

**UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY**

**QUESTIONNAIRE FOR JUDICIAL NOMINEES**

**PUBLIC**

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

Henry Franklin Floyd

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

United States Circuit Judge for the Fourth 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.

United States District Court  
Donald S. Russell Federal Building  
201 Magnolia Street  
Spartanburg, South Carolina 29306

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

1947; Brevard, North Carolina

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.

1970 – 1973, University of South Carolina School of Law; J.D., 1973  
1966 – 1970, Wofford College; B.A., 1970

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

2003 – Present  
United States District Court for the District of South Carolina  
201 Magnolia Street  
Spartanburg, South Carolina 29306  
United States District Judge

1992 – 2003

South Carolina Court Administration  
1015 Sumter Street  
Columbia, South Carolina 29201  
South Carolina Circuit Court Judge

1986 – 1992

Pickens County  
222 McDaniel Avenue  
Pickens, South Carolina 29671  
County Attorney (simultaneously with my partnership at the law firm)

1978 – 1992

Acker, Acker, Floyd & Welmaker, P.A.  
Attorneys at Law  
603 South Lewis Street  
Pickens, South Carolina 29671  
Partner

1972 – 1978

South Carolina House of Representatives  
State House  
Columbia, South Carolina 29211  
Member, House of Representatives

1974 – 1977

Floyd & Welmaker, P.A.  
Attorneys at Law  
208 Garvin Street  
Pickens, South Carolina 29671  
Partner

1973 – 1974

Henry F. Floyd  
Attorney at Law  
208 Garvin Street  
Pickens, South Carolina 29671  
Solo Practitioner

1973

United States Army  
Fort Benjamin Harrison  
Indianapolis, Indiana  
First Lieutenant

1970 – 1971

Lt. Governor Earle E. Morris

P.O. Box 142

Columbia, South Carolina 29202

Administrative Assistant

Other Affiliations (uncompensated)

1994 – Present

South Carolina Judicial Invitational Golf Tournament

P.O. Box 136

Columbia, South Carolina 29202

President (1995 – 2006)

Chairman of the Board (2007 – present)

2004 – 2007

Grace United Methodist Church

309 East Cedar Rock

Pickens, South Carolina 29671

Administrative Board Member

1989 – 1992

Rocky Bottom Camp for the Blind

123 Hancock Road

Sunset, South Carolina 29685

Board Member

1980 – 1992

Pickens County Public Defender Corporation

c/o P. O. Box 10264

Greenville, South Carolina 29603

Board Member

1978 – 1990

South Carolina Forestry Commission

5500 Broad River Road

Columbia, South Carolina 29212

Commissioner

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.

In September 1966, I joined the Reserve Officers Training Corps at Wofford College. I was commissioned Second Lieutenant in the United States Army in May 1970. I was in

reserve status from 1970 to 1973, except for a three month period during which I was in active service at Fort Benjamin Harrison in Indianapolis, Indiana (August 1973 – November 1973). I went on inactive reserve status between November 1973 and July 1979, when I received an honorable discharge. My highest rank was First Lieutenant. In addition, I registered for selective service.

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.

Eagle Scout – Boy Scouts of America (1962)  
Member, Blue Key National Honor Society (1969)  
Scabbard & Blade National Military Honor Society (1969)  
Who's Who in American Colleges & Universities (1969)

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  
State Trial Judges Conference  
American Judicature Society  
Board of Commissioners on Grievances and Discipline, 1990 – 1992  
Federal Bar Association  
Federal Judges Association  
Fourth Circuit Judicial Conference  
Greenville County Bar Association  
Judicial Resources Committee for the Judicial Conference of the United States  
Pickens County Bar Association  
South Carolina Advisory Committee for Drug Offenses & Common Law Crimes  
South Carolina Advisory Committee on Standards of Judicial Conduct, 1993 – 1999  
South Carolina Association of Circuit Judges  
President, 1995 – 1997  
South Carolina Bar Association  
South Carolina Bar Association Pro Bono Program, 1991 – 1992  
South Carolina Circuit Judges Advisory Committee  
South Carolina Commission on Judicial Conduct, 1999 – 2000  
South Carolina Judicial Conference  
South Carolina Trial Lawyers Association (now known as South Carolina Association for Justice)  
Spartanburg County Bar Association  
Upstate South Carolina American Inn of Court

**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.

South Carolina, 1973

There have been no lapses in membership.

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

Supreme Court of the United States, 1980

United States Court of Appeals for the Fourth Circuit, 1974

United States District Court for the District of South Carolina, 1974

South Carolina Supreme Court, 1973

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.

The Arbours at Reba-Dale Homeowners Association (2010 – present)

The Commerce Club (1984 – present)

First National Bank of Pickens County Advisory Board (1984 – 1992)

Grace United Methodist Church Administrative Board (2004 – 2007)

Pi Kappa Alpha Fraternity, Alumnus member

Pickens Country Club (1973 – 2008)

Pickens County Public Defender Corporation (1980 – 1982)

Board Member

Pickens Investment Club (1978 – 1992)

Pumpkintown Associates Investment Group (1982 – 1992)

Rocky Bottom Camp for the Blind (1989 – 1992)

Board Member

South Carolina Forestry Commission (1978 – 1990)

Commissioner

South Carolina Judicial Invitational Golf Tournament (1994 – present)  
President (1995 – 2006)  
Chairman of the Board (2007 – 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.

I am an alumnus member of the Pi Kappa Alpha social fraternity at Wofford College, which is for men only.

To the best of my knowledge, no other organization listed above currently discriminates, or previously discriminated, on the basis of race, sex, religion, or national origin.

**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.

This list represents the published material I have identified through searches of my files and Internet databases. I have tried my best to list all of them here, although there may be some that I have not been able to identify or locate.

*The Law of Automobile Insurance in South Carolina* - Sixth Edition, South Carolina Bar (2009), editorial board. Copy supplied.

*The South Carolina Law of Torts - Third Edition*, South Carolina Bar (2004), contributed substantially to Chapter 8, *Damages: Judicial Supervision of the Amount of Verdicts*. Copy supplied.

*The Criminal Trial Benchbook for New Circuit Judges*, South Carolina Court Administration, 2000. Copy supplied.

*The Pickens Sentinel*, Legislative Report, at varying intervals from 1973 – 1976. During my tenure in the House of Representatives, I published status reports to my constituents regarding legislative happenings. Copy supplied.

Letter to the Editor, OLD GOLD & BLACK, Nov. 8, 1968, at 2. The *Old Gold & Black* is the college newspaper for Wofford College. 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.

Between October 1993 and November 1999, as a board member for the South Carolina Supreme Court Advisory Committee on Standards of Judicial Conduct, I contributed to opinions released in response to conduct questions from other judges. I have supplied all opinions to which I contributed.

Between 1973 and 1978, as a state representative, I sponsored and co-sponsored legislation. A copy of the list of legislation I have been able to obtain is supplied.

During my time at Wofford College, I was a member of the Blue Key National Honor Society and served as the SGA Treasurer. In that capacity, I participated in preparing a report that called for the creation of a Campus Union. I do not have a copy of the report. Articles about the report and my involvement, however, can be found in the March 6, 1970, and April 10, 1970, issues of the Wofford College newspaper, the *Old Gold & Black*. Copies of those articles are supplied. Wofford College's address is 429 North Church Street, Spartanburg, South Carolina 29303.

In addition, between 1978 and 1990, during my service as a Commissioner on the South Carolina Forestry Commission, the Commission published an Annual Report. I do not recall personally preparing or contributing to these reports.

I cannot recall and have been unable to identify any other reports, memoranda, or policy statements that I prepared or contributed in preparing.

- 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 July 30, 2003, I testified before the United States Senate Judiciary Committee prior to my confirmation as a United States District Judge. I was asked one question relating to my work on the Board of Commissioners on Grievances and Discipline and how it helped me as a judge. Copy supplied.

In September 2000, I wrote a letter to the County Council about courthouse security. While I have been unable to obtain a copy of the letter, press coverage with details of my letter is supplied.

In 1998, I testified before the Judicial Merit Selection Commission, chaired by Representative F. Gregory Delleney, Jr., prior to my reelection as a state circuit court judge. My testimony included answering questions regarding the law on various ethical issues, various matters of protocol in my chambers, my views on judicial activism and judicial temperament, and my involvement in the legal community. Copy supplied.

In 1992, I testified before the South Carolina General Assembly's Judicial Screening Committee, chaired by Thomas Pope III, prior to my election as a state circuit court judge. My testimony included answering questions relating to my transition from being a trial lawyer to a judge, the ideal qualities of a circuit court judge, and my prior practice. Copy supplied.

In 1975, I participated with three other state legislators in a public debate regarding the enabling statute for home rule in South Carolina. I advocated for the enactment of county home rule with minimal interference from the state legislature. The debate was broadcast on South Carolina's PBS station, ETV. I have no notes, transcripts or recordings of this debate and have been unable to find any other record of the event.

- 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 list below identifies speeches or talks I have identified from my files, a search of Internet databases and my personal recollection. Despite my searches, there may be other speeches or talks I have been unable to identify, locate, or recall.

March 9, 2010: South Carolina Bar Association's Bridge the Gap course for recent bar members, University of South Carolina School of Law. I participated on a panel discussing tips for succeeding in federal court. I have no notes, transcript or recording. The address of the Bar Association is 950 Taylor Street, Columbia, South Carolina 29201.

November 7, 2009: South Carolina Defense Trial Attorneys' Association Annual Meeting, Savannah, Georgia. I participated on a panel of federal judges



discussing federal practice and procedure. I have no notes, transcript or recording. The address of the Association is 1 Windsor Cove, Suite 305, Columbia, South Carolina 29223.

September 17, 2009: South Carolina Federal Bar Association CLE, Greenville, South Carolina. I participated on a panel discussing ethics in the legal practice. I have no notes, transcript or recording. The address of the Association is P.O. Box 1402, Columbia, South Carolina 29202.

May 16, 2009: South Carolina Court Reporters Association Convention, Greenville, South Carolina. I spoke about rules for living and some of the differences in federal and state courts in South Carolina. I have no notes, transcript or recording. The address of the Association is 721 Cypress Point Drive, Chappells, South Carolina 29037.

November 13-16, 2008: South Carolina Defense Trial Attorneys' Association Annual Meeting, Amelia Island, Florida. I spoke on a panel to give my perspective on serving as a federal judge and to discuss how judges can avoid making legal mistakes. I also served on a panel CLE program on lawyer civility. I have no notes, transcript or recording. Press coverage supplied. The address of the Association is 1 Windsor Cove, Suite 305, Columbia, South Carolina 29223.

June 24, 2008: Investiture for Circuit Public Defender of the Seventh Circuit, Spartanburg, South Carolina. I gave remarks at the ceremony for Clay Allen as he was sworn in as the new Public Defender. A copy of my notes is supplied.

September 26, 2007 and November 9, 2007: Wofford College Judicial Forum and University of South Carolina School of Law class reunion. Terrorism and Civil Liberties was the broad topic of this talk. A copy of my notes is supplied.

February 28, 2007: Charleston School of Law, Charleston, South Carolina. I gave a talk as a part of the school's Professionalism Series. A copy of my notes is supplied.

November 10, 2006: South Carolina Defense Trial Attorneys' Association annual meeting, Amelia Island, Florida. I participated on a panel of judges entitled "Upcoming changes to Electronic Discovery – Tips from the Federal Judiciary." I have no notes, transcript or recording. The address of the Association is 1 Windsor Cove, Suite 305, Columbia, South Carolina 29223.

October 27, 2006: South Carolina Bar CLE, Columbia, South Carolina. Annual Tort Law Seminar. I presented remarks with regard to additur and remittitur in the federal courts. Remarks supplied.

January 28, 2006: South Carolina Bar Convention, Charleston, South Carolina. I participated on a panel dealing with the topic of Tort Reform in South Carolina.

I have no notes, transcript or recording. The address of the Bar Association is 950 Taylor Street, Columbia, South Carolina 29201.

November 11, 2005: South Carolina Bar CLE, Columbia, South Carolina. *Masters in Trial*. Participated on a panel discussion about good trial techniques. I have no notes, transcript or recording. The address of the Bar Association is 950 Taylor Street, Columbia, South Carolina 29201.

October 28, 2005: U.S. Probation Office for the District of South Carolina, Greenville, South Carolina. Annual seminar about U.S. Sentencing Guidelines. I have no notes, transcript or recording. The address for the Probation Office is 617 East McBee Avenue, Greenville, South Carolina 29601.

September 9, 2005: Fourth Annual Federal Bar Association CLE, Columbia, South Carolina. I participated on a panel about developments in the federal practice in South Carolina. I have no notes, transcript or recording. The address of the Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

June 27, 2005: Fourth Circuit Judicial Conference, Hot Springs, Virginia. I gave a brief talk about my journey to becoming a United States District Judge. A copy of my notes is supplied.

April 29, 2005: Spartanburg County Bar Association Law Day event. I discussed the Seventh Amendment right to trial by a jury. Remarks supplied.

April 8, 2005: Emory University School of Law. I spoke to a "Law and Terrorism" class and took questions. My remarks were limited to my decisions in *Padilla* and *Al-Marri*. I have no notes, transcript or recording. The address of the law school is Gambrell Hall, 1301 Clifton Road, Atlanta, Georgia 30322.

February 2005: South Carolina Bar CLE Division. I recorded a video course on the differences in state and federal courts in South Carolina. My notes and the video recording are supplied.

September 24, 2004: *Wofford and the Law*, conference held at Wofford College, Spartanburg, South Carolina. I participated on a panel discussion of a variety of topics, including punitive damages in South Carolina federal courts after *State Farm v. Campbell*. A copy of my outline is supplied.

May 6, 2004: South Carolina Circuit Judges Annual Conference, Columbia, South Carolina. I gave a talk on the basics of class actions. My outline notes are supplied.

March 26, 2004: South Carolina Bar Vacation CLE, Pinehurst, North Carolina. *Ethics – The Oath is Sacred*. My outline is supplied.

