

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

James Kelleher Bredar

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

United States District Judge for the District of Maryland

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

Office: United States Courthouse
 101 West Lombard Street, Chambers 8C
 Baltimore, MD 21201

Residence: 

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

1957; Omaha, Nebraska

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.

1981 – 1982, Yale Law School; Visiting Third Year Student

1979 – 1981, Georgetown University Law Center; J.D. with honors, 1982

1975 – 1979, Harvard University; B.A. with honors, 1979

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

1998 – Present

United States District Court for the District of Maryland
101 West Lombard Street, Chambers 8C
Baltimore, MD 21201
United States Magistrate Judge

1992 – 1998

Office of the Federal Public Defender for the District of Maryland
100 South Charles Street, Tower II, Ninth Floor
Baltimore, MD 21201
Federal Public Defender

1991 – 1992

Vera Institute of Justice
233 Broadway, 12th Floor
New York, NY 10279
Director, London Office, UK

1989 – 1991, 1992 (March – November)

Office of the Federal Public Defender for the District of Colorado
633 17th Street, Suite 1000
Denver, CO 80202
Assistant Federal Public Defender

1985 – 1989

Office of the United States Attorney for the District of Colorado
1225 17th Street, Suite 700
Denver, CO 80202
Assistant United States Attorney

1984 – 1985

Office of the District Attorney, 14th Judicial District
Moffat County Courthouse
221 West Victory Way
Craig, CO 81625
Deputy District Attorney

1983 – 1984

The Honorable Richard P. Matsch, United States District Judge
United States Courthouse
901 19th Street
Denver, CO 80294-3589
Law Clerk

September 1982 – December 1982
Perkins, Coie, Stone, Olsen & Williams (now, Perkins Coie)
Suite 300
1029 West Third Avenue
Anchorage, AK 99501-1981
Legal Intern

July 1982 – September 1982
Perkins, Coie, Stone, Olsen & Williams (now, Perkins Coie)
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Summer Associate

June 1982 – July 1982
Perkins, Coie, Stone, Olsen & Williams (now, Perkins Coie)
1029 West Third Avenue, Suite 300
Anchorage, AK 99501-1981
Summer Associate

October 1981 – May 1982
Jacobs, Jacobs & Grudberg (now, Jacobs, Grudberg, Belt, Dow & Katz)
350 Orange Street
New Haven, CT 06511
Law Clerk

1981
Winthrop, Stimson, Putnam & Roberts (now, Pillsbury, Winthrop)
1540 Broadway
New York, NY 10036
Summer Associate

October 1980 – May 1981
Morgan, Lewis & Bockius
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004
Law Clerk

1976 – 1980 (summers)
National Park Service, U.S. Department of the Interior
Rocky Mountain National Park
Estes Park, CO 80517
Ranger

Other Affiliations (Uncompensated)

2007 – Present

Vera Institute of Justice

233 Broadway, 12th Floor

New York, NY 10279

Trustee (member, Audit Committee)

2002 – 2009

Tufts Springs Architectural Committee (neighborhood association)

Reisterstown, MD

Member (and de facto Chair)

1994 – 1998

National Ski Patrol

Whitetail Resort

13805 Blairs Valley Road

Mercersburg, PA 17236

Volunteer Ski Patroller, EMT

1972 – 1992 (on leave or intermittent, 1976 – 1982)

National Ski Patrol

Winter Park Resort

Winter Park, CO 80482

Volunteer Ski Patroller, EMT

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 registered for selective service in 1975.

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.

Special Recognition for Commitment to Effective Assistance of Counsel and Equal Access to Justice, Defender Services Committee of the Judicial Conference of the United States and the Administrative Office of the United States Courts, Defender Services Division, 1997

Special Achievement Award, United States Department of Justice, 1987

Cum Laude – J.D., Georgetown University Law Center, 1982

Selection for Law Review, American Criminal Law Review, Georgetown University Law Center, 1980

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.

Committee on Federal-State Jurisdiction, Judicial Conference of the United States
Federal Public/Community Defenders Representative and Spokesperson before the
Committee on Criminal Law, Judicial Conference of the United States (1996 – 1997)
Federal Bar Association, Maryland Chapter (Governor, 1994 – present)
Maryland State Bar Association
Baltimore City Bar Association
Colorado Bar Association
Denver Bar Association
American Bar Association
District of Columbia Federal Public Defender Selection/Reappointment Committee
Criminal Justice Act Committee for the District of Maryland (Co-Chair, 1998 – present)
Selection Committee, Criminal Justice Act Supervising Attorney for the District of
Maryland
Criminal Practice Working Group, U.S. District Court for the District of Maryland,
1995 – 1998 (organizing member together with then-U.S. Attorney Lynne Battaglia)

During my tenure as a U.S. Magistrate Judge, I have served on multiple local court committees including the Long-Range Planning Committee, the Bench-Bar Liaison Committee, the Security Committee, and the Court Operations Committee. Security Committee Chair, 2010 – present.

10. **Bar and Court Admission:**

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

Colorado, May 25, 1983 (inactive status since approximately 2001 as I no longer practice there)

Maryland, June 15, 1995

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.

Colorado Supreme Court, 1983; inactive since approximately 2001 as I no longer practice there.

United States District Court for the District of Colorado, 1983

United States Court of Appeals for the Tenth Circuit, 1985

United States Court of Appeals for the Fourth Circuit, 1992
United States District Court for the District of Maryland, 1993
Supreme Court of the United States, 1993
Court of Appeals of Maryland, 1995

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.

Tufts Springs Architectural Committee (neighborhood association) (2001 – present)

Meadow Mill Athletic Club (1994 – 2007)

The International Athletic Club of Denver (1985 – 1988)

Denver Place Athletic Club (1988 – 1992)

The Rocky Mountain Harvard Club (1983 – 1992)

Member of Schools Committee (applicant interview committee 1983 – 1992)

The National Association of Criminal Defense Lawyers (1990 (approx.) – 1998)

The Harvard Club of Maryland (1993 – present)

Lawyers' Round Table Law Club, Baltimore, Maryland (2000 – present)

Secretary (presiding member) (April 2009 – present)

Serjeants Inn Law Club, Baltimore, Maryland (2002 – present)

Tred Avon Yacht Club (2007 – present), member

Catalina 320 International Association (2004-2010), member

Chesapeake Bay Maritime Museum, St. Michaels, Maryland, "Contributing Member" (1994 – present)

The Sierra Club, 1980 – 1985 (approximate)

Downtown Denver Democratic Club, "Century Club Member" (1985 – 1992)

Community Alternative Placement Services (community corrections program),
Craig, Colorado

Board Member (1984 – 1985)

- 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 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. (See Attachment #1, Published Writings, Senate Questionnaire, Question #12a.)

Defense News, Newsletter for Maryland CJA Panel Attorneys, published periodically by me from April 1996 to October/November 1997 during my tenure as Federal Public Defender for the District of Maryland

The Reno Retreat: New Department of Justice Bluesheet DOA, 6 Fed. Sent. R. 313 (May/June 1994) (coauthored with Jeffrey E. Risberg)

Moving Up the Day of Reckoning: Strategies for Attacking the "Cracked Trials" Problem, 1992 Crim. L. Rev. 153 (1992)

Justice Informed: The Pre-Sentence Report Pilot Trials in the Crown Court, Vera Institute of Justice, and Her Majesty's Home Office, published 1992 (2 vol.) (title page only -- actual volumes on file with nominee and accessible by Internet at <http://www.vera.org/content/justice-informed-pre-sentence-report-pilot-trials-crown-court>)

The New Federal Sentencing Guidelines: Some Practice Tips, Off the Cuff (Colorado Criminal Defense Bar, Inc.), Spring 1989

Sentence Guide Throws Justice Out of Balance (Op-Ed. piece), Rocky Mountain News, February 8, 1989.

Watch the Western Sky . . ., Spinsheet Magazine, July 2005, Annapolis, Maryland

Brief statements of mine appearing in publications of the Institute for the Advancement of the American Legal System, University of Denver

- 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.

During my service as Federal Public Defender for the District of Maryland, between 1992 and 1998, I served as a member of the Defender Services Advisory Group under the umbrella of the Judicial Conference of the United States. This group, made up of seven federal defenders and seven Criminal Justice Act panel members, met several times each year. We represented the interests of the federal defender community before the Judicial Conference and other bodies. We regularly took positions and made requests on budgetary and administrative issues. We annually met with the Judges of the Defender Services Committee of the Judicial Conference. These many years later, I do not have copies or specific memories of any particular reports or statements that we issued. In general, we urged the judiciary to seek adequate funding for our offices and to approve logical and appropriate work rules for our colleagues and subordinates in the federal defender system.

Since 2007, I have served as a member of the U.S. Judicial Conference Committee on Federal-State Jurisdiction. That committee meets semiannually to consider policy issues within its jurisdiction on behalf of the U.S. Courts, and then it makes recommendations to the full Conference. I have not been the author of any specific report of this body, although I have been a faithful participant in its deliberations since my appointment to its membership. Reports of the Committee prepared while I have been a member are on file with the Secretariat of the U.S. Judicial Conference, Administrative Office of the U.S. Courts, and are supplied in Attachment #2.

Since 2007, I have served as a Trustee of the Vera Institute of Justice in New York, New York. This non-profit institute regularly conducts studies and publishes analyses of problems afflicting the justice system and urban communities, both in the U.S. and abroad. Other than the report that I edited (and partially authored) when an employee of this institute in 1992, *Justice Informed: The Pre-Sentence Report Pilot Trials in the Crown Court*, Vera Institute of Justice, and Her Majesty's Home Office, available at: <http://www.vera.org/content/justice-informed-pre-sentence-report-pilot-trials-crown-court>, I have not prepared statements or publications for this organization.

- 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. (See Attachment #3, Testimony and Official Statements to Public Bodies, Senate Questionnaire, Question #12c.)

