

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

John Adrian Gibney, Jr.

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

United States District Judge for the Eastern District of Virginia

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.

ThompsonMcMullan, P.C.
100 Shockoe Slip
Richmond, Virginia 23219

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

1951; Coatesville, PA

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.

1973 – 1976, University of Virginia; J.D., 1976
1969 – 1973, College of William & Mary; B.A., 1973

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

2003 – present
ThompsonMcMullan, P.C.
100 Shockoe Slip
Richmond, Virginia 23219
Shareholder

2005 – Present

University of Richmond School of Law
28 Westhampton Way
Richmond, Virginia 23173
Adjunct Professor

1987 – 2003

Shuford, Rubin, & Gibney, P.C., Suite 1250
Seven Hundred Building
Richmond, Virginia 23218
Shareholder

1999 - 2004

Town of Ashland, Virginia
101 Thompson Street
Ashland, Virginia 23005
Town Attorney (this is a part-time position)

1984 – 1987

Lacy & Mehfoud, P.C. (since dissolved)
P.O. Box 1454
Richmond, Virginia 23219
Associate

1982 – 84

Office of the Attorney General
Commonwealth of Virginia
Litigation Section
900 East Main Street
Richmond, Virginia 23219
Assistant Attorney General of Virginia

1978 – 82

Bell, Lacy & Baliles (since dissolved)
P.O. Box 1454
Richmond, Virginia 23219
Associate

1976 – 78

Supreme Court of Virginia
100 North Ninth Street
Richmond, Virginia 23219
Law Clerk to the Honorable Harry L. Carrico, Justice, (now retired Chief Justice)

Summers 1974 and 1975
Gordon & Ashton (since dissolved)
315 East Street
Coatesville, Pennsylvania 19320
Summer Clerk

Other Affiliations (uncompensated)

2002 – Present
Lawyers Helping Lawyers
600 East Main Street, Suite 2035
Richmond, Virginia 23219
Director (2002 – Present)
President (2007 – 2008)

Chesterfield County Bar Association
Box 215
Chesterfield, VA 23832
President (1992-93)

Governor's Substance Abuse Services Council
Department of Behavioral Health and Developmental Services
Jefferson building
1220 Bank Street
Richmond, Virginia 23219
Member, Vice-Chairman, 2005-present

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 registered for Selective Service in 1969. I did not serve in military.

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.

Super Lawyer in Richmond
Best Lawyers in America (local government law)
Martindale-Hubbell, AV rating
Resolution of Lawyers Helping Lawyers recognizing service to the organization, 2008
Resolution of Chesterfield County Board of Supervisors recognizing service to
Chesterfield County Committee on the Future, 2003
Outstanding Achievement Award, Washington Lawyers Committee for Civil Rights and

Urban Affairs, 1997
Distinguished Service Award, Office of the Attorney General of Virginia, 1983
Phi Beta Kappa, 1972
Phi Eta Sigma, 1970

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

American Bar Association
Bar Association of the City of Richmond
Chesterfield County Bar Association
 President (1992-93)
Local Government Attorneys Association of Virginia
United States District Court for the Eastern District of Virginia
 Chair, Advisory Panel to recommend appointment of U.S. Magistrate
 (approximately 1991-2001)
Virginia Bar Association
Virginia State Bar (admitted 1976)
 Third District Committee (1992-98, 2004-05)
 Faculty, Professionalism Course for New Attorneys (2003-2007)
 Member, Continuing Legal Education Board (2009-present)
Virginia Trial Lawyers

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.

Admitted to the Bar of the Commonwealth of Virginia, 1976

There has been no lapse in membership.

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

Supreme Court of the United States, 1980
United States Court of Appeals for the Fourth Circuit, 1978
Temporary Emergency Court of Appeals, 1982
United States District Court for the Eastern District of Virginia, 1977
United States District Court for the Western District of Virginia, 1978
United States Bankruptcy Court for the Eastern District of Virginia, 1981
Supreme Court of Virginia (1976)

My membership in the bar of the Temporary Emergency Court of Appeals was allowed to lapse because, when I left the Office of the Attorney General, I no longer practiced before that court. There has been no other lapse 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.

Lawyers Helping Lawyers (1998 – present)

Member, Board of Directors (2002 – present)

President (2007 – 2008)

Bon Air Community Association (1983 – present)

ACAC Health Club (1985 – present; some years under previous ownership)

United States Tennis Association (1992 – present)

Downtown Club of Richmond (1979-1990)

YMCA of Richmond (1976-1980)

- 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.

None of these organizations discriminates or has discriminated on the basis of race, sex, religion, or national origin during the time I have been a member and I have no knowledge of any prior discrimination.

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.

Author, "Tort Liability of Local Officials," *Virginia Town and City*, October, 1983. No copies available.

Virginia Law Foundation, Committee on Continuing Legal Education, author of section of outline and speaker at seminar, *A Practical Approach to Civil Rights Litigation*, 1987. I did not retain copies and could locate no other copies.

Author, "Ethics and Professionalism: Mental Wellness 101," *The Journal of the Virginia Trial Lawyers Association*, Vol. 21, Number 2, 2009, p. 10.

Letters to the Editor

The Richmond *Times-Dispatch* has published three letters to the editor by me. I have written a fourth letter which was not published. Copies are attached. The letters are as follows:

May 12, 1996. Letter in support of the management of the Richmond City Jail by then Sheriff Michelle Mitchell. This letter outlined problems caused by the overcrowded jail and praised the sheriff for her management of the jail despite those problems.

April 6, 2005. Letter regarding Terri Schiavo. This letter criticized Senator George Allen and Congressman Eric Cantor both for supporting legislation that granted Federal Courts jurisdiction to address issues about Terri Schiavo and for abandoning the principles of their political party.

September 30, 2008. Letter regarding Federal bailouts. This letter criticized efforts to bail out poorly run companies and said that political figures should not condemn welfare for indigent people while providing relief to the wealthy.

