

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Stephen Andrew Higginson

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

United States Circuit Judge for the Fifth 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.

I have two current office addresses because I hold two employment positions, one as a law professor and the other as a federal prosecutor for the United States Department of Justice:

Loyola University New Orleans, College of Law
7214 St. Charles Avenue
Box 901
New Orleans, Louisiana 70118

United States Attorney's Office for the Eastern District of Louisiana
500 Poydras Street, 2nd Floor
New Orleans, Louisiana 70130

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

1961; Boston, Massachusetts

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.

1984 – 1987, Yale Law School; J.D., 1987

1983 – 1984, Cambridge University, England; Masters in Philosophy, 1992

1979 – 1983, Harvard College; A.B. (*summa cum laude*), 1983

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.

2004 – present

Loyola University New Orleans, College of Law
7214 St. Charles Avenue, Box 901
New Orleans, Louisiana 70118
Associate Professor of Law

1993 – present

United States Attorney's Office for the Eastern District of Louisiana
500 Poydras Street, 2nd Floor
New Orleans, Louisiana 70130
Assistant United States Attorney (part-time since 2004)

2002 – 2003

Tulane University Law School
Weinmann Hall, 6329 Freret Street
New Orleans, Louisiana 70118
Adjunct faculty member (uncompensated)

1989 – 1993

United States Attorney's Office for the District of Massachusetts
Federal Courthouse
1 Courthouse Way
Boston, Massachusetts 02210
Assistant United States Attorney

1999 – 2000

Loyola University New Orleans, College of Law
7214 St. Charles Avenue, Box 901
New Orleans, Louisiana 70118
Lecturer

September 1997 – January 1998

United States Department of State
2201 C Street, N.W.
Washington, D.C. 20520
Deputy Director of Special Projects for the Presidential Rule of Law Initiative
(Note: on detail from Department of Justice)

1995 – 1997

Loyola University New Orleans, College of Law
7214 St. Charles Avenue, Box 901
New Orleans, Louisiana 70118
Adjunct faculty member (uncompensated)

1988 – 1989

Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543
Judicial clerk to Associate Justice Byron White

1987 – 1988

United States Court of Appeals for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001
Judicial clerk to Chief Judge Patricia Wald

Summer 1987

United States Senate
Washington, D.C. 20510
Summer intern for Senate Select Committee Chief Counsel Arthur Liman

Summer 1986

Bredhoff & Kaiser, P.L.L.C.
805 Fifteenth Street, N.W.
Washington, D.C. 20005
Summer associate

Summer 1985

Shaw Pittman Potts & Trowbridge (now Pillsbury Winthrop Shaw Pittman)
2300 N Street, N.W.
Washington, D.C. 20037
Summer associate

Summer 1985

United States Attorney's Office for the Southern District of New York
One St. Andrew's Plaza
New York, New York 10007
Summer intern

Summer 1983
United States Congressman Gus Yatron
2170 Rayburn House Office Building
Washington, D.C. 20515
Summer intern

Other Affiliations (uncompensated):

2006 – present
Local Elementary School
New Orleans, Louisiana
School board member

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

I have not served in the military. I did register 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.

Professional honors

United States Department of Justice John Marshall Award for Outstanding Legal Achievement for Trial of Litigation (2003)

United States Department of Justice Director's Awards for Superior Performance (1996, 2003)

Special achievement award from former Attorney General Janet Reno (1993)

Letter of commendation from former FBI Director Louis Freeh for "outstanding prosecutive skills and assistance" to the FBI (1999)

Department of Health and Human Services, Food and Drug Administration, Commissioner's Special Citation for "outstanding handling of FDA criminal investigations and prosecutions"

United States Postal Service commendation

Department of Interior, United States Fish and Wildlife Service recognition for "outstanding contribution to the protection of the Nation's wildlife resources"

Department of Veteran Affairs' certificate of appreciation for "successful prosecution of crimes committed against the VA"

United States Department of Agriculture certificate of appreciation for "dedication to enforcing federal meat and poultry inspection law, and significant contributions to protecting consumers"

Department of Defense certificate of appreciation for investigation and prosecution supporting the Defense Criminal Investigative Service

United States Secret Service commendation for "outstanding assistance and support on behalf of the law enforcement responsibilities of the United States Secret Service"

National Association of Black Narcotics Agents letter of appreciation

Multiple United States Attorney's Office outstanding performance and special achievement awards

Academic honors and recognition as law professor

Loyola University "outstanding teacher" award (2008)

Loyola College of Law graduating students' recognition as "professor of the year" (2005 – 2006, 2006 – 2007, 2008 – 2009)

The Loyola College of Law Moot Court Board Distinguished Faculty Contribution Award (2009 – 2010)

Certificate of appreciation from the A.P. Tureaud Black Students Law Association

Academic honors and recognition

Editor-in-chief of the Yale Law Journal

Yale University's Israel H. Peres Prize (best written contribution to Yale Law Journal) (1987)

Harvard Scholar to Cambridge University (1983 – 1984)

Phi Beta Kappa

Eric Firth Prize for senior thesis (best essay on the subject of the ideals of democracy) (1983)

Civic awards

New Orleans Metropolitan Crime Commission Excellence in Law Enforcement Award
(2003)

City of New Orleans certificate of appreciation (2000)

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

Attorney General Advisory Committee, Appellate Chiefs' Working Group

Bar Association of the Fifth Federal Circuit

Boston Bar Association

District of Columbia Bar

Loyola University

Faculty Senate (law school representative)

Conciliation Committee (law school representative)

Loyola College of Law

Budget Committee

Curriculum Committee

Dean Search Committee

Faculty Development Committee

Petitions Committee

Tenure Standards Ad Hoc Committee

Massachusetts Bar Association

National Association of Assistant United States Attorneys

The Thomas More-Loyola Law School American Inn of Court

Executive Committee Member (2009 – present)

The Tulane Law School 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.

Massachusetts, 1989

District of Columbia, 1990

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.

United States Court of Appeals for the First Circuit, 1990
United States Court of Appeals for the Fifth Circuit, 1994
United States District Court for the Eastern District of Louisiana, 1994
United States District Court for the District of Massachusetts, 1989
Supreme Judicial Court of Massachusetts, 1989

There have been no lapses in membership. However, since my move to Louisiana and the completion of my work for the U.S. Attorney's Office for the District of Massachusetts, I have not appeared in Massachusetts courts.

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.

