

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Kurt Damian Engelhardt

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

United States Circuit Judge for the Fifth Circuit Court of Appeals

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.

500 Poydras Street, Room C367
New Orleans, Louisiana 70130

Residence: Metairie, Louisiana

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

1960; New Orleans, Louisiana

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.

1982 – 1985, Louisiana State University; J.D., 1985

1981 – 1982, Louisiana State University; B.A., 1982

1978 – 1979, 1980, University of New Orleans; no degree conferred

1979 – 1980, American Academy of Dramatic Arts/West; no degree conferred

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.

2001 – present
United States District Court for the Eastern District of Louisiana
500 Poydras Street, Room C367
New Orleans, Louisiana 70130
Chief Judge (2015 – present)
District Judge (2001 – present)

1992 – 2001
Hailey, McNamara, Hall, Larmann & Papale, L.L.P.
One Galleria Boulevard, Suite 1400
Metairie, Louisiana 70001
Partner (1998 – 2001)
Associate (1992 – 1998)

1987 – 1992
Little & Metzger, APLC (later Little, Metzger & Lamz, APLC)
No longer operating, former address:
3421 North Causeway Boulevard, Suite 700
Metairie, Louisiana 70002
Attorney

1985 – 1987
Judge Charles Grisbaum, Jr. (deceased)
Louisiana Fifth Circuit Court of Appeal
100 Derbigny Street
Gretna, Louisiana 70053
Law Clerk

Other Affiliations:

1994 – present
Cancer Association of Greater New Orleans (CAGNO)
824 Elmwood Park Boulevard, Suite 140
Metairie, Louisiana 70123
Board Member

1995 – 1998
The Judiciary Commission of Louisiana
601 St. Charles Avenue
New Orleans, Louisiana 70130
Chairman (1998)
Member (1995 – 1998)

1996 – 1998
Heart of the Americas
Current address unknown

Member, Board of Directors

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

I have not served in any branch of the U.S. Military. I registered for selective service upon turning 18.

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

Mu Sigma Rho Honor Fraternity, Louisiana State University, 1981 – 1982

Fellowship, Loyola University (New Orleans) Institute of Politics, 1990

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

American Bar Association (1985 – present)

American Judicature Society (2002 – present)

The Federal Bar Association

Member, New Orleans Chapter Board of Directors (2004 – 2013)

President of the New Orleans Chapter (2011 – 2012)

President-Elect of the New Orleans Chapter (2010)

Vice-President of the New Orleans Chapter (2009)

Recording Secretary of the New Orleans Chapter (2008)

Membership Chair of the New Orleans Chapter (2007)

The Federal District Judges Association (2001 – present)

Louisiana State Bar Association (1985 – present)

New Orleans Bar Association (1987 – present)

Jefferson Bar Association (1987 – present)

The Fifth Circuit District Judges Association (2001 – present)

The Federalist Society, New Orleans Chapter

Advisory Board (2002 – present)

Louisiana Lawyers for Life (approximately 1994 – 2001)

United States District Court for the Eastern District of Louisiana

Local Rules Committee

Bankruptcy Committee

Clerk of Court Hiring Committee (ad hoc)

Chief United States Probation Officer Hiring Committee (ad hoc)

United States Court of Appeals for the Fifth Circuit

Ad Hoc Committee on Judicial Disability (November 2015 – present)

Criminal Pattern Jury Instruction Committee (2011 – Present)

Space and Staffing Committee (2006 – 2012)

United States Judicial Conference

Federal State Jurisdiction Committee (2004 – 2010)

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.

Louisiana, 1985

There have been no lapses in membership.

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

U.S. Fifth Circuit Court of Appeals, 1987

Eastern District of Louisiana, 1987

Middle District of Louisiana, 1987

Western District of Louisiana, 1987

Due to not practicing before the Fifth Circuit in several years, I am considered an inactive member. There have been no other lapses in membership.

11. Memberships:

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

conferences, or publications.

Cancer Association of Greater New Orleans (approximately 1992 – present)
Past President (2009 – 2011)
Member of Board of Directors (1991 – present)

Friends of the Cabildo (2006 – present)

Heart of the Americas (1996 – 1998)
Member of Board of Directors (1996 – 1998)

The Historic New Orleans Collection (2006 – present)

Humane Society of Louisiana (formerly Legislation In Support of Animals) (1992 – 2001)

Mardi Gras Krewe of Endymion (1979 – 1986)

Mardi Gras Krewe of Hermes (2010 – present)

The National WWII Museum (2000 – present)

New Orleans Museum of Art (2006 – 2016)

New Orleans Track Club (2008 – present)

- 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.

From 1979 until 1986 I was a member of the Mardi Gras Krewe of Endymion. At the time that I was a member, Endymion's membership was limited to men.

I am a member of the Mardi Gras Krewe of Hermes. Although traditionally an all-male krewe, the Krewe does not, and has not at any time that I have been a member, discriminate on the basis of gender, race, religion, or national origin. The Krewe of Hermes is a parading organization, and thus is subject to, and in compliance with, ordinances of the City of New Orleans governing membership of such organizations, including diversity and non-exclusivity.

Except to the extent set forth above, to the best of my knowledge, none of the organizations listed in 11.a currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

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

Message from the President, Advocate (Fed. Bar Ass'n New Orleans Chapter), Summer 2012, at 1. Copy supplied.

Message from the President, Advocate (Fed. Bar Ass'n New Orleans Chapter), Spring 2012, at 1. Copy supplied.

Message from the President, Advocate (Fed. Bar Ass'n New Orleans Chapter), Winter 2012, at 1. Copy supplied.

Message from the President, Advocate (Fed. Bar Ass'n New Orleans Chapter), Fall 2011, at 1. Copy supplied.

What To Do When You Have Oral Argument, Advocate (Fed. Bar Ass'n New Orleans Chapter), Summer 2003, at 2. Copy supplied.

Letter to the Editor, *Cruel Policy Towards Animals*, New Orleans Times-Picayune, Dec. 16, 1995, at Metro Section. Copy supplied.

Letter to the Editor, *Facts About Lee's 'Fizzled' Suit*, New Orleans Times-Picayune, Aug. 13, 1995, at Metro Section. Copy supplied.

Letter to the Editor, *Making School Choice an Option for Everyone*, New Orleans Times-Picayune, Feb. 5, 1993, at B6. Copy supplied.

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

Comm. On Pattern Jury Instructions, *Fifth Circuit Pattern Jury Instructions (Criminal)* (2015 ed.). Copy available at:

<http://www.lb5.uscourts.gov/juryinstructions/fifth/crim2015.pdf>

Local Civil Rules of the United States District Court for the Eastern District of Louisiana. Copy available at:

http://www.laed.uscourts.gov/sites/default/files/local_rules/LAEDLocalCivilRules_4.pdf

Local Criminal Rules of the United States District Court for the Eastern District of Louisiana. Copy available at:

http://www.laed.uscourts.gov/sites/default/files/local_rules/LAEDLocalCriminalRules_3.pdf

United States District Court for the Eastern District of Louisiana Rules for Lawyer Disciplinary Enforcement. Copy available at:

http://www.laed.uscourts.gov/sites/default/files/local_rules/LAEDDisciplinaryRules.pdf

Rules for Disability Inactive Status of the Eastern District of Louisiana Rules for Lawyer Disciplinary Enforcement. Copy available at:

http://www.laed.uscourts.gov/sites/default/files/local_rules/LAEDDisabilityRules.pdf

Judiciary Commission of Louisiana

From 1995 to 1998 I served as a member of the Judiciary Commission of Louisiana. I served as chairman in 1998. The Commission makes recommendations to the Louisiana Supreme Court concerning allegations of misconduct by members of the Louisiana judiciary.

In accordance with Rule XXIII, Section 23, of the Rules of the Louisiana Supreme Court, all documents filed with and evidence and proceedings before the Commission are confidential unless and until the Commission files a recommendation for discipline or retirement with the Supreme Court. Once a recommendation is filed with the Supreme Court, it becomes public.

I do not have records of recommendations made by the Commission during my tenure and such records are not readily available from online sources. The address of the Louisiana Supreme Court is 400 Royal Street, New Orleans, Louisiana 70130.

- 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.

On October 18, 2001, I testified before the United States Senate Committee on the

Judiciary at my confirmation hearing to be a United States District Judge for the Eastern District of Louisiana. I also answered written questions submitted by then Chairman Leahy and Senator Durbin. My testimony and responses to written questions are available at <https://www.congress.gov/107/chrgr/shrg82503/CHRG-107shrg82503.htm>

- 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.

November 6, 2017: Panelist, United States Attorney's Office for the Eastern District of Louisiana Annual Continuing Legal Education Program for Assistant United States Attorneys. The CLE program emphasized the special role of prosecutors in the criminal justice system. The panel also discussed grand jury proceedings, investigatory techniques, and interaction with opposing counsel. Handout materials given to the attendees attached.

September 28, 2017: Panelist, "Frequently Arising Procedural Issues in Federal Practice," 1st Biennial Federal Bench and Bar Conference, Eastern District of Louisiana. I have no notes, transcript, or recording. The address of the United States District Court for the Eastern District of Louisiana is 500 Poydras Street, New Orleans, Louisiana 70130

September 14, 2017: Speaker, Brothers of the Sacred Heart Alumni Association Crimson & Gold Network Social. I have no notes, transcript, or recording. I spoke extemporaneously concerning the educational foundation I received at Brother Martin High School and discussed my service as a judge. The address of Brother Martin High School is 4401 Elysian Fields Avenue, New Orleans, Louisiana 70122. Press report supplied.