January 19, 2009. Unpublished letter regarding inaugural activities. The letter responded to an op-ed piece by a University of Virginia student who objected to the cancellation of classes to allow students to watch the inauguration of President Obama and said that she would not watch during scheduled class times. I argued that the inauguration was an important historic event, that a university should encourage members of the community to observe and participate in such events, and that the op-ed writer was missing an educational opportunity.

- 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.

Chesterfield County Committee on the Future: *Today's Youth Tomorrow's Leaders*, August 1999. Principal Author of Report. Four copies attached.

Chesterfield County Committee on the Future: *Choices, Options, and Benefits of Aging*, January 2003. Principal Author of Report and Chairman of Committee. Four copies attached.

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

I do not recall having offered any such 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.

1999 Talk to History Club at William and Mary about Vietnam War and its effect on the William and Mary campus. Williamsburg, VA (no materials exist)

3/26/01 Talk with Students at Governor's School regarding legal issues, Richmond, VA (no notes exist)

1/9/02 Richmond Bar Association CLE speech on Use of Depositions at Trial, Richmond, VA (no materials available)

3/15/02 CLE Seminar on Substance Abuse Issues, Richmond, VA (no materials available)

4/23/03 CLE Presentation to Local Government Attorneys Association of Virginia on self-insurance issues, Norfolk, VA (no materials available)

5/7/04 Seminar for Virginia Law Enforcement Professional Standards Commission on liability issues, Charlottesville, VA (no materials available)

10/15/04 Local Government Attorneys Association lecture on defamation, Portsmouth, VA (outline attached)

3/3/05 Conduct class for Virginia State Bar Professionalism Course, Richmond, VA (no materials available)

4/13/05 Seminar for Richmond Bar Association on Trends in Employment Law, Richmond VA (no materials available)

12/1/05 Teach Class at Virginia State Bar Professionalism Course, Richmond, VA (no materials available)

2005 Teach Class on Federal Court Jurisdiction and Related Issues, Virginia Commonwealth University, Richmond, VA (no materials available)

1/27/06 Speech to Virginia Bar Leaders Institute about substance abuse and mental health issues and Lawyers Helping Lawyers, Williamsburg, VA (no materials available)

3/9/07 Presentation to King George County management on management issues, King George, VA (no materials available)

3/30/313/07 Moderator at Lawyers Helping Lawyers Educational Program, Williamsburg, VA (no materials available)

9/27/07 Professionalism Course for Virginia State Bar, Richmond, VA (no materials available)

3/4/08 Speech on Substance Abuse and Mental Health Issues, Washington & Lee Law School, Lexington, VA (no notes available)

6/20/08 Talk on Substance Abuse and Lawyers Helping Lawyers, Virginia State Bar Convention, Virginia Beach, VA (no notes available)

6/10/09 Teach Class on Federal Court Jurisdiction and related Issues, Virginia Commonwealth University (notes attached)

9/29/09 Ethics and Risk Management Lecture, Virginia Association of Commissioners of Revenue, Wintergreen, VA (no materials available)

10/14/09 Speech on Substance Abuse and Mental Health Issues, College of William & Mary Law School, Williamsburg, VA (no materials available)

4/2/10 Talk to Virginia Commonwealth University Honors College about employment opportunities for attorneys, Richmond, Virginia (no materials available)

In addition to the above, I frequently speak at seminars for groups of law enforcement officials, public employees, and elected officers in the Commonwealth of Virginia. Most of the lectures deal with issues of public employment law and law enforcement liability. I routinely prepare materials for

these talks, which are typically handed out to each of the participants. Over the years the contents of these materials has changed, and I have not kept every version. I am attaching all of the sets of handouts that I have retained in my files, which are representative of the documents I have written over time. Individual attendees may have kept copies of the original materials, but I did not retain them all.

I have listed below all of the talks reflected in my calendars, going back to 1999. I do not have records before that time. There may have been other such seminars, and I will provide that information to the Committee if I locate other records.

5/11-13/99 Liability Seminar for Law Enforcement Officers, Division of Risk Management, Virginia Beach, VA

5/18/29/99 Liability Seminar for Law Enforcement Officers, Division of Risk Management, Roanoke, Virginia

6/24/99 Lecture at Central Shenandoah Police Academy on liability issues, Weyers Cave, VA

3/8/00 Speech on Employment Issues to Hampton Roads Police Chiefs Association, Hampton, VA

5/8-11/00 Liability Seminar for Law Enforcement Officers, Division of Risk Management, Virginia Beach, VA

5/22-24/00 Liability Seminar for Law Enforcement Officers, Division of Risk Management, Virginia Beach, VA

3/20-21/01 Lawful employment Seminar for Constitutional Officers, Virginia Compensation Board, Roanoke, VA

3/22-23/01 Lawful Employment Seminar for Constitutional Officers, Virginia Compensation Board, Richmond, VA

3/29/01 Liability Seminar for Western Regional Jail Association, Roanoke, VA

4/24-27/01 Lawful Employment Seminar for Constitutional Officers, Virginia Compensation Board, Roanoke, VA

5/8-10/01 Liability Seminar for Law Enforcement Officers, Virginia Compensation Board, Roanoke, VA

5/21-23/01 Liability Seminar for Law Enforcement Officers, Virginia Compensation Board, Virginia Beach, VA

6/21/01 Employment Law Seminar for Commonwealth's Attorneys' Office Administrators, Virginia Compensation Board, Richmond, VA

9/26/01 Employment Law Seminar for Constitutional Officers, Virginia Compensation Board, Blacksburg, VA

10/24-26/01 Liability Law Seminar for Fairfax Criminal Justice Academy, Chantilly, VA

12/10/01 New Officers Training on Employment Issues, Virginia Compensation Board, Richmond, VA

3/27-28/02 Liability Seminar for Constitutional Officers, Virginia Compensation Board, Roanoke, VA

4/25/02 Liability Seminar for Sheriffs

5/7-9/02 Liability Seminar for Law Enforcement Officers, Virginia Compensation Board, Virginia Beach, VA

5/21-23/02 Liability Seminar for Law Enforcement Officers, Virginia Compensation Board, Roanoke, VA

8/13/02 Liability Law Seminar for Local Government Officials Conference, Weldon Cooper Center, Charlottesville, VA (no materials available)

11/19/02 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Staunton, VA

11/20/02 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Richmond, VA.