Statement of James K. Bredar, Federal Public Defender for the District of Maryland, before the Sub-Committee on Intellectual Property and Judicial

Administration, United States House of Representatives, Washington, D.C.,
July 29, 1993

Statement of James K. Bredar, Former Director of the London Office, Vera Institute of Justice, before the Royal Commission on Reform of the [British] Criminal Justice System ("the Runciman Commission"), London, England, June 1992. Note: I provided written and oral testimony before the Royal Commission in relation to the advisability of requiring presentence reports as part of the British sentencing process. I also addressed the mechanics of "plea bargaining" in the British criminal courts. I no longer have in my possession copies or transcripts of this testimony.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke. (See Attachment #4, Speeches and Talks, Senate Questionnaire, Question #12d.)

This list represents the presentations I have identified through searches of my files and internet databases. While Federal Public Defender, and since my appointment as a Federal Magistrate Judge, I have made a number of brief speeches and introduced a variety of people at public gatherings; 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.

June 3, 2009 – Speech to introduce Senator Benjamin Cardin at the Annual Dinner of the Federal Bar Association, Maryland chapter, Baltimore, Maryland

May 15, 2009 – Speech in connection with the presentation of the *John Adams Award*, before the members of the Maryland Criminal Justice Act panel, Baltimore, Maryland

November 2008 – *A (Former) Criminal Lawyer's Perspective on the Civil Justice System*, speech delivered to the Lawyers' Round Table Law Club, Baltimore, Maryland

August 2007 – *The American Plea Bargaining Process from the Perspectives of a Prosecutor, a Defense Attorney, and a Judge as Revealed Through the Examination of a Hypothetical Case*, presentation at a Ford Foundation event for academics and government lawyers, Beijing, China (presentation prepared by me but delivered by a colleague after I was unexpectedly hospitalized in Beijing)

January 2007 – Presentation notes - judicial administration issues, presentation to academics and government officials, Ankara, Turkey

January 20, 2006 – *The Judicial Role in Dispute Resolution: A View from the U.S. District Court for the District of Maryland*, speech delivered to the Virginia Bar Association, Williamsburg, Virginia

November 3-4, 2005 – Participant in panel discussion addressing labor and employment issues, Georgetown University, Washington, D.C.

November 2, 2005 – Untitled speech before a meeting of lawyers convened to consider their undertaking the representation of state death row inmates seeking habeas corpus relief in the federal courts, United States Courthouse, Baltimore, Maryland

May 14, 2004 – *Offensive and Unproductive Behavior in Mediation and Settlement Conferences -- Why Some Mediation Efforts Fail*, speech delivered to members of the Federal Bar, Baltimore, Maryland

March 3, 2004 – Maryland State Court Bail System Task Force meeting -- I was a guest invited to give comments during discussion of potential reforms

January 2004 – Participant in panel discussion of labor and employment issues, Yale Club, New York, New York

2004 – Participant in Continuing Legal Education seminar, “Advice from the Experts: Successful Strategies for Winning Commercial Cases in Federal Court,” Baltimore, Maryland

March 5, 2003 – Untitled speech on the South African criminal justice system, delivered to the Serjeants Inn Law Club, Baltimore, Maryland

September 2002 – Untitled presentation on plea bargaining, Port Elizabeth, Pretoria, and Kwazulu-Natal, South Africa

February 26, 2001 – *Defending the Indigent in Federal Court: A Brief History and Current Practice in Maryland*, speech delivered to the Lawyers’ Round Table Law Club, Baltimore, Maryland

Naturalizations speech (delivered approximately five times annually since 1998 during naturalization ceremonies). This speech was written by others before I became a judge and was passed on to me by more senior colleagues. I have made some amendments and sometimes do not deliver every paragraph, particularly when there are time constraints.

May 8, 1998 – Transcript of my speech upon being installed as United States Magistrate Judge, Baltimore, Maryland

May 30, 1997 – Outline of speech during admissions ceremony for law clerks to the judges of the United States District Court and the United States Court of Appeals for the Fourth Circuit, Baltimore, Maryland

June 1995 – Outline of speech during admissions ceremony for law clerks to the judges of the United States District Court and the United States Court of Appeals for the Fourth Circuit, Baltimore, Maryland

November 19, 1994 – Outline of presentation at 1994 Federal Criminal Practice Seminar, “Nuts and Bolts of Practice in the District of Maryland,” Greenbelt, Maryland

November 14-15, 1994 – Participant in the Middle Atlantic State-Federal Judicial Relationships Conference addressing issue of simultaneous representation of defendants in state and federal proceedings, Williamsburg, Virginia (reported at 162 F.R.D. 173, 188-92)

August 16-18, 1993 – Participant in panel discussion on the role of the probation officer, Tenth Circuit Sentencing Institute, Denver, Colorado

May 13-14, 1993 – Special Administration of Justice Seminar on Federal-State Challenges, presented by The Brookings Institution Center for Public Policy Education, Easton, Maryland – I was a panelist in a discussion of the topic, “The Federal Role in Criminal Justice: When Does a Necessary Responsibility Become an Unwarranted Intrusion?”

April 1993 – Participant in panel discussion on the topic of the war on drugs, The Dartmouth Club of Maryland, Baltimore, Maryland

February 5, 1993 – Transcript of my speech upon being installed as the Federal Public Defender for the District of Maryland, Baltimore, Maryland

1993 – *Plea Bargaining: An Overview of What Can Be Done*, presentation before Wyoming Criminal Justice Act panel of attorneys, Jackson, Wyoming

July 23, 1992 – *The British Criminal Justice Process: An American Lawyer’s Perspective*, presentation at the Western Trial Advocacy Institute, Laramie, Wyoming

Five speeches delivered at ceremonies to honor colleagues (James Wyda, January 22, 1999, upon his investiture as Federal Public Defender; the Hon. Daniel E. Klein, Jr., after his death and for the memorial minutes of the Baltimore City Circuit Court, spring 2002; the Hon. J. Frederick Motz, upon his receiving

the Heeney Award from the Maryland State Bar Association, summer 2002; William Henry, upon his installation as the Chief Probation Officer for the District of Maryland, June 13, 2001; and Gary Jordan, First Assistant United States Attorney, at the court memorial service after his death, 1996)

March 11, 1989 – Participant in panel discussion on the topic of white-collar crime, Dartmouth Lawyers Association, Colorado

March 1988 – Outline of presentation at the Colorado Law Enforcement Training Academy on the subject of case preparation, Golden, Colorado

Date unknown – Participant in panel discussion of ethical issues, University of Baltimore Law School, Baltimore, Maryland (no notes or outline in my possession)

Date unknown – Outline of presentation made at U.S. Probation Officer Training in Baltimore, Maryland, after I became Federal Public Defender for the District of Maryland

- 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.
(See Attachment # 5, Newspaper Articles, Senate Questionnaire, Question #12e)

Throughout my career I have had many occasions to be interviewed by various media outlets. I have thoroughly searched my files and internet databases in an effort to produce as complete a list of these as I could, but it is still possible there are some I was not able to locate.

Mark Abromaitis, *Colorado Ski Hall of Famer Still Chasing the Powder*, The Erickson Tribune, December 2009, at 1

Matthew Dolan, *Halfway House Let 10 Inmates Leave at Night*, The Baltimore Sun, January 31, 2008, at 1A

Halfway House Workers Fired after Security Breach, The Capital (Annapolis, MD), January 31, 2008, at A4

Matthew Dolan, *A New Push to Build Federal Jail in Maryland*, The Baltimore Sun, January 31, 2006, at 1A

Baltimore Housing Discrimination Case Back in Court after Settlement Talks Fail, The Associated Press (news feed), April 7, 2005

Talks Unravel in Public Housing Discrimination Settlement, The Associated Press (news feed), April 7, 2005

Stephanie Hanes, *High Court Upsets Rules on Sentencing; Evidence that Affects Term Must Be Presented to Jury; Federal Guidelines Long Debated; Decision Might Open Door to Rollback of Sentences*, The Baltimore Sun, January 13, 2005, at 1A

Stephanie Hanes, *Attorney Award Gives Credit Where It Is Due*, The Baltimore Sun, July 19, 2004, at 1B

Peter Geier, *Md. Panel Attorney Program Honors Member Joshua Treem for Service to Criminal Justice System*, The Daily Record (Baltimore, MD), May 12, 2001, at 13

Rachel Elbaum, *Diane L. Bredar, 40, Manager of Hospital Diabetes Program* (Obituary), The Baltimore Sun, August 7, 1998, at 5B

Michael James, *Judge Allows IRA Member to Finish Sentence in Ireland; He Was Convicted in Smuggling Plot*, The Baltimore Sun, August 15, 1997, at 3B

Tim Doran, *Bomb Judge Sets No-nonsense Tone*, Detroit Free Press, April 24, 1997, at 5A

Maurice Possley, *Oklahoma City Bombing Trial; Star on the Bench Sings Lawyers*, Austin American-Statesman (Texas), April 20, 1997, at H1

Maurice Possley, *Bombing Case Judge Known for Intensity, Tight-fisted Control*, Fort Worth Star-Telegram (Texas), April 13, 1997, at 1

Maurice Possley, *Oklahoma Bomb Trial Judge Known for Pursuing Truth*, Chicago Tribune, April 13, 1997, at 4C

Sandy Banisky, *Bomb Trial Judge is the "Anti-Ito"; Order: A No-nonsense Judge Is Presiding at the First Oklahoma City Bombing Trial*, The Baltimore Sun, April 1, 1997, at 2A

Joseph Mallia, *Emotions Key as Bomb Trial Set to Start*, The Boston Herald, March 30, 1997, at 16

Valerie Richardson, *Bombing Judge Noted for Courage*, The Washington Times, March 30, 1997, at A1

Karen Abbott, *Doing the Right Thing Paramount to Matsch; Judge in Bomb Case Known for Weathering Pressure from Public*, Rocky Mountain News (Denver, CO), March 23, 1997, at 4A

Why the Public Defender Opposes an Impending Execution, Maryland Church News, January/February 1997, at 5

Lee Hancock, *Order in the Court; Judge Makes Clear He's the Boss at Bombing Trial, Getting Praise for Firmness but Criticism for Secrecy*, The Dallas Morning News, January 22, 1997, at 1A

Scott Higham, *Courthouse Flaws Featured in Film; Design: The Cramped Federal Garmatz Building in Downtown is Called One of the Worst in the Nation by Jurists and Engineers. It Is Being Used to Show What Not to Construct*, The Baltimore Sun, September 6, 1996, at 1A