American Automobile Association (2009 – present)

Carrollton Boosters Club (approx. 2000 – present)

Chicago Fire Juniors of Louisiana Soccer Club (approx. 2003 – present)

Cohasset, Massachusetts Town Library (approx. 1998 – present)

Cohasset Yacht Club (2006 – present)

Louisiana Soccer Association (approx. 2003 – present)

National Building Museum (2004)

New Orleans Audubon Nature Institute (approx. 1998 – 2005)

Phi Beta Kappa Society (approx. 1983 – 1995)

Tulane University Reilly Recreation Center (approx. 1994 – present)

United States Holocaust Memorial Museum (1994 – 1995)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above

currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

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

The Unworkability Imperative in Criminal Justice Rule-Making, Loyola L. Rev. 249 (2009). Copy supplied.

Thurgood Marshall: Cases in Controversy, 15 George Mason L. Rev. 741 (2008). Copy supplied.

Constitutional Advocacy Explains Constitutional Outcomes, 60 Fla. L. Rev. 857 (2008). Copy supplied.

Letter to the Editor, The American Scholar (2001). Copy supplied.

Using Computers in a Complex Case, Department of Justice (1996) (co-authored with trial co-counsel, then Assistant United States Attorney Michael Loucks). Copy supplied.

Note, *A Short History of the Right To Petition Government for the Redress of Grievances*, 96 Yale L.J. 142 (1986). 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.

While serving on the Tenure Standards Ad Hoc Committee at the Loyola College of Law in 2009, I assisted in preparing the "Statement of Standards for Promotion and Tenure," which was adopted by our faculty. Copy supplied.

While serving on the Attorney General Advisory Committee, Appellate Chiefs' Working Group, within the Department of Justice, I assisted in preparing the Department's "Appellate Practices and Supervision in U.S. Attorney's [sic] Offices." Copy supplied.

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

I have given no testimony, official statements or other official communications relating, in whole or in part, to matters of public policy or legal interpretation, which were issued or provided or other presented on my behalf to public bodies or public officials.

- 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.

January 18, 2011

Presentation on evidentiary issues for The Thomas More-Loyola Law School American Inn of Court, in New Orleans, Louisiana. Presentation slides supplied.

October 15, 2010

Panel discussion on appellate advocacy at the Louisiana State Bar Association's Seminar "Appeals! Appeals! Appeals! Experts of the Bench & Bar" in New Orleans, Louisiana. Presentation slides supplied.

June 8, 2010

Panel discussion of recent developments in constitutional criminal law at the Louisiana Judicial College/Louisiana Bar Association's Summer School in Destin, Florida. Presentation slides and outline supplied.

April 9, 2010

Panel discussion on white collar criminal law updates for the Louisiana State Bar Association's 2010 White Collar Crime Symposium in New Orleans, Louisiana. Presentation slides supplied.

February 5, 2010

Presentation on best practices for writing legal briefs, sponsored by the New Orleans Chapter of the Federal Bar Association. Presentation slides and NOFBA coverage supplied.

November 20, 2009

Panel discussion on criminal law updates for the Louisiana State Bar Association's White Collar Seminar in New Orleans, Louisiana. Presentation slides supplied.

April 16, 2009

Lunchtime talk about a draft of my article on criminal justice later published as *The Unworkability Imperative in Criminal Justice Rule-Making*, Loyola Law Review 249 (2009), to the Loyola College of Law's Works-in-Progress Workshop in New Orleans, Louisiana. I have no notes, transcript, or recording for this talk, however I have supplied a copy of the published article in response to 12(a). The address of the Loyola University, Loyola College of Law is 7214 St. Charles Avenue, Box 901, New Orleans, Louisiana 70118.

March 13, 2009

Panel discussion and moderator on the role of technology in law at the Loyola Law Review's 2009 Symposium on Technology and the Law, in New Orleans, Louisiana. Talking points supplied.

April 5, 2008

Panel presentation on law and jurisprudence, and specifically, a draft of my article on constitutional advocacy, which was later published as *Constitutional Advocacy Explains Constitutional Outcomes*, 60 Florida Law Review 857 (2008), at the Midwest Political Science Association 66th Annual National Conference in Chicago, Illinois. I have no notes, transcript, or recording for this talk, however I have supplied a copy of the published article in response to 12(a). The address of the Midwest Political Science Association is 320 West Eighth Street, #218, Bloomington, Indiana 47404.

March 12, 2008

Panel discussion on the 75th Anniversary of the Supreme Court's *Powell v. Alabama* decision for the Federal Bar Association, The Greater New Orleans Louis A. Martinet Society and the A.P. Tureaud Chapter of the American Inns of Court. Presentation slides supplied.

January 31, 2007

Joint presentation with Attorney Robert Glass on appellate advocacy to the Extern Enrichment Seminar conducted at Tulane Law School by the Honorable James Dennis and the Honorable Lance Africk, United States Judges and Adjunct Professors. I have no notes, transcript, or recording for this talk. The address of

the Tulane University Law School is Weinmann Hall, 6329 Freret Street, New Orleans, Louisiana 70118.

June 9, 2004

Presentation for the Louisiana State Bar Association on federal criminal and appellate practice at the Summer School for Lawyers in Sandestin, Florida. I have no notes, transcript or recording. The address of the LSBA is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

March 2, 2004

Panel discussion on the 50th Anniversary of *Brown v. Board of Education* for the New Orleans Chapter of the Federal Bar Association. I have no notes, transcript or recording, but NOFBA coverage is supplied. The address of the NOFBA is 500 Poydras Street, Suite B364, New Orleans, Louisiana 70130.

October 29, 2003

Panel discussion in Orono, Maine, at the William Cohen Papers Forum on reporter's privilege caselaw in criminal cases. Presentation slides and press coverage supplied.

August 25, 2003

Forum on the USA Patriot Act hosted by the U.S. Attorney's Office for the Eastern District of Louisiana. Notes and press coverage supplied.

February 26-28, 2003; October 18-20, 2000

Panel discussions and instructorship for the Office of Legal Education on appellate practice and ethics at the Appellate Supervisors and Appellate Contacts Conference at the National Advocacy Center in Columbia, South Carolina. Although I do not have the actual slides that I used that day, I have supplied a slightly revised version of those slides that would be very similar to what I would have presented.