2/26-27/03 Jail Liability Seminar Fairfax Criminal Justice Academy, Chantilly, VA

5/1/03 Lawful Employment Class for Local Government Officials, Virginia Compensation Board, Richmond, VA

5/14/03 Lecture at Central Shenandoah Police Academy on liability issues, Weyers Cave, VA

9/25/03 Seminar for Local Government Officials on Employment Liability Issues, Virginia Compensation Board, Richmond, VA

12/8/03 New Officer Training on Employment Issues, Virginia Compensation Board, Richmond, VA

1/26-27/04 Employment Liability Presentation to Virginia Association of Locally Elected Constitutional Officers, Richmond, VA

3/23-24/04 Seminar for Local Government Officials on Employment Liability Issues, Virginia Compensation Board, Richmond, VA

5/24/04 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Richmond, VA

10/5-6/04 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Richmond, VA

11/29-30/04 Liability Law Seminar for Fairfax Criminal Justice Academy, Chantilly, VA

12/8/04 New Officer Training on Employment Issues, Virginia Compensation Board, Richmond, VA

3/31/05 Presentation of Litigation Techniques to Virginia Regional Jail Association, Virginia Beach, VA

5/9/05 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Richmond, VA

9/29/05 Risk Management Talk, Virginia Association of Commissioners of Revenue, Wintergreen, VA

10/5/05 Employment Law Presentation at Richmond Management Institute, Richmond, VA

11/28-29/05 Jail Liability Seminar for Fairfax Criminal Justice Academy, Chantilly, VA

12/6/05 New Officer Training on Employment Issues, Virginia Compensation Board, Richmond, VA

3/22-23/06 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Richmond, VA

3/30/06 Liability Lecture to Western Regional Jail Association, Roanoke, VA

4/3-4/06 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Richmond, VA

4/5-6/06 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Roanoke, VA

10/24/06 Employment Liability Presentation to Local Constitutional Officers Virginia Compensation Board, Williamsburg, VA

10/31/06 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Roanoke, VA

11/27-28/06 Jail Liability Seminar for Fairfax Criminal Justice Academy, Chantilly, VA

3/8/07 Employment Liability Presentation to Local Constitutional Officers, Richmond, VA

4/16-17/07 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Roanoke, VA

4/18-19/07 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Richmond, VA

5/17/07 Liability Lecture for Local Government Officials, Virginia Compensation Board, Richmond, VA

10/18/07 Speech to Western Regional Jail Association on liability issues, Roanoke, VA

11/16/07 Seminar for Virginia Sheriffs' Association on employment issues, Richmond, VA

11/19-20/07 Jail Liability Seminar for Fairfax Criminal Justice Academy, Chantilly, VA

12/10/07 New Officer Training on Liability Issues, Virginia Compensation Board, Richmond, VA

4/2-3/08 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Roanoke, VA

4/17-18/08 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Richmond, VA

12/8/08 New Officers Training on Employment Issues, Virginia Compensation Board, Richmond, VA

12/30/08 Employment Liability Presentation to Local Sheriffs, Virginia Sheriffs Association, Richmond, VA

3/19/09 Employment Liability Presentation to Local Sheriffs, Virginia Sheriffs Association, New Kent, VA

3/31/09 Employment Liability Presentation to Local Sheriffs, Virginia Sheriffs Association, Augusta County, VA

5/28/09 Risk Management Speech to Local Officials, Virginia Department of Risk Management, Richmond, VA

9/29/09 Risk Management Speech to Career Development Classes for Commissioners of the Revenue Association of the Commonwealth of Virginia

10/8/09 Employment Liability Presentation to Local Law Enforcement Management, Crater Criminal Justice Academy, Prince George, VA

11/30/09 Employment Liability Presentation to Local Law Enforcement Management, Crater Criminal Justice Academy, Prince George, VA

12/8/09 New Officer Training on Liability Issues, Virginia Compensation Board, Richmond, VA

12/28-29/09 Employment Liability Presentation to Local Sheriffs, Virginia Sheriffs Association, Winchester, VA

3/18/10 Speech on Litigation Issues to Western Regional Jail Association, Roanoke, VA

- 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.

I have given dozens of informal interviews to reporters about cases in which I have participated. I do not know the dates of those interviews, and do not believe that transcripts exist. The interviews were all related to pending or recently concluded litigation.

Matt Sabo, "Supervisors' Defamation Suits Against Hicks to Go Forward," Daily Press, Apr. 9, 2010, at A1.

Brian McNeill, "Fluvanna Police Brutality Suit Advances," The Daily Progress, Mar. 13, 2010, reprinted in The Clover Herald. Also posted at: http://www2.dailyprogress.com/cdp/news/local/fluvanna/article/fluvanna_police_brutality_suit_advances/53551/

Tamara Dietrich, "Gloucester Splatter Zone Widens," Jan. 15, 2010, Daily Press, as A2.

Chris Dumond, "6 Nelson County Deputies Suing Sheriff for Back Pay, The News & Advance, Aug. 21, 2009.

Frank Green, "Virginia High Court Rules in Death-Sentence and Lottery Cases," Richmond Time Dispatch, June 5, 2009, at B01.

"Top State Court Upholds Life Term for Mentally Retarded Inmate," The Virginian-Pilot, June 5, 2009, at B2.

Larry O'Dell, "Life For Man Who Led to Ban on Executing Retarded," AP, June 4, 2009.

Frank Green, "Accessibility to Lottery is Argued before Virginia Supreme Court," Richmond Times Dispatch, Feb. 25, 2009, at B1.

Alan Cooper, "Supreme Court of Virginia: Commutation Authority of York Count Circuit Court Disputed," Virginia Lawyers Weekly, Feb. 24, 2009.

Frank Green, "Clerk Loses Virginia High Court Case," Richmond Times Dispatch, Jan. 17, 2009.

"Virginia High Court Sides with Chesterfield Judge in Spat With Clerk," Richmond Times Dispatch, Jan. 16, 2009

Mike Gangloff, "Ex-Inmate Wins Against Guard," The Roanoke Times, Oct. 22, 2008, at B1.

