

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Richard Edward Neel Federico

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

United States Circuit Judge for the Tenth Circuit

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

Office: Federal Public Defender, District of Kansas
117 Southwest 6th Avenue, Suite 200
Topeka, Kansas 66603

Residence: Lawrence, Kansas

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

1977; Richmond, Indiana

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

2011 – 2012, Georgetown University Law Center; LL.M., 2012 (Distinction)

1999 – 2002, University of Kansas School of Law; J.D., 2002

1995 – 1999, Indiana University; B.A.J., 1999

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.

2017 – present
Federal Public Defender, District of Kansas
117 Southwest 6th Avenue, Suite 200
Topeka, Kansas 66603
Senior Litigator (2020 – present)
Assistant Federal Public Defender (2018 – 2020)
Research and Writing Specialist (2017 – 2018)

2022 – present
Navy Reserve Trial Judiciary
Navy-Marine Corps Trial Judiciary
Washington Navy Yard
1250 10th Street, Southeast, Suite 1300
Washington, DC 20374
Military Judge

2020 – 2022
Navy Reserve Region Legal Service Office Southwest
Navy Base San Diego
3395 Sturtevant Street #9
San Diego, California 92136
Trial Counsel (Prosecutor/Special Assignment)

2019 – 2020
Navy Reserve Trial Judiciary
Navy-Marine Corps Trial Judiciary
Washington Navy Yard
1250 10th Street, Southeast, Suite 1300
Washington, DC 20374
Military Judge

2015 – 2019
Navy Reserve Navy-Marine Corps Appellate Review Authority
Appellate Defense, Office of the Judge Advocate General, Code 45
Washington Navy Yard
1254 Charles Morris Street, Southeast, Suite B01
Washington, DC 20374
Appellate Defense Counsel

2015 – 2017
Federal Public Defender, District of Oregon
101 Southwest Main Street, Suite 1700
Portland, Oregon 97204
Assistant Federal Public Defender

2012 – 2015

Defense Service Office Southeast, Detachment Mayport/Branch Office Jacksonville
Naval Station Mayport
1868 Baltimore Street
Jacksonville, Florida 32228
Officer in Charge (2013; 2014 – 2015)
Senior Defense Counsel (2012 – 2013; 2014)

2012
Navy Legal Service Office Southeast
Naval Station Mayport
1868 Baltimore Street
Jacksonville, Florida 32228
Executive Officer

2008 – 2012
Office of the Chief Defense Counsel, Office of Military Commissions
1600 Defense Pentagon
Washington, DC 20301
Defense Counsel

2005 – 2008
U.S. Region Legal Service Office Europe & Southwest Asia
U.S. Naval Support Activity Naples, Italy
PSC 817 Box 8
FPO AE 09622
Director, Military Justice (Senior Trial Counsel) (2006 – 2008)
Trial Counsel (Prosecutor) (2005 – 2006)

2003 – 2005
Trial Service Office East
Naval Station Norfolk
9680 Maryland Avenue
Norfolk, Virginia 23507
Trial Counsel (Prosecutor)

2001 – 2002
Lawrence Parks & Recreation
100 Rock Chalk Lane
Lawrence, Kansas 66049
Basketball Official

2001
Anderson & Byrd, LLP
216 South Hickory Street
Ottawa, Kansas 66067
Legal Intern

2000 – 2001
Law School Book Exchange (now defunct)
Lawrence, Kansas 66045
Sales

2000
Federico Law Office
20 West Walnut Street
Hagerstown, Indiana 47346
Summer Legal Intern

1999 – 2000
University of Kansas School of Business
1654 Naismith Drive
Lawrence, Kansas 66045
Computer Lab Monitor

1999
Indiana University, High School Journalism Institute
Franklin Hall, 230
601 East Kirkwood Avenue
Bloomington, Indiana 47405
Head Men's Counselor

Other affiliations (uncompensated)

2020 – 2023
Lawrence Parks & Recreation
100 Rock Chalk Lane
Lawrence, Kansas 66049
Girls Volleyball Coach

2019
Catholic Youth Organization of Johnson and Wyandotte Counties
Corpus Christi Catholic School
6001 Bob Billings Parkway
Lawrence, Kansas 66049
Girls Basketball Coach

2017 – 2019
Sporting Kaw Valley Soccer Club
3120 Mesa Way, Suite C
Lawrence, Kansas 66049
Youth Soccer Coach

2012 – 2015
University of Kansas School of Law
Board of Governors
University of Kansas, Green Hall
1535 West 15th Street
Lawrence, Kansas 66045
Board Member

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.

2002 – present, U.S. Navy, Judge Advocate General (JAG) Corps, Captain (O-6)

2002 – 2015, Active Duty, Honorable Discharge

2015 – present, Select Reserves

I registered for the 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.

Distinguished Alumnus, Indiana University, The Media School, High School Journalism Institute (2021)

Rear Admiral Hugh H. Howell, Jr. Award of Excellence (Senior Officer) for outstanding contributions to the Naval Reserve Law Program (2019)

Thomas Bradbury Chetwood, S.J. Prize for the Most Distinguished Academic Performance Leading to a Master of Laws Degree, Georgetown University Law Center (2012)

Junior Officer of the Year, U.S. Region Legal Service Office, Europe & Southwest Asia (2007)

Junior Officer of the Quarter, Trial Service Office East (2003)

CALI Award for Oil and Gas Law, University of Kansas School of Law (2001)

Military Awards and Decorations

Defense Meritorious Service Medal (2012)

Meritorious Service Medal (2015)

Navy and Marine Corps Commendation Medal (4 awards – 2021, 2019, 2008, 2005)
Navy and Marine Corps Achievement Medal (2006)
National Defense Service Medal (2003)
Global War on Terror Expeditionary Medal (2010)
Global War on Terror Service Medal (2004)
Overseas Service Ribbon (2006)
Navy Marksman Rifle Ribbon (2003)
Navy Marksman Pistol Ribbon (2003)

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.

Judge Hugh Means Inn of Court, Douglas County, Member (2017 – present)
Executive Committee Member (2023 – present)

U.S. District Court, District of Kansas, Local Rules (Criminal) Committee Member (2023 – present)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Indiana, 2002
Kansas, 2017

There have been no lapses in membership. I was on inactive status in Indiana from 2002 to 2014, while on active duty and under the supervision and cognizance of the Judge Advocate General of the Navy, pursuant to the Uniform Code of Military Justice, Rule for Court-Martial 109, and Navy JAG Instruction 5803.1E.

- 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.

United States Court of Appeals for the Tenth Circuit, 2017
United States Court of Appeals for the Ninth Circuit, 2016
United States Court of Appeals for the D.C. Circuit, 2009
United States Court of Appeals for the Armed Forces, 2016
Navy-Marine Corps Court of Criminal Appeals, 2016
United States District Court, District of Kansas, 2017
United States District Court, District of Oregon, 2015

There have been no lapses in membership.

11. **Memberships:**

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

Cabana Beach Club, Ponte Vedra Beach, Florida (2012 – 2015)

Indiana University Alumni Association (2003 – present)

Indiana University Varsity Club (2020 – present)

The Jayhawk Club (2023 – present)

Lawrence Arts Center (2018 – present)

Lawrence Country Club (2020 – 2023)

University of Kansas Alumni Association (2003 – present)

University of Kansas Athletics Williams Education Fund (2017 – present)

University of Kansas School of Law, Board of Governors, Member (2012 – 2015)

VillaSport Athletic Club, Beaverton, Oregon (2015 – 2017)

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

To the best of my knowledge and belief, none of the listed organizations currently discriminates or formerly discriminated based on 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.