Steve Twomey, *A Searing Reminder of Prejudice*, The Washington Post, February 12, 1996, at D1

Kevin Johnson, *Colo. Judge Takes Over Bomb Trial // Strict but Fair, Colleagues Say*, USA Today, December 5, 1995, at 2A

Brian Mooar, *Ex-Club Owner Pleads Guilty to Hiring Hit Man in Md. Case*, The Washington Post, September 29, 1995, at C3

Norris P. West, *Prisoner Transfer Denied Amid Continued Heat*, The Baltimore Sun, August 5, 1995, at 3B

Marcia Myers, *3 Languish in Jail Awaiting INS Action*, The Baltimore Sun, August 26, 1994, at 1A

Lyle Denniston, *Justices Allow Extra Penalty for Persistent Recidivists*, The Baltimore Sun, May 24, 1994, at 12B

Joan Biskupic, *Supreme Court Limits Sentencing Challenges; Ruling May Affect "Three Strikes, You're Out,"* The Washington Post, May 24, 1994, at A6

Glenn Small, *Thanos Apt to Die Next Week*, The Baltimore Sun, May 11, 1994, at 1B

Paul W. Valentine, *Relatives Drop Death Penalty Fight; Thanos's Execution Could Come Monday, but ACLU Is Still at Work*, The Washington Post, May 11, 1994, at B4

Glenn Small, *Thanos Stay of Execution Set to Expire Thursday*, The Baltimore Sun, February 27, 1994, at 2B

[Editorial] *For the Record*, The Washington Post, March 5, 1993, at A20 (I did not submit this for publication. The Post took it from my investiture speech listed in Q12a. above.)

Amy Lignitz, *Arkansas Prison Fugitive Convicted of Air Piracy*, The Associated Press (news feed), September 17, 1992

Sue Lindsay, *White-collar Handcuff Rules Raise Hackles*, Rocky Mountain News, March 4, 1990, at 10

United Press International (news feed), February 13, 1989

Girardi Sentenced to Three Years Probation, PR Newswire (news feed), January 17, 1989

Girardi Pleads Guilty to Filing False Income Tax Return, PR Newswire (news feed), December 12, 1988

Jim Eaton, *Local Prosecutor Is On His Way Up*, Northwest Colorado Daily Press, January 31, 1985, at 1

Jim Eaton, *5 Counts Filed in Weekend Shooting*, Northwest Colorado Daily Press, August 22, 1984, at 1

Harry Printz, *Tonto and the Ranger Hit the Jackpot at 10,000 Feet, or Diamond Jim Cleans Out the Moffat Tunnel*, The Harvard Crimson, March 11, 1978, at (<http://www.thecrimson.com/article/1978/3/11/tonto-and-the-ranger-hit-the/?print=1>)

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

On January 26, 1998, I was appointed to serve as a United States Magistrate Judge for the District of Maryland. I was reappointed on January 26, 2006. My current term of office expires on January 25, 2014. I am assigned to the Northern Division in Baltimore.

This position is “appointed,” not “elected.” Magistrate Judges conduct preliminary proceedings in felony cases, all proceedings in petty offense cases, and all proceedings in misdemeanor and civil matters (including entry of final judgment) upon consent of the parties. Magistrate Judges also conduct civil mediation and settlement conferences, oversee civil discovery, and rule on nondispositive motions in civil cases. In the District of Maryland, Magistrate Judges routinely handle Social Security appeals and, upon consent of the parties in those cases, enter final judgment.

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

Magistrate Judges mainly conduct preliminary proceedings, in both their assigned civil and criminal cases, and are usually not the judicial officer who enters final judgment. The exception is the misdemeanor/petty offense caseload, which for me numbers in the hundreds annually, in which I as a Magistrate Judge routinely enter final judgment.

Some civil cases are handled by Magistrate Judges to their conclusion, upon consent of the parties. In that regard, I have conducted 18 civil jury trials and approximately 15 to 25 bench trials after which I have entered final judgment, and, over 12 years, I have probably entered final judgment in another 100 to 200 civil matters. Including dispositions after trial and dispositions on motion, and including both civil and misdemeanor/petty offense criminal cases, I estimate that I have presided over at least a thousand cases that have proceeded to verdict or judgment since becoming a Magistrate Judge in 1998.

- i. Of these, approximately what percent were:

jury trials:	5% (18 civil jury trials)
bench trials:	95% (almost all were misdemeanor/petty offense criminal matters, but approximately 15 to 25 were civil cases)
civil proceedings:	20%
criminal proceedings:	80%

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

Gross v. Astrue, No. JKB-09-1456, 2010 U.S. Dist. LEXIS 29876 (D. Md. Mar. 26, 2010)

Stahl v. Comm'r of SSA, No. JKB-09-1884, 2010 U.S. Dist. LEXIS 29887 (D. Md. Mar. 26, 2010)

Robertson v. Astrue, No. JKB-09-31, 2010 WL 597206 (D. Md. Feb. 17, 2010)

Kane v. Lewis, No. BEL-08-1157, 2009 U.S. Dist. LEXIS 99390 (D. Md. Oct. 26, 2009)

Tsai v. Md. Aviation Admin., No. JKB-08-0142, 2009 WL 2900346 (D. Md. Sept. 9, 2009)

Brecheen v. Astrue, No. JKB-08-998, 2009 WL 2923076 (D. Md. Sept. 9, 2009)

St. Annes Dev. Co., LLC v. Trabich, No. WDQ-07-1056, 2009 U.S. Dist. LEXIS 64735 (D. Md. July 28, 2009)

Muhammad v. Provident Bankshares Corp., No. WDQ-08-1290, 2009 U.S. Dist. LEXIS 62683 (D. Md. July 21, 2009)

Bowden v. Stakem-Hornig, No. MJG-08-1572, 2009 WL 2058577 (D. Md. July 9, 2009)

Kona Props., LLC v. United States, No. WDQ-08-1010, 2009 U.S. Dist. LEXIS 52821 (D. Md. Mar. 9, 2009)

Saint Annes Dev. Co., LLC v. Trabich, No. WDQ-07-1056, 2009 WL 324054 (D. Md. Feb. 9, 2009)

Wyckoff v. Maryland, No. JKB-07-58, 2008 U.S. Dist. LEXIS 85022 (D. Md. Oct. 22, 2008)

United States v. Cooper, No. BEL-08-0239, 2008 WL 2331051 (D. Md. June 4, 2008), *as amended* (June 16, 2008)

U.S. v. Doe, 564 F. Supp. 2d 480 (D. Md. 2008)

In re Yoder's Slaughterhouse Site, Grantsville, Garrett County Md., 519 F. Supp. 2d 574 (D. Md. 2007)

Maryland State Conference of NAACP Branches v. Maryland State Police, No. JKB-98-1098, 2007 WL 2914913 (D. Md. Oct. 3, 2007)

U.S. v. Zarate, 492 F. Supp. 2d 514 (D. Md. 2007)

In re Allegheny Energy, Inc., No. AMD-03-1518, 2007 U.S. Dist. LEXIS 39920 (D. Md. May 31, 2007)

U.S. v. Carson, No. PWG-07-0415, 2007 WL 1101175 (D. Md. Apr. 5, 2007)

Tarquini v. Superior Products, Inc., No. JKB-05-3292, 2007 WL 763186 (D. Md. Mar. 12, 2007)

Maryland State Conference of NAACP Branches v. Maryland State Police, 454 F. Supp. 2d 339 (D. Md. 2006)

In Re Application for an Order Authorizing the Installation and use of a Pen Register and Directing the Disclosure of Telecommunications Records for Cellular Phone assigned the Number Sealed, 439 F. Supp. 2d 456 (D. Md. 2006)

Steiner v. County Com'rs of Caroline County, No. WDQ-05-1517, 2006 WL 2265103 (D. Md. May 18, 2006)

In re U.S. for Orders Authorizing Installation and Use of Pen Registers and Caller Identification Devices on Telephone Numbers, 416 F. Supp. 2d 390 (D. Md. 2006)

Rutherford v. CRU Bldg. Corp., No. MJG-03-1329, 2006 WL 559215 (D. Md. Feb. 6, 2006)

In re Application of U.S. for an Order Authorizing Installation and Use of a Pen Register and a Caller Identification System on Telephone Numbers (Sealed), 402 F. Supp. 2d 597 (D. Md. 2005)

Fox v. Encounters Int'l, Inc., 402 F. Supp. 2d 592 (D. Md. 2005)

Kurtz v. Wal-Mart Stores, Inc., 338 F. Supp. 2d 620 (D. Md. 2004)

In re Washington Post Motion to Open Juvenile Detention Hearing, No. 02-MC-355, 2003 WL 1239410 (D. Md. Mar. 12, 2003)

In re Washington Post Motion to Open Juvenile Detention Hearing, 247 F. Supp. 2d 761 (D. Md. 2003)

Jackson v. Hensley, No. SKG-01-00923, 2003 WL 25696587 (D. Md. Jan. 16, 2003)

U.S. v. Doe, 230 F. Supp. 2d 662 (D. Md. 2002)

Sewell v. Maryland Dept. of Transp., 206 F.R.D. 545 (D. Md. 2002)

Paul Revere Life Ins. Co. v. Jafari, 206 F.R.D. 126 (D. Md. 2002)

Jackson v. Hensley, No. SKG-01-00923, 2002 WL 34382980 (D. Md. Jan. 11, 2002)

U.S. v. Wallen, 177 F. Supp. 2d 455 (D. Md. 2001)

Higginbotham v. KCS Int'l, Inc., 202 F.R.D. 444 (D. Md. 2001)

Rogosin v. Mayor and City Council of Baltimore, 164 F. Supp. 2d 684 (D. Md. 2001)

In re Application of United States of America for an Order Pursuant to 18 U.S.C. § 2703(D) Directed to Cablevision Systems Corp. 1111 Stewart Avenue Bethpage, New York 11714, 158 F. Supp. 2d 644 (D. Md. 2001)

Sutton v. Harrison, No. AW-99-3193, 2001 U.S. Dist. LEXIS 10635 (D. Md. June 25, 2001)

Smith v. Continental Ins. Co., No. BEL-00-526, 2001 WL 418720 (D. Md. Apr. 11, 2001)