March 9, 2004 and May 18, 2004: South Carolina Bar Association's Bridge the Gap course for new bar members. I participated in a panel discussion on federal practice in South Carolina at the University of South Carolina School of Law, Columbia, South Carolina. I have no notes, transcript or recording. The address of the Bar Association is 950 Taylor Street, Columbia, South Carolina 29201.

February 27, 2004: South Carolina Circuit Judge G. Edward Welmaker Investiture ceremony, Pickens, South Carolina. I delivered remarks at the ceremony. A copy of my remarks is supplied.

January 26, 2004: South Carolina Bar Convention, Charleston, South Carolina, *Breakfast Ethics – The Oath is Sacred*. A United States Magistrate Judge and I discussed the topic. The outline I used was the same as that supplied for the March 26, 2004 event.

December 1, 2003: my investiture ceremony as a United States District Judge, given at the Donald Russell Federal Building, Spartanburg, South Carolina. A copy of the transcript is supplied.

May 1, 2003: Law Day Speech, Greenville County Bar Law Day Luncheon. I discussed the history of Law Day in the United States. A copy of my notes is supplied.

September 30, 2002: *Differentiated Case Management System*, South Carolina Court Administration, South Carolina Solicitors' Conference and Public Defenders' Conference, Myrtle Beach, South Carolina, showing results of the Richland County Pilot Project. My notes are supplied. Also supplied is a copy of the article from *The State* entitled, "Project Slashes Backlog of Richland Court Cases."

January 25, 2002: South Carolina Bar Convention, Charleston, South Carolina, 17th Annual Criminal Law Update. I participated in a panel discussion regarding recent decisions affecting criminal law in South Carolina. I have no notes, transcript or recording. The address of the Bar Association is 950 Taylor Street, Columbia, South Carolina 29201.

1996 – 2002, South Carolina Circuit Judges Advisory Committee  
I taught at the new circuit judge's orientation in the area of criminal law and procedure. In doing so, I used the *Criminal Trial Benchbook for New Circuit Judges*, which I supplied in my response to question 12(a).

February 19, 1999: *Winning Evidence: Making Rules Work for You*, South Carolina Bar CLE Division. Notes are supplied.

September 1998: *Post Trial Motions: New Developments in Case Law*, South Carolina Bar CLE Division. Notes are supplied.

June 1998: *A Reporter's Guide to Opening and Closing Court Doors*, South Carolina Bar Association and S.C. Press Association Joint Seminar. The speech addressed the South Carolina rules and case law concerning when and under what circumstances a court proceeding could be closed and the right of the press to challenge the closing. I have no notes, transcript or recording. The address of the Bar Association is 950 Taylor Street, Columbia, South Carolina 29201.

May 8, 1998: Scheduled speaker at ceremony of appreciation for retiring Comptroller General Earle E. Morris Jr., Pickens County Courthouse. After searching my records, public records databases, and the Internet, I have been unable to confirm or recall whether I did or did not give this speech. I have no notes, transcript or recording. The address of the Courthouse is 214 East Main Street, #A100, Pickens, South Carolina 29671.

May 1998: *Courtroom Decorum*, S.C. Women Lawyers Association. The speech was a list of personal tips about maintaining proper decorum. I have no notes, transcript or recording. The address of the Association is P.O. Box 11910, Columbia, South Carolina 29211.

January 1998: *The Complex Case in the State Court System: Trial by Endurance*, South Carolina Bar CLE Division. Notes are supplied.

August 1997: *Update of Comparative Negligence, Friend or Foe?*, South Carolina Circuit Court Judges Association Annual Conference. I have no notes, transcript or recording. The Association does not have a physical address, but the address of the South Carolina Judicial Department is 950 Taylor Street, #120, Columbia, South Carolina 29201.

May 1997: *Executions/Judgments and Forfeitures Roundtable*, South Carolina Association of Clerks of Courts. I have no notes, transcript or recording. The Association does not have a physical address. The Association is currently headed by David Hamilton, York County Clerk of Court. Hamilton can be reached at P.O. Box 649, 1675 – 1G York Highway, York, South Carolina 29745.

September 13, 1996: *Post Trial Procedures: Punitive Damage Award Review, Motions for New Trial Nisi, and Motions for New Trial Absolute*, South Carolina Bar CLE Division. Notes are supplied.

October 1995: *Overview of the New South Carolina Rules of Evidence Panel Discussion*, South Carolina Solicitors Association Annual Conference. I have no notes, transcript or recording. The address of the Association is P.O. Box 11251, Columbia, South Carolina 29211.

August 1995: Speaker, *Rule 40: A Basis for Differentiated Case Management*, South Carolina Circuit Judges' Association Annual Conference, Columbia, South Carolina. This was basically a repeat of the previously presented talk on Rule 40 from the June 1995 CLE (a copy of which is supplied).

June 1995: *SCRCP Rule 40 and the Complex Litigation Track*, South Carolina Bar CLE Division. Notes are supplied.

December 1994: *Mass Tort Litigation – Is Efficiency an Enemy of Justice?* Greenville County Bar Association. At the time this talk was given, I was managing all the breast implant litigation in the state, and the speech addressed some of the problems I was encountering. I have no notes, transcript or recording. The address of the Bar Association is P.O. Box 10145, Greenville, South Carolina 29603.

December 1993: Speaker, *State Court Update – A Day with the Judges*, Greenville County Bar Association. This was a recap of major state court appellate decisions for that year. I have no notes, transcript or recording. The address of the Bar Association is P.O. Box 10145, Greenville, South Carolina 29603.

October 1993: Speaker, *Prior Bad Acts*, South Carolina Solicitors' Association. The speech was about South Carolina Rule of Evidence 404(b) or the *Lyle* rule, and was a survey of the case law and the procedure to follow in seeking admission of 404(b) material. I have no notes, transcript or recording. The address of the Association is P.O. Box 11251, Columbia, South Carolina 29211.

October 1992: *Ethics in Closing Arguments*, South Carolina Solicitors Association, P.O. Box 11251, Columbia, South Carolina 29211. The speech was about the "do's" and "don'ts" in making a closing argument under the rules and case law of South Carolina. I have no notes, transcript or recording. The address of the Association is P.O. Box 11251, Columbia, South Carolina 29211.

October 1992: *Comparative Negligence: Friend or Foe?*, South Carolina Bar CLE Division. Notes are supplied.

June 25, 1992: My investiture ceremony as a South Carolina Circuit Judge for the Thirteenth Judicial Circuit. Transcript and press coverage supplied.

June 1992: *Comparative Negligence in South Carolina*, South Carolina Bar CLE Division, 950 Taylor Street, Columbia, South Carolina 29201. Notes are supplied.

January 16, 1987: Family Law Program, Legal Education Institute, Greenville, South Carolina. I spoke on evidence, procedure and equitable property distribution. I have no notes, transcript or recording. I am unable to recall what

the Legal Education Institute was or whether it goes by another organizational name at present.

For several years, I have participated as a judge for mock trial competitions. For instance, on April 8, 2005, I served as a presiding judge in the intra-school moot court competition at Emory University School of Law. Prior to the competition, I also spoke to a class. Also, on November 4, 2010, I presided over the University of South Carolina School of Law's Mock Trial Competition. I have no notes, recordings or transcripts, but University of South Carolina coverage of the 2010 competition is supplied.

From 1996 to 2002, as a member of the South Carolina Circuit Judges Advisory Committee, I taught at the new circuit judges orientation. The subject matter of these classes was criminal law and procedure. I do not know the dates of these courses, and I have no notes, transcripts or recordings.

In addition to these speeches or presentations, from 1973 to the present, I have given over a dozen other speeches, mostly to civic clubs. Some were to entities like a municipal or county association. All of the talks were either informing a group about the status of legislation, about legislative procedures, or about court procedures. I have also given a few speeches about the humorous things that have happened to me in the courtroom. Most of these speeches occurred many years ago and I am unable to provide more specific information about their dates and locations; nor do I have copies of, or notes from, these speeches.

I occasionally gave remarks on the floor of the South Carolina House of Representatives and in committee hearings during my service as a legislator from 1973 to 1978, but I do not have any notes from such remarks and no transcript or recording of them is available. These remarks were delivered at the State House, 1101 Gervais Street, Columbia, South Carolina 29211.

- 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.

Eric Connor, *Obama's Appellate Court Choice has Record of Independence*, Greenville News, Jan. 28, 2011. Copy supplied.

James Rosen, *Obama Nominates S.C. Federal Judge to Appellate Court*, McClatchy Washington Bureau, Jan. 27, 2011. Copy supplied.

*President's Article*, G-BAR NEWS, April 2010, at 3. Copy supplied.

Katrina Daniel, *Legal Lion*, GREENVILLE MAGAZINE, June 2009, at 24. Copy supplied.

Dudley Brown, *Russell Watches Over*, SPARTANBURG HERALD-JOURNAL, Dec. 16, 2008. Copy supplied.

*Ruminations*, G-BAR NEWS, January 2007. Copy supplied.

Lauren Markoe, *Humane Instincts Distinguish Floyd*, THE STATE, Sept. 28, 2003, at B1. Copy supplied.

Andy Paras, *Senate Backs Seating Floyd on Fed Bench*, THE GREENVILLE NEWS, Sept. 24, 2003, at B1. Copy supplied.

Lauren Markoe, *Panel Advances Floyd's Nomination*, THE STATE, Sept. 5, 2003, at B1. Copy supplied.

Lauren Markoe, *Senate Panel Holds Floyd's Judicial Hearing*, THE STATE, July 31, 2003, at B3. Copy supplied.

Rick Brundrett, *Budget Cuts Blamed Again for Jail Stays*, THE STATE, July 23, 2003, at B1. Copy supplied.

Nichole Monroe Bell & Henry Eichel, *Judge: Mental Health Must Explain Backlog; Budget Was Blamed for Ill People Stuck in Jail*, CHARLOTTE OBSERVER, July 22, 2003, at 1B. Copy supplied.

Aaron Gould Sheinin, *Mental Health Officials to Give Answers in Court*, THE STATE, July 22, 2003, at A1.

Anna Simon, *Pickens Judge Gets Federal Nomination*, THE GREENVILLE NEWS, May 17, 2003, at B2. Copy supplied.

Lauren Markoe, *Floyd Nominated to be Federal Judge*, THE STATE, May 16, 2003, at B1. Copy supplied.

*Circuit Judge Henry Floyd Nominated for Federal Judgeship*, ASSOCIATED PRESS, May 16, 2003. Copy supplied.

Rick Brundrett, *Project Slashes Backlog of Richland Court Cases*, THE STATE, Jan. 23, 2003, at B1. Copy supplied.

John Boyanoski, *Pickens Judge: System to Ease Backlog Working*, THE GREENVILLE NEWS, May 29, 2002, at B1. Copy supplied.

John Boyanoski, *Docket Plan Working; Next Hurdle in May*, THE GREENVILLE NEWS, Mar. 4, 2002, at B1. Copy supplied.

John Boyanoski, *Fewer Cases, Convictions, Yet Justice Slows*, THE GREENVILLE NEWS, Dec. 30, 2001, at A1. Copy supplied.

John Boyanoski, *Judge Aims to Ease Court Backlog*, THE GREENVILLE NEWS, May 14, 2001, at B1. Copy supplied.

*Circuit Court Judge Puts Backlogged Criminal Cases on a Fast-Track*, ASSOCIATED PRESS, May 14, 2001 [reprinted in the CHARLOTTE OBSERVER and COLUMBIA STATE on May 15, 2001]. Copy supplied.

Erikah Haavie, *Pickens Courthouse Security Questioned*, THE GREENVILLE NEWS, Sept. 20, 2000, at B1. Copy supplied.

Andrea Weigl, *Indictment Sought in Investigation of Mann*, THE GREENVILLE NEWS, Apr. 5, 2000, at A1. Copy supplied.

Diane Norman, *Crowded Jail Drives County to Action*, HERALD-JOURNAL, May 9, 1999, at A1. Copy supplied.

*Weekend Inmate System Not Working Well in Spartanburg County*, ASSOCIATED PRESS, Mar. 6, 1999. Copy supplied.

*Mandatory Drug Sentences Not Followed, Study Finds*, CHARLOTTE OBSERVER, July 19, 1998, at 8Y. Copy supplied.

Dave Breitenstein, *Lack of Potential Jurors Causes Courts to Struggle with Trials*, ANDERSON INDEPENDENT-MAIL, July 11, 1998. Copy supplied.

Dave Breitenstein, *Intervention Program Helps Rehabilitate Criminals*, ANDERSON INDEPENDENT-MAIL, Mar. 27, 1998. Copy supplied.

Kathy Steele, *Judge Ready to Start New Ellenton Case*, AUGUSTA CHRONICLE, Sept. 8, 1996, at C02. Copy supplied.

Kathy Steele, *Beasley Considering Response to Resignations*, AUGUSTA CHRONICLE, Aug. 3, 1996, at C2. Copy supplied.

Kathy Steele, *Judge Gives Alternative to Prison*, AUGUSTA CHRONICLE, May 2, 1996, at C9. Copy supplied.

*S.C. Courts Brace for Onslaught of Breast-Implant Lawsuit Cases*, THE STATE, Nov. 17, 1995, at B12. Copy supplied.

Mona Breckenridge, *S.C. Chief Justice Ernest Finney*, CHARLOTTE OBSERVER, Sept. 15, 1995, at 5C. Copy supplied.



*Death Penalty Expensive*, HERALD-JOURNAL, Feb. 15, 1993. Copy supplied.

Anna Simon, *Floyd Sworn in as Pickens Judge*, THE GREENVILLE NEWS, June 26, 1992, at C1. Copy supplied.

*Pickens to Pay Murder Defendant's Fees*, THE STATE, Jan. 5, 1992, at 5B. Copy supplied.

*Senator's Widow Wins S.C. Race*, ROCK HILL HERALD, Sept. 16, 1981, at 14.

Copy available on-line:

<http://news.google.com/newspapers?id=vyotAAAIBAJ&sjid=-qYEA AAAIBAJ&pg=2930.1752305&dq=henry+floyd&hl=en>.