Elliott Robinson, "Church Must Get Outside Audit," The Progress-Index, Oct. 12, 2008, at A1.

Laurence Hammack, "Sheriff's Office Asked to Pay \$290,000 in Legal Fees," The Roanoke Times, July 3, 2008, at B1.

CBS News/ AP, "\$10M Settlement in Prison Sex Abuse Case," April 19, 2008, posted at: <http://www.cbsnews.com/stories/2008/04/19/national/main4029273.shtml>

Frank Green, "Ex-Inmates Settle Sex Abuse Suit," Richmond Times Dispatch, Apr. 19, 2008.

Mike Gangloff, "State Division Says McMillan is Responsible for Suit Payout," The Roanoke Times, Jan. 18, 2008, at B1.

Rex Bowman, "Former Sheriff is Found Guilty of Harassment," Richmond Times Dispatch, Jan. 17, 2008, at B4.

AP, "Jury Sides With Former Deputy in Sex-Harass Suit," AP, Jan. 17, 2008.

Mike Gangloff, "Jury Awards King \$325,000 in Damages Against McMillan, Sheriff's Office," The Roanoke Times, Jan. 16, 2008. Also posted at <http://www.roanoke.com/news/breaking/wb/147273>

Mike Gangloff, "Former Sheriff Denies Charges," The Roanoke Times, Jan. 15, 2008, at A1.

A.J. Hostetler, "Judge Dismisses Barber's Suit Against School Board," Richmond Times Dispatch, Dec., 29, 2007, at B1.

Danielle Zielinski, "Woman Settles for \$2,500 in Sex Assault," Daily Press, July 11, 2007, at B4.

Lindsey Nair, "Harassment Claims Transfer to New Sheriff," The Roanoke Times, Aug. 1, 2006, at B2.

David Royer, "Hazlett Takes Case to Virginia's Supreme Court," The Daily News Leader, June 8, 2006, at 1A.

Michael Hardy, "Sheriff's Convictions Reversed," Richmond Times Dispatch, July 28, 2005, at B3.

Brian Baer, "Inmate's Family Sues Regional Jail," Fredericksburg Times, June 22, 2004. Also posted at: <http://fredericksburg.com/News/FLS/2004/062004/06222004/1406490>

Lindsay Kastner, "Hospital Nearer to Relocation," Richmond Times Dispatch, May 12, 2004, at B1.

Lea Setegn, "Ashland Posed to Hire New Attorney," Richmond Times Dispatch, Dec. 9, 2003, at B5.

Lea Setegn, "Ashland Approves Revised Proffers," Richmond Times Dispatch, Aug. 13, 2003, at B1.

Lea Stegn, "Apartments May Open," Richmond Times Dispatch, Aug. 11, 2003, at B4.

"Judge Slams Sheriff Over Deputy's Reassignment," AP, July 13, 2003.

Becky Krystal, "Judge: Sheriff Violated Virginia Law Cited for Cutting Security at Court," Richmond Times Dispatch, July 12, 2003.

Meredith Fischer and Will Jones, "Firm Has 17 Days to Comply," Richmond Times Dispatch, May 21, 2003, at B1.

Michael Martz and Meredith Fischer, "State, Nursing Homes to Use Loophole for U.S. Funds," Richmond Times Dispatch, Jan. 24, 2003, at B1.

Meredith Fischer, "Senior Citizens' Numbers are on the Rise," Richmond Times Dispatch, Jan. 8, 2003.

Lou Misselhorn, "Virginia Offers Crash Course in 'Firing People'," The Virginian-Pilot, Nov. 21, 2002, at B1.

Bob Piazza, "Impact Worries Hanover Leaders Jurisdictions Seek Compromise," Richmond Time Dispatch, Sep. 11, 2002.

Meredith Fischer, "Lucy Corr Outlook Improves," Richmond Times Dispatch, Jan. 9, 2002, at B1.

Tim McCloud, "Middlesex Pays in Zoning Agreement," Daily Press, Nov. 28, 2001, at C1.

Kiran Krishnamurthy, "Middlesex Settles Case," Richmond Times Dispatch, Nov. 28, 2001, at B9.

Meredith Fischer, "Chance Lost for Loophole," Richmond Times Dispatch, Nov. 2, 2001, at B1.

Meredith Fischer and Michael Martz, "Nursing Home in Trouble?," Richmond Times Dispatch, Oct. 30, 2001, at B1.

Meredith Fischer, "Panel to Vote Again on Deal," Richmond Times Dispatch, Oct. 20, 2001, at B1.

Meredith Fischer and Gordon Hickey, "Effort to Reach Agreement Fails," Richmond Times Dispatch, Oct. 19, 2001, at B1.

Meredith Fischer, "Official Defends Legal Medicaid Loophole," Richmond Times Dispatch, Oct. 16, 2001, at A1.

"To State Medicaid Scam, They Just Said No," The Virginian-Pilot, Oct. 12, 2001, at B10.

Meredith Fisher, Gordon Hickey and Jeremy Redmon, "Nursing Home to Forgo Windfall," Richmond Times Dispatch, Oct. 10, 2001, at B1.

Tom Campbell, "Suit Probes Shooting by Deputy," Richmond Times Dispatch, Sep. 11, 2001, at B1.

Susan Friend and Kimberly Lenz, "Hush Money for Sex," Daily Press, Apr. 8, 2001.

Carrie Johnson, "Sheriff Sues Over \$28,000 Vacation Pay," Richmond Times Dispatch, Feb. 21, 2001, at B1.

Betty Booker, "Like Walking in a Cloud," Richmond Times Dispatch, Feb. 12, 2001, at E1.

Betty Booker, "Localities Grapple with Aging Issues," Richmond Times Dispatch, Feb. 12, 2001, at E2.

Siobhan Roth, "4th Circuit Surprise," Legal Times, Jan. 1, 2001.

Bob Piazza, "Fight with Local Judge May End," Richmond Times Dispatch, Apr. 12, 2000, at J1.