July 25-28, 2000

Presentation and instructorship for the Office of Legal Education on criminal federal practice at the Criminal Federal Practice Seminar at the National Advocacy Center in Columbia, South Carolina. I have no notes, transcript, or recording for this talk. The address of the Office of Legal Education is Executive Office for United States Attorneys, Main Justice Building, Room 2244A, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

March 20-24, 2000

Presentation and instructorship for the Office of Legal Education on evidence at the National Advocacy Center in Columbia, South Carolina. Presentation slides supplied.

February 5, 1999

Panel discussion in New Orleans, Louisiana, at the 14th Annual Fifth Circuit Appellate Practice and Advocacy Seminar on criminal law and sentencing guidelines. Outline supplied.

December 18, 1998

Presentation to the Louisiana State Bar Association White Collar Crime Seminar. Outline supplied.

September 10, 1998

Presentation to the Society of Louisiana CPAs in New Orleans, Louisiana, at the 1998 Louisiana Accounting and Auditing Conference on fraud investigations and prosecutions. Outline supplied.

March 25, 1998

Informal lunchtime talk to law faculty at Louisiana State University Law Center on detail to the Department of State for rule of law initiatives. Outline supplied.

September 7, 1997

Presentation for the Office of Legal Education on appellate practice in Salt Lake City, Utah at the Criminal Federal Practice Seminar. Although I have no notes, transcript or recording, the materials I presented were similar to those supplied for the February 26-28, 2003 event. The address of the Office of Legal Education is Executive Office for United States Attorneys, Main Justice Building, Room 2244A, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

June 10, 1997

Presentation for the Office of Legal Education on appellate advocacy in Washington, D.C. at the Appellate Advocacy Seminar. Although I have no notes, transcript or recording, the materials I presented were similar to those supplied for the February 26-28, 2003 event. The address of the Office of Legal Education is Executive Office for United States Attorneys, Main Justice Building, Room 2244A, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

May 13-16, 1997

Presentation for the Office of Legal Education on trial issues in cases of violence in New Orleans at the Prosecution of Violent Crime and Juvenile Offenders Seminar. I have no notes, transcript, or recording for this talk. The address of the Office of Legal Education is Executive Office for United States Attorneys, Main Justice Building, Room 2244A, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

October, 1996

Presentation to the Attorney General's Advocacy Institute at an Appellate Chiefs Seminar on appellate practices. Although I have no notes, transcript or recording, the materials I presented were similar to those supplied for the February 26-28,

2003 event. The address of the Office of Legal Education is Executive Office for United States Attorneys, Main Justice Building, Room 2244A, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

July 22, 1996

Presentation for the Office of Legal Education on ethics in Salt Lake City, Utah at the Criminal Federal Practice Seminar. I have no notes, transcript, or recording for this talk. The address of the Office of Legal Education is Executive Office for United States Attorneys, Main Justice Building, Room 2244A, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

January 22, 1996

Presentation to the Tulane Inn of Court in New Orleans, Louisiana, on paperless trials. I have no notes, transcript, or recording for this talk. The panel session was held at the United States District Court for the Eastern District of Louisiana, 500 Camp Street, New Orleans, Louisiana 70130.

June 1992

Presentation on criminal investigations and prosecutions in Cape Cod, Massachusetts to United States Fish and Wildlife Service agents. Materials supplied.

May 17, 1992

Presentation in Atlantic City, New Jersey to United States Department of Agriculture investigators on criminal investigations and prosecutions. While I do not have any notes, transcript, or recording of this specific presentation, I believe that it was similar to the June 1992 presentation on criminal investigations and prosecutions for which I supplied materials. The address of the United States Department of Agriculture is 1400 Independence Avenue, S.W., Washington, D.C. 20250.

April 29, 1992

Presentation in Phoenix, Arizona to federal prosecutors about check-kite investigations and prosecutions (which is a presentation I gave also to FBI special agents in training in Quantico, Virginia in spring, 1992). Materials supplied.

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

Ian Fisher, *Florida Law Review Breaks Ground with Multimedia Article*, FlaLaw Online, Sept. 22, 2008. Copy supplied.

Lois Smith Brady, *Weddings: Vows*; Lisa Cohen and Lewis Liman, New York Times, Jan. 24, 1999. Copy supplied.

Local News/Today's Digest, Worcester Telegram & Gazette, Apr. 7, 1992. Copy supplied.

Local News/Today's Digest, Worcester Telegram & Gazette, Mar. 24, 1992. Copy supplied.

Emilie Astell, *Gun Suspect Out on Bond*, Worcester Telegram & Gazette, Feb. 21, 1992. Copy supplied.

Milt Gun, *Ex-Marlboro Postal Official Admits He Falsified Records*, Worcester Telegram & Gazette, Nov. 28, 1991. Copy supplied.

Fitchburg Woman Indicted in Embezzlement, Worcester Telegram & Gazette, Apr. 5, 1990. Copy supplied.

Elizabeth Neuffer, *Subpoena Hoax Turns Courthouse into Madness*, Boston Globe, Feb. 1, 1990. Copy supplied.

Prankster Subpoenas Boston Residents, United Press International, Feb. 1, 1990. Copy supplied.

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

I have not served as a judge.

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

- i. Of these, approximately what percent were:

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

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

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
 - e. Provide a list of all cases in which certiorari was requested or granted.
 - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

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

15. Public Office, Political Activities and Affiliations:

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

I was hired as an Assistant United States Attorney in the District of Massachusetts by United States Attorney Wayne A. Budd in 1989, and the position of Assistant United States Attorney is a public office in which I have been employed ever since, having transferred to the United States Attorney's Office for the Eastern District of Louisiana in 1993.

- 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.

I have held no office and rendered no services, compensated or uncompensated, to any political party or election committee, nor have I ever held a position or played a role in a political campaign.

16. Legal Career: Answer each part separately.

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

I served as a judicial clerk from 1988 to 1989 to Associate Justice Byron White, Supreme Court of the United States. Prior to that, I served as a judicial clerk from 1987 to 1988 to Chief Judge Patricia Wald, United States Court of Appeals for the District of Columbia Circuit.

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

I have not practiced law alone.

