canaan v. McBride, 395 F.3d 376 (7th Cir. 2005). In this death penalty habeas corpus case, I affirmed the murder conviction and one finding of a death penalty aggravator, but found that a new trial was required as to another death penalty aggravator and that a new death penalty hearing was required. Canaan v. Davis, 2003 WL 118003 (S.D. Ind. 2003). The Seventh Circuit reinstated the aggravating factor finding but affirmed the ruling that a new death penalty hearing was required. The defendant was later sentenced to life without parole.

19. Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc., 381 F.3d 1371 (Fed. Cir. 2004). This patent case was tried to a jury, which ruled for the plaintiff on one patent for implantable defibrillators and awarded $140 million. I set the verdict aside and entered judgment for defendants. 2002 WL 1801525 (S.D. Ind. 2002). On appeal, the Federal Circuit held that I had erred in construing one ambiguous claim of one patent and on several defenses. The court remanded for further proceedings on one method claim. I later ruled that the case should be assigned to another judge based on an unusual blend of Seventh Circuit and Federal Circuit rules. 2005 WL 1070681 (S.D. Ind. 2005). In another appeal, the Federal Circuit reversed that decision and said I should continue to handle the remanded case. 144 Fed. Appx. 106 (Fed. Cir. 2005). I did so and eventually granted summary judgment for the defendants on the remaining claims. 483 F. Supp. 2d 734 (S.D. Ind. 2007). The Federal Circuit affirmed that in part and reversed in part on December 18, 2008, but that decision has been vacated for rehearing *en banc*. (See above).

20. United States v. Allen, 383 F.3d 644 (7th Cir. 2004). The Seventh Circuit reversed a conviction for felon-in-possession of firearm after a bench trial. The Seventh Circuit held that the government had not proved beyond a reasonable doubt that defendant David Allen was the same David Allen whose felony conviction record was put into evidence.

21. Old Town Neighborhood Ass'n v. Kauffman, 333 F.3d 732 (7th Cir. 2003). I granted injunctive relief against a highway project through an historic neighborhood. 2002 WL 31741477 (S.D. Ind. 2002). The Seventh Circuit held that I should have issued a narrower injunction only against use of federal funds to carry out the project.

22. Precision Industries, Inc. v. Qualitech Steel SBQ, LLC, 327 F.3d 537 (7th Cir. 2003). In a question of first impression at appellate level, the Seventh Circuit reversed a decision regarding how best to reconcile two apparently conflicting statutory provisions affecting a tenant's rights when the landlord goes into

bankruptcy and the rented property is sold. My decision is available at 2001 WL 699881 (S.D. Ind. 2001).

23. Veach v. Sheeks, 316 F.3d 690 (7th Cir. 2003). The Seventh Circuit affirmed a defense jury verdict in a Fair Debt Collection Practices Act case but reversed and remanded my grant of judgment as a matter of law on one claim.

24. A Woman's Choice–East Side Women's Clinic v. Newman, 305 F.3d 684 (7th Cir. 2002). The Seventh Circuit reversed my decision in an as-applied challenge to an informed-consent abortion statute that effectively required a woman to make two trips to an abortion clinic, one to be provided the information and a later trip for the procedure. I had held unconstitutional the requirement that information be provided to the woman in person at least 18 hours before the procedure. 132 F. Supp. 2d 1150 (S.D. Ind. 2001). The Seventh Circuit reversed the permanent injunction.

25. United States v. Cannon, 39 Fed. Appx. 342 (7th Cir. 2002). The Seventh Circuit vacated and remanded a sentence in a tax fraud case because of an error in calculating the defendant's criminal history points.

26. New Hope Services, Inc. v. United States, 285 F.3d 568 (7th Cir. 2002). A taxpayer prevailed at the administrative level in a tax dispute and then sued for attorney fees from the government under the Equal Access to Justice Act, 28 U.S.C. § 2412. I denied relief for failure to exhaust administrative remedies. Cause No. NA 96-C-116 (S.D. Ind. Aug. 18, 2000). The Seventh Circuit reversed, finding that the taxpayer had adequately exhausted administrative remedies.

27. Higgs v. Carver, 286 F.3d 437 (7th Cir. 2002). I dismissed this many-faceted prisoner civil rights case. 2000 WL 1902190 (S.D. Ind. 2000). The Seventh Circuit reversed on two counts, finding the dismissal premature.

28. Midwestern Gas Transmission Co. v. McCarty, 270 F.3d 536 (7th Cir. 2001). The state utility regulatory commission was considering a proposed "bypass" arrangement in which a large industrial user of natural gas sought to bypass the local gas utility and connect directly to an interstate pipeline. I abstained under Younger v. Harris and denied the gas pipeline's request to enjoin the state regulatory proceedings. 120 F. Supp. 2d 1155 (7th Cir. 2001). The Seventh Circuit reversed and held that the Federal Energy Regulatory Commission had exclusive jurisdiction over the question so that the state proceedings should have been enjoined.

29. Advanced Cardiovascular Systems, Inc. v. Scimed Life Systems, Inc., 261 F.3d 1329 (Fed. Cir. 2001). I granted summary judgment for defendants in this patent infringement action involving cardiac stents used to open blocked coronary arteries. Cause No. IP 98-1108-C (S.D. Ind. June 28, 2000). The Federal Circuit

affirmed in part and reversed in part, holding that I erred in construing some claims in the patents.

30. American Amusement Machine Ass'n v. Kendrick, 244 F.3d 572 (7th Cir. 2001). Indianapolis enacted an ordinance to require parental consent for children to have access to arcade video games with extreme violence or explicit sexual content. The video game industry challenged the ordinance as applied to violent games. I upheld the ordinance and denied an injunction, reasoning that the city could restrict children's access to extremely violent content much as it could restrict their access to explicit sexual content that would be legal for adults to possess. 115 F. Supp. 2d 943 (S.D. Ind. 2000). The Seventh Circuit reversed and held that the limits on children's access to violent video games violated the First Amendment.

31. United States v. Arambula, 238 F.3d 865 (7th Cir. 2001). The defendant in this cocaine case had testified against a co-defendant (also before me). At sentencing, I found that Arambula had lied in his testimony against the co-defendant to protect others involved in the cocaine distribution, and I enhanced his sentence under the Guidelines. The Seventh Circuit reversed and remanded for resentencing, holding that the lies were not material. I re-sentenced the defendant without that enhancement.

32. Del Vecchio v. Conseco, Inc., 230 F.3d 974 (7th Cir. 2000). I granted summary judgment for a life insurance company on statute of limitations grounds in a case claiming fraud in marketing whole life insurance policies. Cause No. IP 98-91-C (S.D. Ind. Sept. 13, 1999). The Seventh Circuit held that the jurisdictional amount-in-controversy requirement was not satisfied, so that I should have dismissed the case instead for lack of jurisdiction.

33. Weiss v. Cooley, 230 F.3d 1027 (7th Cir. 2000). Prisoner sued jail officials for civil rights violations after he was attacked by other inmates. I granted summary judgment for defendants. Cause No. IP 97-471-C (S.D. Ind. May 29, 1998). The Seventh Circuit affirmed in part but reversed as to one defendant, finding a genuine issue of fact as to whether that defendant recognized the risk to the plaintiff

34. Zimmerman v. Tribble, 226 F.3d 568 (7th Cir. 2000). I dismissed a prisoner's complaint stating several civil rights claims. Cause No. IP 97-1778-C (S.D. Ind. April 29, 1998) (copy not available). The Seventh Circuit affirmed in part but reversed as to the prisoner's claim that a library supervisor had retaliated against him by denying library access after the prisoner complained about his limited access.

35. Walker v. O'Brien, 216 F.3d 626 (7th Cir. 2000). In several consolidated cases challenging prison disciplinary decisions, a colleague and I denied habeas corpus

relief and then denied certificates of appealability. I also held that the petitioner was not entitled to proceed on appeal without payment of fees because he had accumulated three "strikes" in the form of frivolous cases. See Finfrock v. Hanks, Cause No. IP 97-861-C (S.D. Ind. Oct. 30, 1997) (denying certificate of appealability). The Seventh Circuit decided to overrule prior circuit law and remanded those determinations, finding that no certificate of appealability was needed in such appeals.