The following list represents my best effort to identify all written materials I have published, based on my review of my own records and publicly available information.

The First Step Act & Compassionate Release, Kansas Federal Defender BLOG (Jan. 10, 2019). Copy supplied.

Stash House Sting Cases – Relaxing the Standard on Discovery, Kansas Federal Defender BLOG (Sept. 10, 2017). Copy supplied.

Government Hacking and the Dark Net: Coming Soon to the Tenth Circuit, Kansas Federal Defender BLOG (Apr. 25, 2017). Copy supplied.

Immigration – Expansion of Expedited Removal – Know Your Rights, Kansas Federal Defender BLOG (Feb. 26, 2017). Copy supplied.

Defending Veterans in Federal Court, Still at War: A Guide for Defenders, Prosecutors & Judges Dealing with Oregon's Veteran Defendant Crisis 13-i (Jesse Wm. Barton, ed.) (2017). Copy supplied.

The Unusual Punishment: A Call for Congress to Abolish the Death Penalty Under the Uniform Code of Military Justice for Unique Military, Non Homicide Offenses, 18 Berkeley J. Crim. L. 1 (Spring 2013). Copy supplied.

Seeking Justice at Guantanamo Bay, 13(1) JAG Magazine (2011). Copy supplied.

Editorial, *Protest? Why Bother*, Indiana Daily Student (Apr. 12, 1999). Copy supplied.

Editorial, *A Fresh Start for Baseball*, Indiana Daily Student (Apr. 5, 1999). Copy supplied.

Editorial, *Kosovo Could Ignite WWII*, Indiana Daily Student (Mar. 29, 1999). Copy supplied.

Editorial, *The Beauty of 'The Body'*, Indiana Daily Student (Mar. 8, 1999). Copy supplied.

Editorial, *The Good Ol' Days of the Cold War*, Indiana Daily Student (Feb. 22, 1999). Copy supplied.

Editorial, *History Repeats Itself*, Indiana Daily Student (Feb. 15, 1999). Copy supplied.

Editorial, *Hail to His Airness: MJ for President*, Indiana Daily Student (Jan. 25, 1999). Copy supplied.

Editorial, *Congress Should Ignore Us*, Indiana Daily Student (Jan. 9, 1999). Copy supplied.

Vehicles Towed Around Town, Arbutus Yearbook (1999). Copy supplied.

Spirit of Sport Raises Record Amount for Special Olympics, Arbutus Yearbook (1998). Copy supplied.

Sprinting to the Finish, Arbutus Yearbook (1998). Copy supplied.

Gone Phishin': Immersed in the Culture, Arbutus Yearbook (1998). Copy supplied.

Dynasty Wins in 'Hoosiers' Sequel, Indiana Daily Student (Apr. 3, 1997). Copy supplied.

A Competitive Sport: Ballroom Dancers Fight Stereotypes, Collegiate Opponents, Indiana Daily Student (Jan. 22, 1997). 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.

In February 2023, I submitted a memorandum to other members of the District of Kansas Local Rules (Criminal) Committee. Copy supplied.

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

I added my name as a signatory to a letter dated June 5, 2020, from the Federal Public Defender for the District of Kansas to Senators of the Kansas Legislature. This letter was sent after the Kansas Senate confirmation vote regarding my former colleague, then-Assistant Federal Public Defender, now-Honorable Carl Folsom III, District Judge, Douglas County District Court, Kansas. Copy

supplied.

In May 2015, I testified before the Judicial Proceedings Panel Subcommittee that was created by the Secretary of Defense pursuant to Section 576(d) of the National Defense Authorization Act for Fiscal Year 2013. The Report of the Subcommittee references my testimony in footnotes 38, 39, and 121. Report, notes, and partial transcript supplied. I am unable to locate the full transcript of my testimony.

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

The following list represents my best effort to identify all presentations and panels I have given or participated, based on my review of my own records and publicly-available information.

April 14, 2023: Presenter, "The Truth of the Matter: Hearsay, Common Evidence, and Admissibility," Federal Bar Association, District of Kansas, Topeka, Kansas. PowerPoint supplied.

April 15, 2022: Presenter, "Informants by Any Name: Discovery & Litigation Strategies," Discovery Conference for Federal Criminal Defense Practitioners, Lawrence, Kansas. PowerPoint supplied.

December 7, 2021: Presenter, "The JAG Corps in the Fleet, Navy Reserve Officers' Training Corps," University of Kansas, Lawrence, Kansas. PowerPoint supplied.

September 24, 2019: Panelist, "Government Practice Panel," Washburn University School of Law. I was part of a panel of lawyers from several federal agencies discussing our practices working for the federal government. I have no notes, transcript, or recording. The address for Washburn University School of Law is 1700 Southwest College, Suite 331C, Topeka, Kansas 66621.

September 19, 2019: Panelist, "Government Practice Panel," University of Kansas School of Law. I was part of a panel of lawyers from several federal agencies discussing our practices working for the federal government. I have no notes, transcript, or recording. The address for Career Services, University of Kansas School of Law is 204 Green Hall, 1535 West 15th Street, Lawrence, Kansas

66045.

November 15 & 16, 2018: Presenter, "Terrorism & The Judiciary: History, Law & Controversy," Wichita, Kansas and Kansas City, Missouri. PowerPoint supplied.

February 13, 2018: Presenter, "Military Commissions and Guantanamo Bay: History, Law, and Controversy," Washburn University School of Law, Topeka, Kansas. PowerPoint supplied.

November 16 & 25, 2017: Presenter, "Military Commissions & Guantanamo Bay: History, Law & Controversy," Judge Hugh Means Inn of Court, Lawrence, Kansas. PowerPoint supplied.

October 5–6, 2017: Presenter, "Haze Gray and Underway: Navigating Choppy Ethical Waters," Ethics CLE, Wichita and Lawrence, Kansas. PowerPoint supplied.

January 25, 2017: Presenter, "Military Commissions & Guantanamo Bay," Portland State University, Portland, Oregon. PowerPoint supplied.

January 18, 2017: Presenter, "Cross-Examination Skills Workshop," CLE Seminar, Portland, Oregon. PowerPoint supplied.

March 2016 (specific date unknown): Panelist, "Defending al-Qaeda," Lewis & Clark Law School, Portland, Oregon. The panel was about experiences defending clients charged with terrorism offenses. I have no notes, transcript, or recording. The address for Lewis & Clark Law School is 10101 South Terwilliger Boulevard, Portland, Oregon 97219.

December 2014 (specific date unknown): Lecturer, "Cross Examination & Impeachment," Naval Justice School (Online Legal Education), Newport, Rhode Island. PowerPoint supplied.

April 2012 (specific date unknown): Moderator, "A Question of Legitimacy: The Reformed Military Commissions," Center on National Security and the Law, Georgetown University Law Center, Washington, DC. The panel was on the military commission proceedings at Guantanamo Bay. I have no notes, transcript, or recording. The address for Georgetown University Law Center is 600 New Jersey Avenue, Northwest, Washington, DC 20001.