Coogan v. Cornet Transp. Co., Inc., 199 F.R.D. 166 (D. Md. 2001)

U.S. v. Johnson, 131 F. Supp. 2d 721 (D. Md. 2001)

Ricks v. Abbott Labs., 198 F.R.D. 647 (D. Md. 2001)

In re Bay Runner Rentals, Inc., 113 F. Supp. 2d 795 (D. Md. 2000)

Bailey v. Apfel, 80 F. Supp. 2d 535 (D. Md. 1999), *aff'd*, 225 F.3d 653 (4th Cir. 2000) (unpublished)

Murphy v. Apfel, No. AW-99-471, 1999 U.S. Dist. LEXIS 22076 (D. Md. Oct. 6, 1999), *aff'd*, 225 F.3d 655 (4th Cir. 2000) (unpublished)

Blue Ridge Ins. Co. v. Puig, 64 F. Supp. 2d 514 (D. Md. 1999)

U.S. v. Hammond, 44 F. Supp. 2d 743 (D. Md. 1999)

Washington v. Apfel, 40 F. Supp. 2d 326 (D. Md. 1999)

Kerbow v. Frostburg State University Foundation, Inc., 40 F. Supp. 2d 724 (D. Md. 1999)

- 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. *Mr. Mattress v. Sealy Mattress*, No. WMN-95-1157

This was a breach of contract/antitrust matter brought by a mattress retailer against a mattress manufacturer alleging contractual violations as well as unlawful collusion between the manufacturer and another retailer. There were counterclaims. The trial lasted just under two weeks. Jury verdicts for the

defendant and counterclaim defendant. No reported opinion. (See Attachment #6, Copies of Opinions or Judgments in Unreported Cases, Senate Questionnaire, Question #13c.)

Counsel for Plaintiff:	John Henry Lewin, Jr. (retired) Venable LLP 750 E. Pratt Street, Suite 900 Baltimore, MD 21202 410.244.7400
Counsel for Defendant:	Randall L. Speck Kaye, Scholer, Fierman, Hays & Handler 901 15th Street, Suite 1100, N.W. Washington, DC 20005 202.682.3500

2. *In re Bay Runner Rentals*, WMN-97-2399, 113 F. Supp. 2d 795 (D. Md. 2000).

In this case, a personal watercraft rental agency, having obtained a stay of an injured renter's tort suit against it, sought exoneration from or limitation of any liability it might have in relation to the accident, pursuant to the Ship-Owners Limitation of Liability Act of 1851. I held after a bench trial that 1) the owner's employees were negligent in failing to warn the renter of limitations on the craft's steerability, and 2) that the owner was in privity with such negligence. I denied exoneration from or limitation of liability after a hotly contested bench trial lasting about one week.

Counsel for Petitioner/Defendant:	Robert L. Ferguson, Jr. Ferguson Schetelich and Ballew 100 South Charles Street, Suite 1401 Baltimore, MD 21201 410.837.2200
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Counsel for Respondent/Plaintiff:	Guerdon Macy Nelson Law Office of G. Macy Nelson 401 Washington Avenue, Suite 803 Towson, MD 21204 410.296.8166
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3. *Mollica v. Salisbury University*, JKB-04-1542

This was a claim of gender discrimination in employment brought by a male executive against the female president of Salisbury University and against the University itself. After a jury trial of one week, a verdict was returned in favor of the University president and the University. No reported opinion. (See Attachment #6, Copies of Opinions or Judgments in Unreported Cases.)

Counsel for Plaintiffs: Suzanne M. Tsintolas
Law Office of Suzanne Tsintolas
14724 Westbury Road
Rockville, MD 20853
301.460.4000

Counsel for Defendants: Anne Love Donahue
State of Maryland Office of the Attorney
General
200 Saint Paul Place, 17th Floor
Baltimore, MD 21202-2021
410.576.6450

4. *McNeil v. Corcoran*, AMD-97-3675

This civil rights case, claiming excessive force, was brought by a Maryland state prisoner against various correctional officials. After a bench trial, I concluded that the plaintiff's evidence was insufficient because of a lack of credibility. Accordingly, I rendered judgment for the defendants. No reported opinion. (*See Attachment #6, Copies of Opinions or Judgments in Unreported Cases.*)

Counsel for Plaintiff: Stephen Z. Meehan
Prisoner Rights Information System of
Maryland, Inc.
P. O. Box 929
Chestertown, MD 21620
410.778.1700

Counsel for Defendants: Angela M. Eaves
Courthouse
20 West Courtland Street
Bel Air, MD 21014
410.638.3264

Wendy A. Kronmiller
Maryland Department of Health & Mental
Hygiene
55 Wade Avenue
Catonsville, MD 21228
410.402.8101

5. *Kreider v. Barlett*, JFM-99-3846

In this declaratory judgment action, the issue before the jury was whether or not the defendant, Robert J. Barlett, was a resident of his parents' home at the time of

the accident. Based on the jury's verdict that he was not a resident, I rendered judgment for the defendant Nationwide Mutual Insurance Company since Barlett was not its insured; I also rendered judgment for the plaintiffs under the decedent's uninsured motorist insurance coverage. No reported opinion. (See Attachment #6, Copies of Opinions or Judgments in Unreported Cases.)

Counsel for Plaintiffs:

Paul D. Bekman
Salsbury Clements Bekman Marder &
Adkins, LLC
300 West Pratt Street, Suite 450
Baltimore, MD 21201
410.539.6633

Counsel for Defendants:

Patricia McHugh Lambert
Hodes, Pessin & Katz, P.A.
901 Dulaney Valley Road, Suite 400
Towson, MD 21204
410.938.8800

Alan B. Gnapp
Duane, Hauck & Gnapp, P.C.
10 East Franklin Street
Richmond, VA 23219-2106
804.644.7400

Thomas Vincent McCarron
Semmes, Bowen & Semmes, P.C.
25 South Charles Street, Suite 1400
Baltimore, MD 21201
410.576.4854

6. *Cline v. Christy*, JKB-03-529

This wrongful death case ended in a jury verdict for the plaintiffs. However, the small amount of damages awarded, \$8,000 to each plaintiff, prompted the plaintiffs to file a motion to alter or amend the judgment. I concluded that the jury, in keeping with Maryland law, had exercised its discretion to render a compromise verdict based upon evidence that could have been interpreted by the jury as showing some negligence on the part of the decedent as well as evidence indicating that the decedent's adult children, who were plaintiffs, had only a distant relationship with him and, therefore, did not deserve a large damage award. No reported opinion. (See Attachment #6, Copies of Opinions or Judgments in Unreported Cases.)

Counsel for Plaintiffs:

Elliot N. Lewis
Elliot N. Lewis, P.A.
111 North Charles Street, Seventh Floor
Baltimore, MD 21201
410.962.1442

Counsel for Defendants:

Lawrence E. Ballantine
One West Pennsylvania Avenue, Suite 500
Towson, MD 21204
410.832.8012

7. *Sutton v. Harrison*, AW-99-3193, 2001 U.S. Dist. LEXIS 10635 (D. Md. June 25, 2001).

Sutton sued various Maryland state prison officers and officials after he received lacerations to his head from a heavy chain swung by Officer Harrison. Sutton had disobeyed Harrison's order to return to his cell after the cell door had been accidentally opened. Although the extent of Harrison's action was not justifiable in light of the circumstances, which included the lack of real danger posed by a much smaller Sutton against the 250-pound Harrison, I concluded that Sutton had failed to prove that Harrison "wantonly and unnecessarily inflicted pain," the Eighth Amendment standard for imposition of liability. This case turned on its particular circumstances and applied well-established precedent.

Counsel for Plaintiff:

Anthony F. Vittoria
Ober, Kaler, Grimes & Shriver, P.C.
120 East Baltimore Street
Baltimore, MD 21202-1643
410.685.1120

Counsel for Defendants:

Gloria Wilson Shelton
State of Maryland, Office of the Attorney
General
200 Saint Paul Place
Baltimore, MD 21202-2021
410.576.6300

8. *Smith v. Continental Ins. Co.*, No. BEL-00-526, 2001 WL 418720 (D. Md. Apr. 11, 2001).

In a case arising under the court's admiralty jurisdiction, Smith made an insurance claim for damage to his boat. Defendant denied the claim on the basis that the marine survey supplied by Smith prior to the underwriting of the policy had misrepresented the condition of the boat. I rendered judgment for the insurance company because I concluded that Smith had violated his duty under the doctrine

of *uberrimae fidei* to disclose all material information so as to render the insurance contract voidable at Continental's option.

Counsel for Plaintiff:	J. Stephen Simms Simms Showers, LLP 20 South Charles Street, Suite 702 Baltimore, MD 21201 410.783.5795
Counsel for Defendant:	Ranji Martelli Garrett Law Offices of Ranji M. Garrett 15200 Shady Grove Road, Suite 202 Rockville, MD 20850 301.296.4474

9. *Conaway v. Gladstone*, JKB-06-1193

This case involved a claim of excessive force against police officers. The jury rendered a verdict for the defendants, and I entered judgment accordingly. No reported opinion. (See Attachment #6, Copies of Opinions or Judgments in Unreported Cases.)

Counsel for Plaintiff:	Randall James Craig, Jr. Craig and Henderson, LLC 19 East Fayette Street, Suite 401 Baltimore, MD 21202 410.727.0406
Counsel for Defendants:	Joseph E. Spicer Jones and Associates, P.C. 111 South Calvert Street, Suite 2700 Baltimore, MD 21202 410.385.5240

10. *Lawing v. Wal-Mart Stores East*, BEL-97-2721

The plaintiff, an elderly woman, brought this personal injury case under the court's diversity jurisdiction. After a three-day trial, the jury found in favor of the defendant. No reported opinion. (See Attachment #6, Copies of Opinions or Judgments in Unreported Cases.)