Peter Krouse, "Keeping Workers Out of Court," News & Record, Mar. 19, 2000, at E1.

Bob Piazza, "Hanover to Appeal Conflict with Judge," Richmond Times Dispatch, Dec. 22, 1999, at J1.

Bob Piazza, "Hanover Lawsuit Protesting Judge's Rulings Thrown Out," Richmond Times Dispatch, Nov. 24, 1999, at B7.

Carrie Johnson, "4 Cited in Boxing Scandal," Richmond Times Dispatch, Nov. 5, 1999, at D1.

Carrie Johnson, "Jail Suite Alleges 'Unhealthy Conditions'," Richmond Times Dispatch, Oct. 14, 1999, at B7.

Tom Campbell, "New Discrimination Suit Filed Against Circuit City," Richmond Times Dispatch, Dec. 1, 1998, at B6.

Tom Campbell, "New Trial is Ordered in Gun Case," Richmond Times Dispatch, Nov. 19, 1998, at B6.

Tom Campbell, "Ex-Deputy Awarded \$40,000," Richmond Times Dispatch, May 7, 1998, at B1.

Tyler Whitley, "GOP Rules Elections, Not House," Richmond Times Dispatch, Jan. 14, 1998, at A1.

Andrew Cain, "Republicans Sweep Virginia Races But May Not Get to Lead," The Washington Times, Jan. 14, 1998, at A1.

Tyler Whitney, "GOP Bid for Quick Tally Denied," Richmond Times Dispatch, Jan. 13, 1998, at A1.

Warren Fiske and Laura LaFay, "Judge Says Elections Board Can Meet Friday," The Virginian-Pilot, Jan. 13, 1998, at A1.

Ellen Nakashima and Spencer S. Hsu, "Virginia GOP Rebuffed on Vote Tallies," The Washington Post, Jan. 13, 1998, at A1.

Andrew Cain, "Judge Trips Virginia GOP's House Bid," The Washington Times, Jan. 13, 1998, at A1.

Warren Fiske, "State Sues to Force Election Decision," The Virginian-Pilot, Jan. 12, 1998, at A1.

Ellen Nakashima, "Certification Battle Heads to Virginia Court," The Washington Post, Jan. 12, 1998, at C1.

Tom Campbell, "Circuit City Ordered to Promote Black," Richmond Times Dispatch, Jan. 10, 1998, at B3.

Tom Campbell, "2nd Fired Henrico Deputy Files Suit Against Mathews," Richmond Times Dispatch, Dec. 10, 1997, at B5.

Judith Haynes, "Fired Principal Wins \$300,000," Daily Press, June 6, 1996, at C1.

Deborah Kelly, "\$300,000 Award for Ex-Principal is Anti-Discrimination Message," Richmond Times Dispatch, June 5, 1996, at B1.

Randolph Good, "Monroe's Insurance Response Asserts Her Innocence," Richmond Times Dispatch, Mar. 15, 1996, at B5.

Randolph Good, "De La Burde Estate Seeks Disputed Funds," Richmond Times Dispatch, Mar. 9, 1996, at B6.

Wes Allison, "Ex-Teacher Sues Over Drug Ad," Richmond Times Dispatch, June 13, 1995.

Marc Davis, "Judge Urges Chesapeake to Settle Suite Over Jail Rape," The Virginian-Pilot, Oct. 4, 1994, at 1.

Susan Winiecki, "Area Builder Fined \$2,000," Richmond Times Dispatch, Oct. 14, 1993.

Sonya Weakley, "Ettrick Native is Bound for Bench Accessibility," Richmond Times Dispatch, Mar. 31, 1993.

Terri Shaw, "Consumer vs. Contractor," The Washington Post, Mar. 25, 1993, at T9.

Frank Green, "Drug-Money Case Ends in Convictions for 7 Defendants," Richmond Times Dispatch, August 3, 1991.

Frank Green, "Surprise Opens Cocaine Ring Trial Accountant Slated as a Crucial Witness," Richmond Times Dispatch, July 30, 1991.

"Some UMW Fines in Pittston Strike Set Aside by Virginia Appeals Court," Lexington Herald-Leader, March 27, 1991.

"Local Bar Association Cited for Project," Richmond Times Dispatch, Aug. 15, 1990.

Betsy Powell, "Town Meeting Airs Judicial Concerns," Richmond Times Dispatch, Mar. 10, 1990.

"Public Forum to Focus on Local Judicial System," Richmond Times Dispatch, Feb. 28, 1990.

"Virginia Teachers Sue on Smoking Rule," The Washington Post, Dec. 25, 1986, at B2.

"Barrier to Practice," Legal Times,

Jean McNair, AP, Apr. 22, 1983.

Douglas B. Peaver, "Hopewell Fined for Pollution, Says It Couldn't Be Helped," The Washington Post, Dec. 16, 1981, at A29.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including

positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

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

- i. Of these, approximately what percent were:

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

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- i. Provide citations to all cases in which you sat by designation on a federal court of

appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

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

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

I have not served as a judge.

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.

Member, Vice-Chairman, Governor's Substance Abuse Services Council, 2005-present, appointed by Governor Mark R. Warner and re-appointed by Governor Timothy M. Kaine.

Member, Chesterfield County Health Care Commission, 2001-2009, appointed by Chesterfield County Board of Supervisors.

Member, Chesterfield County Committee on the Future, 1997-2003, Chairman, 2000-03, appointed by Chesterfield County Board of Supervisors.

Member, Virginia State Board for Contractors, 1989-96, appointed by Governor Gerald L. Baliles and reappointed by Governor L. Douglas Wilder.

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

I have served on the Richmond City (approximately 1978-1982) and Chesterfield County (Mid-1980's) Democratic Committees. I am not currently a member of either.

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;

Law clerk to the Honorable Harry L. Carrico, Justice (now retired Chief Justice), Supreme Court of Virginia, 1976-78.

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

I have not practiced alone.