July 25, 2017: Speaker, Introduction and Attorney Training, New Orleans Bar Association. I have no notes, transcript, or recording. The address of the New Orleans Bar Association is 650 Poydras Street, Suite 1505, New Orleans, Louisiana 70130.

April 26, 2017: Panelist, "Ethics and Professionalism in the Litigation Process," Greater New Orleans Barge Fleeting Association (GNOBFA) 35th Annual River and Marine Industry Seminar. I have no notes, transcript, or recording. The address of the GNOBFA is Post Office Box 232, Hahnville, Louisiana 70057

April 7, 2017: Panelist, "White Collar Pre-Trial Motions and Trials – Special Considerations," 9th Annual White Collar Crime Symposium, Louisiana State Bar Association. I have no notes, transcript, or recording. The address of the Louisiana State Bar Association is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

April 5, 2017: Panelist, "Views from the Bench," 28th Annual National Conference on Consumer Finance Class Actions & Litigation. I have no notes, transcript, or recording. The address of the American Conference Institute is 45 West 25th Street, 11th Floor, New York, New York 10010.

March 23, 2017: Panelist, "Federal Practice Series: Rule 56 – Summary Judgment," Federal Bar Association – New Orleans Chapter. I have no notes, transcript, or recording. The address of the Federal Bar Association – New Orleans Chapter is 500 Poydras Street, Suite B245, New Orleans, Louisiana 70130.

February 2, 2017: Moderator, "Securing Civil Appointments in Federal and State Courts," Federal Bar Association – New Orleans Chapter. I have no notes, transcript, or recording. The address of the Federal Bar Association – New Orleans Chapter is 500 Poydras Street, Suite B245, New Orleans, Louisiana 70130.

January 27, 2017: Speaker, "Ethics and the Unique Position the Prosecutor Occupies in the Practice of Law," Jefferson County Parish District Attorney's Office CLE Program. I have no notes, transcript, or recording. The address of the Jefferson County Parish District Attorney's Office is 200 Derbigny Street, Gretna, Louisiana 70053.

October 7, 2016: Speaker, United States Court Reporters Association Annual Meeting, New Orleans, Louisiana. Copy of text supplied.

July 13, 2016: Speaker, "Morning at the Federal Courthouse," Federal Bar Association – New Orleans Chapter. I have no notes, transcript, or recording. The address of the Federal Bar Association – New Orleans Chapter is 500 Poydras Street, Suite B245, New Orleans, Louisiana 70130.

December 16, 2015: Panelist, "A Case Study – FEMA Trailer/Formaldehyde MDL," New Orleans Bar Association – Procrastinators' Program. I have no notes, transcript, or recording. The address of the New Orleans Bar Association is 650 Poydras Street, Suite 1505, New Orleans, Louisiana 70130.

June 17, 2015: Welcome Speaker, "Morning at the Federal Court," Federal Bar Association – New Orleans Chapter. I have no notes, transcript, or recording. The address of the Federal Bar Association – New Orleans Chapter is 500 Poydras Street, Suite B245, New Orleans, Louisiana 70130.

March 12, 2015: Panelist, "A View from the Bench and Bar," American Bar Association Transportation Mega Conference. I have no notes, transcript, or recording. The address of the American Bar Association is 1050 Connecticut Ave. N.W., Suite 400, Washington, D.C. 20036.

July 9, 2014: Speaker, "Approach the Bench Series – United States District Court: Do's and Don'ts in Section 'N,'" New Orleans Bar Association. I have no notes, transcript, or recording. The address of the New Orleans Bar Association is 650 Poydras Street, Suite 1505, New Orleans, Louisiana 70130.

May 30, 2014: Panelist, "Views from the Bench" American Conference Institute 21st National Forum on Wage & Hour Claims and Class Actions. I have no notes, transcript, or recording. The address of the American Conference Institute is 45 West 25th Street, 11th Floor, New York, New York 10010

March 14, 2014: Panelist, "Summary Jury Trials in Multi-District Litigation: A Unique Tool to Evaluate and Facilitate Settlement," Louisiana State Bar Association 2014 MDL Conference. I have no notes, transcript, or recording. The address of the Louisiana State Bar Association is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

November 20, 2013: Speaker, "Lunch with the Court," Federal Bar Association – New Orleans Chapter. I have no notes, transcript, or recording. I spoke regarding practice in the Eastern District of Louisiana. The address of the Federal Bar Association – New Orleans Chapter is 500 Poydras Street, Suite B245, New Orleans, Louisiana 70130.

October 25, 2013: Panelist, "Practical Applications of Federal and State Rules of Evidence in a Courtroom Setting," Loyola Law School. I have no notes, transcript, or recording. The address of Loyola Law School is 526 Pine Street, New Orleans, Louisiana 70118

August 19, 2013: Speaker, "Judicial Ethics: Avoiding A Prophecy," National Association of Workers' Compensation Judiciary (NAWCJ). I have no notes, transcript, or recording. The address of the NAWCJ is Post Office Box 200, Tallahassee, Florida 32302

June 9, 2013, Speaker, "Morning at the Courthouse," Federal Bar Association – New Orleans Chapter. I have no notes, transcript, or recording. The address of the Federal Bar Association – New Orleans Chapter is 500 Poydras Street, Suite B245, New Orleans, Louisiana 70130.

April 5, 2013: Speaker, "Taking Depositions: A Review," Jefferson Bar Association 26th Annual CLE By The Sea. I have no notes, transcript, or recording. The address of the Jefferson Bar Association is c/o David L. Colvin,

President, 230 Huey P. Long Avenue, Gretna, Louisiana 70053.

March 22, 2013, Panelist, "Introduction to Multidistrict Litigation," Louisiana Law Review Symposium. I have no notes, transcript, or recording. The address of the Louisiana Law Review is 1 East Campus Drive, Room W114, Baton Rouge, Louisiana 70803.

February 6, 2013: Moderator, Panel on the Fifth Circuit, Federal Bar Association – Tulane Chapter. I have no notes, transcript, or recording. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

December 13, 2012: Panelist, "Ethics," New Orleans Bar Association – Masters of the Courtroom Program. I have no notes, transcript, or recording. The address of the New Orleans Bar Association is 650 Poydras Street, Suite 1505, New Orleans, Louisiana 70130.

November 6, 2012: Panelist, "Criminal Concerns: The Basics of and Tips for Practicing Criminal Law in Federal Court," Federal Bar Association – New Orleans Chapter. I have no notes, transcript, or recording. The address of the Federal Bar Association – New Orleans Chapter is 500 Poydras Street, Suite B245, New Orleans, Louisiana 70130.

April 19, 2012: Moderator, "Who Dats, Blue Dogs, And All Dat Jazz: Basics of Intellectual Property in the Big Easy," Federal Bar Association – New Orleans Chapter. I have no notes, transcript, or recording. The address of the Federal Bar Association – New Orleans Chapter is 500 Poydras Street, Suite B245, New Orleans, Louisiana 70130.

March 22, 2012: Speaker, "Lunch with the Court," Federal Bar Association – New Orleans Chapter. I have no notes, transcript, or recording. I spoke regarding practice in the Eastern District of Louisiana. The address of the Federal Bar Association – New Orleans Chapter is 500 Poydras Street, Suite B245, New Orleans, Louisiana 70130.

December 14, 2011: Panelist, "Ethics," New Orleans Bar Association – Masters of the Courtroom Program. I have no notes, transcript, or recording. The address of the New Orleans Bar Association is 650 Poydras Street, Suite 1505, New Orleans, Louisiana 70130.

November 16, 2011: Speaker, "Rule 11," Monroe Seminar, Federal Bar Association – New Orleans Chapter. I have no notes, transcript, or recording. The address of the Federal Bar Association – New Orleans Chapter is 500 Poydras Street, Suite B245, New Orleans, Louisiana 70130.

October 20, 2011: Moderator, "Nazi Looted Art in the Federal Courts: Recent

Developments and the Case of Schiele's Dead City," Federal Bar Association – New Orleans Chapter. I have no notes, transcript, or recording. The address of the Federal Bar Association – New Orleans Chapter is 500 Poydras Street, Suite B245, New Orleans, Louisiana 70130.

December 16, 2010: Panelist, "Opening and Closing Statements," New Orleans Bar Association – Masters of the Courtroom Program. I have no notes, transcript, or recording. The address of the New Orleans Bar Association is 650 Poydras Street, Suite 1505, New Orleans, Louisiana 70130.

November 15, 2010: Speaker, "Examination of Witnesses," United States Attorney's Office for the Eastern District of Louisiana Training Seminar. I have no notes, transcript, or recording. The address of the United States Attorney's Office for the Eastern District of Louisiana is 650 Poydras Street, Suite 1600, New Orleans, Louisiana 70130.

October 15, 2010: Speaker, "Big Easy Bootcamp – Basic Training for Lawyering in New Orleans: Professionalism – Courtroom Demeanor," New Orleans Bar Association CLE. I have no notes, transcript, or recording. The address of the New Orleans Bar Association is 650 Poydras Street, Suite 1505, New Orleans, Louisiana 70130.