Carolyn Teague, *Bills Ask Home Rule Act Change*, ROCK HILL HERALD, Feb. 18, 1976, at 1. Copy available on-line:

<http://news.google.com/newspapers?id=liAtAAAIBAJ&sjid=gqQEAAAIBA J&pg=2042.4135511&dq=henry+floyd+pickens&hl=en>.

*School Aid Bill Recalled by the House*, HERALD-JOURNAL, Feb. 13, 1975, at B8.

Copy available on-line:

<http://news.google.com/newspapers?id=X0QsAAAIBAJ&sjid=Ls0EAAAIBA J&pg=2980.1988320&dq=henry+floyd+pickens&hl=en>.

*Bills Would Stop Price Fixing, Provide Free Textbooks for All*, HERALD-JOURNAL, Jan. 11, 1974, at B1. Copy available on-line:

<http://news.google.com/newspapers?id=wIAsAAAIBAJ&sjid=Uc0EAAAIBA J&pg=5771.1957944&dq=henry+floyd+pickens&hl=en>.

*Avoiding National Support*, OLD GOLD & BLACK, Sept. 20, 1968, at 2. 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 1992, I was elected by the South Carolina General Assembly as a Circuit Court Judge for the Thirteenth Judicial Circuit of South Carolina. In South Carolina, the Circuit Court is a court of general trial jurisdiction. On the criminal side, its responsibilities range from minimum penalties of thirty days to imposition of the death penalty. On the civil side, its judges have complete and concurrent jurisdiction over civil matters other than domestic and probate litigation, with limited exceptions. During my years as a Circuit Judge, I was designated to sit as an Acting Justice on the South Carolina Supreme Court from time to time. I served as a State Circuit Court judge until my appointment as a United States District Judge.

In 2003, I was appointed by President George W. Bush as a United States District Judge in the District of South Carolina, where I am currently serving. Since becoming an Article III judge, I have sat by designation several times on the United States Court of Appeals for the Fourth Circuit.

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

During my service as a federal judge, I have presided over approximately 35 civil and criminal cases to verdict or judgment. In my eleven years on the state bench, I presided over approximately one thousand criminal and civil cases to verdict or judgment.

- i. Of these, approximately what percent were:

jury trials:	80%
bench trials:	20%
civil proceedings:	40%
criminal proceedings:	60%

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

See Attached List.

- 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. *Padilla v. Hanft*, 389 F. Supp. 2d 678 (D.S.C. 2005), *rev'd*, 423 F.3d 386 (4th Cir. 2005), *motion to vacate denied*, 432 F.3d 582 (4th Cir. 2005), *cert. denied*, 547 U.S. 1062 (2006).

In this habeas corpus proceeding, I granted Petitioner's motion for summary judgment, issued a writ of habeas corpus, and directed the government to either bring criminal charges against Petitioner or release him. I concluded that Congress had not authorized the detention of Petitioner, an American citizen arrested on American soil and detained as an enemy combatant. The Court of Appeals reversed, concluding that the President had been granted the authority to detain Petitioner as an enemy combatant, rendering improper the issuance of the writ of habeas corpus. Petitioner sought a writ of certiorari from the Supreme Court. The government subsequently moved the Court of Appeals for authorization to transfer Petitioner immediately out of military custody and into federal civilian law enforcement custody and suggested that

the Court of Appeals withdraw its earlier opinion. The Court of Appeals denied the request. Thereafter, the Supreme Court granted the government's request regarding the transfer and denied as moot Petitioner's application for certiorari.

Counsel for the Petitioner: Michael P. O'Connell, Stirling O'Connell and Pennington, P.O. Box 882, Charleston, SC 29402, (843) 577-9890; Jonathan Marc Freiman, National Litigation Project, 127 Wall Street, New Haven, CT 06570, (203) 498-4584; Donna R. Newman, 121 West 27th Street Suite 1103, New York, NY 10001, (212) 229-1516. Counsel for the Government: Kevin F. McDonald, U.S. Attorney's Office, 1441 Main Street, Suite 500, Columbia, SC 29201, (803) 929-3000.

2. *Al-Marri v. Wright*, 443 F. Supp. 2d 774 (D.S.C. 2006), *rev'd*, 487 F.3d 160 (4th Cir. 2007), *rev'd en banc*, *Al-Marri v. Pucciarelli*, 534 F.3d 213 (4th Cir. 2008), *vacated by*, *Al-Marri v. Spagone*, 129 S. Ct. 1545 (2009).

In this case, Petitioner challenged his military detention as an enemy combatant. Applying the Supreme Court's *Hamdi* opinion, I concluded that the government had put forth sufficient evidence to support Petitioner's detention as an enemy combatant and that Petitioner had failed to put forth evidence contradicting this information. In a two-to-one opinion, the Court of Appeals reversed. Subsequently, the case was argued en banc. In a divided opinion, the Court of Appeals reversed. Writing the controlling concurrence, Judge Traxler concluded that Congress had authorized the President to detain enemy combatants but that Petitioner was denied due process in his attempt to challenge the factual basis for his designation as such. When Petitioner was transferred into civilian custody, the Supreme Court vacated the opinion of the Court of Appeals.

Counsel for the Petitioner: Andrew John Savage, III, Savage and Savage, P.O. Box 1002, Charleston, SC 29402, (843) 720-7470; Jonathan L. Hafetz, American Civil Liberties Union, 125 Broad Street, New York, NY 10004, (212) 549-2583; Lawrence Steven Lustberg, Gibbons Del Deo Dolan Griffinger and Vecchione, One Riverfront Plaza, Newark, NJ 07102, (973) 596-4500; Mark A. Berman, Hartmann Doherty Rosa and Berman, 126 State Street, Hackensack, NJ 07601, (201) 441-9056. Counsel for the Government: Kevin F. McDonald, U.S. Attorney's Office, 1441 Main Street Suite 500, Columbia, SC 29201, (803) 929-3000.

3. *United States v. McIver*, 8:04-cr-00745-HFF (D.S.C. 2005).

Defendant was charged with unlawful distribution of a controlled substance, unlawful distribution of a controlled substance resulting in a death, and conspiracy to unlawfully distribute a controlled substance. Defendant operated a medical clinic for the purpose of treating chronic pain. The

evidence at trial demonstrated that a Drug Enforcement Agency investigation of the clinic found that Defendant prescribed massive quantities of controlled substances to his patients, some of whom traveled great distances, appeared without referrals, paid in cash, and were prescribed drugs that they specifically requested after little or no examination. This trial required me to make rulings concerning expert testimony, which are atypical in most criminal proceedings. After a seven day trial, Defendant was convicted. I sentenced him to 360 months incarceration and five years supervised release. The Court of Appeals subsequently affirmed Defendant's conviction and sentence. *United States v. McIver*, 470 F.3d 550 (4th Cir. 2006).

Counsel for the Government: William Corley Lucius, U.S. Attorney's Office, P.O. Box 10067, Greenville, SC 29603, (864) 282-2100. Counsel for the Defendant: Clarence Rauch Wise, 305 Main Street, Greenwood, SC 29646, (864) 229-5010.

Defendant subsequently filed a motion to vacate pursuant to 28 U.S.C. § 2255, which I granted in part and denied in part. Specifically, I vacated the two counts concerning the death of one of Defendant's patients. A copy of that order is supplied. At resentencing, the Guidelines provided for a sentence in the range of 121 to 151 months imprisonment and three years supervised release. After considering the factors set forth in 18 U.S.C. § 3553(a) and the evidence presented to me that Defendant has cancer and has been given just one year to live, I sentenced Defendant to time served (66 months) and three years supervised release.

Counsel for the Government: William J. Watkins, Jr., U.S. Attorney's Office, P.O. Box 10067, Greenville, SC 29603, (864) 282-2100. Counsel for the Defendant: Peter Robert Zeidenberg, DLA Piper US, 500 Eighth Street NW, Washington, DC 20004, (202) 799-4531.

4. *United States v. Trout*, Criminal Action No. 6:08-cr-01055-HFF (D.S.C. 2009).

Except for the *Padilla* case, this case received more local media attention than any other that I have presided over since I have been on the federal trial court. The matter involved a local county councilman who was accused of illegally accessing the computer of the county administrator with computer spyware. In doing so, Defendant found highly embarrassing information about the county administrator's personal life, which the Defendant wished to make known to the jury. I disallowed such disclosure. Defendant's main defense was that, as a county councilman, he was in effect the supervisor of the county administrator and, thus, was able to access the county administrator's county computer. I ruled, however, that state law makes clear that it is the county council as a whole, and not an individual county councilman, who supervises county employees. Defendant was convicted of violations of the Computer

Fraud and Abuse Act, 18 U.S.C. § 1030 and the Electronic Communications Privacy Act, 18 U.S.C. § 2511. Because this is one of the few convictions in the country under the Electronic Communications Privacy Act, there was little case law to guide me in some of my rulings. I sentenced Mr. Trout to one year and one day incarceration and three years supervised release. The Court of Appeals subsequently affirmed his conviction and sentence. *United States v. Trout*, No. 09-4719, 2010 WL 893430 (4th Cir. Mar. 12, 2010).

Counsel for the Government: Dean A. Eichelberger, U.S. Attorney's Office, 1441 Main Street Suite 500, Columbia, SC 29201, (803) 929-3000; Josh Goldfoot, U.S. Department of Justice, Computer Crime and Intellectual Property Section, 1301 New York Avenue, N.W., Suite 600, Washington, DC 20005, (202) 514-1026. Counsel for the Defendant: Benjamin Thomas Stepp, Federal Public Defender's Office, Two Liberty Square, 75 Beattie Place, Suite 950, Greenville, SC 29601, (864) 235-8714.

5. *South Carolina v. LendingTree, LLC*, 6:08-cv-03044-HFF (Lead Case), slip op. (D.S.C. May 19, 2009).

Most of the solicitors in South Carolina brought separate civil actions in state court in the name of the State against Defendant for alleged violations of the South Carolina Mortgage Broker's Act. Defendant removed the actions to this Court pursuant to the Class Action Fairness Act (CAFA). Plaintiffs moved to remand, and Defendant argued that the solicitors were actually bringing the actions in a representative capacity and, as such, the actions were properly removeable pursuant to CAFA. Defendant based much of its argument on CAFA's legislative history. Inasmuch as the statute is clear that a class action must be brought by one or more representative persons, I ruled that looking at the legislative history was improper. Accordingly, in that the actions were brought in the name of the State, and not in a representative capacity, I remanded the cases to state court.

Counsel for Plaintiff: Carl Frederick Muller, Wyche Burgess Freeman and Parham, P.O. Box 728, Greenville, SC 29602, (864) 242-8200; Matthew T. Richardson, Wyche Burgess Freeman and Parham, P.O. Box 12247, Columbia, SC 29211, (803) 254-6542. Counsel for Defendant: Benjamin Rush Smith, III, Nelson Mullins Riley and Scarborough, P.O. Box 11070, Columbia, SC 29211, (803) 799-2000; John T Moore, Nelson Mullins Riley and Scarborough, P.O. Box 11070, Columbia, SC 29211, (803) 255-9415.

6. *Russell v. Wachovia Bank, N.A.*, No. 99-CP-42-367, *aff'd*, 353 S.C. 208, 578 S.E.2d 329 (2003), *aff'd in part and rev'd in part on subsequent appeal*, 370 S.C. 5, 633 S.E.2d 722 (2006).

This civil case involved a challenge to the will of the late Judge Donald Russell, who died with an estate worth \$33 million. Two of his children

asserted that his will was invalid as the product of undue influence. Given the undisputed evidence of Judge Russell's competence, I granted Defendant's motion for summary judgment, concluding that there were no genuine issues of material fact regarding whether the will was the product of undue influence. Specifically, the evidence established that Judge Russell actively worked as a circuit court judge until the day of his death. Moreover, Judge Russell generally met with his estate attorney alone, and there was no evidence that the alleged improper benefactors ever met with Judge Russell and his attorney. With the clarification that North Carolina law governed the interpretation of certain trust documents, my decision was affirmed on appeal by the South Carolina Supreme Court. Subsequently, after additional proceedings, I struck down the no-contest clauses in the will, imposed sanctions against one of the children, and found that other children had waited too long to file their motion for sanctions. The South Carolina Supreme Court upheld my imposition of sanctions, but concluded that I should have considered the other motion for sanctions and also that the no-contest clause was valid.

Counsel for Plaintiff: Neil Robinson, 1125 East Morehead Street, Suite 207, Charlotte, NC 28204, (704) 373-0077. Counsel for Defendants: Hoover C. Blanton, Hopkins & Campbell, LLP, P.O. Box 11963, Columbia, SC 29211, (803) 255-0998; Moffatt G. McDonald, Haynsworth, Sinkler, Boyd, PA, P.O. Box 2048, Greenville, SC 29602, (864) 240-3336; Stanley Case, Butler, Means, Evins, & Browne, PA, P.O. Drawer 451, Spartanburg, SC 29304, (864) 585-2034.

7. *Hanahan v. Simpson*, No. 92-CP-23-4296 (Order for Sanctions), *aff'd in part, rev'd in part*, 326 S.C. 140, 485 S.E.2d 903 (1997).

This case was another will challenge, but, unlike *Russell*, it proceeded to a jury trial on most issues. Specifically, the will involved the \$48 million estate of Henry Belk Simpson. One of Mr. Simpson's daughters challenged the will as the product of fraud, mistake, and undue influence. Plaintiff was concerned about a special power of appointment in her father's will that, if exercised, allowed her mother to by-pass her and pass her share to her children. The evidence revealed that Mrs. Simpson was given this power to take advantage of any tax law changes that might encourage generation skipping. After a two-week trial, I granted a directed verdict as to the issues of fraud and mistake. The jury then considered the question of undue influence and determined that the will was not the product of undue influence. I also ordered Plaintiff to pay \$548,317.38 in damages under the South Carolina Frivolous Civil Proceedings Act. The South Carolina Supreme Court affirmed my conclusions as to the validity of the will, but it reversed my assessment of damages, finding that, because the undue influence claim survived a motion for a directed verdict, it was not frivolous.