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

1989 – 1993

United States Attorney's Office for the District of Massachusetts
Federal Courthouse
1 Courthouse Way
Boston, Massachusetts, 02210
Assistant United States Attorney

Fall 1997 – January 1998

United States Department of State
2201 C Street, N.W.
Washington, D.C. 20520
Deputy Director of Special Projects for the Presidential Rule of Law
Initiative
(Note: on detail from Department of Justice)

1993 – present

United States Attorney's Office for the Eastern District of Louisiana
500 Poydras Street, 2nd Floor
New Orleans, Louisiana 70130
Assistant United States Attorney (part-time since 2004)

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

I have not served as a mediator or arbitrator.

b. Describe:

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

My law practice has been on behalf of the United States as a federal prosecutor. In the early part of my career, I practiced in federal district courts in Massachusetts and in the United States Court of Appeals for the First Circuit; in 1993 I transferred to Louisiana, where I continued to practice in federal district courts and in the United States Court of Appeals for the Fifth Circuit. During my first five years, I handled multiple investigations and criminal trials, as well as direct appeals from those cases. After my transfer and a year or two more of investigations and trials, I became chief of appeals for the United States Attorney's Office for the Eastern District of Louisiana. Those responsibilities – supervising or handling the civil and criminal appeals for the Office and extensively involving myself in legal matters occurring in district court – are ones I have held since approximately 1995. I have authored over one hundred federal appellate briefs. Pursuant to Solicitor General guidelines, I have

edited and reviewed over three hundred civil and criminal appeals briefs authored by others. I have conducted over one hundred appellate moots of government attorneys whom I supervise. I have presented approximately twenty-five oral arguments myself in United States Courts of Appeals.

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

My work has been for the United States in criminal prosecutions and civil matters. I have not specialized, although my most complex cases have related to political corruption.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

My work has always involved litigation. I have appeared in court on a daily, weekly or monthly basis my entire career. My appellate civil and criminal responsibilities involve me extensively in litigation that is happening in federal district courts.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|------|
| 1. federal courts: | 100% |
| 2. state courts of record: | 0% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 0% |

- ii. Indicate the percentage of your practice in:

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

- 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.

It has been the practice of both United States Attorney's Offices that trials are staffed with co-counsel. As lead counsel – meaning that the investigation and prosecution were my primary responsibility – I have tried approximately one dozen trials to verdict and judgment.

- i. What percentage of these trials were:

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

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

I have not 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:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. United States v. Edwards, 303 F.3d 606 (5th Cir. 2002) (Higginbotham, Wiener, Benavides) (on appeal from United States Chief District Judge Polozola for the Middle District of Louisiana); United States v. Edwards, 206 F.3d 461 (5th Cir. 2000) (Jones, Duhe, Wiener) (on appeal from United States Chief District Judge Polozola for the Middle District of Louisiana); United States v. Edwards, 442 F.3d 258 (5th Cir. 2006) (King, Barksdale, Prado) (on appeal from United States District Judge Tyson for the Middle District of Louisiana); United States v. Edwards, No. 00-30702 c/w 00030845 (5th Cir. 2000); In re: Hearst Argyle, WWL-TV, Emmis Television, WGNO, Associated Press, Gannett River States Publishing, Louisiana Press, No. 00-30841 (5th Cir. 2000); In re: Times Picayune, Associated Press, Capital City, Hearst Argyle, No. 00-31112 (5th Cir. 2000).

I was an attorney of record for the United States, and the government's lead appellate counsel, responsible for legal filings in district and appellate court for approximately seven years. The case successfully prosecuted corruption at the highest level of Louisiana state government. I authored approximately ten government briefs, comprising approximately five hundred pages of written argument. I handled three oral arguments in the Fifth Circuit. I was responsible for 80 record volumes, including 10,000 pages of written pleadings and four months of trial transcripts. The years of trial and appellate litigation required me to consult often with the Office of the Solicitor General and the Criminal Appellate Section of the Department prior to attaining success on numerous significant issues relating to public corruption, disqualification of defense counsel, trial in absentia of one defendant, the dismissal of a deliberating juror for

misconduct, post-conviction efforts to recuse the trial judge, and issues of statutory and evidentiary complexity. On July 30, 2003, I received the Department of Justice's John Marshall Award for Outstanding Legal Achievement for Trial of Litigation for my efforts in this public corruption case.

Defense and opposition counsel were numerous, including: Alan and Nathan Dershowitz, Dershowitz, Eiger & Adelson, 220 5th Avenue, Suite 300, New York, New York, 10001, 212-889-4009; James M. Cole, Bryan Cave, LLP, 7000 13th Street, NW, #700, Washington, D.C. 20005, 202-508-6000; Rebecca Hudsmith, FPD, WDLA, 102 Versailles Boulevard, Suite 816, Lafayette, Louisiana 70501, 337-262-6336; James Michael Small, 1412 Centre Court Drive, Alexandria, Louisiana 71301, 318-487-8963; Servando Garcia, Garcia & Bishop, 618 East Rutland Street, Covington, Louisiana 70433, 985-635-0055; Michael Fawer, 201 St. Charles Avenue, #3702, New Orleans, Louisiana 70170, 504-525-2200; Patrick Fanning, 3636 I-10 Service Road, West, Suite 206, Metairie, Louisiana 70001, 504-368-7888; Mary Olive Pierson, 8702 Jefferson Highway, Suite B, Baton Rouge, Louisiana 70809, 225-927-6765; Mary Ellen Roy, Phelps Dunbar, 365 Canal Street, Suite 2000, New Orleans, Louisiana 70130, 504-566-1311; James Swanson, Fishman, Haygood, Phelps, Walmsley, Willis & Swanson, 201 St. Charles Avenue #4600, New Orleans, Louisiana 70170, 504-586-5267. Although I was lead appellate counsel for the government, lead trial counsel and attorney of record also throughout this case was current United States Attorney Jim Letten, 500 Poydras Street, 2nd Floor, New Orleans, Louisiana 70130, 504-680-3000.

2. United States v. C.R. Bard, Inc., 848 F. Supp. 287 (D. Mass. 1994) (United States District Judge Mark Wolf), and United States v. Leichter, Cr. No. 93-10276 (D. Mass. 1995) (United States Chief District Judge Joseph Tauro).

I was attorney of record throughout the investigation, prosecution and through the first appeal in this matter. Along with Assistant U.S. Attorney Loucks, I directed the criminal investigation of one of the largest medical device manufacturers in the world, requiring us to interview witnesses, experts and doctors around the country. Our investigation was able to show corporate medical fraud involving the experimental use of changed heart catheter devices on unwitting human patients without FDA approval. I helped negotiate a successful civil and criminal resolution against Bard which, at the time, was the largest amount ever recovered in the history of FDA enforcement cases. The company pleaded guilty to a 391-count indictment and paid \$61 million in criminal fines and civil penalties, representing the revenues received by Bard from its sales of offending products. I received the Department of Justice's Director's Award for Superior Performance for my litigation efforts in this corporate medical fraud case.