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

1978 – 82
Bell, Lacy & Baliles (since dissolved)
P.O. Box 1454
Richmond, Virginia 23219
Associate

1982 – 84
Office of the Attorney General
Commonwealth of Virginia
Litigation Section
900 East Main Street
Richmond, Virginia 23219
Assistant Attorney General

1984 – 1987

Lacy & Mehfoud, P.C. (since dissolved)

P.O. Box 1454

Richmond, Virginia 23219

Associate

1987 – 2003

Shuford, Rubin, & Gibney, P.C., Suite 1250

Seven Hundred Building

Richmond, Virginia 23218

Shareholder

2003 – present

ThompsonMcMullan, P.C.

100 Shockoe Slip

Richmond, Virginia 23219

Shareholder

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

I have been trained in both mediation and arbitration. About ten years ago, I have mediated one personal injury case, involving an accident on a tram at Dulles Airport. About 15 years ago, I arbitrated approximately five securities cases involving disputes between customers and brokers and do not have any records of them.

b. Describe:

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

My practice has centered on trial work. Many of my clients have been public entities or officials. Throughout my career, I have also handled criminal, commercial, and domestic relations cases. In addition, for most of my career, I have had a general practice advising clients about business and personal affairs. After my clerkship, it is fair to divide my career into five segments:

From 1978 to 1982, I was in private practice as an associate at a small firm. My work was assigned by partners. We represented a variety of private and public entities in complex litigation. Most of my work consisted of administrative matters before state agencies, litigation

involving environmental matters, and litigation representing school boards.

From 1982 to 1984, I was an assistant attorney general of Virginia, in the litigation section of the Attorney General's Office. I handled a wide variety of matters. I represented individuals and agencies in civil rights and employment matters, represented Virginia in multi-state litigation, did the bulk of the work in litigation stemming from redistricting following the 1980 census, and represented judges and legislators who were sued arising from their official duties.

From 1984 to 1987, I was in private practice as an associate at a small firm. Most of our work involved representing school boards. My tasks consisted of representing the boards in employment cases and matters relating to students.

From 1987 to 2003, I was a shareholder in a small firm. I represented many local governments and officials throughout Virginia in civil litigation. Much of my work involved representation of law enforcement agencies and officers. I represented localities in many employment cases. I was often appointed by the Attorney General to handle cases in which a conflict arose. I also handled some commercial and domestic relations cases. I had an active criminal practice, and took both Federal and State appointed cases. In 1989, I stopped taking appointed cases in state court.

During this period, I served for several years as the Town Attorney of Ashland, and addressed the Town's day-to-day legal needs, including zoning matters and regulatory compliance.

In addition, I participated in our firm's general practice representing clients in business, estate planning, and real estate matters.

Since 2003, I have been a shareholder in a firm that now has 29 attorneys. My work continues to involve the representation of many public entities and officials in employment, law enforcement, and other matters. In addition, our firm represents many businesses, and I handle commercial litigation. I continue to be appointed by the Attorney General of Virginia in cases in which he has a conflict. During this period, the number of criminal cases that I handle has dropped off, as I have stopped doing any appointed work. In addition, our firm has attorneys who specialize in business transactions, estate planning, and real estate, and I no longer work as much in those areas.

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

From 1978 to 1982, I was in private practice as an associate at a small firm. We represented a variety of private and public entities in complex litigation. I also represented individuals in small civil and criminal cases.

From 1982 to 1984, I was an assistant attorney general of Virginia, representing the Commonwealth of Virginia, its agencies, and state employees.

From 1984 to 1987, I was in private practice as an associate at a small firm. We represented many local school boards. In addition, I handled some litigation and other matters on behalf of small businesses and individuals.

From 1987 to 2003, I was a shareholder in a small firm. I represented many local governments and officials throughout Virginia in civil litigation. I also represented state agencies and employees as appointed by the Attorney General when his office has a conflict. I also represented individuals in civil and criminal matters, and small businesses.

Since 2003, I have been a shareholder in a firm of 29 attorneys. My work continues to involve the representation of many public entities and officials, as well as small to medium sized businesses. I continue to represent individuals in civil and criminal matters, and to represent state employees and agencies in cases in which the Attorney General of Virginia has a conflict.

- 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.

For most of my career, 80% of my work has involved litigation. I frequently appear in court.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 75% |
| 2. state courts of record: | 20% |
| 3. other courts: | 4% |
| 4. administrative agencies: | 1% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 80% |
| 2. criminal proceedings: | 20% |

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

counsel.

I estimate that I have handled approximately 500 cases to final decision. In all but a few of those cases, I was lead counsel. In 90% of them, I was sole counsel.

i. What percentage of these trials were:

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

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

I have responded to a number of petitions for certiorari in the Supreme Court, but have never fully briefed or argued a case there. The last occurred around fifteen years ago. I do not have copies of the responses.

I helped to represent the United Mine Workers in litigation arising from a 1989 strike in the Virginia coalfields. That litigation led to the decision, *United Mine Workers v. Bagwell*, 512 U.S. 821 (1994). Although I assisted in the litigation in state court, I did not play a role in the appeal to the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

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

1. *Figg v. Schroeder*, 312 F. 3d 625 (4th Cir. 2002).

In this case, I was lead trial counsel. We represented a Hanover County deputy sheriff who shot and killed a drunk driver in the course of an arrest. Other deputy sheriffs were accused of unlawfully incarcerating unruly family members of the deceased. The case was politically controversial in Hanover County. The jury

rendered a verdict that the officer used reasonable force in apprehending the driver. The jury imposed a small verdict against the other officers on the detention counts, but the verdict was reversed on appeal. Our representation lasted from approximately 2000 through 2002.

The trial court was the United States District Court for the Eastern District of Virginia, Richmond Division. The Honorable James R. Spencer presided. Opposing counsel was James Loots, Esquire, current address P.O. Box 76852, Washington DC 20013-6852. (202) 359-0442. Co-counsel was Robert A. Dybing, ThompsonMcMullan, P.C., 100 Shockoe Slip, Richmond, VA 23219. (804)649-7545.

2. *Smith v. Hampton*, Record No. 980063 (Supreme Court of Virginia, Jan. 13, 1998).