August 19, 2010: Speaker, "Deposition Discovery: Plunder, Carnage or the Search for the Truth," Judge John C. Boutall American Inn of Court. I have no notes, transcript, or recording. The address of the American Inns of Court is 225 Reinekers Lane, Suite 770, Alexandria, Virginia 22314

March 2, 2010: Speaker, Federalist Society Chapter at Loyola University School of Law, New Orleans, Louisiana. Copy of text supplied.

February 18, 2010: Speaker, "Lunch with the Court," Federal Bar Association – New Orleans Chapter. I have no notes, transcript, or recording. I spoke regarding practice in the Eastern District of Louisiana. The address of the Federal Bar Association – New Orleans Chapter is 500 Poydras Street, Suite B245, New Orleans, Louisiana 70130.

January 28, 2010: Speaker, "The Big Not-So-Easy: The USDC and FBA Chapter Post-Katrina" Federal Bar Association – Chattanooga Chapter. I have no notes, transcript, or recording. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

December 15, 2009: Panelist, "Professionalism: Case of *Smith v. Harrah's*," New Orleans Bar Association – Masters of the Courtroom Program. I have no notes, transcript, or recording. The address of the New Orleans Bar Association is 650 Poydras Street, Suite 1505, New Orleans, Louisiana 70130.

November 10, 2009: Speaker, "Rearraignments, Presentence Investigation Reports," United States Attorney's Office for the Eastern District of Louisiana Training Seminar. I have no notes, transcript, or recording. The address of the United States Attorney's Office for the Eastern District of Louisiana is 650 Poydras Street, Suite 1600, New Orleans, Louisiana 70130.

October 14, 2009: Speaker, "Federal Court Practice: Lawyers & Professionalism During Settlement Negotiations," New Orleans Bar Association – Inn of Court. I have no notes, transcript, or recording. The address of the New Orleans Bar Association is 650 Poydras Street, Suite 1505, New Orleans, Louisiana 70130.

October 9, 2009: Panelist, "Update on E-Discovery Seminar: Ethical Considerations in E-Discovery," Louisiana State Bar Association. I have no notes, transcript, or recording. The address of the Louisiana State Bar Association is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

May 28, 2009: Speaker, "Practicing in Federal Court, Do's and Don'ts" Associate Training Lunch at Phelps Dunbar Law Firm. I have no notes, transcript, or recording. The address of Phelps Dunbar is 365 Canal Street, Suite 2000, New Orleans, Louisiana 70130.

April 17, 2009: Speaker, "Glorious Plunder?: The Need for Professionalism," Jefferson Bar Association 22nd Annual CLE By The Sea. I have no notes, transcript, or recording. The address of the Jefferson Bar Association is c/o David L. Colvin, President, 230 Huey P. Long Avenue, Gretna, Louisiana 70053.

March 13, 2009: Moderator, "FBI Special Agent Moot Court Training," I spoke at a training session for local law enforcement agents to familiarize them with the courtroom and the experience of appearing in court to testify both on direct and cross-examination. I have no notes, transcript, or recording. The address of the New Orleans Office of the FBI is 2901 Leon C. Simon Boulevard, New Orleans, Louisiana 70126.

December 10, 2008: Panelist, "Intellectual Property – Direct and Cross Examination," New Orleans Bar Association – Masters of the Courtroom. I have no notes, transcript, or recording. The address of the New Orleans Bar Association is 650 Poydras Street, Suite 1505, New Orleans, Louisiana 70130.

November 14, 2008: Speaker, "A View From the Bench/Judicial Observations," United States Attorney's Office for the Eastern District of Louisiana Training Seminar. I have no notes, transcript, or recording. The address of the United States Attorney's Office for the Eastern District of Louisiana is 650 Poydras Street, Suite 1600, New Orleans, Louisiana 70130.

April 24, 2008: Speaker, "Lunch with the Court," Federal Bar Association – New Orleans Chapter. I have no notes, transcript, or recording. I spoke regarding

practice in the Eastern District of Louisiana. The address of the Federal Bar Association – New Orleans Chapter is 500 Poydras Street, Suite B245, New Orleans, Louisiana 70130.

November 14, 2007: Speaker, Seminar on *Daubert*, United States Attorney's Office for the Eastern District of Louisiana Training Seminar. I have no notes, transcript, or recording. The address of the United States Attorney's Office for the Eastern District of Louisiana is 650 Poydras Street, Suite 1600, New Orleans, Louisiana 70130.

August 29, 2007: Speaker, Federalist Society Chapter, Paul M. Hebert Law Center of Louisiana State University, Baton Rouge, Louisiana. My presentation was substantially similar to my March 2, 2010 presentation, a copy of which is supplied.

May 17, 2007: Panelist, "Ethics and Professionalism in Preparing and Working with Witnesses," Judge Alvin B. Rubin Symposium, Federal Bar Association – New Orleans Chapter. I have no notes, transcript, or recording. The address of the Federal Bar Association – New Orleans Chapter is 500 Poydras Street, Suite B245, New Orleans, Louisiana 70130.

May 11, 2007: Panelist, "Expert Witnesses in Federal Criminal Trials: Recent Trends and Common Practices," The Big (Not So) Easy – What Every Federal Criminal Law Practitioner Should Know: The Fourth Annual CLE Conference and National Meeting of the Federal Bar Association Criminal Law Section. I have no notes, transcript, or recording. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

May 4, 2007: Speaker, "Federal Courts in Post-Katrina New Orleans," Illinois State Bar Association CLE. I have no notes, transcript, or recording. The address of the Illinois Bar Association is 424 South Second Street, Springfield, Illinois 62701.

December 14, 2006: Speaker, "Closing Statements," New Orleans Bar Association – Masters of the Courtroom. I have no notes, transcript, or recording. The address of the New Orleans Bar Association is 650 Poydras Street, Suite 1505, New Orleans, Louisiana 70130.

December 13, 2006: Speaker, "Ethics & Professionalism: Perspectives from the Bench," Federal Bar Association – New Orleans Chapter Last Chance CLE. I have no notes, transcript, or recording. The address of the Federal Bar Association – New Orleans Chapter is 500 Poydras Street, Suite B245, New Orleans, Louisiana 70130.

December 1, 2006: Speaker, "Professionalism & Ethics: Watch Your P's & Q's," Louisiana State Bar Association. I have no notes, transcript, or recording. The

address of the Louisiana State Bar Association is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

November 10, 2006: Panelist, "Professional Liability in the 21st Century: Legal Ethics and Malpractice Exposure in the 21st Century," Louisiana State Bar Association. I have no notes, transcript, or recording. The address of the Louisiana State Bar Association is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

May 18, 2006: Panelist, "A Pandora's Box: The Attorney Client Privilege," Judge Alvin B. Rubin Symposium, Federal Bar Association – New Orleans Chapter. I have no notes, transcript, or recording. The address of the Federal Bar Association – New Orleans Chapter is 500 Poydras Street, Suite B245, New Orleans, Louisiana 70130.

May 20, 2005: Speaker, LSU College of Arts and Sciences Graduation, Baton Rouge, Louisiana. Copy of text supplied.

May 12, 2005: Panelist, "Removal and Remand Procedure, and Discovery and the Use of Evidence in Remand Proceedings," Federal Bar Association – Baton Rouge Chapter. I have no notes, transcript, or recording. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

April 8, 2005: Speaker, "CLE Lunch with U.S. District Court Judges," New Orleans Bar Association – Inn of Court. I have no notes, transcript, or recording. The address of the New Orleans Bar Association is 650 Poydras Street, Suite 1505, New Orleans, Louisiana 70130.

December 13, 2004: Panelist, "Ethics and Professionalism: The Obligations of Judges and the Reasonable Expectations of Attorneys," Greater New Orleans Barge Fleeting Association (GNOBFA) 23rd Annual River and Marine Industry Seminar. I have no notes, transcript, or recording. The address of the GNOBFA is Post Office Box 232, Hahnville, Louisiana 70057.

December 1, 2004: Panelist, "Should I Stay or Should I Go Now: Perspectives on Removal and Remand – Removal and Remand Procedure, and Discovery and the Use of Evidence in Remand Proceedings," Federal Bar Association – New Orleans Chapter. I have no notes, transcript, or recording. The address of the Federal Bar Association – New Orleans Chapter is 500 Poydras Street, Suite B245, New Orleans, Louisiana 70130.

November 16, 2004: Speaker, "Perspectives on Professionalism," New Orleans Bar Association CLE Program. I have no notes, transcript, or recording. The address of the New Orleans Bar Association is 650 Poydras Street, Suite 1505, New Orleans, Louisiana 70130.

November 10, 2004: Speaker, "Open Doors to Federal Courts: The Role of Courts in Balancing Liberties," Federal Bar Association – New Orleans Chapter. I have no notes, transcript, or recording. The address of the Federal Bar Association – New Orleans Chapter is 500 Poydras Street, Suite B245, New Orleans, Louisiana 70130.

October 28, 2004: Speaker, "Lunch with the Court," Federal Bar Association – New Orleans Chapter. I have no notes, transcript, or recording. I spoke regarding practice in the Eastern District of Louisiana. The address of the Federal Bar Association – New Orleans Chapter is 500 Poydras Street, Suite B245, New Orleans, Louisiana 70130.

October 1, 2004: Moderator, "Inside Chambers: A Conversation with Federal Career Law Clerks," Federal Bar Association – New Orleans Chapter. I have no notes, transcript, or recording. The address of the Federal Bar Association – New Orleans Chapter is 500 Poydras Street, Suite B245, New Orleans, Louisiana 70130.