November 9, 2011: Panelist, "The Veteran's Day Panel," Military Law Society, Georgetown University Law Center, Washington, DC. The panel discussed our experiences serving in the armed forces. I have no notes, transcript, or recording. The address for the Military Law Society is 600 New Jersey Avenue, Northwest, Washington, DC 20001.

January 29, 2010: Panelist, "Military Commissions Under President Obama," National Institute of Military Justice, American University, Washington College of Law, Washington, DC. Notes supplied.

September 2009 (specific date unknown): Presenter, The Rule of Law & the War on Terror: Lessons from Guantanamo Bay, Military Officers Association of America, Jayhawk Chapter, Lawrence, Kansas. PowerPoint supplied.

September 2009 (specific date unknown): Panelist, "Should Terrorists Be Tried by Military Commissions?," Amnesty International & Center on National Security & the Law, Georgetown University Law Center, Washington, DC. This panel was a discussion about judicial forum for terrorism trials. I have no notes, transcript, or recording. The address for Georgetown University Law Center is 600 New Jersey Avenue, Northwest, Washington, DC 20001.

November 2008 (specific date unknown): Presenter, "Military Commissions: Role of Lawyers & the Rule of Law in the War on Terror," Boone County CLE, Lebanon, Indiana. This speech was about my experience as a lawyer representing Guantanamo detainees. I have no notes, transcript, or recording. The address for the Boone County Bar Association is P.O. Box 385, Lebanon, Indiana 46052.

- 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.

The following reflects my best effort to identify published interviews in which I am quoted, based on my review of my records and publicly available information.

Claire Withycombe, *Former Oregon DOJ, DA's Employee Pleads Guilty To Theft of Government Funds - Bruce Endicott Admits Taking over \$55,000 in Federal Benefits*, The Bulletin (June 30, 2016). Copy supplied.

Russ Bynum, *7 Sailors Charged After Videos Surfaced of Females on Board*, Associated Press (Mar. 25, 2015). Copy supplied.

Russell Jackson, *Federico Makes Headlines as 9/11 Attorney*, Indiana University Newswires Magazine 43 (Fall 2011). Copy supplied.

Ben Fox, *U.S. Stalls on Sept. 11 Trial for 5 at Gitmo*, Associated Press (July 31, 2010). Copy supplied.

In Quotes: US 9/11 Trial Reactions, BBC News (Nov. 13, 2009). Copy supplied.

Peter Finn, *Lawyers for Alleged Sept. 11 Conspirator Move to Block Hearings*,

Los Angeles Times – Washington Post News Service (Sept. 10, 2009). Copy supplied.

Lara Jakes, *Obama Revives Terror Tribunals, Dismaying Liberals*, Associated Press (May 15, 2009). Copy supplied.

Guantanamo Cases Proceed Despite Freeze, Irish Times (Mar. 11, 2009). Copy supplied.

Ben Fox, *Secret Gitmo Camp Opened to Defense Lawyers*, Associated Press (Nov. 19, 2008). Copy supplied.

Josh White, *Detainees May Be Denied Evidence for Defense*, Washington Post (June 15, 2008). Copy supplied.

Al-Jazeera TV Notes Restrictions on Media Coverage of US Guantanamo Hearing, BBC Monitoring International Reports (June 7, 2008). Copy supplied.

Accused September 11 Planners to Face Charges, National Public Radio, All Things Considered (June 4, 2008). Recording and transcript supplied.

Carol Rosenberg, *Khalid Sheik Mohammed Gets June 5 Court Date*, Miami Herald (May 14, 2008). Copy supplied.

US: Afghan Accused of Firing Missiles, Spying on Bases to Face War Crimes Trial at Guantanamo, Associated Press (Apr. 7, 2008). Copy supplied.

Kate Wiltout, *Petty Officer Gets Prison, Fine in Identity Theft of Shipmates*, The Virginia-Pilot B3 (Feb. 24, 2005). 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.

In 2019, I was designated and certified by the Judge Advocate General of the Navy as a Military Judge, pursuant to Article 26 of the Uniform Code of Military Justice, 10 U.S.C. § 826. Military Judges have jurisdiction to preside over general and special courts-martial criminal cases that have been referred for trial by a convening authority. I serve as a Military Judge in a reserve capacity, or part-time, as a member of the Navy Reserve Trial Judiciary Unit. The mission of our Unit is to augment and support the Active Component to preside over courts-martial cases when needed and called upon.

Throughout my Navy career, on active duty and in the reserves, I have also been detailed to serve in a quasi-judicial capacity as a preliminary hearing officer in eight cases, pursuant to Article 32 of the Uniform Code of Military Justice, 10 U.S.C. § 832. The duty of a preliminary hearing officer is to conduct a hearing to receive evidence and then to

issue a report to the convening authority that includes findings regarding jurisdiction, probable cause, and recommendations as to disposition. The authored reports are appended to the record of trial, if a case proceeds to trial by court-martial and reaches judgment. The records of trial are unpublished.

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

I have been detailed to preside over 11 court-martial cases. For several of the cases, my involvement was solely to preside over the initial appearance and arraignment. For others, I presided over preliminary matters or search warrant applications. I have not presided over any trials. I have presided over four cases that have gone to judgment by plea and sentencing, listed in Question 13c below. Each were findings of guilt, pursuant to the guilty pleas of the accused.

- i. Of these cases, approximately what percent were:

jury trials:	0%
bench trials:	0%

- ii. Of these cases, approximately what percent were:

civil proceedings:	0%
criminal proceedings:	100%

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

I have not written any opinions that have been published or are publicly available.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of 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 (4) 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. Sigler*, Naval Station Great Lakes, Chicago (Nov. 2020) (unreported)

I was detailed as Military Judge to preside over a special court-martial of a combat-wounded E-6 Sailor from Naval Station Great Lakes. I accepted the accused's pleas of guilty to: unauthorized absence, in violation of Article 86, UCMJ; willfully disobeying a superior commissioned officer, in violation of Article 90, UCMJ; violation of a lawful general order, in violation of Article 92, UCMJ; battery upon an intimate partner, in violation of article 128, UCMJ; and assault by strangulation, in violation of article 128b, UCMJ. I accepted the plea

agreement of the parties that required a certain punishment range, heard evidence and argument regarding an appropriate sentence, and sentenced the accused to 14 months' confinement and reduction to the paygrade of E-3.

Counsel for the United States

Lieutenant Commander Ryan Mooney, JAG Corps, U.S. Navy
Region Legal Service Office Midwest
2540 Paul Jones Street
Building 2, Suite 100
Great Lakes, IL 66088
(847) 688-3805

Counsel for the Accused

Lieutenant Commander Bradley Newsad, JAG Corps, U.S. Navy
Post-Graduate Student
Navy Talent Acquisition Group
Portland, OR 97219
(843) 256-6178

2. *United States v. Prall*, Naval Station Great Lakes, Chicago (Nov. 2020) (unreported), *aff'd*, No. 202100019, 2021 CCA LEXIS 396 (N-M Ct. Crim. App. Aug. 4, 2021) (per curiam) (unpublished).

I was detailed as Military Judge to preside over a special court-martial of an E-6 Sailor from Training Support Center Great Lakes. I accepted the accused's plea of guilty to indecent recording, in violation of Article 120c, UCMJ. I accepted the plea agreement of the parties that required a certain punishment range, heard evidence and argument regarding an appropriate sentence, and sentenced the accused to 45 days' confinement, reduction to the paygrade of E-2, and a Bad Conduct Discharge.