This case involved the political control of the Virginia House of Delegates. I represented two members of the Virginia Board of Elections. The petitioners sought to compel one of our clients, the Executive Secretary of the Virginia State Board of Elections, to certify the results of a special election. The petitioners wanted the results certified more quickly than usual, because the outcome would allow the Republican delegates to control the chamber and elect the Speaker. The Court ruled that the timing of certification of an election lay in the discretion of the Executive Secretary, and denied the requested relief. As a result, the Democrats controlled the House for one more session.

The case was filed in the Circuit Court of the City of Richmond, was heard by the Honorable Randall Johnson, and was appealed to the Virginia Supreme Court. This case was filed in early January, 1998, tried in the circuit court two days later, and argued before the Supreme Court the day after the circuit court trial. Opposing counsel was Robert Brooks, Hunton & Williams, LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, VA 23219. (804) 788-8200.

3. *Nelson v. Warden*, 262 Va. 276, 552 S.E. 2d 73 (2001).

The Supreme Court of Virginia appointed me to represent the prisoner in this habeas corpus case. The case involved the failure to notify both parents of a juvenile criminal defendant before certifying the juvenile to be tried as an adult. The specific legal question was whether this failure deprived the circuit court of jurisdiction over the juvenile. At stake were hundreds of convictions in which only one parent had received notice. The Court ruled that the conviction was valid, clarifying a legal issue that had led to many habeas corpus petitions.

The case was heard in 2001. It was heard only by the Virginia Supreme Court under its original jurisdiction over habeas corpus cases. Opposing counsel was Michael Judge, Assistant Attorney General, 900 East Main Street, Richmond, VA 23235. (804)786-2071.

4. *Lowery v. Circuit City Stores*, 206 F. 3d 431 (4th Cir. 2000).

In this case, the Washington Lawyers Committee for Civil Rights and Urban Affairs recruited our firm to assist in the representation of a group of African-American employees in Circuit City's headquarters in Richmond. I served as local counsel and actively worked planning the strategy of the case and in the trial itself, handling many direct and cross examinations. The case involved a number of complex issues on class certification, racial discrimination, and the proper remedies. The trial alone lasted thirty days. Although a number of plaintiffs did not prevail, some did, and Circuit City was compelled to reexamine its promotional policies. Our representation of the plaintiffs lasted for five years, from 1998-2003.

The case was heard in the United States District Court, Eastern District of Virginia, Richmond Division. The trial judge was the Honorable James R. Spencer. Lead counsel for the plaintiffs were Phillip D. Bostwick and David J. Cynamon, Pillsbury Winthrop Shaw Pittman, LLP, 2300 N Street NW, Washington, DC 20037. (202)663-8000. Lead counsel for the defendants was Gerald S. Hartman, now with Drinker Biddle & Reath, LLP, 1500 K Street NW, Washington, DC 20005. (202)842-8881.

5. *Commonwealth of Virginia v. Epps*, 273 Va. 410, 641 S.E. 2d 77(2007).

I represented an elected official in Petersburg, Virginia, who became embroiled in a dispute with a judge and was held in contempt. The official's conviction was overturned on appeal. The Supreme Court of Virginia's decision resolved important questions about the nature of contempt of court and the competence of a judge to testify about matters observed outside the courtroom. My representation of the defendant lasted from 2003 through 2007.

The trial court was the Circuit Court of the City of Petersburg, Virginia. The Honorable Robert G. O'Hara presided. Opposing counsel on appeal was John H. McLees, Senior Assistant Attorney General, Office of the Attorney General of Virginia, 900 East Main Street, Richmond, VA 23235. (804)786-2071. Trial counsel for the prosecution was Larry Hogan, Deputy Commonwealth's Attorney for Chesterfield County, 9500 Courthouse Road, P.O. Box 25, Chesterfield, VA. (804)748-1221.

6. *International Union, United Mine Workers v. Clinchfield Coal Corp.*

I served on a legal team representing the International Union, United Mine Workers, in a series of contempt proceedings initiated by coal companies. I worked on a number of interlocutory and final appeals. Ultimately, the Supreme Court of Virginia affirmed awards that were of such magnitude as to destroy the Union. The Virginia Supreme Court's opinion addressed a number of new

questions regarding contempt, chief among them whether contempt sanctions continue to exist after the parties settle the litigation leading to the sanctions. The Union appealed the ruling of the Virginia Supreme Court to the Supreme Court of the United States, which reversed the decision. I did not participate in the appeal to the Supreme Court of the United States. My representation of the Union went lasted from 1989 through 1992.

The trial court was the Circuit Court of Russell County, the Honorable Donald A. McGlothlin, Jr., presiding. Lead trial counsel for the Union was James J. Vergara, Jr., Vergara and Associates, 100 Main Street Plaza, Hopewell, VA 23860. (804)458-6394. Lead appellate counsel before the Supreme Court of Virginia and the Supreme Court of the United States was Andrew P. Miller, Dickstein Shapiro, LLP, 1825 Eye Street, Washington, DC 20006. (202)420-2200. Lead trial counsel for Covenant Coal Corp. was Robert M. Galumbeck, 104 West Main Street, Tazewell, VA. (276)988-6561. Lead trial counsel for Clinchfield Coal Corp. was Karl Kindig, 110 Fairway Drive, Abingdon, VA 24211. (276)628-6500. Lead opposing counsel on appeal was William B. Poff, Woods Rogers, PLC, 10 South Jefferson Street, Suite 1400, Roanoke, VA 24011. (540)983-7600.

Bagwell v. International Union, 244 Va. 463, 423 S.E. 2d 349 (1992).

United Mine Workers v. Covenant Coal Corporation, 12 Va. App. 135, 402 S.E. 2d 906 (1991).

United Mine Workers v. Clinchfield Coal Corporation, 12 Va. App. 123, 402 S.E. 2d 899 (1991).

International Union, United Mine Workers v. Bagwell, 512 U.S. 821 (1994).

7. *Taylor v. Waters*, 81 F. 3d 429 (4th Cir. 1996).