Counsel for Plaintiff:	Michael J. Kopen Kopen and Collison, LLP P. O. Box 1028 Easton, MD 21601 410.822.3900
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Counsel for Defendant: Jeffrey M. Kotz
Kandel, Klitenic, Kotz & Betten, LLP
502 Washington Avenue, Suite 610
Towson, MD 21204
410.339.7100

- 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. *In re Application of the United States*, 416 F. Supp. 2d 390 (D. Md. 2006)

Counsel for Government: Barbara Sale, Supervisory Assistant United States Attorney
United States Attorney's Office
36 South Charles Street, Fourth Floor
Baltimore, MD 21201
410.209.4902
and
Paul M. Tiao, Assistant United States Attorney
410.209.4916

Counsel for the Defendant: None. *Ex parte* proceeding.

2. *Maryland State Conference of NAACP Branches, et al. v. Maryland State Police*, 454 F. Supp. 2d 339 (D. Md. 2006)

Counsel for Plaintiffs: Douglas R.M. Nazarian (then a partner at Hogan & Hartson, and now Chair, Maryland Public Service Commission)
William Donald Schaefer Tower
Six St. Paul Street, 16th Floor
Baltimore, MD 21202
410.767.8039

Counsel for Defendants: David Reid Moore
Office of the Attorney General, Civil Litigation
200 St. Paul Place, 20th Floor
Baltimore, MD 21202
410.576.7906

3. *In Re Yoder's Slaughterhouse Site, Grantsville, Garrett County, Maryland*, 519 F. Supp. 2d 574 (D. Md. 2007)

Counsel for Government: Larry D. Adams, Assistant U.S. Attorney
Office of the United States Attorney
36 South Charles Street, Fourth Floor
Baltimore, MD 21201
410.209.4801

Counsel for the Defendant: None. *Ex parte* proceeding.

4. *United States v. Doe*, 564 F. Supp. 2d 480 (D. Md. 2008)

Counsel for the Government: Rod Rosenstein, United States Attorney
36 South Charles Street, Fourth Floor
Baltimore, MD 21201
410.209.4800

Counsel for the Defendant: None. *Ex parte* proceeding.

5. *In re: Washington Post Motion to Open Juvenile Detention Hearing*, 247 F. Supp. 2d 761 (D. Md. 2003)

Counsel for Movant: Adam L. Pearlman, Dane H. Butswinkas,
Lisa M. Duggan, Williams & Connelly, LLP
725 12th Street, N.W.
Washington, DC 20005
202.434.5244

Counsel for Government: David Copperthite, Assistant United States
Attorney
36 South Charles Street, Fourth Floor
Baltimore, MD 21201
410.209.4800

6. *In re Bay Runner Rentals*, 113 F. Supp. 2d 795 (D. Md. 2000)

Counsel for Petitioner/Defendant: Robert L. Ferguson, Jr.
Ferguson, Schetelich and Ballew, P.A.
1401 Bank of America Center
100 South Charles Street
Baltimore, MD 21201
410.837.2200

Counsel for Respondent/Plaintiff: G. Macy Nelson
401 Washington Avenue, Suite 803
Towson, MD 21204
410.296.8166

7. *Higginbotham v. KCS Int'l, Inc.*, 202 F.R.D. 444 (D. Md. 2001)

Counsel for Plaintiff: Mark T. Mixer
20 South Charles Street, Ninth Floor
Baltimore, MD 21201
410.539.8415

Counsel for Defendant: Mary Malloy Dimaio,
Maher & Associates
502 Washington Avenue, Suite 410
Towson, MD 21204
410.769.8100

J. Christopher Boucher
Boucher & Denman, LLP
126 Cathedral Street
Annapolis, MD 21401
410.263.9775

8. *Fox v. Encounters Int'l, Inc.*, 402 F. Supp. 2d 592 (D. Md. 2005) (report and recommendation of Magistrate Judge Bredar ADOPTED as Opinion and Order of the Court)

Counsel for Plaintiffs: Randall K. Miller, David M. Orta, Brian
Eric Bowcut, Ross S. Goldstein
Arnold & Porter
1600 Tysons Boulevard, Suite 900
McLean, VA 22102
703.720.7000

Counsel for Defendant: Paul Howard Zuckerberg
1790 Lanier Place, N.W.
Washington, DC 20009
202.232.6400

Gloria Wilson Shelton, Assistant Attorney
General
200 St. Paul Place, 20th Floor
Baltimore, MD 21202
410.576.6300

John Walter Sippel, Jr., Assistant U.S.
Attorney
36 South Charles Street, Fourth Floor
Baltimore, MD 21201
410.209.4807

9. *United States v. Hammond*, 44 F. Supp. 2d 743 (D. Md. 1999)

Counsel for the Government: Lynne Battaglia, United States Attorney
36 South Charles Street, Fourth Floor
Baltimore, MD 21201
410.209.4800

Counsel for Defendant: Beth M. Farber, Acting Federal Public
Defender
Office of Federal Public Defender
Tower II, Ninth Floor
100 South Charles Street
Baltimore, MD 21201
410.962.3962

10. *Kerbow v. Frostburg State Univ. Found., Inc.*, 40 F. Supp. 2d 724 (D. Md. 1999)

Counsel for Plaintiffs: Andrew J. Graham
Kramon & Graham, P.A.
One South Street, Suite 2600
Baltimore, MD 21202
410.752.6030

Counsel for Defendant: James B. Sarsfield (formerly of Hamilton &
Hamilton, now Judge, State of Maryland
District Court, Sixth Judicial District)
2700 Courthouse Square
Rockville, MD 20850
301.279.1373

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

Certiorari has not been requested in any of my cases to the best of my knowledge.

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

1. *A.B. v. Lawson*, No. WMN-02-0079, Docket # 18 (D. Md. Dec. 2, 2002), *rev'd*, 354 F.3d 315 (4th Cir. 2004). (See Attachment #7, Reversed Cases, Senate Questionnaire, Question #13f.)

This lawsuit under the Individuals with Disabilities Education Act ("IDEA") and other federal laws sought reimbursement for the expense of placement of A.B., a minor child with learning disabilities, in a private school on the ground that the Anne Arundel County Public Schools failed to provide him with a free, appropriate, public education for two school years. The standard employed in IDEA is that the prescribed program need only be sufficient to confer some educational benefit. Although I determined that A.B. could have achieved some benefit from the prescribed program, I also concluded that, in other areas, he either would have received no benefit or experienced detriment; consequently, I determined that the net balance to A.B. was not beneficial.

2. *Medimmune Oncology, Inc. v. Sun Pharm. Indus., Ltd.*, No. MJG-04-2612, Docket # 171 (D. Md. Dec. 10, 2007), *partly rev'd*, Docket # 204 (D. Md. Apr. 2, 2008). (See Attachment #7, Senate Questionnaire, Question #13f.)

Defendant moved to compel Plaintiff to disclose various documents, including nine draft patent applications. Concluding that certain published opinions from other courts were persuasive and in line with existing Fourth Circuit philosophy pertaining to the attorney-client privilege, I granted the motion with respect to the draft patent applications.

3. I have made many hundreds if not over one thousand rulings in criminal release/detention hearings. On probably three or four occasions, I have been reversed by District Judges. While I can remember that I have been reversed, I cannot recall any particular case, date, or issue.
- 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.

During my tenure as a Magistrate Judge, the majority of my decisions (80-90%) have been unpublished. They appear in the court files of the cases to which they pertain. They are probably four hundred to five hundred in number. In recent years, some "unpublished" Magistrate Judge opinions have also been listed on the District Court's web site. I file all decisions on our Court's electronic CM/ECF system (operational since 2002), making them available to the public. The majority of my decisions addressing significant motions and/or resolving noncriminal cases on the merits has been downloaded from the Court's web site by Westlaw and/or LEXIS and published electronically.

- 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.

Sutton v. Harrison, No. AW-99-3193, 2001 U.S. Dist. LEXIS 10635 (D. Md. June 25, 2001)

Maryland State Conference of NAACP Branches v. Maryland State Police, 454 F. Supp. 2d 339 (D. Md. 2006)

In re Washington Post Motion to Open Juvenile Detention Hearing, 247 F. Supp. 2d 761 (D. Md. 2003)

U.S. v. Wallen, 177 F. Supp. 2d 455 (D. Md. 2001)

McNeil v. Corcoran, No. 97-3675 (D. Md. Sept. 17, 1999) (unpublished) (See Attachment #8, Opinion on Federal or State Constitutional Issues, Senate Questionnaire, Question #13h).

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

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

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

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

1. All cases in which the Office of the Federal Public Defender represented a party between November 29, 1992, and January 23, 1998. I recused myself sua sponte. Having served as the Federal Public Defender for the District of Maryland between these dates, I did not believe it appropriate for me to preside in cases in which I had previously represented a party.
2. *Maryland State Conference of NAACP Branches, et al. v. Maryland State Police*, JKB-98-1098. I recused myself sua sponte after ruling on the defendants' motion for summary judgment. An excerpt of the recusal order follows:

The pretrial phase of this case has ended. Two sons of the United States Marshal for the District of Maryland remain as defendants in actions still to be tried in this case. Now, the judge presiding over those trials likely will be required to issue a number of discretionary rulings, including some that might relate to the credibility of the Marshal's sons. All of the judges of this Court have a significant working relationship with the Marshal.

Under these circumstances the undersigned and the Chief Judge of this Court, after consulting with the other judges, have concluded that in order to avoid any appearance of impropriety, a judge (or, if necessary for scheduling reasons, more than one judge) from outside the district should be appointed to preside during the trial phase of the case. Accordingly, the undersigned hereby recuses himself from further participation in this case.

3. Consistent with Court policy, I maintain a "conflicts list" with the Clerk of Court. The current version of that list is attached (Attachment #9, List of Conflicts, Senate Questionnaire, Question #14d). Should a party on my list appear in an action, I am automatically disqualified. For instance, my career law clerk's husband is a partner in a Baltimore law firm and, accordingly, I handle no matters in which that firm is involved.

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.

Deputy District Attorney, State of Colorado, 14th Judicial District, 1984 – 1985, appointed by Gregory F. Long, District Attorney.

Assistant United States Attorney for the District of Colorado, 1985 – 1989, appointed by Robert N. Miller, United States Attorney.

Assistant Federal Public Defender, 1989 – 1991, 1992 (six months), appointed by Michael G. Katz, Federal Public Defender for the District of Colorado.