- 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.

Gavel Passes to New President of the Federal Magistrate Judges Association, La. Weekly, Oct. 29, 2012. Copy supplied.

Dionne Searcey, *The Judge Behind the Ruling*, Wall St. J., June 23, 2010, at A6. Copy supplied.

Justin Torres, *Judicial Profile: Hon. Kurt D. Engelhardt*, Fed. Law., March/April 2010, at 17. Copy supplied.

Andrew Astleford, *Mind, Body in for Big Test; Marathoners Face Combination of Obstacles Along Way*, New Orleans Times-Picayune, Feb. 26, 2010, at Sports Section p. 1. Copy supplied.

Focus on Alumni: Alumnus Judge Kurt D. Engelhardt, U.S. District Court, Eastern District of Louisiana, Kaleidoscope, Fall 2007, at 16. Copy supplied.

Stephanie Grace, *Lee Wins Ruling on Vitter's Tulane List*, New Orleans Times-Picayune, June 21, 1996, at Metro Section. Copy supplied.

Joanna Weiss, *Animal Group is Upset Plaquemines' Strays Go to Jeff*, New Orleans Times-Picayune, Nov. 21, 1995, at Metro Section. Copy supplied.

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

I received my commission to serve as a United States District Judge for the Eastern District of Louisiana on December 13, 2001. I was nominated by President George W. Bush on September 4, 2001, and confirmed by the United States Senate on December 4, 2001. From October 1, 2015, I have served as Chief Judge for the Eastern District.

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

Seventy-six.

- i. Of these, approximately what percent were:

jury trials:	54%
bench trials:	46%
civil proceedings:	84%
criminal proceedings:	16%

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

A list of citations to opinions I have written is included at Appendix 13.b.

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

1. *United States v. Bowen*, 969 F. Supp. 2d 546 (E.D. La. 2013), *aff'd*, 799 F.3d 336 (5th Cir. 2015), *reh'g and reh'g en banc denied*, 813 F.3d 600 (5th Cir. 2016).

The Department of Justice, Civil Rights Division, brought over 25 criminal counts against current and former members of the New Orleans Police Department, for their actions in the days after Hurricane Katrina, including the shooting of unarmed civilians on the Danziger Bridge in New Orleans. The matter was tried in summer 2011, resulting in convictions of five defendants. A sixth defendant later pled guilty to a misdemeanor offense. Following trial, an episode of prosecutorial misconduct, prior to, during, and after the trial, came to light,

warranting the granting of a new trial. All five defendants subsequently entered guilty pleas.

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2. *Blanco v. Burton*, No. 06cv3813, 2006 WL 2366046 (E.D. La. Aug. 14, 2006).

The governor of the State of Louisiana brought suit to enjoin the opening of bids on offshore leases, in the aftermath of Hurricanes Katrina and Rita. While declining to enter injunctive relief, I found the claims of the State of Louisiana to potentially have merit.

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3. *United States v. Rainey*, No. 12-cr-291 (E.D. La.).

The Department of Justice Deep Water Horizon Task Force brought three criminal counts against David Rainey, a geologist and vice-president at British Petroleum (BP). Count One, obstruction of Congress, was originally dismissed on pretrial motion. That ruling was vacated on appeal. 757 F.3d 234 (5th Cir. 2014). Subsequently, that count was dismissed on the first day of trial. The defendant was found not guilty as to the remaining counts.

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4. *In Re FEMA Trailer Formaldehyde Prod. Liab. Litig.*, MDL No. 07-1873 (E.D. La.).

In this multi-district litigation, thousands of individuals brought suit against FEMA, trailer and mobile home manufacturers, and contractors who installed such units on private property in the aftermath of Hurricanes Katrina and Rita.

These cases from across the Gulf Coast were consolidated before me as the presiding judge. After several bellwether trials, the parties reached an amicable settlement.

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5. *In re Taxotere (Docetaxel) Prods. Liab. Litig.*, MDL No. 16-2740 (E.D. La.).

This multi-district case is currently pending. Plaintiffs from across the country allege that, as a result of receiving treatment for breast cancer utilizing a medical product known as Taxotere (docetaxel), they suffered permanent alopecia (permanent hair loss). The matter was assigned to me by the Multi-District Litigation Court in October, 2016.

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6. *United States v. Morel*, No. 16-cr-50 (E.D. La.).

The United States brought a single charge, obstruction of justice, against former St. Charles Parish District Attorney Harry J. Morel, Jr., who pled guilty and was sentenced to the statutory maximum of three years.

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7. *Dandridge v. Jefferson Parish Sch. Bd.*, No. 64-cv-14801 (E.D. La.)
8. *United States v. Louisiana*, No. 80-cv-3300 (E.D. La.).

These were decades-old desegregation cases which had been pending in the Eastern District of Louisiana since the 1960s and 1970s. Both involved consent decrees that had been achieved years ago. One related to desegregation of public institutions of higher learning statewide. The other involved desegregation of public grammar schools in Jefferson Parish. I oversaw compliance with the consent orders in order to promptly complete the litigation, thus withdrawing federal court supervision of the Jefferson Parish School System and higher education in Louisiana. Both matters were concluded successfully, in a minimum amount of time.

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9. *United States v. Lang*, No. 04-cr-11 (E.D. La.).

The Department of Justice brought federal carjacking, firearms and other charges against several defendants involved in serial carjacking throughout the New Orleans metropolitan area. The defendants were found guilty on all counts and sentenced to decades in prison, practically life sentences, thus bringing to a conclusion a violent crime wave involving several neighborhoods all over metropolitan New Orleans.

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10. *United States v. Wilson*, No. 14-cr-131 (E.D. La.).

The Department of Justice brought 29 federal racketeering, narcotics, firearm and related conspiracy counts against several young men from an area in New Orleans known as “Central City”, notorious for violent and drug-related crimes. The defendants were alleged to have been members of a gang known as “Young Melph Mafia,” or “YMM,” who controlled the drug trade in Central City, and engaged in violent clashes with other gangs in the City of New Orleans. Some defendants entered guilty pleas, however, five defendants went to trial on June 5, 2017. The jury returned its verdict on June 19, 2017, finding the defendants guilty on 26 of the 29 counts. The defendants each received lengthy sentences.

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

1. *Terrebonne Parish Sch. Bd. v. Mobil Oil Corp.*, 310 F.3d 870 (5th Cir. 2002) (Engelhardt, J., sitting by designation).

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2. *Coliseum Square Ass'n, Inc. v. Dep't of Housing and Urban Dev.*, No. 02-2207, 2003 WL 1873094 (E.D. La. Apr. 11, 2003).

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3. *Felham Enters. (Cayman) Ltd. v. Certain Underwriters at Lloyds*, No. 02-3588, 2005 WL 2050284 (E.D. La. Aug. 2, 2005).

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4. *Alexander v. Wackenhut Corp.*, No. 07-262, 2008 WL 2697163 (E.D. La. July 1, 2008).

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5. *In re FEMA Trailer Formaldehyde Prods. Liab. Litig.*, 583 F. Supp. 2d 758 (E.D. La. 2008).

6. *In re FEMA Trailer Formaldehyde Prods. Liab. Litig.*, MDL No. 07-1873, 2010 WL 2010487 (E.D. La. May 18, 2010,) *aff'd*, 713 F.3d 807 (5th Cir. 2013); *In re FEMA Trailer Formaldehyde Prods. Liab. Litig.*, 719 F. Supp. 2d 677, (E.D. La. 2010), *aff'd*, 668 F.3d 281 (5th Cir. 2012); *In re FEMA Trailer Formaldehyde Prods. Liab. Litig.*, MDL No. 07-1873, 2010 WL 3168116 (E.D. La. Aug. 2010), *aff'd*, 668 F.3d 281 (5th Cir. 2012).

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7. *City of Dallas v. Hall*, 562 F.3d 712 (5th Cir. 2009) (Engelhardt, J., sitting by designation).

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8. *United States v. Bowen*, 969 F. Supp. 2d 546 (E.D. La. 2013), *aff'd*, 799 F.3d 336 (5th Cir. 2015), *reh'g and reh'g en banc denied*, 813 F.3d 600 (5th Cir. 2016).

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9. *Blanco v. Burton*, No. CIV.A. 06-3813, 2006 WL 2366046 (E.D. La. Aug. 14, 2006)

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10. *Sewell v. Sewerage & Water Bd. of New Orleans*, No. 15-3117, 2016 WL 7385701 (E.D. La. Dec. 20, 2016), *aff'd*, No. 17-30089, – F.3d – (5th Cir. Aug. 28, 2017) (slip op.) (per curiam).

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

The Supreme Court granted certiorari in three cases where I presided at trial or sat by designation on the Fifth Circuit:

I sat by designation for a Fifth Circuit panel decision in *PSKS, Inc. v. Leegin Creative Leather Prods., Inc.*, 171 Fed. App'x 464 (5th Cir. 2006). On December 7, 2006, the Supreme Court granted certiorari. 549 U.S. 1092 (2006). On June 28, 2007, the Supreme Court reversed the decision of the Fifth Circuit. 551 U.S. 877 (2007).

On June 29, 2012, the Supreme Court granted certiorari in *Bennett v. United States*, 567 U.S. 950 (2012), a case over which I presided as a district court judge. The Court vacated the judgement of the Fifth Circuit and remanded the case for further consideration in light of *Dorsey v. United States*, 567 U.S. 260 (2012).