36. Board of Trustees, Sheet Metal Workers' Nat'l Pension Fund v. Elite Erectors, Inc., 212 F.3d 1031 (7th Cir. 2000). I held that this pension fund could not exercise "long-arm" jurisdiction over the shareholder of the bankrupt employer that defaulted on its pension contributions. 46 F. Supp. 2d 852 (S.D. Ind. 1999); 64 F. Supp. 2d 839 (S.D. Ind. 1999). The Seventh Circuit reversed and held that such long-arm jurisdiction over an employer's shareholder was permissible under ERISA.

37. Mead Johnson & Co. v. Abbott Laboratories, 201 F.3d 883 (7th Cir. 2000), on rehearing, 209 F.3d 1032 (7th Cir. 2000). I granted a preliminary injunction under the Lanham Act against advertising for infant formulas that I found was misleading. 41 F. Supp. 2d 879 (S.D. Ind. 1999). The Seventh Circuit reversed, holding that the advertising was not misleading and that I erred by setting too low an injunction bond.

38. Smith v. U.S. District Court Officers, 203 F.3d 440 (7th Cir. 2000). Plaintiff sought a writ of mandamus to obtain copies of audio tapes of all proceedings in his earlier federal criminal case. I dismissed the petition. Cause No. IP-97-1924-C (S.D. Ind. Feb. 4, 1998). The Seventh Circuit decided a question of first impression and vacated, holding that the petitioner had a right of access to at least some of the tapes.

39. Velasquez v. Frapwell, 165 F.3d 593 (7th Cir. 1999). Indiana University fired an attorney who alleged discrimination on several grounds, including his National Guard service. I dismissed his claim under the Uniformed Services Employment and Reemployment Rights Act based on the Eleventh Amendment. 994 F. Supp. 993 (S.D. Ind. 1998). The Seventh Circuit affirmed. 160 F.3d 389 (7th Cir. 1998). The court then learned that one day before its affirmance, Congress had enacted new legislation to apply to pending cases, directing them to state courts. The Seventh Circuit therefore vacated the portions of its and my decisions regarding the USERRA claim.

40. Schleibaum v. Kmart Corp., 153 F.3d 496 (7th Cir. 1998). In this ERISA case, I found a violation of the employee's procedural rights but found that the plaintiffs were not entitled to any substantial recovery. Cause No. IP 95-284-C (S.D. Ind. Feb. 12, 1997). The Seventh Circuit affirmed as to the violation but remanded for creation of an equitable remedy.

41. K.R. v. Anderson Community School Corp., 125 F.3d 1017 (7th Cir. 1997). K.R. was a young child with special needs. Her parents chose to enroll her in a Catholic school. Federal regulations required public school districts to provide assistance to children enrolled in private schools that was "comparable" to the help they would receive in public school. I held that the regulations required an assistant for the child, which public schools would have provided if she had attended public school. 887 F. Supp. 1217 (S.D. Ind. 1995). The Seventh Circuit reversed, 81 F.3d 673 (7th Cir. 1996), while other circuits followed the approach I had taken. The Supreme Court granted certiorari and remanded this case and others for reconsideration in light of 1997 statutory amendments. 521 U.S. 1114 (1997). On remand, the Seventh Circuit again held that the student was not entitled to assistance, and the Supreme Court denied a second petition for certiorari.

42. United States v. Talbott, 78 F.3d 1183 (7th Cir. 1996). Defendant was convicted of being a felon in possession of a firearm on one occasion and ammunition on another occasion, and I sentenced him as an armed career criminal under the Guidelines. The Seventh Circuit held that I had erred by imposing the burden on the defendant to prove his defense of necessity. (The Supreme Court later overruled the Seventh Circuit's opinion in Talbott on this point. Dixon v. United States, 548 U.S. 1 (2006).) The Seventh Circuit also held that Talbott should be sentenced at one offense level lower under the Guidelines because his crime was not in connection with a crime of violence. I imposed a lower sentence on remand, and the Seventh Circuit affirmed, 107 F.3d 874 (7th Cir. 1997).

43. Gregory-Bey v. Hanks, 91 F.3d 146, 1996 WL 394011 (7th Cir. 1996). I dismissed a habeas corpus petition in this robbery-murder for failure to exhaust state remedies, which had been long delayed. Cause No. IP 94-903 (S.D. Ind. April 7, 1995). The Court of Appeals reversed, holding that the state courts' delay meant that no further exhaustion was required. On remand, after further discovery and evidentiary hearings, I denied relief on the merits, 2000 WL 1909642 (S.D. Ind. 2000), and the Seventh Circuit affirmed, 332 F.3d 1036 (7th Cir. 2003).

44. Grossbaum v. Indianapolis-Marion County Building Authority, 63 F.3d 581 (7th Cir. 1995). Plaintiffs sought to erect a large menorah in the lobby of the City-County Building. Their request was denied, and they sought an injunction. I denied relief, reasoning that the local government had not opened up the lobby as a public forum and that the government had imposed neutral and permissible restrictions on the subject matter of private displays in the lobby. The Seventh Circuit reversed, holding that the government's restrictions amounted to "viewpoint" discrimination barred by the First Amendment. The government responded by prohibiting all private displays in the public lobby. When the plaintiffs sued again, I held that the new restrictions did not violate the First Amendment, 909 F. Supp. 1187 (S.D. Ind. 1995), and the Seventh Circuit later affirmed that ruling. 100 F.3d 1287 (7th Cir. 1996).

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.

Before April 2000, a substantial majority of the written decisions I issued were not published even in electronic form. They were distributed to the parties and placed in the case file. I designated approximately ten to fifteen percent of those decisions for publication on Westlaw and Lexis, and designated a smaller percentage for publication in the bound Federal Supplement volumes. (Some decisions have also been published by those businesses upon request by parties or counsel rather than by me.) The unpublished decisions are available from the case files. I have paper copies of most that were drafted by my law clerks and me. (I do not have copies of most decisions first drafted by the court's pro se law clerks for my review and revision. Those would need to be retrieved from case files in storage.) The paper copies from those years fill approximately four standard file drawers.

In April 2000, the Southern District of Indiana introduced a system that allowed judges to designate unpublished decisions so that they would be made accessible electronically on the court's Internet website. The database is still maintained. The opinions are maintained in a searchable database, accessible at: http://www.insd.uscourts.gov/Search/opinions_search.htm. These opinions are stored on the court's Internet server, housed at the Indianapolis Courthouse. I designated a total of 446 decisions on this database, including decisions from as early as December 1994 and as late as April 24, 2005. Many of these opinions are also available through Westlaw or Lexis.

On April 24, 2005, in response to the E-Government Act, the court's Case Management/Electronic Case Filing (CM/ECF) was upgraded to permit judges to designate opinions as "written opinions," defined as "any document issued by a judge . . .that sets forth a reasoned explanation for a court's decision." Since April 24, 2005, I have designated nearly 850 documents as "written opinions" that were not specifically designated "for publication." These opinions are stored on the court's CM/ECF server in Indianapolis, and the information should also be available on a server maintained by the Administrative Office of the U.S. Courts. Many of these opinions are also available through Westlaw or Lexis.

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

1. Grossbaum v. Indianapolis-Marion County Building Authority, 870 F. Supp. 1450 (S.D. Ind. 1994). See discussion in Response 13(f).

2. K.R. v. Anderson Community School Corp., 887 F. Supp. 1217 (S.D. Ind. 1995). See discussion in Response 13(f).

3. A Woman's Choice-East Side Women's Clinic v. Newman, 904 F. Supp. 1434 (S.D. Ind. 1995). I issued a preliminary injunction blocking enforcement of a 1995 Indiana law requiring a woman seeking an abortion to make two trips to a clinic (one for a face-to-face meeting with a doctor and a second trip at least 18 hours later for the procedure itself). I found that plaintiffs had made a sufficient showing that the new law was likely to impose an "undue burden" on a significant number of women's right to choose to have an abortion. The preliminary injunction was not appealed. I later narrowed the scope of the injunction after the Indiana Supreme Court construed the health exception in the statute so as to reduce the constitutional problems. 980 F. Supp. 962 (S.D. Ind. 1997). That modification also was not appealed. I later issued a permanent injunction against the requirement that information be provided in person, 132 F. Supp. 2d 1150 (S.D. Ind. 2001), and the Seventh Circuit reversed that decision, 305 F.3d 684 (7th Cir. 2002), as noted above.