Counsel for the United States

Lieutenant Dallin Sopp, JAG Corps, U.S. Navy
Region Legal Service Office Midwest
2540 Paul Jones Street
Building 2, Suite 100
Great Lakes, IL 66088
(916) 220-8156

Counsel for the Accused

Lieutenant Dave Coles, JAG Corps, U.S. Navy
Defense Service Office North
2540 Paul Jones Street,
Building 2, Suite 100
Great Lakes, IL 60088
(847) 688-4753

3. *United States v. Lambert*, Naval Station Great Lakes, Chicago (June 2022) (unreported), *aff'd*, No. 202200215 (N-M. Ct. Crim. App. Jan. 25, 2023) (per curiam) (unreported).

I was detailed as Military Judge to preside over a special court-martial of an E-6 Sailor from Navy Recruiting Command. I accepted the accused's pleas of guilty to violation of a lawful general order, in violation of Article 92, UCMJ, and abuse of position as a military recruiter, in violation of Article 93a, UCMJ. I accepted the plea agreement of the parties that required a certain punishment range, heard evidence and argument regarding an appropriate sentence, and sentenced the accused to reduction to the paygrade of E-1 and a Bad Conduct Discharge.

Counsel for the United States

Lieutenant Luis Parrado, JAG Corps, U.S. Navy
Region Legal Service Office Midwest
2540 Paul Jones Street
Building 2, Suite 100
Great Lakes, IL 66088
(847) 688-3805

Counsel for the Accused

Lieutenant Benjamin Cook, JAG Corps, U.S. Navy
Defense Service Office North
2540 Paul Jones Street
Building 2, Suite 100
Great Lakes, IL 60088
(847) 688-4753 ext. 10

4. *United States v. Martinez*, Naval Base San Diego, California (Jul. 2022) (unreported)

I was detailed as Military Judge to preside over a special court-martial of an E-3 Sailor from the USS *Stockdale* (DDG 106). I accepted the accused's plea of guilty to wrongful broadcast or distribution of intimate visual images, in violation of Article 117a, UCMJ. I accepted the plea agreement of the parties that required a certain punishment range, heard evidence and argument regarding an appropriate sentence, and sentenced the accused to 7 days' confinement and reduction to the paygrade of E-1.

Counsel for the United States

Lieutenant Commander Chelsey J. Nyaradi, JAG Corps, U.S. Navy
Lieutenant Junior Grade Elizabeth Hersey, JAG Corps, U.S. Navy
Region Legal Service Office Southwest
3395 Sturtevant Street #9
San Diego, CA 92136

(619) 556-0049

Counsel for the Accused

Lieutenant Alex Biggs, JAG Corps, U.S. Navy
Defense Service Office West
3395 Sturtevant Street Suite 2
San Diego, CA 92136
(619) 556-7539

- 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. Ruling and Order, *United States v. White*, Navy-Marine Corps Trial Judiciary, Southwest Judicial Circuit, Special Court-Martial, Naval Base San Diego, California (Aug. 5, 2022). Copy supplied.

Counsel for the United States

Lieutenant Commander Chelsey J. Nyaradi, JAG Corps, U.S. Navy
Lieutenant Junior Grade Elizabeth Hersey, JAG Corps, U.S. Navy
Region Legal Service Office Southwest
3395 Sturtevant Street #9
San Diego, CA 92136
(619) 556-0049

Counsel for the Accused

Lieutenant Cayla Barbour, JAG Corps, U.S. Navy
Defense Service Office West
3395 Sturtevant Street Suite 2
San Diego, CA 92136
(619) 556-7539

2. Ruling and Order, *United States v. Darrington*, Navy-Marine Corps Trial Judiciary, Southern Judicial Circuit, Special Court-Martial, Naval Air Station Pensacola, Florida (June 29, 2020). Copy supplied.

Counsel for the United States

Troy Heisman (then Lieutenant, JAG Corps, U.S. Navy)
Coblentz Patch Duffy & Bass, LLP
1 Montgomery Street #3000
San Francisco, CA 94104
(415) 268-0102

Counsel for the Accused

Michael Collett (then Lieutenant Commander, JAG Corps, U.S. Navy)

Breit Biniazan, P.C.
600 22nd Street, Suite 402
Virginia Beach, VA 23451
(757) 622-6000

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

None.

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

None.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

All trial-level opinions are unpublished. They are appended to the record of trial, pursuant to Rule for Court-Martial 1112. The record is either stored with the convening authority, the Region Legal Service Office that prosecuted the case, and/or, for cases that are reviewed under UCMJ, Article 67, 10 U.S.C. § 867, with the Clerk of the Navy-Marine Corps Court of Criminal Appeals.

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

None.

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

I have not sat by designation on any federal court of appeals.

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

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

I have never been requested by a party to recuse myself, nor have I sua sponte recused myself from any cases. Had that occurred, I would have determined whether recusal was necessary and proper pursuant to Article 26(d), Rule for Court-Martial 502(c), Code of Conduct for United States Judges, the rules of professional responsibility, and other applicable ethical canons and rules.

15. Public Office, Political Activities and Affiliations:

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

None.

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

None.

16. Legal Career: Answer each part separately.

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

I have not served as a judicial clerk.

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

I have never been a solo practitioner.

- 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;

2003 – 2005

Trial Service Office East
Naval Station Norfolk
9680 Maryland Avenue
Norfolk, Virginia 23507
Trial Counsel (Prosecutor)

2005 – 2008

U.S. Region Legal Service Office Europe & Southwest Asia
U.S. Naval Support Activity Naples, Italy
PSC 817 Box 8
FPO AE 09622
Director, Military Justice (Senior Trial Counsel) (2006 – 2008)
Trial Counsel (Prosecutor) (2005 – 2006)

2008 – 2011

Office of the Chief Defense Counsel, Office of Military Commissions
1600 Defense Pentagon
Washington, DC 20301
Defense Counsel

2012

Navy Legal Service Office Southeast
Naval Station Mayport
1868 Baltimore Street
Jacksonville, Florida 32228
Executive Officer

2012 – 2015

Defense Service Office Southeast, Detachment Mayport/Branch Office
Jacksonville
Naval Station Mayport
1868 Baltimore Street
Jacksonville, Florida 32228
Officer in Charge (2013; 2014 – 2015)
Senior Defense Counsel (2012 – 2013; 2014)

2015 – 2017

Federal Public Defender, District of Oregon
101 Southwest Main Street, Suite 1700
Portland, Oregon 97204
Assistant Federal Public Defender

2015 – 2019

Navy Reserve Navy-Marine Corps Appellate Review Authority
Appellate Defense, Office of the Judge Advocate General, Code 45
Washington Navy Yard
1254 Charles Morris Street, Southeast, Suite B01
Washington, DC 20374
Appellate Defense Counsel

2019 – 2020; 2022 – present

Navy Reserve Trial Judiciary
Navy-Marine Corps Trial Judiciary
Washington Navy Yard
1250 10th Street, Southeast, Suite 1300
Washington, DC 20374
Military Judge

2020 – 2022

Navy Reserve Region Legal Service Office Southwest
Navy Base San Diego
3395 Sturtevant Street #9
San Diego, California 92136
Trial Counsel (Prosecutor/Special Assignment)

2017 – present

Federal Public Defender, District of Kansas
117 Southwest 6th Avenue, Suite 200
Topeka, Kansas 66603
Senior Litigator (2020 – present)
Assistant Federal Public Defender (2018 – 2020)
Research and Writing Specialist (2017 – 2018)

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

I have not served as a mediator or arbitrator.

b. Describe:

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

I received a commission as a U.S. Navy JAG Officer in February 2002, while a 3L at the University of Kansas. After law school graduation and passage of the Indiana Bar, I commenced Navy training at Officer Indoctrination School, followed by the Basic Lawyer Course at Naval Justice School.