Defense counsel in the corporate guilty plea matter and at the subsequent trial were the following: Richard Cooper and Gerald Feffer, Williams & Connolly, 725 Twelfth Street, NW, Washington, D.C. 20005, 202-434-5466; William

Kettlewell, Dwyer & Collora, 600 Atlantic Avenue, Boston, Massachusetts 02210, 617-371-1037; Robert Keefe, Wilmerhale, 60 State Street, Boston, Massachusetts 02109, 617-526-6000; Richard Taranto, Farr & Taranto, 1150 18th Street, NW, Washington, DC 20036, 202-775-0184; Andrew Good, Good & Cormier, 3rd Floor, 83 Atlantic Avenue, Boston, Massachusetts 02110, 617-523-5933; Harvey Silverglate, 607 Franklin Street, Cambridge, Massachusetts 02139, 617-661-9156.

I represented the United States along with co-counsel Assistant United States Attorney Michael Loucks, later United States Attorney for the District of Massachusetts and presently with Skadden, One Beacon Street, Boston, Massachusetts 02108, 617-573-4840.

3. United States v. Sylvester, 583 F.3d 285 (5th Cir. 2009) (Higginbotham, Smith, Southwick) (on appeal from United States District Judge Feldman for the Eastern District of Louisiana).

The case presented a significant challenge to the conviction and life sentence of a defendant who killed a federal grand jury witness. The overriding proof of the murder was an admission by the defendant himself during plea negotiations. On behalf of the government, we successfully urged in district court and on appeal that the rationale of United States v. Mezzanatto, 513 U.S. 196 (1995), should be extended to permit a defendant to waive his right to object to the use of plea negotiation statements in the government's case-in-chief because of compelling interests of justice concerns, adequate safeguards against abuse, and the internal logic of the Mezzanatto ruling. The defendant is serving a life sentence.

Opposing counsel was Michael Fawer, 201 St. Charles Avenue, #3702, New Orleans, Louisiana 70170, 504-525-2200.

I was counsel of record on appeal for the government, assisting also with district court litigation Assistant United States Attorney Maurice Landrieu, and filing throughout on behalf of United States Attorney Jim Letten, both of the United States Attorney's Office, 500 Poydras Street, 2nd Floor, New Orleans, Louisiana 70130, 504-680-3000.

4. United States v. Auster, 517 F.3d 312 (5th Cir. 2008) (Higginbotham, Davis, Smith) (on appeal from United States District Judge Lemmon).

I represented the government in this interlocutory appeal of a case-determinative suppression order. The case was significant factually because it involved an explicit and immediate threat of "violent retribution" against a victim. The litigation was challenging because the argument in the United States Court of Appeals for the Fifth Circuit to overturn suppression of the criminal threat diverged from other decisions which had applied the psychotherapist-patient

privilege announced in Jaffee v. Redmond, 518 U.S. 1 (1996). The Government prevailed on appeal.

Opposing counsel was Michael Fawer, 201 St. Charles Avenue, #3702, New Orleans, Louisiana 70170, 504-525-2200.

I was counsel of record on appeal for the government, filing on behalf of United States Attorney Jim Letten, 500 Poydras Street, 2nd Floor, New Orleans, Louisiana 70130, 504-680-3000.

5. United States v. O'Keefe, 128 F.3d 885 (5th Cir. 1997) (Wisdom, Jolly, Garza) (appeal from United States Chief District Judge Sear for the Eastern District of Louisiana); In Re: United States, No. 98-30652 (5th Cir. Sept. 28, 1998) (unpublished mandamus relief obtained); United States v. Schmidt, 229 F.3d 1148 (5th Cir. 2000) (Reavley, Davis, Barksdale) (appeal from United States District Judge Lemmon for the Eastern District of Louisiana).

I represented the United States as counsel of record through three years of complex litigation seeking in successive, successful appellate efforts: (1) to reinstate convictions of multiple defendants who fraudulently misled insured doctors and state regulatory authorities in order to divert millions of dollars to themselves through concealed offshore accounts; (2) to overturn through mandamus relief compulsory review of FBI files; (3) to stay and subsequently overturn a bond pending appeal order obtained by defendants who had been ordered to serve as much as 235 months imprisonment; and (4) to affirm against legal and factual arguments the jury verdicts in this case of international insurance fraud and money laundering. The matters I litigated were especially sensitive because, to reinstate the convictions, I had to demonstrate that veteran prosecutors had not violated Brady and presented false evidence.

Opposing counsel included: Richard Simmons, Hailey, McNamara, Hall, Lamann & Papalle, 1 Galleria Boulevard, Suite 1400, Metairie, Louisiana 70001, 504-836-6500; John R. Martzell (deceased), Martzell & Bickford, 338 Lafayette Street, New Orleans, Louisiana 70130; Bruce Ashley, 700 Camp Street, New Orleans, Louisiana 70130, 504-528-9500; James McPherson, McPherson & McPherson, 2434 Highway 53 South, Poplarville, Mississippi 39470, 601-795-0379.

6. United States v. Brown, 218 F.2d 415 (5th Cir. 2000) (King, Garwood, DeMoss) (on appeal from United States Chief District Judge Polozola for the Middle District of Louisiana); United States v. Brown, 250 F.3d 907 (5th Cir. 2001) (Jolly, Jones, Smith) (on appeal from United States District Judge Edith Brown Clement for the Eastern District of Louisiana); United States v. Brown, 303 F.3d 582 (5th Cir. 2002) (Davis, Garza, Stewart) (on appeal from United States District Judge Edith Brown Clement for the Eastern District of Louisiana).

I represented the United States as counsel of record through four years of appellate litigation in these companion cases as well as in related district court proceedings, which led to the affirmance of convictions of Louisiana's Insurance Commissioner on four counts of making false statements to the FBI relating to a corporate insurance liquidation settlement. I twice successfully defended interlocutory challenges to unique trial court measures made necessary to assure a fair trial against outside pressures in this substantial public corruption case. The final merits appeal resulted in the United States Court of Appeals for the Fifth Circuit ruling in an issue of first impression against automatic turnover to defendants of FBI interview files and rough notes, as well as on issues arising from wiretap interception evidence. I received the Department of Justice's Director's Award for Superior Performance for my work.