4. Estate of Cole v. Fromm, 941 F. Supp. 776 (S.D. Ind. 1995). Cole committed suicide while in jail. His estate sued several jail officials alleging deliberate indifference to his safety. I granted summary judgment for the defendants, and the Seventh Circuit affirmed. 94 F.3d 254 (7th Cir. 1996).

5. United States v. Simpson, 944 F. Supp. 1396 (S.D. Ind. 1996). I granted a motion to suppress cocaine seized pursuant to a search warrant. I found that the police had violated the defendant's Fourth Amendment rights by making a recklessly false statement to obtain the warrant. The government did not appeal.

6. Brownsburg Area Patrons Affecting Change v. Baldwin, 943 F. Supp. 975 (S.D. Ind. 1996). A local political action committee challenged state campaign finance laws that applied to political action committees. I found that the statutes did not apply to the plaintiffs and therefore denied a preliminary injunction. The Seventh Circuit certified the question of state law to the Indiana Supreme Court, which agreed with my interpretation, 714 N.E.2d 135 (Ind. 1999), and the Seventh Circuit then affirmed. 1999 WL 33611333 (7th Cir. 1999).

7. Zehner v. Trigg, 952 F. Supp. 1318 (S.D. Ind. 1997), aff'd, 133 F.3d 459 (7th Cir. 1997). See discussion in Response 13(d), case # 6.

8. Stovall v. McAtee, 35 F. Supp. 2d 1125 (S.D. Ind. 1997). The plaintiff was badly injured by other inmates while he was detained in the Marion County Jail. He sued the sheriff in his individual and official capacities. I granted summary judgment for the sheriff in his individual capacity but denied summary judgment on the official capacity claims. There was no appeal; the case later settled.

9. Fleenor v. Farley, 47 F. Supp. 2d 1021 (S.D. Ind. 1998). Fleenor murdered his mother- and father-in-law in front of his wife and children. He was sentenced to death. I denied his petition for a writ of habeas corpus, addressing numerous

constitutional challenges to his convictions and death sentence. The Seventh Circuit affirmed.

10. Velasquez v. Frapwell, 994 F. Supp. 993 (S.D. Ind. 1998). See discussion in Response 13(f), case # 39.

11. Bibbs v. Newman, 997 F. Supp. 1174 (S.D. Ind. 1998). A deputy prosecutor in Marion County sued for sex discrimination on the job. Whether a deputy prosecutor is an "employee" entitled to protection under Title VII of the Civil Rights Act of 1964 depended on whether, under the First Amendment, the attorney position was one for which political affiliation could be considered in hiring and firing decisions. I found that the First Amendment and therefore Title VII did not protect the deputy prosecutor. There was no appeal.

12. Mason v. Hamilton County, 13 F. Supp. 2d 829 (S.D. Ind. 1998). Plaintiff Mason was high on drugs outside a Grateful Dead concert when he climbed a fence to "crash the gate." He refused a police officer's order to stop, and a deputy sheriff sent a police canine to stop Mason, resulting in serious injuries. A jury found that the deputy sheriff had not used excessive force by using the police dog to stop Mason from fleeing. I denied plaintiff's motion for judgment as a matter of law and a new trial, finding that whether the use of force was reasonable was a factual question for the jury to decide. There was no appeal.

13. United States v. Gosha, 78 F. Supp. 2d 833 (S.D. Ind. 1999). I denied motions to suppress drug evidence, finding that the police could conduct a warrantless walk-through inspection of house in which one defendant was arrested because they believed a child was left alone inside.

14. Lowery v. Anderson, 69 F. Supp. 2d 1078 (S.D. Ind. 1999). Lowery and another man murdered an elderly couple in their home, and Lowery was sentenced to death. I denied his petition for a writ of habeas corpus, deciding numerous constitutional challenges to the convictions and sentence. I later denied a motion to reconsider. 1999 WL 778587 (S.D. Ind. July 29, 1999). The Seventh Circuit affirmed. 225 F.3d 833 (7th Cir. 2000).

15. Schornhorst v. Anderson, 77 F. Supp. 2d 944 (S.D. Ind. 1999). Attorneys for D.H. Fleenor sought to stop his execution by asserting that he was incompetent to be executed. I held on an emergency basis that the state court finding that he was competent to be executed was reasonable, and denied the last-minute request to stop the execution.

16. United States v. Gold, 77 F. Supp. 2d 936 (S.D. Ind. 1999). I granted a defendant's motion to suppress a firearm seized after a traffic stop for which police had no probable cause. The government did not appeal.

17. Sefick v. United States, 1999 WL 778588 (N.D. Ill. 1999). While sitting by designation in the Northern District of Illinois, I held that the First Amendment did not entitle an artist to place a sexually suggestive artistic work in the lobby of a principal federal office building in Chicago. The decision was not appealed..

18. Gray v. City of Columbus, 2000 WL 683394 (S.D. Ind. Jan. 31, 2000). I denied summary judgment for the police department and police officers where a person who was not under arrest testified that she had been required to submit to a warrantless strip search and body cavity search. The case was later settled without an appeal.

19. Porter v. City of Muncie, 2000 WL 682660 (S.D. Ind. Feb. 16, 2000). Porter was mentally ill and, after a dispute with her husband, left her home on foot with two kitchen knives. Her husband called the police, and an officer located her. The encounter ended with the officer firing two shots that killed Porter. Her husband filed suit, claiming that the use of deadly force was unreasonable and excessive under the Fourth Amendment. After a bench trial, I found that the officer had been justified in shooting Porter to defend himself as she approached him with the knives and refused his orders to stop. There was no appeal.

20. Watkins v. Miller, 92 F. Supp. 2d 824 (S.D. Ind. 2000). See discussion in Response 13(c).

21. Marion County Committee of Indiana Democratic Party v. Marion County Election Board, 2000 WL 1206740 (S.D. Ind. Aug. 3, 2000). Indiana election law gives small political parties more time than it gives the two major parties to fill vacancies on the ballot. The plaintiff Democratic Party challenged the different treatment under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. I denied the Democratic Party's motion for a preliminary injunction, finding that the legislature had not discriminated unconstitutionally against the Democratic and Republican parties.

22. American Amusement Machine Ass'n v. Kendrick, 115 F. Supp. 2d 943 (S.D. Ind. 2000). See discussion in Response 13(f).

23. Canaan v. Davis, 2003 WL 118003 (S.D. Ind. Jan. 10, 2003). See description of Canaan v. McBride in Response 13(f).

24. Porco v. Trustees of Indiana University, 2005 WL 552462 (S.D. Ind. Feb. 24, 2005). Plaintiff had moved from Michigan to Indianapolis to attend law school. After paying the higher non-resident tuition for his first year, he sought the lower resident tuition rate for his second and third years. The university rejected his request, and he sued, alleging violation of his federal constitutional rights. I ruled in favor of the university, holding that lower tuitions at state schools for state residents do not violate the Constitution. The plaintiff's appeal was later

dismissed as moot because he had failed to seek a stay pending appeal to block distribution of the money deposited with the court. 453 F.3d 390 (7th Cir. 2006).

25. Hinrichs v. Bosma, 400 F. Supp. 2d 1103 (S.D. Ind. 2005). See discussion in Response 13(c), case # 6

26. United States v. McCotry, 2006 WL 2460757 (S.D. Ind. July 13, 2006). See discussion of United States v. Hollingsworth, 495 F.3d 795 (7th Cir. 2007), in Response 13(f), case # 12.

27. Martin Marietta Materials, Inc. v. Brainard, 2007 WL 4232184 (S.D. Ind. Nov. 28, 2007). Martin Marietta owned a long-established gravel and stone quarry. A suburb grew up around it. Residents of the area pushed the local government to restrict the mining activities. After numerous disputes and court cases, Martin Marietta sued the local government for breaching a contract and violating its constitutional property rights. I denied the local government's motion for summary judgment.