Counsel for Plaintiff: Thomas H. Pope, Pope & Hudgens PA, P.O. Box 190, Newberry, SC 29108, (803) 276-2532. Counsel for Defendant: R. David Massey, Brown, Massey, Evans, McLeod, & Haynsworth, P.O. Box 2464, Greenville, SC 29602, (864) 271-7424; John A. Hagins, Jr., Covington, Patrick, Hagins, Sterns, & Lewis, P.O. Box 2343, Greenville, SC 29602, (864) 242-9000; Elizabeth Van Doren Gray, Sowell Gray Stepp & Laffitte, LLC, P.O. Box 11449, Columbia, SC 29211, (803) 231-7827.

8. *State v. Council*, No. 94-GS-2-1049, *aff'd*, 335 S.C. 1, 515 S.E.2d 508 (1999), *cert. denied*, 528 U.S. 1050 (1999).

This case was one of the most graphic and gruesome murder trials of my legal career, but it is also a case that continues to have legal significance in South Carolina. In particular, I was one of the first judges in the country to address the admissibility of mitochondrial DNA evidence. I concluded that this evidence was admissible under South Carolina's Rules of Evidence and also under *Daubert*. Though the state supreme court did not adopt *Daubert*, it did approve my application of the South Carolina Rules of Evidence and upheld my admission of the DNA evidence. The court also upheld my exclusion of polygraph results during the penalty phase of the trial.

Counsel for the State: Barbara Morgan, 342 Dupree Place, Aiken, SC 29801. Defense Counsel: James E. Whittle, Johnson, Johnson, Whittle & Snelgrove, P.O. Box 2619, Aiken, SC 29802, (803) 641-4517.

9. *State v. Humphries*, No. 94-GS-23-4175, *aff'd*, 325 S.C. 28, 479 S.E.2d 52 (1996).

This was a death penalty case in which Defendant was tried and convicted of murder. It involved at least two unique legal issues. I instructed the jury that attempted armed robbery accompanying murder is an aggravating circumstance in determining whether to sentence one to life or to death. The South Carolina Supreme Court agreed with my instruction. On appeal, Defendant also challenged the introduction of victim impact testimony because he was not provided notice that the State was offering such testimony. The court also affirmed my admission of the victim impact evidence.

Counsel for the State: Joe Watson, 664 East Washington Street, Greenville, SC 29601, (864) 467-0380. Defense Counsel: John Mauldin, P.O. Box 10264, Greenville, SC 29603, (864) 467-8522.

10. *State v. Beckham*, No. 96-GS-36-79, *aff'd*, 334 S.C. 302, 513 S.E.2d 606 (1999).

This was one of the most high profile cases I ever tried as a judge. It involved the murder of the daughter of a prominent state senator by the son of an

Episcopal bishop. The three-week trial was televised live on Court Television without incident. A jury found Defendant guilty, and I sentenced him to life in prison. Defendant appealed many of my evidentiary decisions to the South Carolina Supreme Court, but my decisions were affirmed and Defendant's conviction was upheld.

Counsel for the State: W. Townes Jones, IV, 116 Court Avenue West, Greenwood, SC 29646. Defense Counsel: Richard Harpootlian, P.O. Box 1090, Columbia, SC 29202, (803) 252-4848; Jack Swerling, 1720 Main Street #301, Columbia, SC 29201, (803) 765-2626.

- 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. *Padilla v. Hanft*, 389 F. Supp. 2d 678 (D.S.C. 2005), *rev'd*, 423 F.3d 386 (4th Cir. 2005), *motion to vacate denied*, 432 F.3d 582 (4th Cir. 2005), *cert. denied*, 547 U.S. 1062 (2006).

Counsel for the Petitioner: Michael P. O'Connell, Stirling O'Connell and Pennington, P.O. Box 882, Charleston, SC 29402, (843) 577-9890; Jonathan Marc Freiman, National Litigation Project, 127 Wall Street, New Haven, CT 06570, (203) 498-4584; Donna R. Newman, 121 West 27th Street, Suite 1103, New York, NY 10001, (212) 229-1516. Counsel for the Government: Kevin F. McDonald, U.S. Attorney's Office, 1441 Main Street, Suite 500, Columbia, SC 29201, (803) 929-3000.

2. *Al-Marri v. Wright*, 443 F. Supp. 2d 774 (D.S.C. 2006), *rev'd*, 487 F.3d 160 (4th Cir. 2007), *rev'd en banc*, *Al-Marri v. Pucciarelli*, 534 F.3d 213 (4th Cir. 2008), *vacated by Al-Marri v. Spagone*, 129 S. Ct. 1545 (2009).

Counsel for the Petitioner: Andrew John Savage, III, Savage and Savage, P.O. Box 1002, Charleston, SC 29402, (843) 720-7470; Jonathan L. Hafetz, American Civil Liberties Union, 125 Broad Street, New York, NY 10004, (212) 549-2583; Lawrence Steven Lustberg, Gibbons Del Deo Dolan Griffinger and Vecchione, One Riverfront Plaza, Newark, NJ 07102, (973) 596-4500; Mark A. Berman, Hartmann Doherty Rosa and Berman, 126 State Street, Hackensack, NJ 07601, (201) 441-9056. Counsel for the Government: Kevin F. McDonald, U.S. Attorney's Office, 1441 Main Street, Suite 500, Columbia, SC 29201, (803) 929-3000.



3. *Hicks v. Fed. Bureau of Prisons*, 603 F. Supp. 2d 835 (D.S.C. 2009), *aff'd*, No. 09-7205, 2009 U.S. App. LEXIS 27813 (4th Cir. Dec. 18, 2009).

Counsel for the Petitioner: David Ray Hicks (Pro Se), No. 09109-032, FCI Edgefield, P.O. Box 725, Edgefield, SC 29824. Counsel for the Government: Beth Drake, U.S. Attorney's Office, 1441 Main Street, Suite 500, Columbia, SC 29201, (803) 929-3000.

4. *South Carolina v. LendingTree, LLC*, 6:08-cv-03044-HFF, slip op. (D.S.C. May 19, 2009).

Counsel for Plaintiff: Carl Frederick Muller, Wyche Burgess Freeman and Parham, P.O. Box 728, Greenville, SC 29602, (864) 242-8200; Matthew T. Richardson, Wyche Burgess Freeman and Parham, P.O. Box 12247, Columbia, SC 29211, (803) 254-6542. Counsel for Defendant: Benjamin Rush Smith, III, Nelson Mullins Riley and Scarborough, P.O. Box 11070, Columbia, SC 29211, (803) 799-2000; John T. Moore, Nelson Mullins Riley and Scarborough, P.O. Box 11070, Columbia, SC 29211, (803) 255-9415.

5. *Long John Silver's Rests., Inc. v. Cole*, 409 F. Supp. 2d 682 (D.S.C. 2006), *aff'd*, 514 F.3d 345 (4th Cir. 2008).

Counsel for Plaintiff: Frank S. Holleman, III, Wyche Burgess Freeman and Parham, P.O. Box 728, Greenville, SC 29602, (864) 242-8200. Counsel for Defendant: Brian P. Murphy, Brian Murphy Law Firm, 514 Pettigru, Greenville, SC 29601, (864) 370-9400.

6. *Russell v. Wachovia Bank, N.A.*, No. 99-CP-42-367, *aff'd*, 353 S.C. 208, 578 S.E.2d 329 (2003), *aff'd in part and rev'd in part on subsequent appeal*, 370 S.C. 5, 633 S.E.2d 722 (2006).

Counsel for Plaintiff: Neil Robinson, 1125 East Morehead Street, Suite 207, Charlotte, NC 28204, (704) 373-0077. Counsel for Defendants: Hoover C. Blanton, Hopkins & Campbell, LLP, P.O. Box 11963, Columbia, SC 29211, (803) 255-0998; Moffatt G. McDonald, Haynsworth, Sinkler, Boyd, PA, P.O. Box 2048, Greenville, SC 29602, (864) 240-3336; Stanley Case, Butler, Means, Evins, & Browne, PA, P.O. Drawer 451, Spartanburg, SC 29304, (864) 585-2034.

7. *Glover v. Suitt Constr. Co.*, No. 93-CP-23-2159, *aff'd*, 318 S.C. 465, 458 S.E.2d 535 (1995).

Counsel for Plaintiff: Robert M. Holland, P.O. Box 5506, Spartanburg, SC 29304, (864) 582-0416; John Leslie Smith, P.O. Box 5625, Spartanburg, SC 29304, (864) 596-2038. Counsel for Defendant: Jack Griffeth, Collins & Lacy, P.O. Box 5819, Greenville, SC 29606, (864) 282-9104.

8. *Diamonds v. Greenville County*, No. 95-CP-23-2144, *aff'd*, 325 S.C. 154, 480 S.E.2d 718 (1997).

Counsel for Plaintiff: Suzanne E. Coe, 115 Pelham Commons Boulevard, Greenville, SC 29615, (404) 235-0636. Counsel for Defendant: W. Howard Boyd, Jr., Gallivan, White & Boyd, P.A., P.O. Box 10589, Greenville, SC 29603, (864) 271-9580; Ronald Wray, Gallivan, White & Boyd, P.A., P.O. Box 10589, Greenville, SC 29603, (864) 271-9580.

9. *Bakala v. Bakala*, 352 S.C. 612, 576 S.E.2d 156 (2003) (Floyd, J., sitting as active justice).

Counsel for Appellant: Fleet Freeman, 941 Houston Northcutt Boulevard, Suite 204, Mount Pleasant, SC 29464, (843) 216-0009. Counsel for Respondent: Robert Rosen, 18 Broad Street, Suite 201, Charleston, SC 29401, (843) 377-1700.

10. *Carolina First Corp., v. Whittle*, No. 96-CP- 23-3123, *aff'd*, 343 S.C. 176, 539 S.E.2d 402 (Ct. App. 2000).

Counsel for Plaintiff: John A. Hagins, Jr., Covington, Patrick, Hagins, Sterns & Lewis, P.O. Box 2343, Greenville, SC 29602, (864) 242-9000. Counsel for Defendant: David Freeman, Wyche Burgess Freeman & Parham, PA, P.O. Box 728, Greenville, SC 29602, (864) 242-8202; Wallace Lightsey, Wyche Burgess Freeman & Parham, PA, P.O. Box 728, Greenville, SC 29602, (864) 242-8207.

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

The Supreme Court granted *certiorari* in the following case, for which I sat by designation as a Fourth Circuit panel member:

*Mid Atl. Med. Servs., LLC v. Sereboff*, 407 F.3d 212 (4th Cir. 2005), *aff'd*, *Sereboff v. Mid Atl. Med. Servs.*, 547 U.S. 356 (2006).

The Supreme Court granted *certiorari* in the following case over which I presided:

*Al-Marri v. Wright*, 443 F. Supp. 2d 774 (D.S.C. 2006), *rev'd*, 487 F.3d 160 (4th Cir. 2007), *rev'd en banc*, *Al-Marri v. Pucciarelli*, 534 F.3d 213 (4th Cir. 2008), *vacated by Al-Marri v. Spagone*, 129 S. Ct. 1545 (2009).

The following list identifies cases in which the Supreme Court denied *certiorari* review of cases over which I presided, or for which I sat by designation as a Fourth Circuit panel member:

#### 4th Circuit Cases

*White v. Sun Life Assurance Co. of Canada*, 488 F.3d 240 (4th Cir. 2007), *cert. denied*, 552 U.S. 1022 (2007).

*Rux v. Republic of Sudan*, 461 F.3d 461 (4th Cir. 2006), *cert. denied*, 549 U.S. 1208 (2007).

*Locklear v. Bergman & Beving AB*, 457 F.3d 363 (4th Cir. 2006), *cert. denied*, 549 U.S. 1208 (2007).

*Logan v. JKV Real Estate Servs. (In re Bogdan)*, 414 F.3d 507 (4th Cir. 2005), *cert. denied*, *Stewart Title Guar. Co. v. Logan*, 546 U.S. 1093 (2006).

*Lambeth v. Bd. of Comm'rs*, 407 F.3d 266 (4th Cir. 2005), *cert. denied*, 546 U.S. 1015 (2005).

*United States v. Bush*, 404 F.3d 263 (4th Cir. 2005), *cert. denied*, *Bush v. United States*, 546 U.S. 916 (2005).

*Chaplin v. Du Pont Advance Fiber Sys.*, No. 04-1469, No. 04-1471, 124 F. App'x 771 (4th Cir. Mar. 10, 2005), *cert. denied*, *Chaplin v. Du Pont Advance Fiber Sys.*, 546 U.S. 927 (2005).

#### District Court Cases

*Super Duper, Inc. v. Mattel, Inc.*, No. 6:05-1700-HFF-WMC (D.S.C. Mar. 31, 2009), *aff'd*, No. 09-1397, 2010 U.S. App. LEXIS 11853 (4th Cir. June 10, 2010), *cert. denied*, 2011 U.S. LEXIS 720 (Jan. 18, 2011).

*United States v. Miller*, No-04-22, 2007 U.S. Dist. LEXIS 66872 (D.S.C. Sept. 7, 2007), *cert. denied*, 130 S. Ct. 393 (2009).

*Roussos v. United States*, No. 08-70113, slip op. (D.S.C. June 3, 2009), *cert. denied*, 2010 U.S. LEXIS 2428 (Mar. 22, 2010).

*United States v. McDaniels*, Crim. No. 06-36-HFF-1, slip op. (D.S.C. Nov. 12, 2008), *cert. denied*, 176 L. Ed. 2d 203 (2010).

*Dempsey v. Cartledge*, No. 08-1054-HFF-PJG, 2009 U.S. Dist. LEXIS 18393 (Mar. 10, 2009), *cert. denied*, 176 L. Ed. 2d 220 (2010).

*Gantt v. United States*, Crim. No. 04-1013, slip op. (D.S.C. Sept. 5, 2008), *cert. denied*, 130 S. Ct. 346 (2009).