Federal Public Defender for the District of Maryland, 1992 – 1998, appointed by majority vote of the active judges then serving on the United States Court of Appeals for the Fourth Circuit

I have had no unsuccessful candidacies for elective office or 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.

Delegate to the Colorado State Democratic Convention, 1984, from Moffat County, pledged to Presidential candidate Gary Hart.

Downtown Denver Democratic Club, “Century Club Member,” 1985 – 1992.

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;

1983 – 1984; I served as a law clerk to The Honorable Richard P. Matsch, United States District Judge for the District of Colorado

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

I have never 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.

1982

Perkins, Coie, Stone, Olsen & Williams (now, Perkins Coie)
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099

and

1029 West Third Avenue, Suite 300
Anchorage, AK 99501-1981
Summer Associate and Legal Intern

1983 – 1984

The Honorable Richard P. Matsch, United States District Judge
United States Courthouse
901 19th Street
Denver, CO 80294-3589
Law Clerk

1984 – 1985

Office of the District Attorney, 14th Judicial District, State of Colorado
Moffat County Courthouse
221 West Victory Way
Craig, CO 81625
Deputy District Attorney

1985 – 1989

Office of the United States Attorney for the District of Colorado
1225 17th Street, Suite 700
Denver, CO 80202
Assistant United States Attorney

1989 – 1991, 1992

Office of the Federal Public Defender for the District of Colorado
633 17th Street, Suite 1000
Denver, CO 80202
Assistant Federal Public Defender

1991 – 1992

Vera Institute of Justice
233 Broadway, 12th Floor
New York, NY 10279
Director, London Office, UK

1992 – 1998

Office of the Federal Public Defender for the District of Maryland
100 South Charles Street, Tower II, Ninth Floor
Baltimore, MD 21201
Federal Public Defender

1998 – Present

United States District Court for the District of Maryland

101 West Lombard Street, Chambers 8C

Baltimore, MD 21201

United States Magistrate Judge

- 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.

Provide either a response that you have not served or a response that indicates such service, with a listing (and short description) of 10 matters.

While serving as a U.S. Magistrate Judge in the United States District Court for the District of Maryland, I have conducted approximately 700 mediation and settlement conferences. Here are short descriptions of ten such matters:

1. *In re Baltimore Harbor Shuttle, LLC*, No. 04-1575 (the Baltimore Inner Harbor Water Taxi Disaster)

This litigation arose after a water taxi with 24 persons on board capsized off Ft. McHenry in the midst of a sudden spring storm. There were multiple fatalities and serious injuries. Twenty-three claims were brought in our court, with admiralty jurisdiction invoked under the Ship-Owners Limitation of Liability Act of 1851 (“the Act”). There were multiple disputes: (1) Liability and fault were contested, (2) the quantum of damages was not agreed, and most significantly, (3) there was a dispute among claimants as to how any settlement fund should be divided. With the assistance of seasoned counsel, I was able to resolve all 23 claims in a single, marathon 20-hour settlement conference. My prior experience with the Act, with maritime matters in general, and with litigants in distress was invaluable as I mediated this legally complex and emotionally fraught dispute.

2. *Anne C. Fischer, M.D., Ph.D. v. Johns Hopkins Hospital and Health System*, No. 08-1073.

This tense dispute between a prominent surgeon and Hopkins involved complicated employment contract and civil rights issues. The dispute had a high profile and was being followed closely by the media and the academic medical community. With the assistance of skilled attorneys, and building on substantial advance preparation, I was able to bridge the significant gaps that divided the parties and craft a detailed, multipart agreement that resolved the case.

3. *Moxley v. Town of Walkersville*, No. 08-1763.

This was a dispute between the Town of Walkersville, Maryland, and a land developer, who had identified an Islamic sect interested in purchasing a large farm within the Town. The developer accused the Town of unlawfully denying him and his potential purchasers necessary building and development permits, driving away the potential purchasers and thus scuttling the project. The developer sued the Town, its elected and appointed leaders, and several citizens for religious discrimination and tortious interference with a contract. I met with the parties on multiple occasions over five months and succeeded in negotiating an agreement wherein the Town purchased the farm for a price acceptable to the developer and all claims were dismissed. This was a multimillion dollar matter.

4. *Equal Employment Opportunity Commission v. Chesapeake Academy*, No. 09-2342.

This was an employment discrimination dispute wherein a teacher claimed that he was denied reappointment because he was infected with HIV/AIDS. The school vehemently denied this alleged motivation and instead pointed to substandard performance. After a difficult negotiation process, an agreement was reached resulting in the entry of a consent decree resolving the case.

5. *Franco v. Richardson*, No. 08-1062.

This dispute arose out of a bus/pedestrian collision at Baltimore Washington International Airport. The plaintiff was struck by the right front portion of a large bus as the bus operator attempted to pass by the plaintiff's stopped vehicle in the passenger unloading area. The plaintiff sustained serious injuries. There was a question as to whether the plaintiff had been contributorily negligent. After substantial discussion, an agreement was reached resolving all claims and resulting in the dismissal of the suit.

6. *Glutfelty v. Seamons*, No. 08-910.

This case concerned a head-on automobile collision where there were significant injuries. Following substantial negotiations, an agreement was reached resolving all claims, and the case was dismissed.

7. *Webster v. Transflo*, No. 08-3418.

This was a personal injury matter where a truck driver sustained injuries after falling while exiting his tractor cab on the defendant's premises. Plaintiff alleged that he slipped on an oily steel rail onto which it was intended that he step after parking his vehicle on defendant's scale. The defendant argued that all surfaces were clean and dry and that the plaintiff fell as a result of his own negligence. Plaintiff's injuries were substantial. After vigorous negotiations, an agreement was reached resolving all claims. The case was dismissed.

8. *St. Agnes Healthcare, Inc. v. R.D.A. Sterling Holdings*, No. 08-358.

This was a complicated business dispute wherein a hospital filed claims against a medical services corporation, alleging that the defendant, upon purchasing the assets of a failed corporation that had previously supplied emergency physician services at the hospital, itself subsequently failed to provide sufficient medical malpractice insurance for the physicians who continued to work under the defendant's authority at the hospital. Further, the hospital contended that the defendant had failed to indemnify the hospital in relation to a particular malpractice claim, in violation of a contractual provision. After lengthy and detailed negotiations, I assisted the parties in reaching an agreement that resolved all claims. Subsequently, the matter was dismissed.

9. *Empire Fire and Marine Insurance Company v. Winchester Medical Center*, No. 06-2437.

This was a complicated insurance coverage dispute. I mediated this dispute over a period of two years. The parties were deeply divided over the question of who owed insurance coverage in relation to an automobile collision that resulted in fatalities and multiple injuries. One of the vehicles involved was an ambulance transporting a pregnant woman whose fetus was in distress. Damages were substantial. After negotiations broke down, I suggested terms on which the matter could be resolved, and those terms were accepted by all parties, resolving the case. The matter was dismissed.

10. *Petrone v. Royer*, No. 08-2655.

This was a motor tort matter in which there was little dispute about the defendant's probable liability, but a substantial argument over the extent of the plaintiff's damages. After extensive negotiation, an agreement was reached resolving all claims. The matter was dismissed.

b. Describe:

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

Provide a short narrative of your law practice. One or two paragraphs should generally be sufficient.

1984 – 1985	Line state prosecutor in rural jurisdiction
1985 – 1989	Line prosecutor (AUSA) in busy federal district
1989 – 1991	Line public defender (AFPD) in busy federal district
1991 – 1992	Not practicing; criminal justice consultant in the UK
1992 – 1998	Agency head and lead attorney in charge of federal public defender agency serving two court locations in the District of Maryland. Four intermediate attorney supervisors, chief investigator, and administrative officer – each of whom supervised between five and twelve staff members – all reported to me. Also handled a reduced personal caseload.
1998 – 2009	U.S. Magistrate Judge. Caseload 75% civil and 25% criminal.

Before commencing service as a U.S. Magistrate Judge, most of my legal experience was as a criminal practitioner (both prosecuting and defending). I have prosecuted crimes ranging from homicide, bribery, income tax evasion, sexual assault, and the robbery of \$2.3M in bearer bonds to drunk driving and “dog-off-leash” in a National Park. I prosecuted a significant espionage case. I have represented defendants on criminal charges ranging from air piracy and murder to domestic assault and drunk driving, from racketeering and wire fraud to failure to file income tax returns. As I was a public defender, my typical clients were the indigent criminally accused. I have both prosecuted and defended a significant number of “white collar” cases involving fraud.

Since commencing service as a U.S. Magistrate Judge in 1998, most of my experience has been in civil cases. I have presided in the full range of cases that come before federal courts. Less than 12 months after taking the bench, I presided in a complex antitrust jury trial. I have presided in employment discrimination and auto-tort cases, in commercial disputes, in civil rights cases, and in significant admiralty matters, to give a few examples. I have managed discovery in my own cases and in cases referred by district judges. I have conducted many hundreds of civil settlement conferences. I have presided in the jury trials of almost 20 cases and have ruled on scores of dispositive motions (e.g., motions for summary judgment; motions to dismiss).

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

When I was a prosecutor, I represented the State of Colorado and the U.S. Government. While serving as a public defender, my clients were indigent criminally accused people.

Before commencing service as a U.S. Magistrate Judge, I was a criminal lawyer. Since becoming a judge, most of my work has been civil, across the full range of matters falling within the jurisdiction of the federal courts.

- 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.

Almost all of my legal experience is as a litigator. Since leaving my clerkship in 1984, my work has been in court. Before I became a magistrate judge, I appeared in court frequently (except from early 1991 until mid-1992 when I was working as a criminal justice consultant in the UK).

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 90% |
| 2. state courts of record: | 10% |
| 3. other courts: | 0% |
| 4. administrative agencies: | <1% |

- ii. Indicate the percentage of your practice in:

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

(Percentages are based on my work before I became a U.S. Magistrate Judge. Before becoming a U.S. Magistrate Judge, I did little civil work. Since my appointment as a U.S. Magistrate Judge, about 75% of my work has been in civil cases and about 25% in criminal cases.)

- 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.