In March 2003, I was assigned to the Trial Service Office East in Norfolk, Virginia as a trial counsel to prosecute all manner of criminal military cases in trial by courts-martial. In 2004, I was designated by my Commanding Officer to be part of the command's national security case litigation team. I tried 15 contested trials, including 13 before a jury and two bench trials. In June 2004, I served on temporary duty as a staff judge advocate, for Commander Second Fleet, while underway onboard USS *Mount Whitney* (LCC 20). In that capacity, I advised military commanders on legal issues that arose in the joint operations center as part of a multi-national, joint exercise, Operation Blinding Storm.

In 2005, I transferred on orders and reported to the U.S. Region Legal Service Office, Europe & Southwest Asia at Naval Support Activity, Naples, Italy. For the first year, I served as a trial counsel, prosecuting cases that were convened for trial by court-martial in Naples. I also acted as a recorder (government counsel) for at least one administrative separation proceeding in Stuttgart, Germany. In 2006, I "fleeted up" and became the Director of Military Justice, or trial department head with supervisory responsibilities for all Navy courts-martial cases in Europe & Southwest Asia, and I also continued prosecuting cases in Naples. Due to a gapped billet, on at least five occasions, I traveled to Bahrain to prosecute cases, and on one occasion in 2007, I was flown onboard USS *Boxer* (LHD 4) in the Persian Gulf to conduct court-martial proceedings while the ship was underway. During this tour of duty, I prosecuted five jury trials, four in Naples and one in Bahrain. I also served as a legal assistance conflicts attorney, where I drafted wills for a small number of clients.

In 2008, I transferred on orders and reported to the Office of the Chief Defense Counsel, Office of Military Commissions (OMC-D). This position change was also a transition from being a Navy prosecutor to a defense counsel. My practice at OMC-D was unique and specific to representation of detainees facing criminal prosecution by military commission. The commissions required a mastery of military law and procedure, constitutional law, and the law of armed conflict. Although based in Washington, DC, I made more than 20 trips to Guantanamo Bay, where hearings were held in the Expeditionary Legal Complex. To investigate the unique case facts, I led an investigative mission to Afghanistan and to Korea. In both commission cases, I filed petitions for

ex writs before the U.S. Court of Appeals for the D.C. Circuit, which has direct appeal jurisdiction over military commission cases. The writs were litigated at the appellate level for about a year before they were dismissed by per curiam orders after significant changes in law and case posture from when originally filed.

While at the military commissions, I was selected for a year of post-graduate education at the Georgetown University Law Center to study trial advocacy and national security law. Following graduation with honors and highest distinction in 2012, I transferred on orders to the Navy Legal Service Office Southeast to report as the Executive Officer, supervising four offices through the Southeast. In that capacity, my primary responsibilities were leadership and administrative duties, along with advising junior counsel on criminal defense cases. As part of an organizational realignment, our office became a detachment office of a new headquarters in October 2012, so my practice shifted back to an active criminal defense practice, representing Sailors, Marines, and Coastguardsman who were charged with crimes and facing trial by court-martial. I became the Officer in Charge of two offices and took on the most challenging, complex cases. As a defense counsel, I tried six cases before a jury, including a two-week trial as lead defense counsel for a client charged with premeditated murder. In addition to the criminal defense practice, I also represented clients, primarily Senior Officers, in administrative and employment matters, including retirement determinations, medical licensure hearings, and lawyers during professional responsibility investigations and proceedings.

I left active duty in 2015 and affiliated with the Select Reserves as part of the Navy Reserve Law Program. That same year, I became an Assistant Federal Public Defender in Portland, Oregon. I represented indigent clients charged with federal crimes, from initial appearance through judgment. I was assigned to several complex cases, including a multi-defendant case for the militia occupation of Malheur National Wildlife Refuge.

From 2015 to 2019, in my capacity as a Navy Reserve JAG Officer, I was an appellate defense counsel serving with the Navy Marine Corps Appellate Review Authority, Appellate Defense (OJAG, Code 45). As an appellate lawyer, I was detailed to represent 34 clients on appeal, who had cases under review before the Navy-Marine Corps Court of Criminal Appeals by virtue of receiving a jurisdictional sentence at court-martial, pursuant to Article 66, UCMJ. I also filed petitions for review before the U.S. Court of Appeals for the Armed Forces, pursuant to Article 67, UCMJ.

For the Reserves, in 2019, I was board-selected to attend the Judges

Course, an all-service, three-week course hosted at The Army's Judge Advocate General Legal Center and School that is required for certification as a Military Judge. Following completion of that course, I was certified by the Judge Advocate General of the Navy to be a Military Judge on May 3, 2019, pursuant to Article 26, UCMJ.

After I joined the Navy Reserve Trial Judiciary, I was detailed to a small number of criminal military cases, as needed, at various locations in the United States, where I reviewed search warrant applications and presided over pretrial motion hearings, guilty plea inquiries, and sentencing proceedings. I also volunteered to be a preliminary hearing officer, in which role I reviewed the parties' evidence presentation to make findings regarding jurisdiction and probable cause, and to make recommendations to the convening authority regarding disposition.

In 2020, I was requested by Navy leadership to step down from the bench to lead the criminal investigation into the alleged arson of the USS *Bonhomme Richard* (LHD 6), a fire that led to the destruction and decommissioning of a multi-billion-dollar U.S. warship. After a "cooling off" period, I returned to the bench at the Navy Reserve Trial Judiciary.

In 2017, in a civilian capacity, I transferred from the Federal Public Defender in Portland to become a Research and Writing Specialist for the Federal Public Defender in the District of Kansas. In 2018, I was named an Assistant Federal Public Defender for the District of Kansas, and in 2020, I was promoted to the Senior Litigator position. In each of these roles, I have represented indigent persons charged with federal crimes. I have filed one appeal before the U.S. Court of Appeals for the Tenth Circuit, and I routinely consult on my district court cases that are filed on appeal, even though my name does not appear on the docket or the filings. As Senior Litigator, I also run our office's trial committee, which is a forum to analyze and prepare all cases within the office for jury trial.

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

For the first five years of my legal career, I represented the United States government as a prosecutor.

Since 2008, I have been court-appointed or detailed by a cognizant military authority to represent persons charged with federal or military crimes, at the trial level or on appeal.

My specialization is in federal criminal law and procedure, military law, evidence, and national security law.

- 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.

Ninety-nine percent of my practice has been in litigation. The other one percent encompasses the few weeks I worked as a staff judge advocate providing legal advice to commanders during an operational exercise and a few conflict clients to whom I provided legal assistance to while stationed overseas.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 60% |
| 2. state courts of record: | 0% |
| 3. other courts: | 35% |
| 4. administrative agencies: | 5% |

- ii. Indicate the percentage of your practice in:

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

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

I have tried 32 cases to verdict in both U.S. District Courts and military courts-martial. Of those 32 trials, 30 were tried before a jury and two cases as bench trials. Of those 32 trials, I was sole counsel in 14, chief or lead counsel in 11, and associate counsel in 7. Additionally, I have filed 13 appeals and argued one case before the Ninth Circuit.