*Meadows v. City of Cayce*, No. 07-409-HFF-BHH, 2008 U.S. Dist. LEXIS 52936 (D.S.C. June 24, 2008), *cert. denied*, 130 S. Ct. 306 (2009).

*Kilgore v. Drew*, No. 08-3200, 2008 U.S. Dist. LEXIS 85307 (D.S.C. Oct. 22, 2008), *cert. denied*, 129 S. Ct. 2421 (2009).

*Dorsey v. Burt*, No. 07-1865, 2008 U.S. Dist. LEXIS 92541 (D.S.C. Aug. 21, 2008), *cert. denied*, 129 S. Ct. 2793 (2009).

*Cruz v. LaManna*, No. 07-1060, 2008 U.S. Dist. LEXIS 14355 (D.S.C. Feb. 26, 2008), *cert. denied*, 129 S. Ct. 2421 (2009).

*Stoudemire v. Padula*, No. 07-3272-HFF-BHH, 2008 U.S. Dist. LEXIS 59865 (D.S.C. Aug. 4, 2008), *cert. denied*, 129 S. Ct. 2830 (2009).

*United States v. Harrison*, Crim. No. 07-552-HFF-1 (D.S.C. Nov. 1, 2007), *cert. denied*, 129 S. Ct. 610 (2008).

*Webb v. Hamidullah*, No. 05-2546-HFF-BM, 2006 U.S. Dist. LEXIS 50833 (D.S.C. July 24, 2006), *cert. denied*, *Webb v. Rivera*, 129 S. Ct. 1361 (2009).

*Glover v. Rushton*, No. 06-3454-HFF-BM, 2008 U.S. Dist. LEXIS 6675 (D.S.C. Jan. 29, 2008), *cert. denied*, 130 S. Ct. 24 (2009).

*Long John Silver's, Inc. v. Cole*, 409 F. Supp. 2d 682 (D.S.C. 2006), *cert. denied*, 129 S. Ct. 58 (2008).

*United States v. Penland*, Crim. No. 05-710-HFF-1 (D.S.C. Sept. 13, 2006), *cert. denied*, 553 U.S. 1059 (2008).

*Wise v. South Carolina Dep't of Corr.*, No. 06-802-HFF-WMC, 2007 U.S. Dist. LEXIS 14680 (D.S.C. Feb. 28, 2007), *cert. denied*, 128 S. Ct. 2528 (2008).

*Wigfall v. Burt*, No. 06-1750-HFF-RSC, 2006 U.S. Dist. LEXIS 93793 (D.S.C. Dec. 28, 2006), *cert. denied*, 552 U.S. 981 (2007).

*Spence v. Yancey*, No. 05-3478-HFF-WMC, 2006 U.S. Dist. LEXIS 39843 (D.S.C. June 14, 2006), *cert. denied*, 552 U.S. 1218 (2008).

*United States v. McIver*, Crim. No. 04-745-HFF (D.S.C. Sept. 15, 2005), *cert. denied*, 550 U.S. 936 (2007).

*United States v. Roussos*, Crim. No. 04-407-HFF (D.S.C. June 6, 2005), *cert. denied*, 551 U.S. 1168 (2007).

*Scott v. Ozmint*, No. 05-2008-HFF, slip op. (D.S.C. Jan. 30, 2006), *cert. denied*, 550 U.S. 922 (2007).

*Allen v. SSA*, No. 04-280, 2005 U.S. Dist. LEXIS 40265 (D.S.C. Feb. 15, 2005), *cert. denied*, 549 U.S. 861 (2006).

*Pinckney v. McMaster*, No. 04-22837, slip op. (D.S.C. July 12, 2005), *cert. denied*, 547 U.S. 1077 (2007).

*Padilla v. Hanft*, 389 F. Supp. 2d 678 (D.S.C. 2005), *cert. denied*, 547 U.S. 1062 (2006).

*Stevenson v. South Carolina*, No. 04-1465-HFF, slip op. (D.S.C. Mar. 3, 2005), *cert. denied*, 546 U.S. 1078 (2005).

*Dingle v. South Carolina*, No. 02-3422-HFF, slip op. (D.S.C. Sept. 15, 2004), *cert. denied*, 547 U.S. 1080 (2006).

*Burdette v. Rushton*, No. 04-1249-HFF, slip op. (D.S.C. Oct. 22, 2004), *cert. denied*, 546 U.S. 942 (2005).

*Fluellen v. United States*, No. 03-211-HFF, slip op. (D.S.C. July 29, 2004), *cert. denied*, 546 U.S. 869 (2005).

- 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.

#### District Court Cases

*United States v. Johnson*, No. 8:07-960-HFF-2 (D.S.C. Nov. 14, 2008), *rev'd and remanded*, 617 F.3d 286 (4th Cir. 2010). The Court of Appeals reversed my admission of a DEA agent's testimony as to the meaning of certain wiretapped conversations because he was never qualified as an expert. The court also disagreed with my admission of some of Defendant's prior drug transactions.

*United States v. Martinez*, No. 7:08-112-HFF (D.S.C. Feb. 10, 2009), *aff'd in part, vacated in part, and remanded*, No. 09-4184, 2010 U.S. App. LEXIS 12554 (4th Cir. June 18, 2010). The Court of Appeals vacated my sentence of 216 months imprisonment because I failed to address Defendant's arguments for a below-guidelines sentence based on the factors set forth in 18 U.S.C. § 3553.

*United States v. McDowell*, No. 7:07-711-HFF (D.S.C. Apr. 7, 2009), *aff'd in part, vacated in part, and remanded*, No. 09-4411, 2010 U.S. App. LEXIS 12422

(4th Cir. June 17, 2010). The Court of Appeals vacated my sentence of Defendant as a career offender because he had two previous convictions for failure to stop for a blue light under South Carolina law.

*United States v. Tucker*, Crim. No. 7:08-666-HFF-1 (D.S.C. Apr. 3, 2009), *vacated and remanded*, *United States v. Lynn*, 592 F.3d 572 (4th Cir. 2010). The Court of Appeals reversed my decision to depart upwards from the guideline range because I failed to provide a sufficient “individualized explanation.”

*United States v. Garrett*, Crim. No. 09-428-HFF (D.S.C. Oct. 5, 2009), *aff’d*, No. 09-4953, 2010 U.S. App. LEXIS 6375 (4th Cir. 2010). The Court of Appeals found that my failure to ask Defendant at sentencing if she had gone over the Presentence Investigation Report (PSR) with her attorney was error, but it was not reversible error because it did not impact the outcome of the sentencing hearing.

*Wojeicki v. Aiken Tech. Coll.*, No. 1:06-461-HFF-BM, 2006 U.S. Dist. LEXIS 35179 (D.S.C. Mar. 27, 2008), *vacated and remanded*, No. 08-1469, 2010 U.S. App. LEXIS 528 (4th Cir. 2010). The Court of Appeals reversed my dismissal of an employment discrimination case for Plaintiff’s failure to exhaust his administrative remedies, finding that I should have considered evidence of exhaustion presented for the first time in Plaintiff’s objections to the Magistrate Judge’s Report and Recommendation.

*Smith v. Smith*, No. 0:07-275-HFF-GCK, 2008 U.S. Dist. LEXIS 5202 (D.S.C. Jan. 22, 2008), *rev’d and remanded*, 589 F.3d 736 (4th Cir. 2009). The Court of Appeals reversed my dismissal of a prisoner’s complaint alleging a claim of deliberate indifference, concluding that Plaintiff pled facts sufficient to state a claim for deliberate indifference.

*United States v. Spears*, Crim. No. 08-112-HFF-3 (D.S.C. Dec. 4, 2008), *aff’d in part, vacated in part, and remanded*, No. 08-5216, 2009 U.S. App. LEXIS 24624 (4th Cir. 2009). The Court of Appeals affirmed a conviction for conspiracy to murder a federal law enforcement officer based on the evidence, but it agreed with Defendant that he was indicted under the wrong statute.

*United States v. Allison*, Crim. No. 8:05-55-HFF-1 (D.S.C. Sept. 19, 2005), *vacated and remanded*, 301 F. App’x 243 (4th Cir. 2008). The Court of Appeals reversed my decision at sentencing that defendant-appellant failed to qualify for a two-level safety-valve reduction under the sentencing guidelines.

*Webb v. Hamidullah*, No. 05-2546-HFF-BM, 2006 U.S. Dist. LEXIS 50833 (D.S.C. July 24, 2006), *aff’d*, 281 F. App’x 159 (4th Cir. 2008). The Court of Appeals affirmed my granting Defendants’ motion for summary judgment in a prisoner case alleging deliberate indifference, but Judge Gregory wrote a strong dissent in which he concluded that deliberate indifference existed.

*Al-Marri v. Wright*, 443 F. Supp. 2d 774 (D.S.C. 2006), *rev'd*, 487 F.3d 160 (4th Cir. 2007), *rev'd*, *Al-Marri v. Pucciarelli*, 534 F.3d 213 (4th Cir. 2008) (en banc), *vacated by Al-Marri v. Spagone*, 129 S. Ct. 1545 (2009). The Court of Appeals, in both a panel decision and a divided en banc opinion, reversed my finding that the government had put forth sufficient evidence to support Petitioner's detention as an enemy combatant and that Petitioner had failed to put forth evidence contradicting this information. Writing the controlling concurrence, Judge Traxler concluded that Congress had authorized the President to detain enemy combatants but that Petitioner was denied due process in his attempt to challenge the factual basis for his designation as such. When Petitioner was transferred into civilian custody, the Supreme Court vacated the opinion of the Court of Appeals.

*Ellenburg v. Tom Johnson Camping Ctr., Inc.*, No. 06-1606-HFF, 2006 U.S. Dist. LEXIS 36911 (D.S.C. May 31, 2006), *rev'd and remanded*, *Ellenburg v. Spartan Motors Chassis, Inc.*, 519 F.3d 192 (4th Cir. 2008). The Court of Appeals reversed my sua sponte remand of a products liability action, concluding that I lacked the authority to sua sponte enter a remand order on what it deemed to be procedural grounds.

*United States v. Mitchell*, Crim. No. 6:05-1167-HFF-1 (D.S.C. Nov. 7, 2006), *rev'd*, 518 F.3d 230 (4th Cir. 2008). The Court of Appeals reversed my finding Defendant guilty of aggravated identity theft in a bench trial, finding that an identifier for purposes of aggravated identify theft must be sufficient to identify a specific individual, not simply use a name of another.

*Scott v. Westinghouse Savannah River Co.*, No. 00-1715-HFF-RSC, slip. op. (D.S.C. Sept. 29, 2004), *aff'd in part and vacated and remanded in part*, *Sherman v. Westinghouse Savannah River Co.*, 263 F. App'x 357 (4th Cir. 2008). The Court of Appeals affirmed my grant of summary judgment in favor of Defendants in three of four consolidated employment discrimination cases, but reversed in the fourth, concluding that Plaintiff had presented a prima facie case.

*Reed v. Ozmint*, 3:08-cv-02301-HFF (D.S.C. June 20, 2008), *vacated and rev'd*, No. 08-7 (4th Cir. 2008), *stay denied*, 128 S. Ct. 2953 (2008). The Court of Appeals vacated my stay of Petitioner's execution and reversed the judgment. The Supreme Court then refused to stay the execution.

*Vaughan v. Recall Total Info. Mgmt.*, No. 02-402-HFF (D.S.C. Apr. 6, 2005), *aff'd in part, rev'd in part and remanded*, 217 F. App'x 211 (4th Cir. 2007). The Court of Appeals reversed two of my findings in a bench trial for a breach of contract action. The court concluded that, under the language of the contract, revenues earned by a newly acquired company should not have been included in the judgment. The court also disagreed with my conclusion that Defendant's counterclaim was barred by the limitations period provided in the sales contract.

*United States v. Silver*, Crim. No. 05-451-HFF (D.S.C. Sept. 19, 2005), *aff'd in part, vacated and remanded in part*, 208 F. App'x 201 (4th Cir. 2006). The Court of Appeals vacated my guideline sentence of fifty months, concluding that I failed to rule on Defendant's objection to a four-level increase in his offense level based on the depiction of sadistic or other violent conduct.

*Padilla v. Hanft*, 389 F. Supp. 2d 678 (D.S.C. 2005), *rev'd*, 423 F.3d 386 (4th Cir. 2005), *motion to vacate denied*, 432 F.3d 582 (4th Cir. 2005), *cert. denied*, 547 U.S. 1062 (2006). The Court of Appeals reversed my decision that Congress had not authorized the detention of Petitioner and that the government must either bring criminal charges against Petitioner or release him. Petitioner sought a writ of certiorari from the Supreme Court. Thereafter, the Supreme Court granted the government's request to transfer Petitioner immediately out of military custody and into federal civilian law enforcement custody, and denied as moot Petitioner's application for certiorari.

#### State Court Cases

*State v. Ballenger*, 322 S.C. 196, 470 S.E.2d 851 (1996). The Court of Appeals reversed me on a "throw down" drug case for failure to direct a verdict of acquittal. The Supreme Court then reversed the Court of Appeals.

*State v. Grovenstein*, 335 S.C. 347, 517 S.E.2d 216 (1999). The Court of Appeals reversed me on the procedure I used when it was discovered the alternate juror was in the jury room during deliberations. The Supreme Court then reversed the Court of Appeals. The case went back to the Court of Appeals on remand as to other issues. The Court of Appeals reversed my application of the rape shield statute. The case is cited in 340 S.C. 210, 530 S.E.2d 406 (Ct. App. 2000). The Supreme Court granted certiorari to review that decision, but the parties resolved the matter by agreement and withdrew the appeal before an opinion was issued.

*State v. Brockman*, 339 S.C. 57, 528 S.E.2d 661 (2000). The Court of Appeals reversed me concerning the admission of drug evidence found in a moped within the curtilage of Defendant's mother's home. The Supreme Court then reversed the Court of Appeals.