Before becoming a magistrate judge, I had tried approximately 40 cases to jury verdict and a much larger number of mostly misdemeanor cases to the bench, almost always as "sole" or "chief" counsel. I have handled at least eight appeals as "sole" or "chief" counsel (eight reported opinions; additional unreported). As

the Federal Public Defender for Maryland, I supervised attorneys who litigated thousands of cases during my tenure. Although my name appears as counsel in all of those thousands of cases, the data I supply here relate only to matters I personally handled before, and while, I was the Federal Public Defender.

i. What percentage of these trials were:

1. jury: 25% (mostly felonies, some quite lengthy);
2. non-jury: 75% (mostly petty offenses and misdemeanors, usually of very short duration)

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.

Custis v. United States, 511 U.S. 485 (1994) (Argued by one of my assistants when I was serving as the Federal Public Defender for the District of Maryland; I was on the brief, which I edited) (*see* Attachment #10, Supreme Court Brief, Senate Questionnaire, Question #16e).

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. Buglisi*, Criminal Case No. PJM-95-0265. United States District Court for the District of Maryland, Hon. Peter J. Messitte, 301.344.0632; 1995 – 1997.

Marcello Buglisi and several associates were implicated in a scheme to kill the cousin and former business partner of a Prince George's County land developer. My client owned adult entertainment clubs in Charles County. His associates asked him to introduce them to an individual who would be prepared to commit a contract murder. My client then linked them to a Prince George's County police officer who, when off duty, worked for my client as a bouncer. The police officer then twice attempted to shoot and kill the target. In a negotiation that lasted over one year, I represented my

client as he agreed to cooperate with the authorities in exchange for favorable treatment. Although there was evidence that my client was deeply involved in this scheme, I was able to negotiate a disposition wherein he served less than five years in federal prison. I was able to leverage his cooperation to dispose of multiple charges pending against him in multiple jurisdictions.

Co-counsel:

Paul Hazlehurst, Assistant Federal Public
Defender
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410.962.3962

Opposing counsel:

I. Matthew Campbell, Jr., Assistant State's
Attorney, Montgomery County
(now, Counsel, NASD Market Regulation)
9509 Key West Avenue
Rockville, MD 20850
240.386.5251

Brent Gurney, Assistant U.S. Attorney
(now, Partner in WilmerHale)
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Washington, DC 20006
202.663.6525

2. *United States v. White*, Criminal Case No. JFM-94-0442. United States District Court for the District of Maryland, Hon. J. Frederick Motz, 410.962.0782; 1994 – 1995.

Mannix White was suspected of being an “enforcer” for a street-level drug gang operating in the Westport section of Baltimore City. He was accused of executing a competing drug dealer by shotgun blast to the head. Mr. White was suspected of committing other murders on behalf of the organization that employed him and, although he was only 18 at the time, the government considered seeking the death penalty against him. While there were multiple aggravating factors, possibly the most difficult was that the murder victim had been raised in the same foster home as had Mr. White, and they had known each other since early childhood with the victim serving as a surrogate “big brother” to my client. During the course of lengthy negotiations, I convinced the government not to seek the death penalty against Mr. White, and I then persuaded the sentencing judge not to impose a life term. Mr. White received 35 years imprisonment for his offense. In anticipation of the sentencing hearing, with the assistance of two attorneys on my staff, I prepared a detailed sentencing memorandum that charted Mr. White’s life until his date of arrest. My investigation revealed that Mr. White had been introduced to heroin by his addicted mother, that he had been abandoned soon after, that he had lived as a homeless child for over a year, that he had dropped out of school at about age ten, and

through adolescence his street drug gang had been the only real “family” in his life. Despite a forceful presentation by the government at sentencing, which included the passionate and distraught testimony of the victim’s sister, I persuaded the court to resist the urge to impose a life sentence. I demonstrated that Mr. White had considerable and untapped talents, that with counseling he had become remorseful for his misconduct, and that, most significantly, after incarceration until he was nearly 50, criminology data indicated it was unlikely he would remain dangerous.

Co-counsel:

Steven F. Reich, Assistant Federal Public
Defender (now, Partner in Manatt Phelps)
Seven Times Square, # 23
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212.790.4500

Opposing counsel:

Bonnie Greenberg, Assistant U.S. Attorney
Greg Welch, Assistant U.S. Attorney
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410.209.4800

3. *United States v. Nutter*, Criminal Case No. 90-CR-131. United States District Court for the District of Colorado, Hon. Edward Nottingham (resigned; no telephone number available); June 1990.

Douglas K. Nutter was accused of attempting to ignite a fire (attempted arson) inside a large, vacant, and dilapidated building in downtown Denver for the purpose of assisting the owner in fraudulently collecting insurance proceeds. Agents of the Federal Bureau of Alcohol, Tobacco, and Firearms had detected this scheme before ignition and had infiltrated the plot. The agents had recorded my client making statements during a “walk through” of the building on the day before the planned fire, during which he explained how he would ignite the building so as to ensure its total destruction. On the day of the offense, Mr. Nutter was arrested, either just before setting the fire or immediately after setting it – I cannot remember which, now. If there was a fire, it was quickly extinguished without significant damage. While there was no credible defense, the government also did not make a significant plea offer, and my client elected to proceed to trial. As the government presented its case, I realized that it was neglecting its jurisdictional obligation to show that my client’s conduct had a significant impact on interstate or foreign commerce. As I recall, the insurance policy under which my client’s patron hoped to collect had lapsed, and even if the building had been destroyed as planned, it was unlikely that the owner could have collected any insurance proceeds. My pretrial investigation had revealed this circumstance and I assumed the government was aware of the same and would compensate with alternative proof of a nexus to interstate commerce, but it never did. After the government rested its case, I argued that it had failed to prove the interstate commerce nexus, the Court agreed, judgment of acquittal was entered pursuant to Rule 29 of the Federal Rules of Criminal Procedure, and my client was discharged.

Co-counsel: None

Opposing counsel: David Conner, Assistant U.S. Attorney
F. Joseph Mackey, Assistant U.S. Attorney
1225 17th Street, Suite 700
Denver, CO 80202
303.454.0100

4. *United States v. Smith*, Criminal Case Number 85-CR-171 (appellate opinion reported at 797 F.2d 836 (10th Cir. 1986)). United States District Court for the District of Colorado, Hon. Zita L. Weinshienk, 303.844.2784; July 1985.

As an Assistant U.S. Attorney, I prosecuted Timothy Grayson Smith in connection with his transshipment by light aircraft of a load of marijuana and archeological artifacts from the state of Durango, Mexico, to the District of Colorado. Mr. Smith was a prominent businessperson in La Plata County, Colorado, and he maintained an extravagant life style. He regularly piloted his own aircraft to exotic locations in the Caribbean and Mexico. On the day in question, he was the subject of an air pursuit by the U.S. Customs Service that began at the Mexican border and continued across two states. He landed his contraband-laden aircraft in southwestern Colorado and fled on foot before federal agents could themselves land and attempt to apprehend him. He was the subject of a manhunt for two weeks after which he surfaced in Oklahoma and then surrendered to federal authorities, denying any connection to the contraband found in his airplane. After indictment, the matter proceeded to trial in the city of Durango, Colorado, where the court decided to sit specially. After a week-long trial, Mr. Smith was convicted as charged.

Co-counsel: Robert G. Chadwell, Assistant U.S.
Attorney (now, Partner in McKay-
Chadwell)
600 University Street
Seattle, WA 98101-4124
206.233.2804

Opposing counsel: Frank Courbois, Attorney at Law
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405.524.7507

5. *United States v. McDonald*, No. CR-93-125-B, CA-97-1176-HNM. United States District Court for the District of Maryland, Hon. Herbert N. Maletz (deceased).

As Federal Public Defender, I was appointed to defend Mr. Dwayne I. McDonald on a charge of armed robbery of a federal credit union located on the grounds of the National Institutes of Health. This was a "bank takeover, vault job" type of robbery

during which great fear was instilled in the victims. After a trial, during which Mr. McDonald vigorously denied his involvement in the offense, but during which it was proven that his palm prints were found in a nonpublic area near the vault of the credit union, he was convicted.

Co-Counsel:

Donna M. D'Alessio, Assistant Federal
Public Defender
(now, Assistant Public Defender, State of
Maryland)
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410.819.4020

Opposing counsel:

Geoffrey Garinther, Assistant U.S. Attorney
(now, Partner at Venable, LLP)
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410.244.7400

6. *United States v. Roe*, No. JFM-93-0355. United States District Court for the District of Maryland, Hon. J. Frederick Motz, 410.962.0782.

As Federal Public Defender, I was appointed to represent this executive in a waste-hauling business who, along with several colleagues, was accused of executing a scheme to defraud a number of commercial entities and public institutions by systematically inflating the volume and weight of garbage and other waste hauled from these customers. The weight of the evidence against my client was overwhelming and with his agreement, I persuaded the prosecutors to grant him a favorable plea agreement in exchange for his truthful testimony against multiple other officers and employees of the corrupt business. Negotiations leading to this favorable result for my client occurred over a 12-month period. As a result of his cooperation, my client received a sentence that was less than half of what he was otherwise facing under the U.S. Sentencing Guidelines.

Co-Counsel:

None

Opposing counsel:

Jane Barrett, Assistant U.S. Attorney (now,
Associate Professor, University of
Maryland School of Law)
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Baltimore, MD 21201
410.706.8074

7. *United States v. Patterson*, No. 92-CR-211 (appellate opinion reported at 20 F.3d 809 (10th Cir. 1994)). United States District Court for the District of Colorado, Hon. Jim R. Carrigan (retired); 1992 - 1993.

As an Assistant Federal Public Defender, I was appointed to represent Mr. Patterson after he was accused of hijacking an aircraft over Colorado. Mr. Patterson denied his involvement in this offense and claimed that he had been framed, and I defended him by challenging the Government's proof against him. However, he was convicted, largely based upon his fingerprints, which were found inside the aircraft.

Co-Counsel: None

Opposing counsel: Gregory C. Graf, Assistant U.S. Attorney
(now, Partner in Bertram & Graf, LLC)
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303.409.7711

8. *United States v. Schroeder*, No. 89-CR-70 (appellate opinion reported at 902 F.2d 1469 (10th Cir. 1990)). United States District Court for the District of Colorado, Hon. Zita L. Weinshienk, 303.844.2784; 1989.