- i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 94% |
| 2. non-jury: | 6% |

- 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 am listed as counsel in the petition for a writ of certiorari in *Larrabee v. United States*, No. 18-306 (2018), 2018 WL 4407374, *cert. denied*, 139 S. Ct. 1164 (2019).

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. *United States v. Starks*, No. 18-cr-40105-01-JTM/TC (D. Kan.), *rev'd and vacated*, 34 F.4th 1142 (10th Cir. 2022)

I was sole counsel representing an individual charged in a drug conspiracy case. At the jury trial, I challenged the government's evidence and cross-examined the key witness, a codefendant turned into an informant and cooperative witness. My client was convicted by the jury on two counts, and a mistrial was granted on the third. I then consulted on the appeal, which was successful when the Tenth Circuit reversed and vacated the conviction and sentence. When the government determined to proceed forward again with the prosecution, I negotiated a resolution that led to my client being sentenced to time served, a significant reduction from the 180-month sentence originally imposed.

Dates of representation: 2019 – 2022

Judges

Honorable J. Thomas Marten, Honorable Toby Crouse (remand)
Honorable Jerome A. Holmes, Honorable Carlos F. Lucero, Honorable Gregory A. Phillips (appeal)
United States Court of Appeals for the Tenth Circuit

Co-Counsel

Paige Nichols (on appeal)
Assistant Federal Public Defender
117 Southwest 6th Avenue, Suite 200
Topeka, KS 66603
(785) 232-9828

Counsel for the United States

Greg Hough
U.S. Attorney's Office
444 Southeast Quincy Street
Topeka, KS 66683
(785) 295-2848

2. *United States v. Mays*, Navy-Marine Corps Trial Judiciary, Southwest Judicial Circuit, Navy Base San Diego, California

I was a by-name request from Navy JAG leadership to take charge and lead the multi-agency criminal investigation into the fire onboard the USS *Bonhomme Richard* (LHD 6) that led to the total loss and decommissioning of a multi-billion-dollar U.S. Navy warship. The fire started while the ship was in berthing at Pier 2 at Naval Base San Diego and burned for five days. When I started work on the case, there were multiple investigations, hundreds of potential witnesses, and a large, combustible crime scene. I worked extensively with the Naval Criminal Investigative Service, the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives, and other agencies to ensure the investigation and subsequent prosecution proceeded in a legal, professional, and ethical manner. I wrote a lengthy prosecutorial merits report and provided charging advice to a Vice Admiral, who decided to proceed with charges. I acted as lead prosecutor during the three-day preliminary hearing held in December 2021. At the conclusion of the preliminary hearing, I turned the case over to active duty prosecutors for trial and had no further involvement with the case. A bench trial was held in 2022, which resulted in the accused being found not guilty.

Dates of representation: 2020 – 2021

Preliminary Hearing Officer

Captain Angela Tang, JAG Corps, U.S. Navy
Deputy Director, Office of Special Trial Counsel
Washington Navy Yard, DC 20374
(202) 685-5541

Co-Counsel for the United States

Lieutenant Commander John Preis, JAG Corps, U.S. Navy
USS *Carl Vinson* (CVN 70)
Unit 100111 Box 1
FPO AP 96629
(323) 559-2767

Lieutenant Commander Chelsea J. Nyaradi, JAG Corps, U.S. Navy
Region Legal Service Office Southwest
3395 Sturtevant Street #9
San Diego, CA 92136
(619) 556-0049

Opposing Counsel

Gary Barthel
2173 Salk Avenue, Suite 250
Carlsbad, CA 92008
(760) 536-9010

Lieutenant Commander Sharlena Williams, JAG Corps U.S. Navy
Defense Service Office West
3395 Sturtevant Street Suite 2
San Diego, CA 92136
(619) 556-1668

Lieutenant Taylor Haggerty, JAG Corps, U.S. Navy
Defense Service Office West
3395 Sturtevant Street Suite 2
San Diego, CA 92136
(619) 556-1690

3. *United States v. Smith*, No. 19-cr-40091-DDC (D. Kan.)

I was court-appointed as lead counsel to represent a Fort Riley soldier charged with distributing explosives information to persons who intended to target national politicians and news organizations. The government presented evidence that our client had engaged in extremist conduct and speech and professed white nationalist ideology. We countered that narrative and told the story of a young man who suffered enormous trauma as a child, when he was bullied by classmates, struggled with a physical deformity, and was the target of a school shooter at his high school. We negotiated a plea agreement and engaged in extensive sentencing advocacy to avoid the terrorism enhancement under the U.S. Sentencing Guidelines, which resulted in a low-end sentence of 30 months' imprisonment.

Dates of representation: 2019 – 2020

Judge

Honorable Daniel D. Crabtree

Co-Counsel

Kathryn Stevenson
State Board of Indigents Defense Services
700 Southwest Jackson Street, Suite 500
Topeka, KS 66603
(785) 296-5484

Counsel for the United States

Tony Mattivi (formerly of the U.S. Attorney's Office, District of Kansas)
Director, Kansas Bureau of Investigation
1620 Tyler Street
Topeka, KS 66612
(785) 296-8200

4. *United States v. Barriss*, No. 18-cr-10154/10155/10065-EFM (D. Kan.)

I was court-appointed as sole counsel to represent a Los Angeles man charged in Kansas with offenses from a “swatting” call that led to a Wichita police SWAT team shooting and killing an innocent man in the doorway of his home. My client was contacted on a video game platform to do the swatting after a dispute arose between two gamers, so one gamer contacted our client to swat the other and provided the incorrect address. Upon being appointed, I discovered that the client was also under indictment in the District of Columbia and under investigation in more than 20 federal districts for similar conduct. I negotiated a global resolution with three U.S. Attorneys’ Offices and the Sedgwick County, Kansas District Attorney’s Office. My client ended up pleading guilty to 51 counts, in three cases but one proceeding in the District of Kansas, pursuant to a Rule 11(c)(1)(C) “binding” plea agreement. My client was sentenced to the lowest sentence permitted under the plea agreement, an aggregated and controlling sentence of 240 months.

Dates of representation: 2018 – 2019

Judge

Honorable Eric F. Melgren

Counsel for the United States

Stephen R. McAllister (formerly United States Attorney, District of Kansas)

Professor of Law, University of Kansas

Green Hall 315B

1535 West 15th Street

Lawrence, KS 66045

(785) 864-9236

Debra Barnett

U.S. Attorney’s Office

301 North Main Street, Suite #1200

Wichita, KS 67202

(316) 269-6481

5. *United States v. Allen*, No. 16-cr-10141-EFM (D. Kan.), *aff’d sub nom. United States v. Stein*, 985 F.3d 1254 (10th Cir. 2021)

I was court-appointed and served as co-lead counsel to represent the lead defendant in a five-week jury trial. Mr. Allen was charged, along with two others, with conspiring to use a weapon of mass destruction and conspiring to violate civil rights for a plot to use explosive devices targeting an apartment complex in Garden City, Kansas, housing Somali refugees. The investigation included hundreds of hours of recorded conversations and audio/video from a confidential human source and FBI undercover agents. I conducted voir dire, gave the opening statement, examined half the witnesses, including the FBI explosive experts, and took lead on the sentencing proceedings and argument. Our client was convicted by the jury and sentenced to 300 months imprisonment. Following judgment, I consulted on the appeal, which raised, *inter alia*, a structural

challenge to the jury selection method in the District of Kansas. The conviction and sentenced were affirmed on appeal.