*Osteen v. Greenville County Sch. Dist.*, 323 S.C. 432, 475 S.E.2d 775 (1998). The Court of Appeals reversed a workers' compensation decision of mine dealing with the application of the personal comfort doctrine. The Supreme Court then reversed the Court of Appeals.

*Hanahan v. Simpson*, 326 S.C. 140, 485 S.E.2d 903 (1997). The Supreme Court affirmed my handling of a wills contest but reversed my order of sanctions.

*State v. Martin*, 340 S.C. 597, 533 S.E.2d 572 (2000); *State v. Wilson*, 339 S.C. 491, 530 S.E.2d 126 (2000). The Supreme Court reversed the convictions of two



defendants tried together in a murder case in front of me on the ground that I should have directed a verdict of acquittal for both.

*State v. Lynch*, 344 S.C. 635, 545 S.E.2d 511 (2001). The Supreme Court affirmed Defendant's conviction of murder but reversed his conviction of burglary on the ground that I allowed an improper amendment to the indictment.

*Hill v. State*, 350 S.C. 465, 567 S.E.2d 847 (2002). The Supreme Court reversed my granting of post-conviction relief, concluding that, although I was right that an erroneous charge was given, the Defendant suffered no prejudice.

*Cooper v. State*, 338 S.C. 202, 525 S.E.2d 886 (2000). The Supreme Court reversed my holding that the statute of limitations in the PCR Act barred Petitioner's claim for relief.

*State v. Fuller*, 337 S.C. 236, 523 S.E.2d 168 (1999). The Supreme Court reversed Defendant's conviction for murder because I did not let Defendant represent himself and because I admitted accomplice testimony.

*Gilmore v. State*, 314 S.C. 453, 445 S.E.2d 454 (1994). The Supreme Court reversed my decision that trial counsel was ineffective for failing to request that the lesser included offense be charged and said counsel was not ineffective.

*Cunningham v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (2003). The Supreme Court reversed my grant of summary judgment in favor of one defendant based on assumption of the risk.

*State v. Murphy*, 322 S.C. 321, 471 S.E.2d 739 (Ct. App. 1996). The Court of Appeals reversed Defendant's conviction of intent to commit criminal sexual conduct with a minor, holding that I should have charged assault of a high and aggravated nature.

*In re Breast Implant Prod. Liab. Litig.*, 331 S.C. 540, 503 S.E.2d 445 (1998). The Supreme Court reversed my decision that the distribution of breast implants constituted a sale under the Uniform Commercial Code rather than a service.

*Revis v. Almshouse and Auto-Owners Ins. Co. & Revis v. Almshouse*, UPO, No. 94-UP-185 (S.C. Ct. App. 1994). In a pedestrian/auto accident, the Court of Appeals affirmed me on the issue of whether the court had jurisdiction over the auto owner but reversed on the finding that the court did not have jurisdiction over the underinsured insurance carrier.

*State v. Blassingame*, UPO No. 94-UP-246 (S.C. Ct. App. 1994), *rev'd and remanded*. The trial judge sentenced Defendant, who was tried in absentia, and sealed the sentence until Defendant could be located. Defendant was arrested, and he was brought before me for sentencing. On appeal, some of the trial

judge's rulings were reversed. In this case, I was performing only the duty of imposing the sealed sentence in accordance with our procedure.

*L. Rowland v. The Schafer Co. & J. Rowland v. The Schafer Co.*, UPO No. 2000-UP-259 (S.C. Ct. App. 2000). The Court of Appeals reversed my finding that Rowland was a statutory employee under our workers' compensation statute.

*In the Matter of Millie Beeks: Rollison v. Beeks*, UPO No. 95-UP-263 (S.C. Ct. App. 1995). The Court of Appeals reversed my affirmation of the Probate Judge's decision appointing co-guardians and payment of attorney's fees to the guardians.

*Rhodes v. McDonald*, 345 S.C. 500, 548 S.E.2d 220 (Ct. App. 2001). The Court of Appeals reversed my decision to allow the jury to award punitive damages in a warranty action brought by a homeowner against a contractor.

*Marty Mack, Employee v. Landmark Nissan, Employer*, UPO No. 96-UP- 334 (S.C. Ct. App. 1996). The Court of Appeals reversed my decision that the Workers Compensation Commission should not have denied benefits to Plaintiff.

*Mullinax v. Bates*, 317 S.C. 394, 453 S.E.2d 894 (1995). The Supreme Court reversed my ruling in a non-jury proceeding that Rule 13 of South Carolina Rules of Civil Procedure regarding compulsory counterclaims barred Appellant's claim.

*State v. Proctor*, 345 S.C. 299, 546 S.E.2d 673 (Ct. App. 2001). The Court of Appeals reversed my revocation of the Appellant's probation, holding that his adult probation case did not begin until he completed his youthful offender parole.

*Sullivan v. Mayfield & Mattison v. Mayfield & VanAllen v. Mayfield*, UPO No. 96-UP-265 (S.C. Ct. App. 1996). The Court of Appeals reversed my granting of summary judgment in an automobile negligence case.

*Ex parte Foster*, 350 S.C. 238, 565, S.E.2d 290 (2002). The Supreme Court remanded on the ground that I did not make enough findings that the defendant in a civil forfeiture action was entitled to an appointed Guardian Ad Litem.

*The Jay Group, LTD v. The Bootery of Haywood Mall*, 335 S.C. 114, 515 S.E.2d 542 (Ct. App. 1999). The Court of Appeals disagreed with my holding that a North Carolina judgment was entitled to full faith and credit in South Carolina.

*De Bondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 536 S.E.2d 399 (Ct. App. 2000). In a case involving the purchase of an automobile, the Court of Appeals reversed me on the granting of summary judgment as to the Unfair Trade Practices Act and Manufacturers and Dealers Act.

*State v. Evans*, 343 S.C. 685, 541 S.E.2d 852 (Ct. App. 2001), *rev'd*, 354 S.C. 579, 582 S.E.2d 407 (2003). The Court of Appeals held that I identified the appropriate objective standard of custody in evaluating a *Miranda* issue, but reversed me because I made additional remarks about her mental situation, which caused the court to believe that I might have been using a subjective standard. The Supreme Court then reversed the Court of Appeals.

*State v. Fletcher*, 363 S.C. 221, 609 S.E.2d 572 (Ct. App. 2005), *rev'd*, 379 S.C. 17, 664 S.E.2d 480 (2008). The South Carolina Supreme Court reversed my decision to admit character evidence.

*State v. Laney*, 367 S.C. 639, 627 S.E.2d 726 (2006). In this death penalty case, the Supreme Court reversed my instruction at the sentencing phase as error because the State offered evidence of Defendant's future dangerousness and I had failed to instruct the jury that a sentence of life imprisonment meant a sentence of life without parole.

*State v. Cobb*, 349 S.C. 126, 561 S.E.2d 631 (Ct. App. 2002), *rev'd*, 355 S.C. 98, 584 S.E.2d 371 (2003). The South Carolina Supreme Court reversed my sentencing Defendant to twenty years in prison on the ground that I should have sentenced him under South Carolina's accommodation statute.

*State v. James*, 346 S.C. 303, 551 S.E.2d 591 (Ct. App. 2001), *rev'd*, 355 S.C. 25, 583 S.E.2d 745 (2003). The South Carolina Supreme Court reversed my sentencing Defendant to life in prison, holding that I erred by admitting evidence of seven of Defendant's prior burglary convictions when the statute requires proof of only "two or more" prior convictions to establish first degree burglary.

*Tennis v. S.C. Dep't of Soc. Servs.*, 355 S.C. 551, 585 S.E.2d 312 (Ct. App. 2003). The Court of Appeals reversed my affirming the Department of Social Services' denial of Plaintiff's application to renew her license to operate a day care facility.

*Sheppard v. State*, 357 S.C. 646, 594 S.E.2d 462 (2004). The Supreme Court disagreed with my holding that Petitioner had voluntarily waived his right to a direct appeal and granted him a belated appeal, but affirmed his conviction.

*Austin v. State*, 352 S.C. 473, 575 S.E.2d 547 (2003). The Supreme Court reversed my finding that the family court could transfer the charge of possession of a firearm during the commission of a violent crime to the circuit court.

*Tilley v. Pacesetter Corp.*, 333 S.C. 33, 508 S.E.2d 16 (1998). The Supreme Court affirmed my judgment in its result in a South Carolina Consumer Protection action but held the applicable statute of limitations to be three years, not one year like I had found.

*Cowburn v. Leventis*, 366 S.C. 20, 619 S.E.2d 437 (2005). In this action, an investor in what turned out to be a Ponzi scheme sued a bank and an attorney for the losses that he suffered. The Court of Appeals affirmed my decision to grant summary judgment for both the bank and the attorney, except on the issue of the attorney's alleged violation of the South Carolina Uniform Securities Act.

*Russell v. Wachovia Bank*, 370 S.C. 5, 633 S.E.2d 722 (2006). The Supreme Court reversed my finding that the no-contest clauses in a will were unenforceable, upheld my imposition of sanctions against one of the children, and reversed my conclusion that one of the motions for sanctions was untimely.

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

As a district judge, almost all (99%) of my opinions are "unpublished" in the sense that they fail to appear in the Federal Supplement. I rarely ask to have an opinion published, but, occasionally, the Federal Supplement will select one of my opinions for publication. However, a majority of my opinions are electronically published through Lexis and WestLaw. In fact, I would estimate that approximately 90% of my final orders are electronically published in this manner.

It is my understanding that the electronic databases do not publish most pre-trial, non-dispositive orders such as discovery and procedural orders. Further, according to them, they do not publish orders that are not released by the Clerk of Court's office. For an opinion to be released, the electronic filer (whether it be someone in my chambers or someone in the Clerk's office) must indicate that the opinion constitutes a written opinion. Occasionally, the filing user inadvertently fails to indicate as such. I estimate that I have written approximately 70 opinions that should have been classified as written opinions but were not. Each of these orders, along with thousands of pre-trial orders, is available through the District of South Carolina's electronic filing system, ECF.

- 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.

U.S. Court of Appeals for the Fourth Circuit, sitting by designation

*United States v. Schaffer*, No. 07-4187, 286 F. App'x 81 (4th Cir. July 3, 2008).

*Walker v. Kelly*, No. 04-22, 195 F. App'x 169 (4th Cir. Aug. 24, 2006).

### District Court Cases

*Padilla v. Hanft*, 389 F. Supp. 2d 678 (D.S.C. 2005), *rev'd*, 423 F.3d 386 (4th Cir. 2005), *motion to vacate denied*, 432 F.3d 582 (4th Cir. 2005), *cert. denied*, 547 U.S. 1062 (2006).

*Al-Marri v. Wright*, 443 F. Supp. 2d 774 (D.S.C. 2006), *rev'd*, 487 F.3d 160 (4th Cir. 2007), *rev'd en banc*, *Al-Marri v. Pucciarelli*, 534 F.3d 213 (4th Cir. 2008), *vacated by Al-Marri v. Spagone*, 129 S. Ct. 1545 (2009).

### State Court Cases

*Diamonds v. Greenville County*, No. 95-CP-23-2144, *aff'd*, 325 S.C. 154, 480 S.E.2d 718 (1997).

- 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.

### Opinions Authored, U.S. Court of Appeals for the Fourth Circuit

*United States v. Schaffer*, No. 07-4187, 286 F. App'x 81 (4th Cir. July 3, 2008) (Floyd, J.). In this criminal appeal, Defendant challenged the admissibility of evidence seized during a warrantless search of his residence. We concluded that exigent circumstances existed to justify a warrantless search of the home and, thereby, affirmed the district court's decision to admit the evidence seized. More specifically, the evidence established that the officers who conducted the search reasonably believed that Defendant had a gun and he may have been inside the house, posing a danger to the officers and Defendant's wife.

*Schweikert v. Bank of Am., N.A.*, 521 F.3d 285 (4th Cir. 2008) (Floyd, J.). This was an employment case brought by a former bank vice president against his former employer. The district court dismissed the case on the grounds that Plaintiff's action was preempted by the National Bank Act (NBA). We agreed and held that the NBA preempted state law claims for wrongful discharge of bank officers.

*Hussain v. Gonzales*, 477 F.3d 153 (4th Cir. 2007) (Floyd, J.). This was an immigration case in which I denied Petitioner's petition for review of an order from the Board of Immigration Appeals (Board), which denied his appeal from an immigration judge's order. The sole issue was the question of remand and whether it was properly addressed by the Board.

We concluded that the Board failed to address the motion to remand, but, on the merits, Petitioner was statutorily prohibited from receiving an adjustment in his immigration status because he entered the country illegally.

*Newport News Shipbuilding & Dry Dock Co. v. Dir., Office of Workers' Comp. Programs*, 477 F.3d 123 (4th Cir. 2007) (Floyd, J.). This case reviewed an award of attorney's fees under the Longshore and Harbor Workers' Compensation Act. Applying the statutory language, we agreed with the district court that attorney's fees for Plaintiff's counsel were justified because Plaintiff obtained greater compensation by litigating the case.

*Newport News Shipbuilding & Dry Dock Co. v. Young*, No. 05-1781, 199 F. App'x 274 (4th Cir. Sept. 8, 2006) (Floyd, J.). This case involved a claim for benefits under the Longshore and Harbor Workers' Compensation Act. The Benefits Review Board awarded Plaintiff benefits, and we affirmed the award of those benefits, concluding that the Board's decision was supported by substantial evidence.

*Walker v. Kelly*, No. 04-22, 195 F. App'x 169 (4th Cir. Aug. 24, 2006) (Floyd, J.). This was an appeal from the denial of federal habeas relief under 28 U.S.C. § 2254. The issue before the court was whether Petitioner had shown cause and prejudice sufficient to overcome the procedural default of his *Brady* claim. Applying the *Strickler* factors, we concluded that he had shown cause for the procedural default. Moreover, Petitioner demonstrated prejudice from the procedural default because the evidence that the State failed to disclose undermined the testimony of the State's only eyewitness. Thus, had the evidence been disclosed and admitted, it may have changed the jury's verdict.