On April 28, 2014, the Supreme Court granted certiorari in *Wright v. United States*, 134 S. Ct. 1933 (2014), a case over which I presided as a district court judge. The Court vacated the judgement of the Fifth Circuit and remanded the case for further consideration in light of *Paroline v. United States*, 134 S. Ct. 1710 (2014).

Please see Appendix 13.e. for a list of cases where certiorari was requested but denied.

- 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.

Romain v. Walters, No. 2:15-CV-06942-KDE-SS (E.D. La. July 18, 2016), *rev'd*, 856 F.3d 402 (5th Cir. 2017).

Recipients of benefits under Supplemental Nutritional Assistance Program (SNAP), whose eligibility for the program was terminated upon expiration of state-wide work waiver, filed suit against Secretary of Louisiana Department of

Children and Family Services, alleging violation of due process and related rights under SNAP. Following settlement, the recipients moved for attorney fees and costs as the prevailing party under 42 U.S.C. § 1988. I issued an order denying the motion, and the recipients appealed.

The Fifth Circuit reversed, holding that the recipients were prevailing parties for purposes of attorney's fees and costs under 42 U.S.C. § 1988 as a matter of law. The Fifth Circuit remanded to determine whether special circumstances applied, and if special circumstances did not apply, to determine the amount of reasonable and necessary attorney's fees.

Fisk Elec. Co. v. Woodrow Wilson Const. Co., Civil Action No. 13-86, 2015 WL 328306 (E.D. La. Jan. 26, 2015), *rev'd*, 816 F.3d 311 (5th Cir. 2016).

The plaintiff subcontractor (Fisk Electric Co.) sued the defendant general contractor (Woodrow Wilson Const. Co.) claiming that the defendant violated Louisiana's Prompt Pay Statute, LSA-R.S. 9:2784, by failing to pay for electrical work on a school construction project. I entered summary judgment in the plaintiff's favor, concluding the evidence presented demonstrated that the defendant did not have "reasonable cause" under the statute to withhold payment from the plaintiff. The Fifth Circuit reversed and rendered summary judgment in Defendant's favor, finding my "reasonable cause" determination to be insufficient under Louisiana courts' interpretation of reasonable cause.

Armijo v. Tetra Techs., Inc., 936 F. Supp. 2d 675 (E.D. La. 2013), *rev'd sub nom.*, *Tetra Techs., Inc. v. Cont. Ins. Co.*, 814 F.3d 733 (5th Cir. 2016).

Workers filed suit against the operator of a derrick barge and the owner of a decommissioned oil production platform, seeking to recover damages for personal injuries they sustained offshore while performing salvage work on platform. The operator and owner subsequently filed a third-party indemnity action against the provider of rigging services and the provider's general liability insurer.

I granted summary judgment in favor of the operator and owner on their indemnification claim and summary judgment to the insurer on a claim for additional insured coverage. Subsequently, I entered an order denying the insurer's re-urged motion for summary judgment.

The Fifth Circuit affirmed with respect to the interpretation of the insurance policy, reversed with respect to the interpretation of the Louisiana Oilfield Indemnity Act (LOIA), and remanded to determine whether Louisiana law applies under the Outer Continental Shelf Lands Act (OCSLA).

Morgan v. Colvin, Civil Action No. 14-0814, 2015 WL 1525906 (E.D. La. Apr. 2, 2015), *rev'd*, 803 F.3d 773 (5th Cir. 2015).

Plaintiff Kenneth Morgan filed suit challenging the final decision of the Social Security Administration (the SSA) denying his application for disability insurance benefits and supplemental security income. I affirmed the decision, and Morgan appealed. The Fifth Circuit reversed the, finding that the Administrative Law Judge violated the SSA's internal hearings manual such that Plaintiff's rights were affected, and Plaintiff was prejudiced by the violation. Additionally, the Fifth Circuit remanded the action to the Commissioner for further proceedings consistent with its opinion.

Sun v. Colvin, Civil Action No. 13-6292, 2014 WL 10936543 (E.D. La. Aug. 11, 2014), *rev'd*, 793 F.3d 502 (5th Cir. 2015).

Claimant Leslie Sun filed suit, seeking judicial review of the Social Security Administration's (the SSA) denial of her applications for disability insurance benefits and supplemental security benefits. I entered judgment in favor of the SSA. The Fifth Circuit reversed and remanded for further proceedings because it was unable to determine, from review of the record as a whole, if there was substantial evidence to support the denial of benefits.

Tapp v. Gulf Stream Coach Inc., 2009 WL 365890, Civil Action No. 08-1134, 2009 WL 365890, (E.D. La. Feb. 11, 2009), *rev'd in part and aff'd in part sub nom.*, *Tapp v. Shaw Env'tl, Inc.*, 401 F. App'x 930 (5th Cir. 2010).

I granted summary judgment in favor of defendants Shaw Environmental, Inc., and Crown Roofing Services, Inc., on the grounds that plaintiff Tapp's claims against them did not relate back to the filing date of the original complaint. On appeal, the Fifth Circuit concluded Shaw had been served within 120 days of the filing date of the original complaint such that her claim against Shaw was timely. Accordingly, the Fifth Circuit reversed the grant of summary judgment in favor of Shaw Environmental, but affirmed as to Defendant Crown Roofing Services.

Korbel v. Lexington Ins. Co., Civil Action No. 06-7283, 2007 WL 2900203 (E.D. La. Oct. 4, 2007), *reconsideration denied*, 2007 WL 3237396 (E.D. La. Oct. 31, 2007), *rev'd in part and aff'd in part*, 308 F. App'x 800 (5th Cir. 2009).

The Fifth Circuit found that a genuine issue of material fact existed as to when the insurer received satisfactory proof of loss and thus precluded summary judgment in insurer's favor on claim for attorneys' fees and penalties.

Solana v. GSF Dev. Driller I, Civil Action No. 06-1983 (E.D. La. Aug. 2, 2006), *rev'd*, 587 F.3d 266, 272 (5th Cir. 2009).

As Hurricane Katrina approached, the crew of the Development Driller I ("DDI"), a semi-submersible drilling platform located in the Gulf of Mexico, evacuated and returned to shore. Immediately after the storm, the plaintiffs, members of the DDI's crew, returned to the platform to attempt to stabilize it. As compensation

for their efforts, the plaintiffs, argued that they had acted as “volunteers” in returning to the unit, and sought a salvage award of at least one percent of the DDI’s value. The Fifth Circuit agreed that the plaintiffs did not qualify as salvors. The Fifth Circuit disagreed, however, that the record permitted the conclusion that an express or implied agreement was reached that Plaintiffs would be compensated for their work on the same basis utilized just prior to Katrina. Accordingly, the Court of Appeals reversed summary judgment and remanded the action for additional briefing regarding the appropriate rate of compensation.

TIG Ins. Co. v. Eagle Inc., Civil Action No. 05-01792, 2007 WL 861153 (E.D. La. Mar. 19, 2007), *rev’d*, 294 F. App’x 920 (5th Cir. 2008).

I granted summary judgment in favor of the general liability insurer, Eagle Insurance Co., finding excess insurer, Gray Insurance Company, to be obligated under the excess insurance policy to pay “up-front” the covered claims and defense costs. The Fifth Circuit reversed, finding no ambiguity in the policy such that excess insurer was required only to reimburse or “pay-back” paid claims and defense costs.

House v. Am. United Life Ins. Co., No. Civ.A. 02-1342, 2004 WL 856671 (E.D. La. Apr. 20, 2004), *rev’d*, 499 F.3d 443 (5th Cir. 2007).

An insured attorney, a former partner in the law firm, sued the firm’s group long-term disability insurer, challenging the insurer’s determination of non-disability and accompanying termination of long term benefits payments, as well as seeking an award state-law penalties for bad faith and misrepresentation. I granted summary judgment for insured in part, concluding that the insurance policy was not governed by ERISA, and that insured was entitled to LTD benefits and state-law penalties. The Fifth Circuit reversed, finding the insurance policy to be part of an ERISA plan such that the insureds’ state-law claims for penalties and attorney fees was preempted and that the insured did not qualify for long-term benefits. The Fifth Circuit agreed, however, that the insured’s entitlement to partial disability benefits terminated as of February 2002.

Keytrade USA, Inc. v. M/V/ Ain Temouchent, No. Civ.A.01-161, 2004 WL 797789 (E.D. La. Apr. 8, 2004), *rev’d*, 404 F.3d 891 (5th Cir. 2005).

The Fifth Circuit reversed my determination that the charter party’s failure to contain provisions requiring incorporation of the arbitration clause into the bills of lading necessarily created confusion regarding who was the charterer or which charter party the bills of lading sought to incorporate. The Fifth Circuit reasoned that whether or not the voyage charter provides that all bills of lading should incorporate arbitration provisions may be relevant, but it is typically not dispositive. Because there was no confusion as to which charter party the bill of lading sought to incorporate, the Fifth Circuit found the voyage charter’s arbitration clause established a right to compel arbitration.

United States v. Bennett, Crim. Action No. 09-177, 2010 WL 487404 (E.D. La. June 29, 2012), *aff'd*, 664 F.3d 997 (5th Cir. 2011), *vacated*, 567 U.S. 950 (2012), *on remand*, 485 Fed. Appx. 673 (5th Cir. 2012).