Defense as well as media counsel in these successive appeals included: William Jeffress, Jr., Baker Botts, LLP, 1299 Pennsylvania Avenue, NW, Washington, D.C. 20004, 202-639-7751; Mary Ellen Roy, Phelps Dunbar, 365 Canal Street, Suite 2000, New Orleans, Louisiana 70130, 504-566-1311; James Swanson, Fishman, Haygood, Phelps, Walmsley, Willis & Swanson, 201 St. Charles Avenue #4600, New Orleans, Louisiana 70170, 504-586-5267; Lloyd Luncford, Taylor, Porter, Brooks & Phillips, LLP, P.O. Box 2471, Baton Rouge, Louisiana 70821, 225-387-3221.

Although I was lead appellate counsel for the government, trial co-counsel whom I assisted with authoring pleadings and arguing issues were Assistant United States Attorneys Salvatore Perricone and James Mann, 500 Poydras Street, 2nd Floor, New Orleans, Louisiana 70130, 504-680-3000.

7. United States v. Moore, 995 F.2d 1061 (1st Cir. 1993) (Torruella, Cyr, Boudin).

I represented the United States as counsel of record, from 1991 to 1993, through the investigation, indictment, trial and appeal in this prosecution of a violent felon for drug and gun possession. The defendant was convicted after trial on all counts. The significance of the litigation not only was the serious nature of the felonies, including a police chase and the defendant's aiming a fully-loaded semi-automatic weapon with an obliterated serial number at the pursuing officers, but also was that it is the only trial I have had where the opposing party represented himself. This added complexities to the trial and required heightened sensitivity to pretrial and trial fairness concerns on behalf of the accused. The trial lasted four days and was before the Honorable Rya W. Zobel, United States District Judge for the District of Massachusetts.

Opposing counsel was the defendant, acting pro se.

8. United States v. Mason, 972 F.2d 337 (1st Cir. 1992) (Seyla, Roney and Pieras, D.J.).

I represented the United States as counsel of record, from 1989 to 1992, through the investigation, indictment, trial and appeal in this prosecution of a bank fraud case involving millions of dollars of check-kiting activity. The defendant was convicted after trial on all counts. The amount of financial records in the case as well as the lack of precedent for prosecuting complex check-kiting crimes required the use of expert financial witnesses. Novel legal issues related to the proper unit of prosecution under the bank fraud statutes. The trial, before the Honorable Andrew Caffrey, United States Senior District Judge for the District of Massachusetts, lasted four days and concluded with a successful conviction of the defendant, upheld on appeal. I subsequently was asked to lecture to prosecutors as well as FBI special agents in training on how to investigate and prosecute complex financial fraud cases.

My co-counsel at trial was Assistant United States Attorney Nadine Pelligrini, United States Attorney's Office, 1 Courthouse Way, Suite 9200, Boston, Massachusetts 02110, 617-748-3696.

Opposing counsel at trial was Attorney Albert F. Cullen, Cullen & Cullen, 60 K Street, South Boston, Massachusetts 02127, 617-268-2240.

9. United States v. Smith, 135 F.3d 963 (5th Cir. 1998) (Politz, Higginbotham, DeMoss) (on appeal from United States District Judge Patrick Carr for the Eastern District of Louisiana).

I represented the United States as counsel of record in this interlocutory appeal, authoring the government's briefs appealing a district court suppression order pertaining to the arson of a large regional commercial distribution facility. The appeal was successful and the order quashing the subpoenaed evidence was reversed, eventually contributing to the conviction of the arsonist, as reported at United States v. Smith, 273 F.3d 1095 (5th Cir. 2001). The challenge of the litigation effort was that it required the United States Court of Appeals for the Fifth Circuit to address a consequential question of first impression relating to whether a privilege exists to avoid production of evidence in federal criminal cases. The government litigation approach was marked by procedural sensitivity to media concerns, including an agreed upon dismissal without prejudice to reinstate the government appeal in order to return the matter to the district court for in camera consideration. The United States Court of Appeals for the Fifth Circuit agreed with our position, reconciling media interests by permitting grand jury evidence-gathering after pre-approval from the Attorney General of the United States.

My co-counsel for the oral argument was Liza Collery, an attorney with the Appellate Section of the Criminal Division of the United States Department of

Justice, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530, 202-514-2611.
(At the time of oral argument, I was on detail with the Department of State in Washington, D.C.)

Opposing counsel on the appeal was Mary Ellen Roy and Luther Munford, Phelps Dunbar, 365 Canal Street, Suite 2000, New Orleans, Louisiana 70130, 504-566-1311.

10. United States v. Hartenstein, Cr. No. 94-188 (E.D. La. 1994) (United States District Judge Edith Brown Clement).

I represented the United States as lead counsel in this two-day criminal trial of a defendant who threatened to kill his supervisor in a federal workplace context. The prosecution was significant inasmuch as one in six violent crimes occurs in the workplace and also because threat prosecutions, like this one, often require the obtaining and sensitive assessment of psychiatric evaluations of accused persons. The prosecution was successful.

Opposing counsel at trial was Warren DeAgano, Jr., 2900 Energy Centre, 1100 Poydras Street, New Orleans, Louisiana 70163, 504-585-7343.

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

I have spent much of my career training and assisting other lawyers. I spent approximately five years working on the Attorney General's Advisory Committee, Appellate Working Group, helping to improve appellate standards, procedures, rules, training and other initiatives nationwide; I have volunteered to teach ethics and legal advocacy for the Office of Legal Education across the country. Because I am responsible for civil and criminal appeals in the city where the United States Court of Appeals for the Fifth Circuit sits, I enjoy assisting government attorneys who phone or arrive with issues in cases that are not my own. Similarly, as a law professor, I extend this aspect of my legal activity to all lawyers by volunteering to lecture in state and federal bar programs, as well as to local American Inns of Court.

Related, much of my most meaningful legal activity has been ensuring that the professional standards are followed by lawyers privileged to work for the United States. I have handled many matters when charges of government misconduct were raised. These activities require careful and candid ethical consideration, consultation with the Department of Justice, and steps that do not always lead to litigation. However, when findings of misconduct occur that are mistaken, I have considered it a privilege to

seek to correct rulings which would mar careers of devoted public servants. I am gratified that I have been successful in all such attempts. I have been entrusted by all United States Attorneys for whom I have worked in the Eastern District of Louisiana to handle issues that go beyond case results to enhance the professionalism of public servants.