28. Martin v. Indiana State Police, 537 F. Supp. 2d 974 (S.D. Ind. 2008). Police obtained a warrant to search Martin's house for evidence of marijuana production and sales. In a garden bed just outside the house, the police found $300,000 in cash sealed in buried pipes. The police seized the money and later turned it over to federal authorities for forfeiture. Martin later sued to recover the money. Among other issues, I found that the warrant was valid and was broad enough to authorize the search of the garden bed as part of the home's "curtilage." (I also found that the police may have violated state law by delivering the money to federal authorities without permission from the state court that had issued the warrant, but that any remedy would need to be pursued under state law in state courts.) No appeal was filed.

29. Bowden v. Town of Speedway, 539 F. Supp. 2d 1092 (S.D. Ind. 2008). Bowden was detained by police officers investigating unusual activity outside a business late at night. The detention lasted well beyond the point where it was clear that there was no criminal activity. Bowden sued for violation of his Fourth Amendment rights. On cross-motions for summary judgment, I held as a matter of law that a police officer had violated Bowden's rights by keeping him in a police car in handcuffs after it was clear that there was no criminal activity. I also granted defendants' motion for summary judgment in part and denied it in part. The case later settled; there was no appeal.

30. Doe v. Prosecutor, 566 F. Supp. 2d 862 (S.D. Ind. 2008). See discussion in Response 13(d), case # 5.

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

None

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

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have always provided the Clerk's Office with an automatic recusal list. Judges provide the clerk with a list of parties from whose cases they would need to recuse, and no case with those parties should be assigned to that judge. My list for automatic recusal has included at various times one corporation in which my minor daughter held stock, two state agencies that my brother directed, a not-for-profit organization and then a city where my wife has worked as an attorney, and corporations in which the estate of my then father-in-law held stock. In addition, I recuse in any case in which my brother-in-law David J. Hensel is counsel.

For the first two years I served as a judge, I recused automatically from all cases in which my former law firm (Barnes & Thornburg) appeared as counsel. After those first two years, I recused from any cases in which Barnes & Thornburg had been involved while I was still with the firm. I do not have specific records or recollections of the particular cases.

During the first several years on the court, I also recused from almost all cases in which the law firm of Baker & Daniels appeared. Lawyers from that firm were then representing me and Indiana Attorney General Pam Carter and other defendants in lawsuits by former Attorney General's Office employees who had been terminated or had resigned in connection with Attorney General Carter's transition, which I had served as volunteer transition director from November 1992 to January 1993. Several former employees filed federal lawsuits in the Southern District of Indiana claiming that they had lost their jobs because of improper considerations, including political affiliation, race, national origin, sex, and/or age. All cases were dismissed on the merits, holding that the applicable laws did not protect deputy attorneys general, without reaching the issues of the defendants' motives. The cases included Americanos v. Carter, 74 F.3d 138 (7th Cir. 1996) (affirming dismissal under Rule 12(b)(6)), which became the basis for dismissing other cases brought by deputy attorneys general. The other cases were Wright v. Carter, IP 94-C-1312; Webster v. Carter, IP 94-C-2104; and Miller v. Carter, IP 94-C-477. One example of such disqualification involving Baker & Daniels was Robyns v. Community Centers of Indianapolis, Inc., IP 94-440-C-T/G, aff'd, 130 F.3d 1231 (7th Cir. 1997) (affirming Judge Tinder's grant of summary judgment), though I later handled a second related case several years later, and several years after the grounds for disqualification had been removed. See Robyns v. Community Centers of Indianapolis, Inc., IP 98-1241, 2000 WL 1902193 (S.D. Ind. Dec. 28, 2000). The reason I recused from "almost" all of the Baker & Daniels cases is that this particular ground for recusal could be waived by all the parties through a "blind" process that prevented me from learning which parties declined to waive the ground for recusal. I recall that all parties did waive the ground for recusal in a few cases, but I have no specific records or memories of those cases. I also recused from cases involving the lawyers or the law firms adverse to me in those Attorney General transition lawsuits, but I do not have specific records or recollections of the particular cases. When I joined the bench, I had proposed this approach to the Judicial Conference on Codes of Conduct, and the committee endorsed the approach.

During approximately my first year or two on the bench, I also recused in any cases involving law firms that were involved in the case of Nobles v. Cartwright, 659 N.E.2d 1064 (Ind. App. 1995), in which I was a defendant stemming from my work as Counsel to the Governor. I do not have records or recollection of the specific cases affected. Shortly after the Indiana Court of Appeals decision, the matter was concluded successfully, and after that, I no longer recused in cases involving law firms that had been involved in the lawsuit.

I recused in an employment discrimination case against the South Indiana Conference of the United Methodist Church, Cronin v. South Indiana Annual Conference, 1:05-cv-1804 (S.D. Ind. Oct. 23, 2006). The plaintiff moved for my disqualification on the ground that my father is a retired United Methodist minister and had previously had administrative responsibilities in the conference, including service as a district superintendent of the church. I granted the motion to disqualify pursuant to 28 U.S.C. § 455(a) (disqualify where impartiality might reasonably be questioned).

I raised the issue of recusal in Mead Johnson Co. v. Abbott Laboratories, 1999 WL 778592 (S.D. Ind. Feb. 22, 1999). A few weeks after I heard evidence on a motion for preliminary injunction in a false advertising trademark case, my then father-in-law died. Shortly after his death, I learned that his estate included some stock in the plaintiff's parent company. Because my then-wife was a beneficiary of the estate, that meant I had unexpectedly acquired a disqualifying financial interest in the plaintiff. Under such circumstances, I could and did use the "safety valve" mechanism set forth in 28 U.S.C. § 455(f) to dispose of the disqualifying interest quickly and then proceeded to decide the case. I filed the cited opinion explaining the situation and my resolution of it.

I recused from KnowledgeAZ, Inc. v. DeFosset, No. 1:05-cv-1019, on April 11, 2007. After I had presided in the case for nearly two years, new attorneys for plaintiff filed a motion to disqualify Barnes & Thornburg from representing a defendant. The motion was based on a theory that an attorney for Barnes & Thornburg had done related work for a predecessor company of the plaintiff. My initial review of the motion indicated that its resolution might depend on whether the prior work was actually related to the issues and contracts in the current lawsuit. The problem for me was that the prior work had been done back in 1994 in my last few months as a partner of Barnes & Thornburg. I concluded that recusal was appropriate. The new judge assigned to the case later denied the motion for disqualification of the law firm.

Plaintiffs moved for my disqualification in 2008 in two parallel cases challenging conditions at a privately-managed jail facility in Indianapolis, Kress v. CCA of Tennessee, LLC (No. 1:08-cv-431) and Olmstead v. CCA of Tennessee, LLC (No.1:08-cv-029). The motions asserted that I should recuse because one of the defendants' lawyers had worked for me as a law clerk (in 1999-2000) and because I had been a partner in the defendants' law firm (Barnes & Thornburg) before I was appointed to the court in 1994. I denied the motions to disqualify in an opinion available at 2008 WL 5216018 (S.D. Ind. Dec. 11, 2008). I explained that I have applied a one year "cooling off period" for law clerks after they leave employment with me, and that I had applied a two year cooling off period for cases with Barnes & Thornburg lawyers. In my judgment, recusal was not called for based on these prior relationships.

During my fourteen years service as a district judge, several pro se litigants who have been unhappy with my rulings in their current or previous cases have sought recusal. This is routine in a district court, and I did not keep records of all such requests. I have located several examples of cases in which pro se parties filed such requests. The following are examples of such cases:

Raphlah v. Roob, 2007 WL 3302440 (S.D. Ind. Nov. 5, 2007). This was a pro se habeas corpus case challenging the petitioner's state court commitment to a mental hospital in 2005. Several months after I dismissed the case as moot, the petitioner filed a motion for my recusal. He argued that I should have recused because my brother John Hamilton had been the Secretary of the Indiana Family and Social Services Administration, which oversaw the hospital where petitioner had been confined, and would or should have been a witness. My brother had been the Secretary of the agency from 2001 until August 2003, long before the petitioner had been committed to the hospital. I denied the motion for recusal because it came too late and lacked merit. My brother had not been involved at any relevant time, and the habeas corpus case challenged the state court's decision to commit the petitioner to the hospital, not the management or conditions of the hospital.