I determined that the Fair Sentencing Act of 2010 did not apply retroactively to the defendants, but also concluded that, even if it did, the sentences would have been the same. The Fifth Circuit affirmed, citing its decision in *United States v. Tickles*, 661 F.3d 212 (5th Cir. 2011) and *United States v. Doggins*, 633 F.3d 379 (5th Cir. 2011).

On June 12, 2012, the United States Supreme Court vacated and remanded the matter to the Fifth Circuit for further consideration in light of the Court's decision in *Dorsey v. United States*, 567 U.S. 260 (2012). On remand, the Fifth Circuit held that an additional remand to the district court for resentencing was not warranted and that the life sentence imposed was substantively reasonable.

- 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.

All opinions I have issued are available in the court records maintained by the Clerk of the Court for the Eastern District of Louisiana or (for those cases where I have sat by designation) the Clerk of the Court for Fifth Circuit Court of Appeals. These opinions are generally available through the PACER.

Some of my opinions are available through electronic databases including Westlaw and LEXIS. A search of Westlaw conducted December 9, 2017 lists 1,552 opinions, 41 (approximately 2%) of which are reported. A search of LEXIS conducted December 9, 2017, lists 1,685 opinions, 53 (approximately 3%) of which are reported.

- 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.

Social Aid and Pleasure Club Task Force v. City of New Orleans, Civil Action No. 06-10057, 2007 WL 763241 (E.D. La. March 9, 2007)

Evans v. Union Bank of Switzerland, No. Civ. A. 01-1507, 2003 WL 21804984 (E.D. La. Aug. 4, 2003)

Gray Ins. Co. v. State Ins. Fund of New York, Civil Action No. 11-3066, 2012 WL 4469310 (E.D. La. Sept. 26, 2012)

- 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.

A list of citations to all cases in which I sat by designation on the Fifth Circuit Court of Appeals is provided at Appendix 13.i.

The following are opinions which I authored:

Claiborne v. Recovery Sch. Dist., 690 Fed. Appx. 249 (5th Cir. 2017).

An employee, a paraprofessional at a school, brought an action in state court against her former employer, alleging that the employer failed to accommodate her disability and that she was terminated because of her disability, her request for accommodation, and her application for workers' compensation benefits, in violation of the Americans with Disabilities Act (ADA), the Louisiana Employment Discrimination Law, and the Louisiana Workers' Compensation Law. Following removal, the district court granted summary judgment in favor of the employer. The employee appealed.

The Court of Appeals affirmed, holding that:

- (1) the employer's failure to fully engage in an interactive process to explore reasonable accommodations that would allow the employee to perform the essential functions of her job did not violate the ADA;
- (2) the employee failed to show that she was qualified for the position from which she was terminated, as required to make out a prima facie case of disability discrimination;
- (3) the employee failed to show that she was replaced by or treated less favorably than a non-disabled person, as required to make out a prima facie case of disability discrimination; and
- (4) the employee failed to show that her employer's proffered legitimate, non-discriminatory reason for terminating her, i.e., that her position was eliminated due to a reduction in force (RIF), was pretext for discrimination or retaliation.

United States v. Martinez-Rodriguez, 857 F.3d 282, 284 (5th Cir. 2017).

The defendant plead guilty in the United States District Court for the Southern District of Texas to knowingly being present in the United States after deportation without consent to re-enter. The defendant appealed his sentence.

The Court of Appeals vacated and remanded, holding that the modified categorical approach did not apply in determining whether a prior conviction for

causing injury to child was crime of violence, and the prior Texas offense – causing injury to child – was not a crime of violence.

Jurach v. Safety Vision, LLC, 642 F. App'x 313 (5th Cir. 2016).

A former employee brought a state court action against her employer, claiming that she was disabled due to an eye condition, that the employer failed to accommodate her disability under the Texas Commission on Human Rights Act, and that she was fired for discriminatory and retaliatory reasons. The district court granted the employer summary judgment. The former employee appealed.

The Court of Appeals affirmed, holding that the employer participated in an interactive process to find a reasonable accommodation for employee in good faith, and the employer's reduction in force (RIF) constituted a legitimate, nondiscriminatory reason for laying off the employee.

Groover v. Scottsdale Ins. Co., 586 F.3d 1012 (5th Cir. 2009).

The brother and guardians of minor children of a worker, who died from injuries sustained while performing debris removal and disposal work following Hurricanes Rita and Katrina, brought bystander, survival, and wrongful death actions against a debris removal contractor, subcontractor, sub-subcontractors, and their insurers. The United States District Court for the Eastern District of Louisiana granted summary judgment in favor of the contractor and subcontractor. The plaintiffs appealed.

The Court of Appeals affirmed, holding that the "two-contract" theory of the statutory employer defense applied to shield contractor and subcontractor from tort liability, and the subcontract in the case was permissible under the agreement between the contractor and parish.

In re Isbell Records, Inc., 586 F.3d 334 (5th Cir. 2009).

A music publisher brought a copyright infringement action against a record company, seeking a declaratory judgment that it was the rightful owner of two musical compositions. The United States District Court for the Eastern District of Texas dismissed for lack of standing. The music publisher appealed.

The Court of Appeals reversed and remanded, holding that an assignment agreement did not divest the music publisher of its right to pursue copyright infringement claims.

United States v. Brigham, 569 F.3d 220 (5th Cir. 2009).

Defendant appealed the revocation of his term of supervised release. The Court of Appeals affirmed, holding that: (1) the district court had authority to review

Magistrate Judge's "no probable cause" dismissal order; (2) a special condition of supervised release which prohibited defendant's possession or control of pornographic, sexually oriented, or sexually stimulating materials was not impermissibly vague as applied; and (3) the special conditions of supervised release were reasonably related to factors set forth in the statute governing supervised release.

City of Dallas v. Hall, 562 F.3d 712 (5th Cir. 2009).

The City of Dallas and the Texas Water Development Board (TWDB) filed suit against the United States Fish and Wildlife Service (FWS), claiming that the environmental assessment (EA) prepared by the FWS and the establishment of a refuge at a site where the City and TWDB had planned to build a reservoir violated the Tenth Amendment and the National Environmental Policy Act (NEPA). The United States District Court for the Northern District of Texas dismissed some claims, and granted summary judgment in favor of FWS on others. The plaintiffs appealed.

The Court of Appeals affirmed, holding that: (1) the EA was sufficient; (2) the decision-making process engaged in by FWS was not arbitrary and capricious; (3) an environmental impact statement was not required under NEPA; and (4) the City waived Tenth Amendment arguments on appeal.

United States v. Alfaro, 555 F.3d 496 (5th Cir. 2009).

The defendant was convicted in the United States District Court for the Southern District of Texas of production of child pornography and receipt of child pornography. He appealed his 288-month sentence. The Court of Appeals affirmed, holding that the district court's application of an offense level enhancement for the minor being in the custody, care, or supervisory control of defendant was warranted.

United States v. Bennett, 258 F. App'x 671 (5th Cir. 2007).

Following a jury trial, the defendant was convicted in the United States District Court for the Southern District of violating the Mann Act by transporting a minor with the intent to engage in criminal sexual activity. The defendant appealed.

The Court of Appeals affirmed, holding that: (1) an FBI interviewer was qualified to give expert testimony; (2) the district court had discretion to admit the interviewer's testimony regarding "compliant" victims of sexual abuse; (3) an improper kidnapping instruction that the victim was presumptively incapable of consenting to travel was harmless under the circumstances; (4) the evidence of intent was sufficient to sustain the Mann Act conviction; (5) the prosecutor's reference to defendant as a pedophile did not substantially affect his right to fair

trial; (6) venue was proper; and (7) the district court's sentence of 81 months' imprisonment was reasonable.

United States v. McGrew, 165 F. App'x 308 (5th Cir. 2006).

The defendant appealed his conviction in the District Court for the Western District of Texas for possessing a firearm and ammunition after having been previously convicted of a felony. The Court of Appeals affirmed, holding that the evidence was sufficient to show that defendant had dominion or control over the residence and that he had knowledge of and access to a firearm so as to support his conviction.

United States v. Montes-Nunez, 155 F. App'x 154 (5th Cir. 2005).

The defendant was sentenced to 77 months' imprisonment he plead guilty to illegally re-entering the United States following deportation. The defendant appealed. The Court of Appeals affirmed in part and vacated the sentence, holding that the district court's improper treatment of the federal sentencing guidelines as mandatory amounted to plain error requiring remand, and the defendant was not constitutionally entitled to a jury trial on the existence of a prior conviction, which the district court relied upon in enhancing his sentence.

Terrebonne Parish Sch. Bd. v. Mobil Oil Corp., 310 F.3d 870 (5th Cir. 2002).

A school board, as owner of mineral royalties on a tract of land owned by the State, filed a state court petition for damages against an oil company that was a party to a farm-out agreement with a mineral lessee. The school board asserted tort and contract claims with respect to erosion damage from an oil field canal. The action was removed to federal court on the basis of diversity jurisdiction. The United States District Court for the Eastern District of Louisiana granted summary judgment for the oil company and dismissed the claims as time-barred under one-year liberative prescription for delictual actions and ten-year liberative prescription for contractual actions. The school board appealed.