*Locklear v. Bergman & Beving AB*, 457 F.3d 363 (4th Cir. 2006) (Floyd, J.). In this products liability action, Plaintiff sought to amend his complaint and change the name of the defendant manufacturer after the statute of limitations had run. The issue on appeal was whether the amended complaint, filed during a court-ordered extension of the time for service, related back to the original complaint under what is now Federal Rule of Civil Procedure 15(c)(1)(C). We agreed with the district court that it did not relate back because Plaintiff's failure to include the proper defendant was not a "mistake" in that Plaintiff learned of the proper manufacturer eight months after filing the lawsuit.

*Simms v. Mut. Benefit Ins. Co.*, No. 03-2452, 137 F. App'x 594 (4th Cir. June 30, 2005) (Floyd, J.). Defendant insurance company challenged a trial court's evidentiary decision to exclude evidence of Plaintiff's financial condition on the ground that it was more prejudicial than probative under Rule 403. Reviewing for abuse of discretion, we agreed with the trial court's

decision to exclude the evidence because it could have confused the jury about the issues of the case and extremely prejudiced Plaintiff. Defendant also challenged the trial court's jury instruction that it had to prove its affirmative defense by clear and convincing evidence. Applying Maryland law, we disagreed with Defendant and affirmed the trial court's decision.

Opinions Joined, U.S. Court of Appeals for the Fourth Circuit

*United States v. Branch*, 537 F.3d 328 (4th Cir. 2008).  
*United States v. Jones*, No. 06-4889, 289 F. App'x 593 (4th Cir. Aug. 20, 2008).  
*United States v. Henry*, 538 F.3d 300 (4th Cir. 2008).  
*Westmoreland Coal Co. v. Amick*, No. 06-2172, 289 F. App'x 638 (4th Cir. Aug. 18, 2008).  
*Iko v. Shreve*, 535 F.3d 225 (4th Cir. 2008).  
*Charlie Norfolk Ctr. Assocs., L.P. v. Norfolk Redevelopment & Hous. Auth.*, No. 07-1571, 285 F. App'x 80 (4th Cir. July 1, 2008).  
*United States v. Bradshaw*, No. 07-4465, 282 F. App'x 264 (4th Cir. June 24, 2008).  
*United States v. Anderson*, Nos. 07-4303, 07-4304, 282 F. App'x 255 (4th Cir. June 20, 2008).  
*Flaherty v. Legum & Norman Realty, Inc.*, No. 07-1507, 281 F. App'x 232 (4th Cir. June 11, 2008).  
*Scott v. Lumbee River Elec. Mbrshp. Corp.*, No. 07-1169, 286 F. App'x 27 (4th Cir. June 10, 2008).  
*United States v. Hassan*, No. 07-4602, 280 F. App'x 271 (4th Cir. June 6, 2008).  
*United States v. Kuai Li*, No. 07-4559, 280 F. App'x 267 (4th Cir. June 6, 2008).  
*United States v. Moran*, No. 07-4312, 280 F. App'x 302 (4th Cir. June 4, 2008).  
*United States v. Black*, 525 F.3d 359 (4th Cir. 2008).  
*Barnhill v. Veneman (In re Peanut Crop Ins. Litig.)*, 524 F.3d 458 (4th Cir. 2008).  
*United States v. Bodkins*, Nos. 06-4647, 06-4652, 274 F. App'x 294 (4th Cir. Apr. 18, 2008).  
*Beckner v. Am. Benefit Corp.*, No. 07-1225, 273 F. App'x 226 (Apr. 10, 2008).  
*Barbe v. McBride*, 521 F.3d 443 (4th Cir. 2008).  
*Kennedy v. Joy Techs., Inc.*, No. 06-2307, 269 F. App'x 302 (4th Cir. Mar. 12, 2008).  
*United States v. Reyes Go*, 517 F.3d 216 (4th Cir. 2008).  
*United States v. Wallace*, 515 F.3d 327 (4th Cir. 2008).  
*EEOC v. Firestone Fibers & Textiles Co.*, 515 F.3d 307 (4th Cir. 2008).  
*Darveau v. Detecon, Inc.*, 515 F.3d 334 (4th Cir. 2008).  
*Parts Depot, Inc. v. NLRB*, Nos. 07-1178, 07-1290, 260 F. App'x 607 (4th Cir. Jan. 7, 2008).  
*Hyang Kyu Smart v. Mukasey*, No. 06-1468, 258 F. App'x 622 (4th Cir. Dec. 19, 2007).  
*Wirba v. Mukasey*, No. 06-1719, 257 F. App'x 619 (4th Cir. Dec. 14, 2007).

*United States v. Uhrich*, Nos. 05-4486, 05-4487, 05-4490, 228 F. App'x 248 (4th Cir. June 1, 2007).  
*White v. Sun Life Assur. Co.*, 488 F.3d 240 (4th Cir. 2007).  
*United States v. Godsey*, No. 06-4243, 214 F. App'x 274 (4th Cir. Jan. 24, 2007).  
*West Virginia v. Thompson*, 475 F.3d 204 (4th Cir. 2007).  
*Gross v. SES Americom, Inc.*, No. 05-2304, 213 F. App'x 166 (4th Cir. Jan. 11, 2007).  
*Pension Benefit Guar. Corp. v. United Airlines, Inc.*, No. 05-2375, 2007 U.S. App. LEXIS 401, 39 Employee Benefits Cas. (BNA) 2741 (4th Cir. Jan. 9, 2007).  
*Jani v. Bert Bell/Pete Rozelle NFL Player Ret. Plan*, No. 05-2386, 209 F. App'x 305 (4th Cir. Dec. 13, 2006).  
*United States v. Chapman*, No. 04-5010, 209 F. App'x 253 (4th Cir. Dec. 8, 2006).  
*Board of Trs. v. BES Servs.*, 469 F.3d 369 (4th Cir. 2006).  
*Briggs v. Marriott Int'l, Inc.*, No. 05-1616, 205 F. App'x 183 (4th Cir. Nov. 28, 2006).  
*Buchbinder v. Natanzon*, No. 06-1078, 205 F. App'x 984 (4th Cir. Nov. 16, 2006).  
*United States v. Carpenter*, No. 06-4027, 204 F. App'x 260 (4th Cir. Oct. 19, 2006).  
*Hyman v. City of Gastonia*, 466 F.3d 284 (4th Cir. 2006).  
*United States v. Evans*, No. 06-4480, 199 F. App'x 290 (4th Cir. Sept. 12, 2006).  
*Rux v. Republic of Sudan*, 461 F.3d 461 (4th Cir. 2006).  
*Cowan Sys. v. Harleysville Mut. Ins. Co.*, 457 F.3d 368 (4th Cir. 2006).  
*Naizgi v. Gonzales*, 455 F.3d 484 (4th Cir. 2006).  
*First Penn-Pac. Life Ins. Co. v. William R. Evans, Chtd.*, No. 05-1336, 193 F. App'x 221 (4th Cir. July 14, 2006).  
*Ridpath v. Bd. of Governors Marshall Univ.*, 447 F.3d 292 (4th Cir. 2006).  
*United States v. Isom*, No. 03-4960, 138 F. App'x 574 (4th Cir. July 12, 2005).  
*Logan v. JKV Real Estate Servs. (In re Bogdan)*, 414 F.3d 507 (4th Cir. 2005).  
*TNT Logistics of N. Am., Inc. v. NLRB*, 413 F.3d 402 (4th Cir. 2005).  
*Trowell v. Beeler*, No. 04-6531, 135 F. App'x 590 (4th Cir. May 19, 2005).  
*Lambeth v. Bd. of Comm'rs*, 407 F.3d 266 (4th Cir. 2005).  
*Slade v. Hampton Rds. Reg'l Jail*, 407 F.3d 243 (4th Cir. 2005).  
*Mid Atl. Med. Servs., LLC v. Sereboff*, 407 F.3d 212 (4th Cir. 2005).  
*United States v. Bush*, 404 F.3d 263 (4th Cir. 2005).  
*United States v. Evans*, 404 F.3d 227 (4th Cir. 2005).  
*Chaplin v. Du Pont Advance Fiber Sys.*, Nos. 04-1469, 04-1471, 124 F. App'x 771 (4th Cir. Mar. 10, 2005).  
*United States v. Woolfolk*, 399 F.3d 590 (4th Cir. 2005).  
*Devan v. Phoenix Am. Life Ins. Co. (In re Merry-Go-Round Enters.)*, 400 F.3d 219 (4th Cir. 2005).  
*Talton v. I.H. Caffey Distrib. Co.*, No. 04-1652, 124 F. App'x 760 (4th Cir. Jan. 18, 2005).



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.

In determining whether to recuse myself from presiding over a matter, I base my decision on whether one with knowledge of the relevant facts might reasonably question my impartiality.

The Clerk of Court employs a computer program that randomly assigns cases to the various district judges in this district. When one of these assignments is made to me, the Clerk manually checks the names of the parties against the recusal list that I have submitted. If there is a match, then the case is reassigned without my knowledge that I was initially chosen to preside over the particular matter.

Below is a list of the cases that I have recused myself or refused to recuse myself and the reason for my decision:

*Smith v. Smith*, No. 0:07-CV-00275-HFF

In this action, Plaintiff accused me of an abuse of discretion and of judicial misconduct. He failed to set forth any specific allegations. Having considered the motion, I found that there was no factual or legal basis that would make the granting of the motion proper.

*United States v. Miller*, No. 6:04-CR-00022-HFF, 6:06-CV-00548-HFF

Defendant/Movant has made repeated conclusory allegations of my misconduct and racial bias against him. Simply stated, he has been unhappy with my rulings against him, which have repeatedly been affirmed by the Court of Appeals. Having considered his arguments, I have declined to grant his requests for recusal.

*Smith v. Harrison*, No. 6:04-CV-01188

Plaintiff stated that I was unable to adjudicate his case impartially and thus he wished for me to recuse myself from his case. He failed, however, to give any rationale for his assertion. I denied his motion.

*United States v. Jones*, No. 6:06-CR-00398-HFF, 6:06-CV-02427

Petitioner moved that the Chief Judge of the district remove me from this case and reassign someone else. He intimated that I was unable to reach a fair, unbiased and impartial judgment. He set forth no basis for his accusation. Consequently, I denied his requested relief.

*Wood v. Wieder*, 7:09-CV-03178

Plaintiff in this case is being represented by a very good friend of mine, Scott Dover. When I realized that I had been assigned the case, I contacted the Clerk to inform her that I wanted the case to be reassigned to another judge inasmuch as my impartiality in the case might be reasonably questioned.

*Wise v. State*, 6:09-cv-01361-HFF

In this action, Petitioner requested that I be disqualified from considering his case but gave absolutely no basis for such disqualification. The motion was denied as meritless.

*Child Evangelism v. Anderson Sch. Dist.*, 8:04-cv-01866

This action involved a suit against a religious organization suing a school district over the use of some of the school district's facilities. Inasmuch as my wife was, at the time, in the administration of a neighboring school district, I thought that it would be prudent to inform the parties of that fact and inquire as to whether they preferred that I remove myself from the case. Inasmuch as Plaintiff requested that the case be reassigned, I agreed and directed the Clerk to reassign the case.

*Blackwell v. Suntrust Bank*, 7:08-cv-04125

This was a putative class action. In that I have two savings accounts with Defendant, I decided to inform the parties of that fact and to inquire as to whether they would consent to my presiding over the matter or if they would prefer that the case be reassigned. Defendant asked that we reassign the case. In light of the fact that, according to Defendant, I might have had personal knowledge of central issues in dispute in this case, which could result in my impartiality being reasonably questioned, I recused myself from this case.

*Penland v. United States District Court*, 6:07-cv-03284-HMH

In this action, Plaintiff sued the United States District Court and specifically accused me of wrongdoing. In light of this suit, I recused myself from further consideration of this action, along with several other civil actions that Plaintiff filed against various parties.

S.C. Advisory Comm. on Standards of Judicial Conduct, Op. 7-1995 (1995). The Advisory Committee on Standards of Judicial Conduct handed down this advisory opinion during the time that I was a member. The Committee issued advisory opinions regarding ethical questions presented by judges. The question presented concerned the propriety of a judge accepting a prize raffled off at the Judicial Golf Classic. I did not participate in this advisory opinion because I was the judge who submitted the question.

S.C. Advisory Comm. on Standards of Judicial Conduct, Op. 5-1996 (1996). The Advisory Committee on Standards of Judicial Conduct handed down this advisory opinion during the time that I was a member. The Committee issued advisory opinions regarding ethical questions presented by judges. The question presented concerned the propriety of individual members of the Family Court, the Circuit Court, the Court of Appeals, and the Supreme Court sponsoring a barbeque for the South Carolina General Assembly and Staff. I did not participate in this advisory opinion because I was the judge who submitted the question.

S.C. Advisory Comm. on Standards of Judicial Conduct, Op. 2-1997 (1996). The Advisory Committee on Standards of Judicial Conduct handed down this advisory opinion during the time that I was a member. The Committee issued advisory opinions regarding ethical questions presented by judges. The question presented concerned the propriety of a circuit court judge becoming a member of a fraternal organization of former members of the South Carolina General Assembly. I did not participate in this advisory opinion because I was both a circuit court judge and former member of the South Carolina General Assembly.

**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.

From 1972 to 1978, I served in the South Carolina House of Representatives representing District 3. I was elected to three terms.

From 1973 to 1976, I was a member of the Appalachian Region Council of Governments, appointed by the Legislative delegation from Pickens County.

From 1978 to 1990, I was a Commissioner on the South Carolina Forestry Commission, appointed by Governor Richard W. Riley.

From 1986 to 1992, I served as attorney for Pickens County, having been appointed by Pickens County Council (while continuing in my full-time partner status at Acker, Acker, Floyd & Welmaker, P.A.).

In 1981, I ran unsuccessfully for the South Carolina Senate.

I have had no unsuccessful nominations for appointed office.

- 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.

In the 1970's, I served a term on the South Carolina Democratic Party Executive Committee.

In 1976, I was on the advisory committee for Charles "Pug" Ravenel, who was running for Governor of South Carolina.