Raphlah v. Indiana Medical Bd., 2007 WL 3285805 (S.D. Ind. Nov. 5, 2007). The same pro se litigant filed motion seeking recusal more than three years after the case was closed. The plaintiff again asserted that I should have recused because my brother John Hamilton had been the Secretary of the Indiana Family and Social Services Administration from 2001 until August 2003. I denied the motion. Neither that agency nor my brother nor any other agency personnel had been named as defendants, nor had the plaintiff challenged any agency policy.

Palmer v. United States, 2007 WL 3286414, *3 (S.D. Ind. Nov. 5, 2007). Palmer pled guilty to federal bank fraud and I sentenced her. She later sought relief under 28 U.S.C. § 2255 and asserted, among other arguments, that she should have been informed that one of the physicians she defrauded was the daughter of a former law partner from the firm where I was a partner from 1991 to 1994. I had never met the victim and had no relationship with her. I concluded that the partnership with the victim's late father more than a decade earlier was too tenuous to have required disqualification under 28 U.S.C. § 455.

Nottingham v. Acting Judges of District Court, 2006 WL 1042761 (S.D. Ind. March 24, 2006). Plaintiff had filed a nearly incoherent pro se complaint against all judges of the Southern District of Indiana, including myself, complaining about the results of previous lawsuits. He sought my recusal. If there had been a colorable claim against me or any of my colleagues, I would have recused. Because there was not even a colorable claim, I concluded that there was no need to recuse to allow a litigant to choose his or her judge, or to force the court to bring in a judge from another district, by filing frivolous claims against all the judges.

Robinson v. Gregory, 929 F. Supp. 334 (S.D. Ind. 1996). In a pro se case challenging alleged screening of prison mail, the plaintiff moved to disqualify me under 28 U.S.C. § 144, which requires a certificate of "good faith" signed by "counsel of record" stating that the judge has a personal bias or prejudice, apparently based on his disagreement with some of my earlier rulings in the case. I concluded that § 144 did not apply to such a request by a pro se litigant, and I also found no reason to recuse under 28 U.S.C. § 455, the more general recusal statute.

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.

Indiana State Ethics Commission. Chair, 1991 to 1994, appointed by Governor Evan Bayh to a four-year term. The Commission is responsible for developing, implementing, and enforcing ethical standards for the executive branch of state government, and for providing advisory opinions and education for state officers and employees. No reports were issued during my tenure. I resigned to accept appointment to U.S. District Court

Counsel to the Governor. January 1989 to June 1991, appointed by Governor Evan Bayh to serve as a member of his staff and as the chief lawyer for the administration.

Indiana State Recount Commission. November 1986 to January 1988, appointed pursuant to statute by the chairman of the Indiana Democratic Party (John Livengood) to serve as the Democratic member of the three-member commission for recounts in the 1986 election cycle, the first of the commission's existence.

Mayor's Task Force on Police Performance Assessment. October 1992 to 1994. I also served as a member of the task force. I was selected to serve by Marion County Prosecutor Jeff Modisett, though it is possible that Mayor Stephen Goldsmith made the formal selection. The task force developed a proposal for involving civilians in the review of police-action shootings, uses of deadly force, and civilian complaints against police officers. As I recall, the proposal was made public some time in 1994 but quickly died for lack of support. Neither the chairman of the task force nor I have been able to locate a copy of the report.

Marion County Traffic Safety Partnership. Approx. 1993 to 1994. I served as chair of this multi-agency partnership to promote traffic safety. I served as a volunteer appointed by Marion County Prosecutor Jeff Modisett.

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.

November 1992 to January 1993 – Transition Director, Indiana Attorney General-elect Pamela Carter (unpaid volunteer position). Volunteer on issues research during the campaign in 1992.

1987 to November 1988 – Evan Bayh for Governor. Volunteer to coordinate issues research and position papers for the gubernatorial campaign.

1985 to November 1986 – Evan Bayh for Secretary of State. Volunteer as counsel to the campaign and for issues research, particularly in the field of election and recount law.

1988 and 1992 – Organized fundraisers among my colleagues at Barnes & Thornburg for Evan Bayh in 1988 and 1992, and in 1992 for the Indiana House Democratic Caucus, Pamela Carter for Attorney General, and Stan Jones for Superintendent of Public Instruction.

1974 – Volunteer for Sen. Birch Bayh's campaign for re-election. I worked as a "gopher" at campaign headquarters for several hours each day during the summer.

1973 – Youth coordinator for Philip Hayes, candidate for the U.S. House of Representatives from Indiana's Eighth Congressional District.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

   i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

      I served as a law clerk for Judge Richard Cudahy, United States Court of Appeals for the Seventh Circuit from September 1983 to September 1984.

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

      I have not practiced alone.

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

      October 28, 1994 to present
      United States District Court for the Southern District of Indiana
      46 East Ohio Street
      330 Birch Bayh United States Courthouse

Indianapolis, Indiana 46204
United States District Judge; Chief Judge since January 1, 2008

July 1991 to October 1994
Barnes & Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204
Partner

January 1989 to July 1991
Office of the Governor of the State of Indiana
206 State House
Indianapolis, Indiana 46204
Counsel to the Governor

October 1984 to January 1989
Barnes & Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204
Associate

September 1983 to September 1984
United States Court of Appeals for the Seventh Circuit
219 South Dearborn Street
Chicago, Illinois 60604
Law clerk to Judge Richard D. Cudahy

Summer 1983
Kirkland & Ellis
200 East Randolph
Chicago, Illinois 60601
Law clerk

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

I have not served as a mediator or arbitrator.

b. Describe:

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

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

1. 1984-89 – Associate at Barnes & Thornburg in the firm's Intellectual Property and Trade Regulation department and the Litigation department. The trade regulation work included antitrust law in both litigation and counseling of clients. Much of the counseling work involved application of antitrust law to joint ventures in health care and other industries. The trade regulation litigation included both prosecuting and defending efforts to enforce covenants not to compete and trade secret cases, often on an expedited basis involving temporary restraining orders and preliminary injunctions. I represented manufacturers in disputes with their distributors and/or franchisees. I counseled businesses on trade secret protection, covenants not to compete, and vertical distribution relationships.
In general litigation, I was involved in prosecuting and defending civil claims for securities fraud, common law fraud, RICO violations, breaches of contract, and other causes of action between businesses. I had a blend of first chair and second chair responsibilities. In a junior capacity, I helped draft the briefs for CTS Corporation before the Supreme Court of the United States in CTS Corp. v. Dynamics Corp. of America, 481 U.S. 69 (1987), in which the Supreme Court upheld Indiana's control share laws regulating hostile corporate takeovers. I also did extensive legal and factual work in Wabash Valley Power Ass'n v. Public Service Co. of Indiana, a RICO and securities fraud case brought against our client, PSI, by the co-owner of the cancelled Marble Hill nuclear generating plant.

2. 1989-91 – Counsel to the Governor: When Governor Bayh took office in 1989, I joined his staff as his counsel. My principal task was to provide legal advice for the Governor, other members of the staff, and agency directors. As the new administration took over the reins of state government, a wide range of legal issues arose, from personnel matters to litigation to the extent of executive powers.

   When the new administration took office, several major lawsuits were pending that threatened the state with potential liabilities of hundreds of millions of dollars – enough to disrupt the state budget and Governor Bayh's programs. Those lawsuits included several class actions seeking tax refunds, a class action by former patients of mental hospitals seeking payment for work performed at mental hospitals, and a state constitutional challenge to the school funding system. I managed those cases closely. By combining aggressive defenses and selective settlements, I reduced the threats to the administration's programs and the state budget.

   As Counsel to the Governor, I coordinated appointments of judges and prosecutors. While I worked for him, the Governor appointed one justice to the Indiana Supreme Court, four judges to the Indiana Court of Appeals, and approximately 15 trial court judges.

As Counsel to the Governor I was the chief ethics officer for the Governor and the administration. I helped develop and implement a new, tougher ethics policy, first for the Governor's staff and then for the entire executive branch through legislation and rulemaking. I was the Governor's liaison to the State Ethics Commission, the State Election Board, the Attorney General, and the State's judiciary. I assisted the Governor and the chief of staff on selected personnel and legislative matters.