Dates of representation: 2017 – 2018

Judge

Honorable Eric F. Melgren

Co-Counsel for Mr. Allen

Melody Brannon
Federal Public Defender, District of Kansas
117 Southwest 6th Avenue, Suite 200
Topeka, KS 66603
(785) 232-9828

Counsel for the United States

Tony Mattivi (formerly of the U.S. Attorney's Office, District of Kansas)
Director, Kansas Bureau of Investigation
1620 Tyler Street
Topeka, KS 66612
(785) 296-8200

Risa Berkower
Department of Justice
601 D Street, Northwest
Washington, DC 20530
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Mary Hahn
Department of Justice, Civil Rights Division
150 M Street, Northwest, Suite 7.1108
Washington, DC 20002
(202) 305-0921

David Cora
Department of Justice, National Security Division
950 Pennsylvania Avenue, Northwest
Washington, DC 20530
(202) 514-7259

6. *United States v. Barry*, Washington Navy Yard, *rev'd and vacated*, 78 M.J. 70
(C.A.A.F. Sept. 5, 2018)

I was assigned as part of the appellate defense team to represent a U.S. Navy SEAL Senior Chief Petty Officer (a wounded combat veteran) who was convicted in a bench trial of a sexual assault. The Rear Admiral Convening Authority had significant concerns

about the handling of the case and the factual and legal sufficiency of the conviction. While the case was docketed on appeal, a Navy Officer came forward with information that called into question the lawfulness of the post-trial processing of the case. The Court of Appeals for the Armed Forces ordered a fact-finding (*DuBay*) hearing presided over by the Chief Judge of the Air Force. I acted as lead counsel for the defense at that hearing, wherein I examined three Admirals, including a cross-examination of the then-Judge Advocate General of the Navy (Vice Admiral). Following the findings of fact and conclusions of law from the hearing, I participated in briefing to the Court of Appeals for the Armed Forces. In a published opinion, the Court found that there had been unlawful command influence over the post-trial processing by Navy JAG leadership, reversed the conviction of my client, and dismissed the charges against him with prejudice.

Dates of representation: 2017 – 2018

Judge

Colonel Vance Spath, U.S. Air Force

Co-Counsel

Captain Brian L. Mizer, JAG Corps, U.S. Navy
Inspector General (OJAG Code 002)
1322 Patterson Avenue, Southeast, Suite 3000
Washington Navy Yard, DC 20374
(703) 919-2719

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Counsel for the United States

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Commander Kate Shovlin, JAG Corps, U.S. Navy
Director, Defense Counsel Assistance Program
Washington Navy Yard, DC 20374

(202) 685-7077

7. *United States v. Payne*, No. 16-cr-00051-BR (D. Or.), *interlocutory appeal dismissed sub nom. United States v. Bundy*, 654 F. App'x 345 (9th Cir. 2016)

I was court-appointed to represent a Montana man charged in a 26-codefendant conspiracy indictment as one of the leaders of the occupation of the Malheur National Wildlife Refuge. I was selected by the district judge to be one of two defense counsel to take lead for all defense teams on conferral with the government, joint pleadings, and case organization, which required significant courtroom time for hearings. At the district court level, the evidence was voluminous and complex. I also took lead for the briefing of an expedited interlocutory appeal to the Ninth Circuit that challenged a writ of habeas corpus ad prosequendum issued in the District of Nevada, which removed our client from the District of Oregon for proceedings in Nevada during the pendency of the case. I argued the case before the Ninth Circuit on behalf of five defendants. The petition was denied and appeal dismissed. Our client subsequently entered a guilty plea and was sentenced to 37 months' imprisonment.

Dates of representation: 2016 – 2017

Judges

Honorable Anna J. Brown

Honorable John B. Owens, Honorable Mary M. Schroeder, Honorable Wallace Tashima (appeal)

United States Court of Appeals for the Ninth Circuit

Co-Counsel

Lisa Hay

Federal Public Defender, District of Oregon

101 Southwest Main Street, Suite 1700

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Counsel for the United States

Craig Gabriel

Ethan Knight

Geoffrey Barrow

U.S. Attorney's Office

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Portland, OR 97204

(503) 727-1107

8. *United States v. Holden*, No. 13-cr-00444-BR-02 (D. Or.) (Brown, J.), *vacated and remanded*, 908 F.3d 395 (9th Cir. 2018)

I was court-appointed as part of a trial defense team that represented an Oregon man

during a three-week jury trial in a multinational fraud case. The charged investment fraud alleged our client solicited investment funds using false pretenses and promises concerning biodiesel companies in Ghana and Chile. I cross-examined several government witnesses and led direct examinations of witnesses brought to Portland from Ghana to testify about the company's activities in Ghana. Our client was convicted by the jury and sentenced to 87 months' imprisonment. I then assisted the appellate team with developing arguments and strategy; the sentence was vacated and remanded by the Ninth Circuit for new sentencing proceedings. On remand, our client was again sentenced to 87 months' imprisonment.

Dates of representation: 2015 – 2016

Judge

Honorable Anna J. Brown

Co-Counsel

Lisa Hay

Mark Ahlemeyer

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101 Southwest Maine Street, Suite 1700

Portland, OR 97204

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Portland, OR 97239

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Counsel for the United States

Donna Maddox

Clare Fay

U.S. Attorney's Office

1000 Southwest Third Avenue, Suite 600

Portland, OR 97204

(503) 727-1071

9. *United States v. bin al Shibh; In re al Shibh*, No. 09-1238, 2010 WL 2898997 (D.C. Cir. July 23, 2010), Military Commission, Guantanamo Bay, Cuba

I was assigned by the Department of Defense to serve as the assistant military defense counsel and was detailed pursuant to § 948k(c) of the Military Commissions Act of 2006, 120 Stat. 2605, to represent a Yemeni man charged in the joint, capital trial for plotting the terrorist attacks on September 11, 2001. The litigation issues were extensive, including: competency of my client, who had spent years in CIA custody before being transferred to Department of Defense custody to stand trial by military commission; discovery disputes over classified information; and constitutional and other legal

challenges to the military commissions. Case work also involved out-of-courtroom advocacy and client-centered policy work related to the Executive Branch review of detainee treatment policies and forum selection review, initiated by Executive Orders in January 2009. My client challenged the lawfulness of the military commission proceedings through a petition for a writ of mandamus and prohibition before the U.S. Court of Appeals for the D.C. Circuit. My work on the case ended in 2011 when I transferred on orders to attend post-graduate school at the Georgetown University Law Center. The case remains pending before the military commission at Guantanamo.