I was an assistant to Earle E. Morris, Jr., candidate for Lt. Governor of South Carolina during his campaign in 1970. I acted as his driver and messenger/scheduler.

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 did not serve as a clerk to a judge.

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

From 1973 to 1974, I was a solo practitioner in Pickens, South Carolina. My office address was 208 Garvin Street, Pickens, South Carolina 29671.

- 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.

1974 – 1977  
Floyd & Welmaker, P. A.  
Attorneys at Law  
208 Garvin Street  
Pickens, South Carolina 29671  
Partner

1978 – 1992

Acker, Acker, Floyd & Welmaker, P.A.

Attorneys at Law

603 South Lewis Street

Pickens, South Carolina 29671

Partner

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

I have never served as a mediator or an arbitrator.

b. Describe:

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

Initially, the firm of Floyd & Welmaker was predominantly involved in civil, criminal, and domestic litigation with the general office practices of deeds, wills, estates, and real property closings. When the firms were merged in 1978, Acker & Acker was predominantly a firm involved in property, probate, trust, and commercial activities. As we entered into the merger, eventually there was a division of the labor among the partners, and I continued primarily in the litigation areas of civil, criminal, and domestic relations. However, I was more involved in probate litigation and real property litigation, and, on a smaller scale, I continued the general “walk-in” traffic of wills, deeds, and contracts. I also represented some regulated utilities, municipalities, the County of Pickens, and an electric cooperative. Essentially, my practice remained the same from 1978 until 1992 at which time I was elected as a State Circuit Court judge.

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

Pickens is a relatively small city in a relatively rural county and our typical clientele included general working people with everyday problems from criminal charges, domestic relations disputes, and routine civil disputes. The firm also represented some lending institutions, municipalities, and the County. We also participated in bond issues and corporate sales. I did not specialize in any particular areas of practice.

- 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.

I appeared in court frequently, and the frequency of my appearances in court remained fairly stable during my entire career as a lawyer.

i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 2%  |
| 2. state courts of record:  | 80% |
| 3. other courts:            | 18% |
| 4. administrative agencies: | 0%  |

ii. Indicate the percentage of your practice in:

- |                          |     |
|--------------------------|-----|
| 1. civil proceedings:    | 65% |
| 2. criminal proceedings: | 35% |

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.

Over an eighteen year period, I estimate that I tried approximately 400 cases to verdict or judgment in courts of record. I estimate that 95% of the time I was either chief or sole counsel.

i. What percentage of these trials were:

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

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

I have not practiced before the Supreme Court of the United States.

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:

- the date of representation;
- 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. *State v. Cox*, No. A83-9248 (13th Cir. Ct. Gen. Sessions 1983), *rev'd*, 335 S.E.2d 809, 287 S.C. 260 (Ct. App. 1985) (Moore, Paul, Special Circuit Judge, presiding and McFadden, Robert L., presiding over retrial). This was the first capital murder case tried in Pickens County after reinstitution of the death penalty. It was a murder-for-hire case. In the first trial, during June of 1983, I was appointed to assist the Public Defender, J. Redmond Coyle of Pickens, South Carolina (deceased). Defendant was convicted, and the jury recommended a life sentence. On appeal, the conviction was reversed and remanded for a new trial. Upon retrial in 1987, Defendant's family retained me and the jury acquitted Defendant.

Representing the State in the first trial was William B. Traxler, Jr., then Solicitor for the Thirteenth Judicial Circuit, now Chief Judge of the U.S. Court of Appeals for the Fourth Circuit, currently at 300 East Washington Street, Suite 222, Greenville, South Carolina 29603, (864) 241-2730. Representing the State in the second trial was Benjamin T. Stepp, then Assistant Solicitor for the Thirteenth Judicial Circuit, now Assistant Federal Public Defender, 501 East McBee Avenue, Suite 202, Greenville, South Carolina 29601, (864) 235-8714.

2. *State v. Crunkleton*, No. 90-GS-37-1179 (10th Cir. Ct. Gen. Sessions 1991) (Brown, Luke, presiding). This case was tried in March of 1991 and it arose out of manslaughter charges against my client as a result of an attack by Defendant's part Pit Bull, part Rottweiler dog upon a five-year-old child who was mauled and killed by the dog. The jury acquitted Defendant.

Prosecuting the case was Tommy B. Edwards, then Assistant Solicitor for the Tenth Judicial Circuit, now Family Court Judge for the Tenth Judicial Circuit, P.O. Box 8002, Anderson, South Carolina 29622, (864) 260-4040.

3. *Giles v. Lanford & Gibson, Inc.* (13th Cir. Common Pleas 1981) (Eppes, Frank, presiding), *aff'd*, 328 S.E.2d 916, 285 S.C. 285 (Ct. App. 1985). I represented Defendant Giles in this case, involving the use of the theory of constructive fraud in which a Plaintiff does not have to prove intent to recover under a cause of action in fraud. Plaintiff was a homeowner with a builder's risk policy who claimed his agent misled him as to the effect of coverage. The jury awarded Plaintiff \$25,000 in damages. I represented Defendant from approximately May 1981 through June 1985.

Opposing counsel in this matter was Herman E. Cox, 115 Broadus Avenue, Greenville, South Carolina, 29601 (864) 242-4711.

4. *Blue Ridge Elec. Coop., Inc. v. Combined Util. Sys. of the City of Easley* (13th Cir. Common Pleas 1981) (Sparks, James and Board, Joseph, presiding), *aff'd*, 303 S.E.2d 91, 279 S.C. 135 (1983). I represented Plaintiff, Blue Ridge Electric Cooperative, in this declaratory judgment action challenging the constitutionality of a South Carolina

eminent domain statute. The statute provides for electric utility acquisition of electric cooperative property upon payment of just compensation. The court held that the statutory formula used to compute the cooperative's just compensation was constitutional as long as it was construed as a minimum and not a limitation.

Opposing counsel were J.D. Todd, Jr. (retired), 300 East McBee Avenue, Suite 500, Greenville, South Carolina 29601, (864) 242-6440, and Felix L. Finley, Jr., Pickens, South Carolina (deceased).

5. *Hayes v. Tompkins* (13th Cir. Common Pleas 1982) (Cureton, Robert, presiding), *aff'd*, 337 S.E.2d 888, 287 S.C. 289 (Ct. App. 1985). This case involved an implied easement of necessity under South Carolina law wherein I represented Defendants. The case was tried and the lower court held there was an implied easement of necessity, which was favorable to Plaintiff, and also found that there was a right of apportionment of maintenance costs, which was in favor of Defendants. Both sides appealed, and each side lost their respective appeals. The decision as outlined above remained in effect. The value of this case is that for the first time an appellate court of South Carolina announced that apportionment of costs can be an equitable remedy notwithstanding an agreement between the parties. I represented these clients from approximately June 1982 through 1985.

Opposing counsel in this case was Felix L. Finley, Jr., Pickens, South Carolina (deceased).

6. *State v. Spearman*, No. 84-GS-39-142 (13th Cir. General Sessions 1984) (Eppes, Frank, presiding). This is the second death penalty case tried in Pickens County after the reinstitution of the death penalty in South Carolina. I represented Defendant Spearman. Defendant was charged with murder and the aggravating circumstance of armed robbery. Our objective in this case was to avoid the death penalty because the evidence clearly showed that he was guilty of murder and armed robbery. The jury became deadlocked and so the trial judge imposed a life sentence. I represented Defendant from approximately June 1983 through April 1984.

Co-counsel was J. Redmond Coyle of Pickens, South Carolina (deceased). Prosecuting the case was William B. Traxler, Jr. then Solicitor for the Thirteenth Judicial Circuit, now Chief Judge for the Fourth Circuit Court of Appeals, currently at 300 East Washington Street, Suite 222, Greenville, South Carolina 29603, (864) 241-2730.

7. *Parrish v. Gilstrap* (13th Cir. Common Pleas 1980) (Hall, Stuart, presiding), *aff'd*, 312 S.E.2d 4, 280 S.C. 184 (1984). I represented Plaintiff Parrish from June 1980 through May 1984. The Appropriations Act of the South Carolina General Assembly for 1979-80 mandatorily provided for a sum certain for the benefit of each county probate judge. Pickens County refused to comply with the statute and a writ of mandamus was sought and granted. On appeal, the decision was affirmed.



Opposing counsel in this case was Felix L. Finley, Jr., Pickens, South Carolina (deceased).

8. *State v. Morgan* (13th Cir. Gen. Sessions 1982) (Pyle, Victor, presiding), *aff'd*, 319 S.E.2d 335, 282 S.C. 409 (1985). I represented Defendant Morgan from November 1982 through June 1985. This case is significant for DUI practitioners because the Court clearly established the rules regarding how and when to raise the issue of corpus delicti, vis a vis custodial/non-custodial statements made during a routine traffic accident investigation. It also clarified the application of *Miranda* warnings as well as the extent to which a trial judge can charge the jury upon the issue of a statement rendered by an intoxicated person.

Prosecuting this case was O. Warren Mowry, Jr, then Assistant Solicitor for the Thirteenth Judicial Circuit, now at 25 Augusta Court, Greenville, South Carolina 29605, (864) 232-8125.

9. *State v. Holcombe*, No. 79-GS-37-244 (10th Cir. Gen. Sessions 1979) (Ballenger, Howard, presiding). I represented Defendant Holcombe, who was charged and convicted under the theory of transferred intent for the murder of a 4-year-old girl. The State's theory was that he was intending to kill the husband of his lover. This was being tried during the development of the law of burden shifting immediately following the Supreme Court's *Sandstrom v. Montana* decision. Burden shifting issues were raised, but the South Carolina Supreme Court summarily denied the appeal and the Supreme Court refused to grant certiorari. I represented Defendant from approximately January 1979 through November 1980.

Prosecuting this case were Henry Raines, then Solicitor for the Tenth Judicial Circuit (deceased) and John Fields, then Assistant Solicitor for the Tenth Judicial Circuit, now at 10 Commons Boulevard, Seneca, South Carolina 29678, (864) 882-1812.

10. *Culler v. Blue Ridge Elec. Coop.* (13th Cir. Common Pleas) (Simmons, Charles, presiding), *aff'd*, 422 S.E.2d 91, 309 S.C. 243 (1992). This is a case alleging wrongful discharge brought by the employee, Plaintiff Culler, against my client, Blue Ridge Electric Cooperative. The employee alleged that he was discharged for failure to contribute to Defendant's political action committee. However, at trial the evidence proved to the contrary, and the Supreme Court affirmed the lower court. This case is significant because it was one in a line of cases that helped develop the law of at-will employment in South Carolina and where the courts will allow tort actions notwithstanding the at-will employment doctrine.

Co-counsel was G. Edward Welmaker, then my law partner, now Circuit Court Judge for the Thirteenth Judicial Circuit, Pickens County Courthouse, Pickens, South Carolina 29671, (864) 898-5791. Opposing counsel was Hal J. Warlick, Pickens, South Carolina (deceased).

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.)

For a few years, I served on the Board of Commissioners on Grievances and Discipline, which was empowered to deal with complaints against members of the Bar in this State and to make certain recommendations for disciplinary conduct. I also participated in negotiations regarding assignment of utility territory and negotiations concerning the acquisition of property for major water and utility lines. As county attorney, I was involved in the issuance of revenue and general obligation bonds. Also, I was responsible for guiding the County Council through Freedom of Information Act requests and discussions of appropriate areas for the enactment of ordinances.

While a State judge, I was also a member of the Commission on Judicial Conduct. This Commission dealt with complaints against judges by reviewing and making recommendations to the South Carolina Supreme Court. For the last four years, I have served on the Judicial Resources Committee for the Judicial Conference of the United States and continue in that capacity. We are charged with overseeing personnel policies and management of judicial resources.

During the years 1979 and 1980 I was a lobbyist for Sherman College of Straight Chiropractic. I lobbied for the expansion of the ability of straight chiropractors in this State to practice their vocation.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

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.

Currently, I am drawing my retirement income from the South Carolina Judges and Solicitors' retirement system. My wife is still actively employed with the School District of Pickens County but upon retirement expects to receive South Carolina Retirement System income.

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

I have no plans, commitments, or agreements to pursue outside employment, with or without compensation during my service with the court.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

I am not aware of any conflicts in any of these categories at this time subject, however, to my current recusal list. But, in any event, I would review each case to double check if any conflict existed, and, if it did, I would recuse myself.

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

In my present position, I always review a case assigned to me to see whether a potential conflict of interest exists, by adhering to 28 U.S.C. § 455, other relevant statutes, the Code of Conduct for United States Judges, and any applicable policies and procedures of the United States Courts. If a conflict is evident, I will recuse myself. If there is the potential for a conflict, I will contact counsel and advise them of the potential conflict and ask whether they want me to recuse myself. If confirmed for this position, I will observe the same practice.

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.

While in private practice, I participated in the South Carolina Bar pro bono program. I probably got a case per month, which would take roughly four hours of my time. For several years, I served on the Pickens County Public Defender Board. It was a three-member board with oversight responsibility for indigent representation. No pay or gratuity was involved, and it took a few hours per month. I also participated in community and church food bank programs for several years. After becoming a judge, I have not handled any pro bono matters, but I volunteer my time to assist law students and young lawyers in their transition into practice. Every summer, I also accept a number of interns to give them experience in a federal court chambers. Additionally, I have judged several mock trial competitions in the last few years.

**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.

We do not have a selection commission in our jurisdiction, but I have had at least three conversations with United States Senator Lindsey Graham about the nomination. Also, I have had communication from Democratic Congressmen Spratt and Clyburn by way of a letter that each Congressman had recommended me to the President of the United States.

Since April 2010, I have communicated with pre-nomination staff in the Department of Justice. I was interviewed by the Department's pre-nomination staff, and by the White House Office of Counsel, on August 4, 2010.

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

No.

AFFIDAVIT

I, **HENRY FRANKLIN FLOYD**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

1-24-2011

(DATE)

Henry Floyd

(NAME)

Sandra H. Knell

(NOTARY)

Expires: April 24, 2011