3. 1991-94 – Partner of Barnes & Thornburg: As a partner in the litigation department, I litigated, tried, and argued a variety of commercial, constitutional, and regulatory disputes at all levels of the federal courts and state courts and administrative agencies. I represented state and local governments in several constitutional challenges to government actions. I represented businesses and not-for-profit entities in contract and related disputes, including covenants not to compete and trade secret cases. I represented public utilities before the courts and the Indiana Utility Regulatory Commission. I represented the plaintiff in an antitrust case in the Southern District of Texas against Greyhound Lines, Inc., and I served as court-appointed counsel to a habeas corpus petitioner in the Southern District of Indiana.

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.

As an attorney in private practice, both as a partner and associate, approximately 75% of my practice was litigation. During that time, I appeared in court occasionally. Most of my private practice involved small numbers of complex matters in which most of the activity was outside the courtroom. As Counsel to the Governor, approximately 25% of my time was spent on litigation, but almost always in the role of a manager or client representative. As Counsel to the Governor, I appeared only once before a court.

i. Indicate the percentage of your practice in:
    1. federal courts: 50%
    2. state courts of record: 45%
    3. other courts:
    4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:
    1. civil proceedings: 100%
    2. criminal proceedings.

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.

Eight. Two as sole counsel; three as chief counsel; and three as associate counsel.

i. What percentage of these trials were:
1. jury;
2. non-jury: 100%

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.

As counsel of record, I filed a petition for certiorari in Bayh v. Government Suppliers Consolidating Services, Inc., which was denied. 506 U.S. 1053 (1993). For details, see Answer 17, below (case #1).

Before I was admitted to the Supreme Court bar, I also assisted with the following matters:

Jurisdictional and merits briefing on behalf of CTS Corporation in CTS Corp. v. Dynamics Corp. of America, 481 U.S. 69 (1987), which upheld the Indiana Control Share statute against federal preemption and commerce clause challenges.

Petition for certiorari in Johnson v. Duckworth, which was denied. 479 U.S. 937 (1986). For details, see Answer 17, below (case #6).

Petition for certiorari in Cambridge v. Duckworth, which was denied. 489 U.S. 1056 (1989). I was court-appointed counsel for this habeas petitioner before the Seventh Circuit. The principal issue was whether a mistrial was required after a witness blurted out during the criminal trial that the petitioner had previously signed a guilty plea in the case.

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. Government Suppliers Consolidating Services, Inc. v. Bayh, 975 F.2d 1267 (7th Cir. 1992). I was lead counsel for Governor Bayh in this lawsuit challenging the constitutionality of several Indiana laws regulating waste disposal and transportation. Two waste brokers brought suit in 1991 claiming that nine laws violated the Commerce Clause because they imposed an excessive burden on interstate waste shipments into Indiana. They also sought a preliminary injunction against enforcement of the statutes. After a hearing on the preliminary injunction, Judge Larry McKinney of the Southern District of Indiana denied the injunction and dismissed several of the challenges for lack of a ripe case or controversy or failure to state a claim. He held a bench trial to consider challenges to a statute that restricted "backhauling" of goods other than municipal waste on vehicles that had been used to carry municipal waste, and statutes requiring vehicles used to transport municipal waste for disposal in Indiana to be registered and labeled as municipal waste vehicles.

   Judge McKinney found that these laws applied to both intrastate and interstate commerce. He found that both laws served legitimate state interests and did not unconstitutionally burden interstate commerce. On appeal, the Seventh Circuit reversed, concluding that the backhauling and vehicle registration laws would have a substantially greater effect on interstate commerce than on intrastate commerce. The Supreme Court denied certiorari.

   Judge McKinney's address is 204 U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204; (317) 229-3650. Opposing counsel were Ronald J. Waicukauski, Price Waicukauski & Riley, 301 Massachusetts Avenue, Indianapolis, Indiana 46204, 317-633-8787; and Bruce Thall, Spector, Gadon & Rosen, P.C., Seven Penn Center, 7th Floor, 1635 Market Street, Philadelphia, Pennsylvania 19103, 215-241-8802. Co-counsel for defendants were John Maley, Barnes & Thornburg, 11 South Meridian Street, Indianapolis, 46204, 317-236-1313; Rosemary G. Spalding, Spalding & Hilmes, PC, 330 South Downey Avenue, Indianapolis, Indiana 46219, 317-375-1140; Arend J. Abel, Cohen & Malad, Suite 1400, One Indiana Square, Indianapolis, Indiana 46204, 317-636-6481; and Robert S. Spear, formerly of the Office of the Attorney General, 7530 U.S. Highway 31 South, Indianapolis, Indiana 46227, 317-884-4166.

2. Department of Natural Resources v. Indiana Coal Council, Inc., 542 N.E.2d 1000 (Ind. 1989). Beginning in 1985, I was lead counsel, on a pro bono basis, for the Wabash Valley Archaeological Society and the Council for the Conservation of Indiana Archaeology to test whether the "lands unsuitable" provisions of federal and state surface mining laws could effectively protect significant archaeological sites. The subject of the case was the "Beehunter Site," a significant archaeological site that lay over substantial coal deposits

for which a coal company had sought a mining permit. Surface mining would have destroyed the site. I presented the case for preservation in two contested evidentiary administrative hearings before the Department of Natural Resources. Both ALJs found that the site was significant and was unsuitable for surface mining. The owner and the coal industry sought judicial review. The Dubois Circuit Court held in 1987 that the restriction on surface mining on this privately owned site amounted to an unconstitutional regulatory taking of private property without compensation.

The archaeology groups and the DNR appealed to the Indiana Supreme Court, which reversed the Dubois Circuit Court and upheld the DNR decision. The Supreme Court agreed with our arguments that the lands unsuitable designation did not interfere with the existing use of the land or deny all economically viable use of the property, and that the designation served legitimate state interests in protecting the state's heritage from unnecessary destruction. The U.S. Supreme Court denied certiorari.

The evidentiary hearings before the DNR were held in November 1985 and on December 19, 1985. The first was before Steve Lucas, Indiana Natural Resources Commission, Suite N-501, 100 North Senate Avenue, Indianapolis, Indiana 46204, 317-233-3322. The second was before Sue Shadley, Plews Shadley Racher & Braun LLP, 1346 North Delaware Street, Indianapolis, Indiana 46202, 317-637-0700. Judge Hugo Songer of the Dubois Circuit Court heard argument on two occasions, November 14, 1986, and July 9, 1987. He is now Senior Judge, and his address is Dubois Superior Court, One Courthouse Square, Jasper, Indiana 47546, contact phone number through the Clerk's Office at 812-481-7035. Counsel for the DNR on judicial review was Deputy Attorney General Myra Spicker, retired from the Office of the Solicitor, U.S. Department of the Interior, Sacramento, California, current location in Foothill Ranch, CA. Opposing counsel throughout the case were David R. Joest, current address unknown; and James Buthod, current address unknown. Opposing counsel before the Indiana Supreme Court was G. Daniel Kelley, Jr., G. Daniel Kelley, Jr., Ice Miller LLP, One American Square, Suite 3100, Indianapolis, Indiana 46282, 317-236-2100.

3. Stewart v. Stewart, 521 N.E.2d 956 (Ind. App. 1988). A divorce court terminated a father's parental rights because he was infected with HIV. On appeal I was the principal author of the amicus brief of the Indiana Civil Liberties Union arguing that this discrimination against the father – amounting to the total destruction of his relationship with his daughter – was an irrational and unconstitutional interference with the father's parental relationship with his daughter. The Court of Appeals decision in favor of the father was the first in Indiana, and one of the early reported decisions in the nation, preventing such discrimination against persons with HIV.

I was the principal author of the constitutional arguments in the amicus brief. Richard Waples of the ICLU was principally responsible for the brief's discussion of the available medical evidence. His address is 410 North Aububon Road, Indianapolis, Indiana 46219, Indianapolis, Indiana 46219; 317-357-0903. Lead counsel for the father was Timothy

Rowe, 22 East Washington Street, Suite 600, Indianapolis, Indiana 46204; 317-632-2524. Lead counsel for the mother was Mary T. Wolf, current address unknown.