The Court of Appeals affirmed, holding: (1) the State's constitutional immunity from prescription did not inure to benefit of school board suing solely in its capacity as royalty owner and not in the name of the State; (2) the school board waived any claim that the law of solidarity conferred immunity from prescription; (3) the doctrines of *contra non valentem* and continuing tort did not suspend or provide an exception to the one-year prescriptive period on delictual claims; and (4) the school board could not claim the benefit of ten-year liberative prescription on actions *ex contractu*, absent proof of contract and privity.

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.

Because my sister-in-law Dorothy H. Wimberly, is an equity partner at the New Orleans law firm of Stone Pigman Walther Wittmann, L.L.C., I am automatically recused from any case filed by the Stone Pigman law firm, or in which the Stone Pigman law firm enrolls.

Following Hurricane Katrina (August 29, 2005), I filed a homeowners and auto claim with my insurer, State Farm Insurance Company, for my damaged home and vehicle. Accordingly, I provided blind recusal information to all counsel in cases involving State Farm. In some instances, counsel chose to have the case reallocated. In those instances, I was not, and have not been, made aware of the identity of counsel requesting reallocation. In other cases, counsel did not seek reallocation, thus waiving any potential conflict. I discontinued this practice when Katrina-related litigation ceased.

In my first five years on the bench, I recused myself from cases in which my former law firm, Hailey, McNamara, Hall, Larmann & Papale, was enrolled. Thereafter, I have recused myself only on cases involving my former partner, Richard T. Simmons, Jr., with whom I worked closely while at the firm. This is a *sua sponte* recusal based on his status as enrolled counsel.

My brother-in-law, Stephen T. Wimberly, is the First Assistant District Attorney in the Parish of Jefferson, State of Louisiana, 24th Judicial District Court. I therefore recuse automatically on all matters involving the Jefferson Parish District Attorney's Office.

I have denied motions to recuse in the following cases:

Superior Diving Co., Inc. v. Jay Watts, No. 05-197, 2008 WL 2097152 (E.D. La. May 16, 2008)

Henry v. IRS, No. 02-968, 2010 WL 1293349 (E.D. La. March 29, 2010)

Henry v. IRS, No. 09-5620, 2010 WL 1855971 (E.D. La. May 6, 2010)

Alexander v. Ayestas, No. 13-6195, 2014 WL 4275192 (E.D. La. Aug. 29, 2014)

In all of these cases, the movants had previously filed numerous motions and other improper pleadings, and I ruled accordingly. That motions to recuse were plainly based upon dissatisfaction with rulings on the improper pleadings and without merit.

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.

Notary Public Commission, State of Louisiana, 1985 – 2001 (granted by application, resigned upon taking the bench)

The Judiciary Commission of Louisiana (Member, 1995 – 1998; Chairman 1998). I was nominated by the Louisiana Conference of Court of Appeal Judges and appointed by Governor Edwin Edwards

- 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.

Jefferson Parish Young Republicans

Vice President for Political Affairs (1991 – approximately 1995).

David Vitter for Congress (Louisiana House District 1)

Treasurer (1999 – 2001). I was responsible for deposits, accounts payable, and FEC reporting.

Committee to Elect David Vitter (Louisiana legislature)

Chairman (1991 – 2001). I was responsible for accounts payable and Louisiana Ethics Commission reporting.

The Louisiana Term Limits Campaign

Treasurer (1995). I was responsible for the financial affairs of a campaign to amend the Louisiana Constitution to impose term limits for state legislators.

Between 1979 and 2001, I served as a volunteer for various state, local and federal Republican candidates including David Treen for Governor in 1979 and Ronald Reagan's presidential campaign in 1980. My responsibilities varied but were similar to those generally performed by campaign volunteers: preparing mailings; distributing campaign materials; and, helping with event preparation.

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

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

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

From 1985 to 1987 I served as a law clerk to the Hon. Charles Grisbaum, Jr., Louisiana Fifth Circuit Court of Appeal.

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

I have never practiced alone.

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

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Hailey, McNamara, Hall, Larmann & Papale, L.L.P.

One Galleria Boulevard, Suite 1400

Metairie, Louisiana 70001

Partner (1999 – 2001)

Associate (1992 – 1998)

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 never served as a mediator or arbitrator in an alternative dispute resolution proceeding.

b. Describe:

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

From 1987 to 1992 I was an associate with Little & Metzger, APLC (later Little, Metzger & Lamz, APLC) in Metairie, Louisiana. My practice was general commercial litigation, including bankruptcy, construction litigation, business, and contracts. I also was involved in receivership work for the FSLIC, as well as director and officer claims against personnel of related financial institutions.

In 1992, upon the dissolution of Little & Metzger, APLC, I joined Hailey, McNamara, Hall, Larmann & Papale, also located in Metairie, Louisiana. My practice there was very similar, except that much of my work initially involved defending officer and director claims asserted by the FDIC, FSLIC, and the Resolution Trust Corporation. I also participated in government contract litigation, professional malpractice defense, white collar criminal defense, civil and criminal RICO litigation, transactional work, and arbitration matters.

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

Typical clients of Little & Metzger, APLC included FSLIC (directly and as receiver for Enterprise Federal Savings and Loan), Insurance Underwriters Ltd., Century Graphics Printing, Johnny Smith Truck and Dragline Company, Inc., T.L. Wallis Construction Company, Mechanical Construction Company, Business Sound, Inc., and Jefferson Guaranty Bank. I also represented various individuals in transactional matters and in business-related litigation.

While at the Hailey McNamara law firm, my clients were similar. I also served as counsel of record for several matters involving large institutional clients including Avondale Shipyards and Lockheed Martin. In addition, I handled matters for several firm clients including State Farm Insurance Company, The Home Insurance Company, and Carlisle Syntec Systems. Moreover, I represented various professional liability insurance carriers, and individuals involved in those companies, both in transactional matters and in litigation. Finally, I was also involved in real estate transactional work, the purchase and sale of ongoing businesses, and negotiating various contracts between and among business entities and individuals.

- 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.

My practice was approximately 10% contractual negotiations/transactional and 90% litigation. I appeared in both various state and federal courts frequently throughout my time in practice. Early in my career, while handling mostly FSLIC-related work, my practice was heavily weighted toward federal court (particularly the Eastern District of Louisiana). As my experience broadened and the client base changed, my practice was more balanced between state and federal court.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 50% |
| 2. state courts of record: | 50% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 0% |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 95% |
| 2. criminal proceedings: | 5% |

My experience in criminal practice was mostly through my then partner, Richard T. Simmons, Jr. who handled several white collar criminal defense matters during my association with him.

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.

Sole Counsel: Approximately fifteen

Chief Counsel: Approximately eight

Associate Counsel: Approximately thirty

i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 20% |
| 2. non-jury: | 80% |

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

I have not practiced before the United States Supreme Court.

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. *Resolution Trust Corp. v. Miramon*, Civ. A. No. 92-2672, 1994 WL 90488 (E.D. La. March 11, 1994), *aff'd*, 22 F.3d 1357 (5th Cir. 1994).

The RTC sued officers and directors of failed savings and loan institution alleging negligence, breach of fiduciary duty, and gross negligence. I represented three defendant-directors. The district court dismissed the RTC's negligence and breach of fiduciary duty claims pursuant to Fed. R. Civ. P. 12(b)(6). On interlocutory appeal, the Fifth Circuit affirmed and held that the Financial Institutions Reform, Recovery and Enforcement Act established a federal standard of care of gross negligence in actions brought against directors or officers of federally-insured depository institutions and does not impose liability under lesser standards of care. I participated in all aspects of the litigation in the district court and the Fifth Circuit including discovery, motion practice, briefing, settlement negotiations, and court appearances.

Date of Representation: 1993 – 1996

District Court for the Eastern District of Louisiana: Hon. Charles Schwartz

Fifth Circuit Panel: Hon. Samuel Johnson; Hon. William L. Garwood; and E. Grady Jolly

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John V. Baus, Jr., Attorney at Law
[Then at Hammett & Baus]
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2. *United States ex rel Walle v. Martin Marietta Corp.*, No. 92-03677, 1997 WL 4566 (E.D. La. Jan. 6, 1997).

The Plaintiff brought fraud allegations against government contractor pursuant to the False Claims Act. The Plaintiff, a former employee, alleged that the contractor submitted false charges for payment to the U.S. government, used defective parts on External Fuel Tank, and billed for unsuccessful research and development. After a two-week jury trial, a verdict was reached for the defendant. I served as co-counsel and worked on every phase of pretrial and trial of this matter.

Date of Representation: 1993 – 1997

District Court for the Eastern District of Louisiana: Hon. Henry A. Mentz, Jr.

Co-Counsel

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William R. Seay, Jr.
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Counsel for the United States

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601 D Street
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3. *Ins. Underwriters Ltd. v. Oxford Mgmt., Inc.*, No. 87-13771 (La. Civ. Dist. Ct.).

The Plaintiffs, purchasers of an insurance division from the Defendants, alleged material misrepresentations in connection with the purchase. After a five-day bench trial, judgment was rendered in favor of the Plaintiffs. I represented the plaintiffs and worked on every phase of the case, including the filing of the original petition, motion practice, all aspects of discovery, and expert witness preparation. At trial, I handled certain witnesses and assisted with all others.

Date of Representation: 1987 – 1992

Civil District Court for the Parish of Orleans: Hon. Robin M. Giarrusso

Co-Counsel

Michael F. Little (deceased)

Defendant's Counsel

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4. *United States v. LaFont*, No. 93-407 (E.D. La.)