Third, I have devoted significant time to negotiating cases to plea resolutions, avoiding protracted litigation yet obtaining outcomes which vindicate government, social and especially victim interests and also are respectful of the diverse circumstances of accused persons and entities. I have done so especially in bankruptcy fraud cases, all aspects of consumer protection cases, a decade-long kickback scheme that defrauded a national company of more than three million dollars, and recently I assisted with a case involving the murder of a federal law enforcement officer. I was lead government counsel throughout the criminal investigation of a national seafood distributor which distributed and sold food product to the Department of Defense and to the public that was fraudulently labeled as American, but in fact was imported from China and was adulterated with saccharin and other chemicals. The investigation later resulted in convictions against the company and its president of 101 charges after I had transferred to the United States Attorney's Office for the Eastern District of Louisiana.

Fourth, my legal work in the immediate aftermath of Hurricane Katrina was significant. I researched jurisdictional, statutory and regulatory issues pertaining to the federal justice system in the aftermath of the Hurricane, as well as federal and state relief efforts. I volunteered to return to the city overnight to assist with the law enforcement imperative in the difficult days after the storm.

I have performed no lobbying activities on behalf of any client or organization.

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.

As a professor of law at the Loyola College of Law in New Orleans, Louisiana, since 2004, I have taught the following courses:

Spring 2011

Administration of Criminal Justice I (constitutional criminal law and procedure).

Syllabus provided.

Administration of Criminal Justice II (the rules of criminal procedure and all steps of a criminal case). Syllabus provided.

Fall 2010

Constitutional Law. Syllabus provided.

Evidence. Syllabus provided.

Spring 2010

Evidence & Appeals Seminar. Syllabus provided.

Administration of Criminal Justice II. Current (2011) version of syllabus provided.

Fall 2009

Evidence. Current (2010) version of syllabus provided.

Spring 2009

Administration of Criminal Justice I. Current version (2011) of syllabus provided.

Administration of Criminal Justice II. Current version (2011) of syllabus provided.

Fall 2008

Constitutional Law. Current version (2010) of syllabus provided.

Evidence. Current version (2010) of syllabus provided.

Spring 2008

Administration of Criminal Justice I. Current version (2011) of syllabus provided.

Criminal Law Seminar. Syllabus provided.

Fall 2007

Evidence. Current version (2010) of syllabus provided.

Spring 2007

Administration of Criminal Justice I. Current version (2011) of syllabus provided.

Administration of Criminal Justice II. Current version (2011) of syllabus provided.

Fall 2006

Constitutional Law. Current version (2010) of syllabus provided.

Evidence. Current version (2010) of syllabus provided.

Spring 2006

Administration of Criminal Justice I. Current version (2011) of syllabus provided.

Constitutional Law. Current version (2010) of syllabus provided.

Spring 2005

Administration of Criminal Justice I. Current version (2011) of syllabus provided.

Criminal Law Seminar. Current version (2008) of syllabus provided.

Fall 2004

Constitutional Law. Current version (2010) of syllabus provided.

Prior to joining the faculty, I taught as an adjunct faculty member and as a lecturer at the Loyola College of Law the following courses:

Spring 2000

Federal Appellate Advocacy. I do not have my syllabus from this course.

Fall 1999

Evidence. Syllabus provided.

Fall 1996

Federal Criminal Law. Notes outlining course coverage provided.

Fall 1995

Federal Criminal Law. Notes outlining course coverage provided.

I also taught a course on criminal procedure at Tulane Law School, New Orleans, Louisiana, in Fall 2002 and again in Fall 2003 as an adjunct professor (co-teaching in the fall of 2003 with the Honorable Lance Africk, United States District Judge for the Eastern District of Louisiana). Draft syllabi provided.

Finally, in July 2008, I was invited to teach a Comparative Criminal Justice Seminar at the University of Vienna Law School and Loyola College of Law's Summer Legal Studies Program, in Vienna, Austria. Syllabus provided.

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

I will receive payments, upon retirement, from the retirement systems of both current employers, Loyola University and the United States.

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. I have enjoyed volunteering to speak to local, state and federal bar associations, as well as in local Inns of Court. Within time limits permitted to judges, I would enjoy continuing those involvements with the legal community.

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.

The circumstances likely to present potential conflicts-of-interest would be any that involve family, relatives and friends. Also, I likely would face conflicts-of-interest arising from litigation, civil and criminal, pending in the United States Attorney's Office for the Eastern District of Louisiana while I worked there.

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

I would address any such conflict with complete adherence to requirements set forth by the Department of Justice for persons leaving employment with the Department. I would adhere to all statutory and judicial rules and guidelines, including the Code of Conduct for United States Judges. I would consult other judges on the bench who have had experience with recusal situations. I have litigated judicial and attorney conflicts-of-interest, and would follow the caselaw from the United States Court of Appeals for the Fifth Circuit and the Supreme Court of the United States. Unbiased judgment is an imperative, and I would adhere to the statutory and ethical requirement that there be no actual conflict of interest or even an appearance of a conflict.

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.

I value both of my career commitments – as a prosecutor and as a law professor – because of their community and service contribution. At a personal level, I have involved myself in New Orleans' recovery from Hurricane Katrina, which caused citizens great harm and loss. I volunteered and was honored to be one of the two first federal prosecutors back in the city overnight immediately after the hurricane to assist with law enforcement. More recently, but ongoing, I enjoyed joining other citizens at the Mayor's request cleaning up the hurricane ravages that still afflict people here.

I devote myself to children, primarily by volunteer coaching. Before our own children were born, I coached soccer in the Fischer Housing Projects; since then, for almost fifteen years, I have coached softball, basketball and soccer at two large city youth sports clubs which include children from all schools, areas and backgrounds. I have volunteered for the American Red Cross teaching English as a Second Language. I have been an Emergency Medical Technician in Washington, D.C., Massachusetts, and Louisiana. I hope my work in 1997 with rule of law initiatives in China, along with many more significant efforts by others, will improve conditions for persons in that country.

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.

In the fall of 2010, I met twice with an advisory selection committee assisting Sen. Mary Landrieu with recommendations to the President for federal judicial office. On October 15, 2010, I was interviewed by Sen. Landrieu and thereafter was told that the Senator intended to recommend me, along with others, to the President for consideration for federal judicial office. Because of my employment by the Department of Justice, I was instructed to notify the Department and promptly did so.