4. Office of Utility Consumer Counselor v. Public Service Co. of Indiana, 608 N.E.2d 1362 (Ind. 1993). Almost four years after PSI had formed a holding company, the Indiana Court of Appeals ruled that PSI should have obtained prior regulatory approval for the transaction. That ruling created significant obstacles in issuing new securities and raising new capital for PSI and other Indiana utilities with holding companies. The Indiana Supreme Court ruled that PSI was not required to obtain regulatory approval before it created the holding company. The case was important for PSI and for other Indiana public utilities and their investors because it removed the legal uncertainty and obstacles to raising capital.

   I took the primary role in writing the brief, and I worked closely on the brief with my partner, Stanley C. Fickle, who did the oral argument before the Indiana Supreme Court. Counsel for the Office of Utility Consumer Counselor were James Turner, now with Duke Energy, reachable through corporate offices at 526 South Church Street, Charlotte, North Carolina 28202, 704-594-6200; and Robert K. Johnson, 350 Canal Walk, Suite A, Indianapolis, Indiana 46202; 317-506-7348.

5. Reel Pipe & Valve Co. v. City of Indianapolis. I was lead counsel for the City of Indianapolis in a constitutional and procedural challenge to the city's power to acquire private property for an economic development project along the nineteenth century Central Canal in downtown Indianapolis. In an area declared blighted in 1981, the city took initial steps in 1992 to begin acquisition of some private property to clear and redevelop the area. Several property owners opposed the effort and sought judicial review of the decision to add their property to an acquisition list. In an unusual hearing before thirteen judges of the Marion Superior Court, sitting en banc, the court ruled in the city's favor in July 1992. That decision was affirmed on appeal. 633 N.E.2d 274 (Ind. App. 1994). The case was significant because of the economic development project for which the land was essential, the constitutional issues concerning the city's power to acquire private property in a blighted area for economic development purposes, and the procedural protections for property owners who sought to challenge the city's decision.

   The case was argued to the Marion Superior Court, en banc, on July 24, 1992. The presiding judge was Judge James Kirsch, currently Judge, Indiana Court of Appeals, Room 415, 200 West Washington Street, Indianapolis, Indiana 46204, 317-232-6909. Opposing counsel for the property owners were Douglass R. Shortridge, 748 Woodview North Drive, Carmel, Indiana 46032, 317-846-4801; and Jerry W. Newman, current address unknown. Co-counsel for the city was Sue A. Beesley, Bingham McHale, Suite 2700, 10 West Market Street, Indianapolis, Indiana 46204, 317-635-8900.

6. Johnson v. Duckworth, 793 F.2d 898 (7th Cir. 1986). I was the court-appointed attorney in this habeas corpus appeal. The petitioner, Thomas Johnson, had shot and killed his brother in an altercation after both had been drinking. He was charged with murder but

claimed self-defense. The prosecutor offered to accept a guilty plea to voluntary manslaughter. Johnson was 17 years old at the time. His father and attorney decided for him to reject the plea offer. At trial Johnson was convicted of murder and sentenced to 30 years. In his habeas case, Johnson raised pro se the question whether his father and attorney could decide for him to reject the plea offer. The Seventh Circuit appointed me to serve as counsel for supplemental briefing and oral argument on this issue. I argued that the decision to reject a plea offer, like the decision to accept an offer and plead guilty, is a fundamental decision that only the client can make. Under applicable professional standards, the attorney's role in such matters is only to advise. I also argued that neither Johnson's age nor his emotional condition could justify denying him the right to make this basic decision about his own fate. The Seventh Circuit agreed with my legal arguments and held that a defendant generally has the right to decide for himself or herself whether to accept or reject a plea offer. At the end of its opinion, however, the court held that the "unique circumstances" of the case (Johnson's age and emotional state) required denial of his petition. 793 F.2d at 902. The Supreme Court denied certiorari.

Opposing counsel was Charles N. Braun II, 11935 Glen Cove Court, Indianapolis, Indiana 46236; (317) 823-0789.

7. Government Suppliers Consolidating Services, Inc. v. Bayh, 133 F.R.D. 531 (S.D. Ind. 1990). While still serving as Counsel to the Governor, I was involved in an earlier round of litigation with the same two trash brokers who sued again in 1991. The 1990 case challenged Indiana laws that facially discriminated against interstate waste shipments. The plaintiffs sought the deposition of the Governor and sought documents and testimony concerning internal deliberations on policy. I appeared and filed a motion to quash and brief on behalf of the Governor that successfully asserted (for the first time in Indiana) a Governor's general immunity from deposition, at least absent a specific showing of extraordinary need. (Judge John Tinder's unreported decision on this motion is referenced in his later opinion, 133 F.R.D. at 532.) Defense witnesses asserted the governmental deliberative privilege in response to plaintiffs' discovery requests for documents and testimony reflecting internal policy deliberations. When they moved to compel, I prepared the brief filed by the Office of the Attorney General to oppose the motion. That brief argued that the governmental deliberative privilege should be recognized in Indiana. The opinions of both Magistrate John Godich and Judge John Tinder recognizing the privilege and upholding it in the case are published at 133 F.R.D.532.

Judge Tinder is now a judge on the Seventh Circuit, tel. 317-229-3680. Opposing counsel were Ronald J. Waicukauski, Price Waicukauski & Riley, 301 Massachusetts Avenue, Indianapolis, Indiana 46204, 317-633-8787; and Bruce Thall, Spector, Gadon & Rosen, P.C., Seven Penn Center, 7th Floor, 1635 Market Street, Philadelphia, Pennsylvania 19103, 215-241-8802. Representing defendants from the Office of the Attorney General was Harry John Watson, III, Deputy Attorney General, 5th Floor, 302 West Washington Street, Indianapolis, Indiana 46204, 317-232-6201.

8. Valley Transit Co. v. Greyhound Lines, Inc. In August 1992 a national bus company terminated a small regional carrier's leases for use of bus terminals in Houston, San Antonio, and Corpus Christi, Texas. I worked with my colleagues Richard H. Streeter and Michael Klein of Barnes & Thornburg, and Rene Oliveira of Brownsville, Texas, to prepare and file a federal antitrust action for attempted monopolization in the Southern District of Texas. We sought a temporary restraining order, arguing that the three terminals were "essential facilities" under antitrust law. Immediately before the hearing on Valley Transit's motion for a temporary restraining order, the national carrier consented to an order that allowed Valley Transit to stay in the terminals, thus saving Valley Transit's business and an important public service in the Rio Grande Valley. I do not know how the case was ultimately resolved after I joined the court.

The case was before Judge Filemon Vela, former Senior District Judge for the Southern District of Texas, who died in 2004. Opposing counsel for Greyhound Lines were Gary Gurwitz, Atlas & Hall, LLP, 818 Pecan Boulevard, McAllen, Texas 78501, 956-632-8226; Mark Horning, Steptoe & Johnson, LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036, 202-429-8126. Co-counsel for Valley Transit were Rene O. Oliveira, now State Representative, Room CAP 4N.10, P.O. Box 2910, Austin, Texas, 78768, 512-463-0640, also at 855 West Price Road, Suite 22, Brownsville, TX 78520, 956-542-1828; Richard H. Streeter, Barnes & Thornburg, 750 17th Street, N.W., Suite 900, Washington, D.C. 20006, 202-408-6933; and Michael A. Klein, last known address 4354 Idlewild Lane, Carmel, Indiana 46032, 317-843-2369.

9. NUCOR Corp. v. Aceros y Maquilas de Occidente, S.A. de C.V. I represented NUCOR in this declaratory judgment action before Judge Larry McKinney of the Southern District of Indiana. In early 1991, NUCOR entered into negotiations for a possible sale of steel to a steel broker, United Steel Corp. of Houston, Texas, for resale to a Mexican steel company, Aceros y Maquilas. After extended communications and negotiations, no steel was ever shipped. Aceros threatened to sue NUCOR for breach of contract and violation of the Texas Deceptive Trade Practices Act, but did not file suit. I filed a declaratory judgment action in federal court in Indiana against Aceros and United Steel. I was assisted by my colleagues Robert D. MacGill and Andrew J. Detherage. We sought a declaration that NUCOR had never entered into any binding contract with United Steel or Aceros, and had not violated the Texas Act. Judge McKinney granted NUCOR's motion for summary judgment. The legal issues were whether the statute of frauds under the Uniform Commercial Code was a defense to any contract claim, whether NUCOR had made United Steel its agent for dealing with Aceros, whether Aceros could assert a claim for promissory estoppel in the absence of an enforceable contract, and whether the Texas Deceptive Trade Practices Act could be applied to NUCOR's conduct, which was centered in Indiana. Judge McKinney ruled for NUCOR on all issues. The Seventh Circuit affirmed. 28 F.3d 572 (7th Cir. 1994). The case is representative of my commercial litigation work.