I represented Dennis LaFont in a criminal case involving a conspiracy to defraud certain insurance companies wherein defendant was an officer. A plea bargain was reached. I participated in most of the interviews given by Mr. LaFont to federal prosecutors necessary to satisfy Mr. LaFont's obligation to cooperate as part of his plea bargain. I also consulted with Mr. LaFont with regard to his ability to satisfy restitution

Date of Representation: 1993 – 2000

Presiding Judge: Hon. G. Thomas Porteous, Jr.

Co-Counsel

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5. *RTC v. Evans*, Nos. 90-0770, 90-0611, 92-0756 (E.D. La.).

This case involved officer/director liability arising out of failed federally-insured savings and loan institutions. The case involved various aspects of federal statutory and common law, particularly the Financial Institution Reform, Recovery and Enforcement Act (FIRREA). I represented one of the defendants, Robert B. Evans. I participated in all aspects of this litigation, including extensive motion practice, settlement negotiations, depositions and other pretrial activity. I also participated in assisting on criminal proceedings brought Mr. Evans.

Date of Representation: 1992 – 1995

Presiding Judges: Hon. Edith Brown Clement, Hon. Marcel Livaudais, Jr.

Co-Counsel

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6. *Monumental Life Ins. Co. v. R.A.J. Holdings*, No. 99-3281 C/W (E.D. La.); *Admiral Ins. Co. v. R.A. Jakelis & Co.*, No. 99-2270 C/W (E.D. La.); *Monumental Life Ins. Co. v. Exec. Risk Specialty Ins. Co.*, No. 99-2676 (E.D. La.).

This litigation involved allegations of breach of a reinsurance agreement, reinsurance brokers and underwriters agreements, breaches of various fiduciary responsibilities and duties, and extensive insurance coverage issues. I served as lead counsel for defendants. The plaintiff insurance company contended that the defendants were part of a “single business enterprise”, and thus should be held liable for debts and obligations of another corporate entity accused of violating its fiduciary and contractual duties. The “single business enterprise” claim was dismissed by the Court on my motion for summary judgment. The remainder of the case settled.

Date of Representation: 1999 – 2000

Presiding Judges: Hon. Charles Schwartz, Jr.; Hon. Sally Shushan

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7. *Pan-American Life Ins. Co. v. Jakelis*, No. 99-7783 (Orleans Parish Civ. Dist. Ct.).

This litigation involved allegations of breach of a reinsurance agreement,

reinsurance brokers and underwriters agreements, breaches of various fiduciary responsibilities and duties, and extensive insurance coverage issues. I served as lead counsel for defendants. The plaintiff insurance company contended that the defendants were part of a “single business enterprise”, and thus should be held liable for debts and obligations of another corporate entity accused of violating its fiduciary and contractual duties. I was involved in investigation of this claim, extensive research of the law, communicating with opposing counsel, preparing and filing a motion to dismiss based on an unsettled area of law (in the Fifth Circuit), and attended all proceedings leading up to dismissal.

Date of Representation: 1999 – 2001

Presiding Judge: Hon. Carolyn W. Gill-Jefferson

Co-Counsel

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8. *Avery v. Schmidt*, No. 93-4079 (E.D. La.).

I represented a defendant, Michael O'Keefe, Sr. in a civil RICO case. Mr. O'Keefe was dismissed pursuant to the McCarran-Ferguson Act. I was involved in the investigation of this claim, extensive research of the law, communicating with opposing counsel, preparing and filing the Motion to Dismiss based on an unsettled area of law (in the Fifth Circuit), and I attended all proceedings leading up to dismissal.

Date of Representation: 1993 – 1995

Presiding Judge: Hon. Patrick E. Carr

Co-Counsel

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9. *Philips v. Berner*, No. 97-11980 (Orleans Parish Civ. Dist. Ct.), *rev'd*, 789 So. 2d 41 (La. App. 4th Cir. 2001).

I represented the plaintiff, Mr. Phillips, with regard to a breached oral sale agreement and material misrepresentations which culminated in the termination of his employment by his employer, Berner's Heating & Air Conditioning. The case was tried before a jury over four and a half days, and verdict was rendered in favor of Mr. Phillips. The defendants appealed to the Louisiana Fourth Circuit Court of Appeal, which reversed the judgment. I handled all aspects of the litigation, including the filing of suit, motion practice, all aspects of discovery, conferences with the court, pretrial preparation, and all presentation before the jury.

Date of Representation: 1997 – 2001

Presiding Judge: Hon. Carolyn W. Gill-Jefferson

Co-Counsel

Lynette Hall-Lewis
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10. *Giordano v. Sassone*, No. 419-002 (Jefferson Parish 24th Jud. Dist. Ct.)

This was a legal malpractice action brought by a former client of the defendant attorney, claiming that the defendant attorney committed malpractice in making a claim to mineral royalties in Plaquemines Parish. A class of other claimants intervened in the malpractice action, aligning themselves with the original plaintiff, alleging malpractice. After the class action was litigated and the intervention dismissed by court order, the original case settled. I represented the defendant, Martha Sassone. I scheduled and took depositions, participated in all hearings including oral argument, and handled certain witnesses at the class action hearing. In addition, I drafted numerous pleadings and other briefs filed with the court. I also participated in all aspects of settlement, and handling of the client.

Date of Representation: 1991 – 1999

Presiding Judge: Hon. Brady Fitzsimmons

Co-Counsel

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Counsel for Intervenors Farrett J. Romagossa, Sr. and Merrill S. Cantin, Sr.

Nelson L. Burchfield, died during case; representation assumed by:
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Assistant Parish Attorney
Plaquemines Parish Legal Department
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Belle Chasse, Louisiana 70037
(504) 297-5697

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I represented a variety of clients in transactional matters including real estate closings, the purchase or mergers of businesses, the drafting and negotiation of employee/officer contracts, and other general business transactions where the advice of counsel was requested. I also participated in several internal investigations for corporations including Lockheed Martin, Avondale Shipyards, and Columbia Healthcare, to discern compliance with various regulatory and statutory guidelines. I also served represented parties in several arbitration proceedings.

I represented the parents of several parents of disabled children in Jefferson Parish, Louisiana. I met with Parish School Board's attorney to find reasonable accommodations for the children consistent with the Americans with Disabilities Act. This representation was successful without the need to commence costly and protracted litigation.

From 1995 to 1998 I served a member and chairman (1998) of the Louisiana Judiciary Commission. The Commission makes recommendations to the Louisiana Supreme Court concerning allegations of misconduct by members of the Louisiana judiciary.

I have never served as a lobbyist or been involved in lobbying activities.

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.

None.

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.

No.

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).

None.

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

See attached.

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.

Because my sister-in-law Dorothy H. Wimberly, is an equity partner at the New Orleans law firm of Stone Pigman Walther Wittmann, L.L.C., I am automatically recused from any case filed by the Stone Pigman law firm, or in which the Stone Pigman law firm enrolls. If I am confirmed, I will continue this recusal policy.

In my first five years on the bench, I recused myself from cases in which my former law firm, Hailey, McNamara, Hall, Larmann & Papale, was enrolled.

Thereafter, I have recused myself only on cases involving my former partner, Richard T. Simmons, Jr., with whom I worked closely while at the firm. If I am confirmed, I will continue this recusal policy.

My brother-in-law, Stephen T. Wimberly, is the First Assistant District Attorney in the Parish of Jefferson, State of Louisiana, 24th Judicial District Court. I am therefore automatically recused on all matters involving the Jefferson Parish District Attorney's Office, which primarily consists of habeas applications arising out of state court prosecutions/convictions in Jefferson Parish. If I am confirmed, I will continue this recusal policy.

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

In addition to recusing myself as set forth above, I will continue to carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any other laws, rules, and practices governing such circumstances.

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

As a U.S. District Judge, and now Chief Judge, I have participated in and encouraged pro bono practice in our Louisiana courtrooms, giving younger lawyers valuable litigation experience in court. On those occasions, counsel volunteered his/her services on a pro bono basis, mostly through a program my Court developed with the New Orleans Chapter of the Federal Bar Association.

26. **Selection Process**:

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

On February 7, 2017, I traveled to Washington, D.C. and met individually with the following members of the Louisiana Congressional delegation: Senator Bill Cassidy; Senator John Kennedy; Congressman Steven Scalise; and, Congressman

Ralph Abraham. On the following day I met individually with Congressman Garrett Graves and Congressman Mike Johnson.

On March 28, 2017, I again traveled to Washington, D.C. for the Chief Judges Conference, and met with Louisiana Congressman Clay Higgins.

There is no formal selection commission in Louisiana to recommend candidates for nominations to federal courts. However, Senator Bill Cassidy put together an ad hoc committee, chaired by David Cassidy of Baton Rouge, to interview those interested in judicial positions. Interested candidates completed a questionnaire for review by the committee. On May 12, 2017, I interviewed with Senator Cassidy's committee in New Orleans. The interview lasted approximately one hour, during which I answered a variety of questions on a variety of topics.

On June 19, 2017, I interviewed in Washington, D.C. with attorneys from the White House Counsel's Office and the Department of Justice's Office of Legal Policy.

On August 3, 2017, I was contacted by the White House Counsel's Office and informed that the White House was interested in nominating me for this vacancy. On October 5, 2017, the President submitted my nomination to the Senate.

I have communicated regularly with the Office of Legal Policy in the preparation of my answers to this questionnaire and the completion of other related materials.

- 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.