Dates of representation: 2008 – 2011

Judges

Colonel Ralph Kohlmann, U.S. Marine Corps
Colonel Steve Henley, U.S. Army

Co-Counsel for Mr. bin al Shibh

Suzanne Lachelier
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1620 Defense Pentagon
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Opposing Counsel

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Jeff Groharing
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Office of Military Commissions

1610 Defense Pentagon
Washington, DC 20301
(703) 919-9658

10. *United States v. Kamin; In re Kamin*, No. 09-1294, 2010 WL 2898995 (D.C. Cir. 2010), Military Commission, Guantanamo Bay, Cuba

I was assigned by the Department of Defense to serve as lead counsel to represent an Afghan man charged before a military commission with providing material support to terrorism. The litigation involved, among other issues, pretrial discovery disputes over classified information and challenges to the legality of the commissions. The case work included leading an investigative mission to Afghanistan and Korea and garnering diplomatic support for repatriation from senior Afghan government officials. My client also filed a petition for a writ of mandamus before the U.S. Court of Appeals for the D.C. Circuit, which has direct appeal jurisdiction over military commission cases. Following the Executive Branch review of detainee policies and commission cases initiated in January 2009, the charges against my client were eventually dismissed. After I departed the defense team, I contributed a letter to a presentation before a detention review board that concluded that my client was able to be released, and he was later released from Guantanamo.

Dates of representation: 2008 – 2011

Judge

Colonel Thomas Cumbie, U.S. Air Force

Co-Counsel

Hon. Clay West

Judge, 17th Circuit Court / U.S. Army Reserve Trial Judiciary

Kent County Courthouse

180 Ottawa Avenue, Northwest

Grand Rapids, MI 49501

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Opposing Counsel:

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Navy-Marine Corps Trial Judiciary, Southern Judicial Circuit

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Jacksonville, FL 32212

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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.)

The most significant legal activities I have pursued that are not otherwise reflected above involve leadership. As both a Navy Officer and public defender, I have been placed in leadership positions with the respective legal communities and been responsible for supervising, training, and mentoring other lawyers and legal professionals.

As a senior officer in the Navy, I have been responsible for providing recurrent training on substantive legal issues and trial advocacy, supervised completion of required qualifications, and been involved in case strategy discussions at both the trial and appellate level. My training regimen has included significant mock trial and presentations, which require lawyers to be on their feet in a courtroom.

As Senior Litigator for the Federal Public Defender, I run our office's "trial committee," the purpose of which is for lawyers to present cases in a meaningful way to brainstorm ideas and solicit feedback to assist in trial preparations. It is attended by the trial lawyers, appellate lawyers, and investigators. I have also served as a mentor in our "Second Chair" program for Kansas lawyers who receive classroom and courtroom training in federal criminal law and procedure, with a goal of making them competitive for admission to the Criminal Justice Act Panel in the District of Kansas. I have also served as a supervisor in our "Third Chair" program for our summer law student interns, wherein I provided classroom training, edited substantive legal work, and took them on field trips to visit prisons, meet clients, and observe court proceedings.

I was one of two lawyers in our office who originally worked on "compassionate release" cases after the passage of the First Step Act of 2018, Pub. Law. 115-391, which amended 18 U.S.C. § 3582(c) to allow for defendants to file their own motions to modify their sentence upon certain requirements being met. After the outbreak of the Covid-19 pandemic, our office received hundreds of inquiries of prisoners with potential compassionate release claims. I sat on a committee that reviewed each potential claim and was the lead drafter of a Standing Order that was presented to and approved by the Chief Judge for the District of Kansas to streamline procedures in compassionate release cases.

For other case work in the Navy, I was counsel for a variety of administrative proceedings and represented senior officers. For example, I represented the Commanding Officer of a U.S. warship who was relieved of command ("detached for cause") after the ship ran aground in the Black Sea off the coast of Turkey. This Officer was directed by the Secretary of the Navy to "show cause" as to why he should remain in the Navy, and was ultimately retained in the Navy and permitted to retire with full benefits. In another case, I represented the Commanding Officer of a shore command charged with testing ballistic missiles, who also received a "show cause" letter, for ethical lapses that occurred within the command on his watch. A board of three Admirals unanimously concluded that no misconduct had occurred, and my client was permitted to continue in service and

ultimately retired with an Honorable discharge and full retirement benefits.

I have never acted as a lobbyist or engaged 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.

In 2007, I taught an "Investigating Sexual Assault Cases" course for Central Texas College (CTC). The CTC had a contract to provide an Associate Degree education program to military members and dependents overseas, so my students were all within those categories. The course was taught at Naval Support Activity, Naples, Italy. Syllabus supplied.

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

None.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I intend to continue military service in the U.S. Navy JAG Corps, Navy Reserve Law Program. I do not have a remaining service commitment or agreement that requires me to remain in the Reserves. I received my "Twenty Year Letter" in 2022, so I am now eligible to retire from the Navy. If confirmed, my intention is to continue service in the Navy so long as it does not meaningfully interfere with my duties as a Circuit Judge.

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

When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that Report/See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

I would recuse myself from cases involving or affecting the law firm of Stevens & Brand LLP, where my wife works as an estate planning attorney. She does not appear in court or have any matter pending in federal courts. I would expect this potential conflict to be a very rare occurrence, if it were to occur at all.

I would also recuse myself from cases involving any defendant I personally represented or in whose defense I participated while practicing at the Federal Public Defender for the Districts of Kansas and Oregon.

I would also be mindful of potential conflicts with the Department of the Navy, based upon my past and current military service. However, I note that throughout my time in military service I have litigated "against" the Navy as a defense attorney, so the Navy as a party to case would not be a per se conflict. I would assess each case to which the Navy is a party on the nature and circumstances of the case.

Also, due to my close affiliation and support of the University of Kansas, I would consider recusal in any cases involving the University as a party, depending on the nature and circumstances of the case.

If confirmed, I would strictly follow the Code of Conduct for United States Judges, the Kansas Rules of Professional Responsibility, and all other applicable ethical rules and canons governing recusal.

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

I would evaluate any potential conflicts of interest by consulting and scrupulously applying the rules and standards set forth in 28 U.S.C. § 455, the Code of Conduct for United States Judges, and any and all other laws, rules, practices, opinions, or cases that govern or inform the resolution of any potential conflicts. As appropriate, I would also consult with other judges and the Tenth Circuit's Executive Office.

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 federal public defender, my work involves serving, assisting, and providing counsel to the disadvantaged. I am court-appointed under the Criminal Justice Act, 18 U.S.C. § 3006A, to represent persons who are charged with federal crimes but are unable to afford adequate representation. As a federal employee, I am not able to engage in the outside practice of law, with the exception of my service in the Navy Reserve Law Program.

For pro bono work, I have volunteered at the Topeka Bar Association “Clean Slate Day” to assist Topeka community members who are eligible to draft and file petitions for expungement under Kansas law. Additionally, I have volunteered for the “poverty simulation” exercise arranged by my office, the Federal Public Defender for the District of Kansas, for the Kansas Judicial Conference and the Kansas Women Attorneys Association Women in Law Conference. Finally, I have volunteered to act as a moot-court judge at the National Moot Court Regionals sponsored by the University of Kansas School of Law.

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 10, 2023, I received a phone call from the state director for Senator Jerry Moran about my interest in being considered for this vacancy. I interviewed with the state director on February 15, 2023. On March 25, 2023, I interviewed with Senator Moran. On April 13, 2023, I interviewed with lawyers from the White House Counsel’s Office. On April 27, 2023, I interviewed with counsel for Senator Roger Marshall. Since May 3, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 21, 2023, I met with Senator Marshall to discuss my potential nomination. On July 27, 2023, my nomination was submitted to the Senate.

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

No.