As an Assistant Federal Public Defender, I was appointed to represent Mr. Schroeder after he was accused of telephoning the Civil Division of the United States Attorney's Office in Denver and, while in negotiations over a veterans' benefits dispute, threatened to travel to the main post office in Denver and commit mass murder if he was not granted the relief he demanded. (He also frequently demonstrated in the plaza between the courthouse and the post office, marching to and fro with an AR-15 semiautomatic assault rifle, and, while this was not reflected in the charges against him, his odd and frightening behavior added credibility to his threat in the minds of prosecutors.) I defended Mr. Schroeder by challenging the Government's proof at trial. However, he was convicted. On appeal, I gained a significant reduction in his sentence by noting and arguing a District Court error in the application of the U.S. Sentencing Guidelines.

Co-Counsel: None

Opposing counsel: Thomas M. O'Rourke, Assistant U.S.
Attorney
1225 17th Street, Suite 700
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303.454.0100

9. *United States v. Steed*, No. 86-CR-196. United States District Court for the District of Colorado, Hon. Richard P. Matsch, 303.844.4627; 1986.

As an Assistant United States Attorney, I prosecuted Mr. Steed for manufacturing and distributing methamphetamine. During trial, a DEA agent and I completely reconstructed Mr. Steed's methamphetamine laboratory in the courtroom before the jury. Mr. Steed was convicted and his conviction was affirmed on appeal.

Co-Counsel: None

Opposing counsel: Charles Szekely, Assistant Federal Public Defender (retired)
633 17th Street
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303.294.7002

10. *United States v. Homa*, No. 86-CR-357. United States District Court for the District of Colorado, Hon. Zita L. Weinshienk, 303.844.2784; 1986.

As an Assistant United States Attorney, I prosecuted Mr. Homa on explosives charges. Mr. Homa, a former Denver police officer, had previously been convicted of a felony offense and was thereby forbidden from possessing or using explosives. Mr. Homa was convicted after trial and his conviction was affirmed on appeal.

Co-Counsel: None

Opposing counsel: Brian Holland, Assistant Federal Public Defender (now Partner, Recht & Kornfeld, P.C.)
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303.573.1900

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

During my career, I have worked to ensure that the indigent, criminally accused have had zealous and effective representation in our criminal courts. For over ten years I have co-chaired the Criminal Justice Act Committee of the U.S. District Court for the District of Maryland. In this role, and especially during my prior tenure as Federal Public Defender, I have worked to ensure that indigent defendants are afforded qualified legal counsel as well as additional resources, such as investigators and appropriate experts, so that their

Sixth Amendment right to counsel is fully satisfied. I have encouraged other lawyers to undertake the representation of indigent people accused of serious offenses such as capital murder. When Federal Public Defender, I mentored younger lawyers and trained them in the effective representation of criminal defendants.

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.

Trial Practice, University of Colorado School of Law, 1986-89, winter intersession. I was an instructor in the law school's trial practice course taught during an intersession each winter. I do not possess a syllabus of the course.

I have not been an active Continuing Legal Education (CLE) instructor in recent years. However, from time to time, I have been recruited to appear on panels during CLE courses. I accepted an invitation from the Dartmouth Lawyers Association in Colorado to appear in a March 1989 panel discussion of the topic of white-collar crime. At the invitation of The Dartmouth Club of Maryland, I served as a panelist in April 1993 on the topic of the war on drugs. In August 1993, I participated in a panel discussion, hosted by the Tenth Circuit Sentencing Institute in Denver, on the role of the probation officer. In November 1994, while serving as the Federal Public Defender for the District of Maryland, I participated in the Middle Atlantic State-Federal Judicial Relationships Conference and addressed the issue of simultaneous representation of defendants in state and federal proceedings; this conference, including my extensive comments, is reported at 162 F.R.D. 173, 188-92. I have vague memories of appearing on a panel addressing ethical questions with attorney Andrew D. Levy (410.962.1030) at the University of Baltimore Law School approximately ten years ago. I also have vague memories of appearing on panels at the request of my colleague, Magistrate Judge Paul W. Grimm, addressing labor and employment issues, at Georgetown University (November 3-4, 2005) and at the Yale Club in New York (one occasion several years ago).

While I have no recollection of it, a LEXIS/NEXIS search reveals that I participated in a CLE seminar titled, "Advice from the Experts: Successful Strategies for Winning Commercial Cases in Federal Court." According to LEXIS/NEXIS, this occurred in 2004.

While serving as the Federal Public Defender for the District of Maryland between 1992 and 1998, I led and participated in numerous training programs for public defenders and Criminal Justice Act (CJA) lawyers in Maryland and at national conferences.

I received no compensation for any of this instructional work (except, of course, my regular salary as a federal employee); my transportation expenses may have been paid in relation to at least one seminar (e.g., the CLE seminar at the Yale Club in New York).

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.

Two of my children receive financial benefits under the terms of a structured settlement negotiated after their mother was killed in an automobile accident.

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 plan to continue my service as an unpaid Trustee of the nonprofit, nonpartisan Vera Institute of Justice in New York.

I plan to continue my service as a member (and *de facto* Chair) of the Tufton Springs Architectural Committee (my neighborhood association) in Baltimore County.

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 would not sit in any cases that were pending during my tenure as Federal Public Defender for the District of Maryland and in which that office then represented the defendant. As it has been over 12 years since I left that position, there are now few such cases. Normally, the conflict arises when a defendant is brought before the Court to answer an accusation that he/she has violated the terms of supervised release after completing a substantial term of imprisonment.

I maintain a “conflicts list” on file with the Clerk of this Court and my chambers staff. Parties such as the Baltimore County Public Schools, where my wife is employed, are on this list. So, too, is the law firm of DLA Piper where my career law clerk’s husband is a partner. A number of other individuals and entities are listed there as a result of my personal or family interests that would give rise to a conflict. I have provided a copy of the list (Attachment #9). The Clerk provides me with a list monthly of any potential conflicts in my caseload, based on the content of my conflicts list.

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

When possible conflicts arise, I follow the recusal statutes and Canon 3 of the Code of Conduct for United States Judges, and consider carefully not only whether there is an actual conflict, but also appearance issues. I do not and will not sit in cases where I have a conflict or an appearance issue.

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

As a sitting judge, I am precluded from undertaking the representation of any person, including one who is “disadvantaged.” Nonetheless, I am deeply involved in efforts to ensure that the disadvantaged have equal and appropriate access to our courts. For over ten years, I have served as Co-Chair of this Court’s Criminal Justice Act (“CJA”) Committee. This Committee is charged with ensuring that poor and disadvantaged individuals in criminal cases are provided with quality legal representation, whether or not they can afford it. In this regard, I led the complete reconstitution of our Criminal Justice Act panel over ten years ago. I have overseen the training of lawyers admitted to the Criminal Justice Act panel. For over a decade, I have supervised the Criminal Justice Act Supervising Attorney who recruits lawyers, investigators, paralegals, and experts to serve clients qualifying for free legal services under the Criminal Justice Act. I have regularly spoken before bar association and other meetings in order to recruit lawyers to perform this work. I created the “John Adams Award,” an annual honor bestowed on an outstanding CJA attorney. My work overseeing the appointed counsel program in this District has occupied five to ten hours each month since I became a judge in 1998. I have made a significant contribution to the effort to ensure that all Marylanders charged in federal court, regardless of income or financial status, are represented by competent counsel and that those counsel have access to sufficient resources to fully discharge their responsibilities under the Sixth Amendment to the United States Constitution.

I serve as a Trustee of the nonprofit Vera Institute of Justice in New York. Quoting the Vera mission statement, the Institute “combines expertise in research, demonstration

projects, and technical assistance to help leaders in government and civil society improve the systems people rely on for justice and safety.” Vera’s projects and reform initiatives, typically performed in partnership with local, state, or national officials, are located across the United States and around the world. Vera plans and implements demonstration projects to test and refine new solutions to problems like violent crime and chronic truancy. The Institute is currently operating projects to ensure fairness in immigration proceedings, to assist offenders in successfully reintegrating into their communities upon release from prison, to ensure that juveniles receive mental health and drug treatment to the extent that those conditions are contributing to their chronic involvement in the judicial system, to ensure racial justice in criminal prosecution, and to achieve other positive reforms in the justice process. Vera is a nonpartisan organization devoted to making justice systems fairer and more effective through research and innovation. The beneficiaries of Vera’s efforts are almost always people who are otherwise disadvantaged. As a Trustee, I am not directly involved in the daily operation of the Institute or its projects. I provide general oversight and advice on the overall administration of the Institute, and I serve on its Audit Committee. You may learn more about Vera by going to www.vera.org.

From 1986 until 1989, before I had children myself, I was a volunteer reading tutor in the Lincoln Park Scholars program within the Denver Public Schools. I tutored disadvantaged third graders at Greenlee Elementary School for two hours weekly during the school year.

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.

Senators Mikulski and Cardin appointed a Selection Committee to recommend candidates for nomination to the federal courts. That Committee solicited applications from interested lawyers and judges, with the applications due on July 1, 2009. I was interviewed by the Committee on September 28, 2009. I believe that the Committee recommended me favorably because, in November 2009, I was contacted by Senator Mikulski’s staff and invited to an interview with the Senator and Senator Cardin on November 17, 2009. On December 10, 2009, Senator Mikulski contacted me by telephone and advised that she and Senator Cardin were recommending that President Obama nominate me for this position.

Since mid-December 2009, I have been in contact with pre-nomination officials at the U.S. Department of Justice. On February 22, 2010, I travelled to the U.S. Department of Justice ("DOJ"), Office of Legal Policy ("OLP") in Washington, D.C., where I met with DOJ lawyers and an Associate White House Counsel. The President submitted my nomination to the Senate on April 21, 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, JAMES KELLEHER BREDAR, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

April 21, 2010
(DATE)

James H. Bredar
(NAME)

State of Maryland
County of Harford

Sworn to and subscribed before me on
the 21st day of April, 2010

Janice R. Whitmore
Janice R. Whitmore
My Commission Expires 1-1-14

Janice R. Whitmore
(NOTARY PUBLIC)
Janice R. Whitmore
Harford County
My Commission Expires
1-1-2014