I was the principal author of the briefs in the district court and the Seventh Circuit, and argued the appeal. Judge McKinney's address is 204 U.S. Courthouse, 46 East Ohio

Street, Indianapolis, Indiana 46204; (317) 229-3650. Opposing counsel for Aceros were Richard C. Arroyo, 855 West Price Road, Brownsville, TX 78520, 956-541-4825; and Alan J. McLaughlin, Suite 702, 111 Monument Circle, Indianapolis, Indiana 46204, 317-287-3520. United Steel did not participate in the case.

10. Diversified Computer Services, Inc. v. Kathy Ann Cox. I represented the defendant Kathy Cox in this 1986 action to enforce a covenant not to compete. Ms. Cox was a computer programmer employed by Diversified to write and maintain software for its clients. She then accepted a job with one of the accounts she served and was planning to start work. Diversified sued her in the Marion Superior Court and obtained an ex parte temporary restraining order that enforced a covenant not to compete and barred Ms. Cox from taking her new job. I filed a brief for Ms. Cox and tried the preliminary injunction hearing, which was also consolidated with the trial on the merits, before Judge Gerald Zore of the Marion Superior Court. Judge Zore held that the covenant not to compete was not enforceable and entered judgment for Ms. Cox. Judge Zore also found that Ms. Cox was entitled to damages for the wrongful temporary restraining order, including the attorney fees for dissolving the TRO. No appeal was taken. The case is representative of my work on covenant not to compete cases.

    Judge Gerald Zore has retired, and his current address is unknown. Counsel for Diversified was Michael J. Hebenstreit, Whitham, Hebenstreit & Zubek, LLP, Suite 2000, 151 North Delaware Street, Indianapolis, Indiana 46204, 317-638-5555.

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.)

    In addition to matters described above, launching the Bayh administration in 1989-90 was the most significant. The Bayh administration took office after 20 years of control by the opposite party. The administration had many talented and energetic people but few with significant experience in state government or public life. We faced challenges ranging from personnel decisions and ethics policies to long-term strategic goals. There was a legal dimension to most of our issues. I participated in a wide variety of issues and decisions to try to avoid legal problems and recognize the opportunities we had.

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.

Indiana University School of Law, Bloomington, Indiana. Spring 2004 – Federal Jurisdiction.

Indiana University School of Law, Bloomington, Indiana. Spring 1988. Selected topics in Antitrust Law. I have not been able to locate a syllabus or notes. The course reviewed major doctrines in antitrust law, including conspiracies, concerted action and combinations that are illegal per se; combinations subject to the rule of reason; joint ventures; state action exception; monopoly power and attempted monopolization.

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.

    None.

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 hope to continue to work as a volunteer with the Center for Constitutional Democracy in Plural Societies (based at the Indiana University School of Law in Bloomington), especially in helping the Burmese democracy movement in exile develop effective federal and state constitutions for a future democratic Burma. This work involves occasional meetings in Indiana and possible foreign travel on vacation time to meet with members of the movement. I have no other plans, commitments, or agreements to pursue outside employment during service on the court.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

   Since becoming a District Judge, I have tried to minimize the potential for conflicts of interest by avoiding investments and other relationships likely to require recusal. For example, I do not invest directly in any corporate stocks. If appointed to the Court of Appeals, I would provide the Clerk of the court with a list of automatic disqualifying relationships, which would include the City of Bloomington, Indiana, where my wife is an attorney. I would also need to avoid cases in which my brother-in-law David J. Hensel is an attorney. (He practices in Indianapolis with Taft Stettinius & Hollister.) I would also plan to avoid any issues in which the Center for Constitutional Democracy in Plural Societies might be involved. (The Center has not been involved in litigation anywhere, let alone in the United States.) If any issue of a potential conflict were to arise, I would consult the applicable statutes and seek advice from the Codes of Conduct Committee of the Judicial Conference, and in cases of uncertainty would err on the side of disqualification.

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

   In all cases I will follow the Code of Conduct for United States Judges. If any issue of a potential conflict were to arise, I would consult the applicable statutes and seek advice from the Codes of Conduct Committee of the Judicial Conference, and in cases of uncertainty would err on the side of disqualification.

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.

As a judge, I may not practice law and thus have not done pro bono representation of the disadvantaged. I have assisted the Center for Constitutional Democracy in Plural Societies, as described above, in advising the Burmese democratic opposition in exile, and hope to continue to do so. (Such assistance is not the practice of law.)

In private practice, I spent more than 200 hours per year on pro bono work. I served as court-appointed counsel in Johnson v. Duckworth, described above in response to Question 17. (167 hours), and I served as court-appointed counsel in two additional federal habeas corpus cases. One was Brian Cambridge v. Duckworth, 859 F.2d 526 (7th

Cir. 1988), on which I spent approximately 180 hours. The second was a case in the Southern District of Indiana, Leland Powell v. State of Indiana, on which I spent more than 50 hours. Associates I supervised spent more time. The writ was eventually granted in that case, and there was no appeal.

The work on the coal v. archaeology "Beehunter Site" case described above was all pro bono, and over the three years that I worked on the case, I spent 341 hours on the matter.

I also served as a volunteer attorney, board member, and vice president of litigation for the Indiana Civil Liberties Union. The ICLU does not represent clients who can afford private counsel. In 1984-85, I was lead counsel for the ICLU in Bruce Grau v. Indiana State Bd. of Nursing Registration, which challenged the constitutionality of an Indiana law that discriminated against graduates of out-of-state nursing schools, and I spent 155 hours on that matter. I was the principal author of the ICLU's amicus brief in Stewart v. Stewart, described above, and I spent 52 hours on that matter. As vice president of litigation, I also participated in evaluating and selecting cases for the ICLU to handle, and I often provided advice and assistance to the lead attorneys.

From 1985 to 1987, I served as a board member and treasurer of the Mapleton-Fall Creek Housing Development Corporation, a not-for-profit corporation established by several churches in the Mapleton-Fall Creek neighborhood of Indianapolis to promote housing development, rehabilitation, and home ownership.

From October 1992 to 1994, I served as a member of the Mayor's Task Force on Police Performance Assessment, which studied and tried to develop a proposal for involving civilians in the review of police-action shootings, uses of deadly force, and civilian complaints against police officers.

26. **<u>Selection Process</u>**:

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

   There is no selection commission that operates in Indiana at this time.

   In approximately June 2008, after I learned that Judge Kenneth Ripple had advised the President that he intended to take senior status, I spoke with Senator

Evan Bayh to express my interest in the event that Senator Obama would win the presidential election. A few days after the election, I spoke with Senator Bayh again about the matter. I was contacted by the White House Counsel's office on January 30, 2009, to ask if I would agree to a background check, and I said yes. On February 3, 2009, the White House Counsel's office contacted me by telephone and emailed a copy of a questionnaire and asked me to complete it. On February 4, 2009, I spoke by telephone with the White House Counsel's office with a few questions about how best to provide the requested information. Beginning on approximately February 7, 2009, I was contacted by the Office of Legal Policy (OLP) of the Department of Justice and received additional forms to complete, and I have been in touch with that office by telephone and email concerning the timing and logistics of those responses. In addition, I have been interviewed by the ABA Standing Committee representative for the Seventh Circuit. On March 16, 2009, I met with Attorney General Holder, Associate Attorney General Perrelli, and OLP staff in separate meetings at the Department of Justice. I also met with Counsel to the President Gregory Craig and members of his staff and then with members of the White House communications staff on that same day, and I met briefly with President Obama that same day. My nomination was submitted to the Senate on March 17, 2009.

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

No.

AFFIDAVIT

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

March 18, 2009

David F Hamilton

(SIGNED)

Linda S Carmichael

(NOTARY)

Linda S. Carmichael
State of Indiana Notary Public
Resident of Marion County
My Commission Expires 9/11/2014