On January 6, 2011, I was contacted by the White House Counsel's Office, and since January 14, 2011, I have been in contact with pre-nomination officials at the Department of Justice. On February 15, 2011, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On May 9, 2011, the President submitted my nomination to the Senate.

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

No.

FINANCIAL DISCLOSURE REPORT NOMINATION FILING

Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial) Higginson, Stephen A.	2. Court or Organization Fifth Circuit	3. Date of Report 05/09/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Circuit Judge	5a. Report Type (check appropriate type) ☒ Nomination, Date 05/09/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	6. Reporting Period 01/01/2010 to 05/04/2011
7. Chambers or Office Address Loyola University, Loyola College of Law 526 Pine Street, Office 409 New Orleans, LA 70118	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.		

I. POSITIONS. (Reporting individual only; see pp. 9-13 of filing instructions.)

☐ NONE (No reportable positions.)

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1. Associate Professor of Law	Loyola University, Loyola College of Law
2.	
3.	
4.	
5.	

II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of filing instructions.)

☒ NONE (No reportable agreements.)

<u>DATE</u>	<u>PARTIES AND TERMS</u>
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT

Page 2 of 6

Name of Person Reporting

Higginson, Stephen A.

Date of Report

05/09/2011

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)***A. Filer's Non-Investment Income**☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1. 2011	Loyola University Loyola College of Law -- teaching	\$52,421.00
2. 2010	Loyola University Loyola College of Law -- teaching	\$171,906.00
3. 2009	Loyola University Loyola College of Law -- teaching	\$167,149.00
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.**(Dollar amount not required except for honoraria.)*☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2011	Tulane University -- university architect
2. 2010	Tulane University -- university architect
3.	
4.	

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment.**(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*☐ NONE *(No reportable reimbursements.)*

<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1. Exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT
Page 3 of 6

Name of Person Reporting
Higginson, Stephen A.

Date of Report
05/09/2011

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1. Exempt		
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☒ NONE *(No reportable liabilities.)*

<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.		
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT

Page 4 of 6

Name of Person Reporting

Higginson, Stephen A.

Date of Report

05/09/2011

VII. INVESTMENTS and TRUSTS – Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Regions Bank accounts	B	Interest	L	T	Exempt				
2. LA Start Savings Program accounts	D	Interest	M	T	Exempt				
3. Merrill Lynch Cash Money account	A	Dividend	K	T	Exempt				
4. BlackRock Balanced Mutual Fund	A	Dividend	J	T	Exempt				
5. Computer Associates stock	A	Dividend	J	T	Exempt				
6. Fidelity Contrafund	A	Dividend	J	T	Exempt				
7. Judicial & Justice Federal Credit Union account	A	Dividend	J	T	Exempt				
8. CREF Money Market		None	L	T	Exempt				
9. TIAA-Cref Lifecycle 2025-Rmtt		None	L	T	Exempt				
10. TIAA Real Estate		None	J	T	Exempt				
11. CREF Stock		None	K	T	Exempt				
12. CREF Social Choice		None	J	T	Exempt				
13. CREF Bond Market		None	J	T	Exempt				
14. CREF Global Equities		None	J	T	Exempt				
15.									
16.									
17.									

1. Income Gain Codes:

(See Columns B1 and D4)

2. Value Codes:

(See Columns C1 and D3)

3. Value Method Codes:

(See Column C3)

A = \$1,000 or less

F = \$50,001 - \$100,000

J = \$15,000 or less

N = \$250,001 - \$500,000

P3 = \$25,000,001 - \$50,000,000

Q = Appraisal

U = Book Value

B = \$1,001 - \$2,500

G = \$100,001 - \$1,000,000

K = \$15,001 - \$50,000

O = \$500,001 - \$1,000,000

R = Cost (Real Estate Only)

V = Other

C = \$2,501 - \$5,000

H1 = \$1,000,001 - \$5,000,000

L = \$50,001 - \$100,000

P1 = \$1,000,001 - \$5,000,000

P4 = More than \$50,000,000

S = Assessment

W = Estimated

D = \$5,001 - \$15,000

H2 = More than \$5,000,000

M = \$100,001 - \$250,000

P2 = \$5,000,001 - \$25,000,000

T = Cash Marker

E = \$15,001 - \$50,000

FINANCIAL DISCLOSURE REPORT
Page 5 of 6

Name of Person Reporting

Higginson, Stephen A.

Date of Report

05/09/2011

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

FINANCIAL DISCLOSURE REPORT

Page 6 of 6

Name of Person Reporting

Higginson, Stephen A.

Date of Report

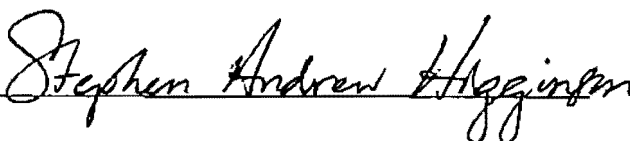
05/09/2011

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature



NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		69	654	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		68	408	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		169	088
Real estate owned – personal residence		460	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		25	000	- Pledged charitable giving			200
Cash value-life insurance							
Other assets itemize:							
- Louisiana START Saving Program Acct (529 College Savings Plan)		102	194				
- Retirement Holdings – see schedule		519	500				
				Total liabilities		169	288
				Net Worth	1	075	468
Total Assets	1	244	756	Total liabilities and net worth	1	244	756
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor on leases or contracts				Are any assets pledged? (Add schedule)	No		
Legal Claims				Are you defendant in any suits or legal actions?	No		
Provision for Federal Income Tax				Have you ever taken bankruptcy?	No		
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities

BlackRock Balanced Fund	\$13,512
Computer Associates, Inc. stock	3,594
Fidelity Contrafund	7,010
Merrill Lynch Cash Money Account	44,292
Total Listed Securities	<u>\$68,408</u>

Retirement Holdings

TIAA-CREF Retirement Accounts	\$202,000 (est)
Thrift Savings Plan Account	<u>\$317,500 (est)</u>
Total Retirement Holdings	\$519,500 (est)

State of Louisiana
Parish of Orleans

AFFIDAVIT

I, Stephen Andrew Higginsen, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

5/2/2011
(DATE)

Stephen Andrew Higginsen
(NAME)
Stephen Andrew Higginsen
Louisiana Drivers License 006560224

Pamela A. Occhipinti
(NOTARY)
PAMELA A. OCCHIPINTI
Louisiana Notary Public License
Number 88661
my commission expires at death