I represented a police officer who was sued under 42 U.S.C. §1983 for wrongful arrest. The lower court dismissed the case against the officer. On appeal, the United States Court of Appeals for the Fourth Circuit made significant rulings in the area of qualified immunity. This case is frequently cited as definitive authority on issues of the immunity of police officers and other governmental officials. My representation of Officer Waters lasted from 1994 through 1996.

The case was heard in the United States District Court for the Eastern District of Virginia, Newport News Division, the Honorable James E. Bradberry presiding. Opposing counsel was Sa'ad El-Amin, Esquire. Mr. El-Amin has been disbarred and no longer practices law.

8. *In Re: Commonwealth of Virginia*.

I represented the Honorable Prentis Smiley, Judge of the Circuit Court of York County. In a capital murder case, Judge Smiley ruled that prosecutors had concealed evidence they should have given to defense counsel. After making this

ruling, he held that the prosecution could not seek the death penalty against the defendant. The prosecutors filed a petition for mandamus in the Supreme Court of Virginia, asking the Court to compel Judge Smiley to conduct proceedings that could lead to capital punishment. The Court ruled that Judge Smiley had the authority to make his ruling, and that the Commonwealth, therefore, could not seek the death penalty in the case. My representation of Judge Smiley lasted from 2008 through 2009.

Opposing counsel were Melissa Hoy, Assistant Commonwealth's Attorney, and Mark Krueger, Deputy Commonwealth's Attorney. 9500 Courthouse Road, P.O. Box 25, Chesterfield, VA 23832. (804)748-1221.

9. *Thompson v. Walker*, 758 F. 2d 1004 (4th Cir. 1985).

I represented the Virginia judicial retirement plan in a suit challenging the constitutionality of the plan's restriction of retirement benefits to retired judges who returned to litigation practices. The court held that the Commonwealth had a reasonable basis to discourage retired judges from appearing in court, and upheld the validity of the plan. I represented the plan from 2003-2005.

The case was heard in the United States District Court, Eastern District of Virginia, Alexandria Division, the Honorable Albert Bryan, Jr., presiding. Opposing counsel was George F. West, Jr., Richards McGettigan Reilly & West P.C, 1725 Duke Street Suite 600, Alexandria, VA 22314. (703)549-5353.

10. *Cosner v. Robb*, 541 F. Supp. 613 (E.D. Va. 1982)
Cline v. Robb, 548 S. Supp 128 (E.D. Va. 1982).

I was second chair in these two cases representing the Commonwealth in a challenge to the 1980 redistricting of Virginia. I wrote the State's summary judgment briefs, which resulted in dismissal of the actions. These cases established the precedent that the Equal Protection Clause does not require compactness, contiguity, and community of interest in legislative districts. The court also ruled that the legislature could legitimately reapportion part, but not all, of the state, in response to objections raised by the Department of Justice under the Voting Rights Act. My representation in these cases occurred in 1982.

The cases were heard before three judges in the United States District Court for the Eastern District of Virginia. The panel consisted of the Honorable John Butzner, Circuit Judge, the Honorable D. Dortch Warriner, Judge, and the Honorable Glenn Williams, Judge. Lead counsel for the defendants in the case was Deputy Attorney General Elizabeth B. Lacy, now senior justice of the Supreme Court of Virginia, 100 North Ninth Street, Richmond, Virginia 23219. (804)741-5301. Lead opposing counsel were Robert Fitzgerald, Fairfax, Virginia, retired, address unknown, and Raymond R. Robrecht, Salem, retired, address unknown.

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.)

From 2006 to 2009, I represented a local government in a matter arising under the Fair Labor Standards Act. The locality had failed to maintain any time records for a group of 250 employees, who claimed that they had not been compensated for overtime for a period of three years. The workers claimed over \$500,000 in overtime wages, plus attorneys' fees. We were able to reconstruct the time of workers. These efforts persuaded plaintiffs' counsel to accept a settlement for a small fraction of the amount claimed.

This year, I represented a major Richmond law firm whose managing partner had allegedly sexually harassed an office manager. I assembled a comprehensive package of the employee's emails, and obtained witness statements from a number of co-workers. This evidence showed that the claims of harassment fell on the heels of a bad evaluation. We were then able to persuade plaintiff's counsel to settle the case, rather than file suit.

While the Town Attorney for Ashland, Virginia, I handled the rezoning of property to allow a Wal-Mart Supercenter to open. This matter was highly controversial, with opponents constantly railing at Town Council meetings about the propriety of the Town's actions. Although the opponents of Wal-Mart hired a number of attorneys to examine the Town's actions in detail, all requirements were met, and ultimately no one challenged the rezoning.

In 2007, I handled a civil case for a former politician who had resigned in disgrace after pleading guilty to sexual battery against his step-daughter. The father of the step-daughter sued him for \$10 million in damages. We developed evidence that a) showed that our client had pled guilty in order to avoid the risks of trial, and b) called into question whether the event had actually occurred. We were able to settle the case for a very low amount.

In 2007-08, I represented a regional jail in the Tidewater region. One of its correctional officers had pled guilty to forcible sodomy on a female inmate. The inmate sued the facility. We developed evidence that the jail had properly trained its officers, and, more importantly, that the inmate had enticed the officer to have sexual relations with her. We presented this evidence to counsel for the inmate, who settled the case for \$2,000.

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.

Since 2005, I have taught as an adjunct professor at the University of Richmond School of Law. I teach a clinical placement course in which students work from sixteen to twenty-four hours each week in local law offices and courts. We meet each week to discuss their experiences, and to discuss short weekly essays they write. I convey to them some “real life” aspects of legal practice, and show them that the practice of law is only part of a balanced life. Attached are syllabi for the past four years.

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

I have a buy-out agreement with my current firm if my employment terminates. It calls for a lump sum payment when I leave.

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 would hope to continue to serve as an adjunct professor at the University of Richmond School of Law, as time and ethical rules allow.

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.

Local governments and their officials are frequent litigants in Federal Court. I have represented many clients in these categories, and have also conducted training courses for them. I will recognize my former clients and will not hear their cases. For other localities and local officials, I propose to inquire of counsel whether I have taught courses for them, and, if so, will recuse myself.

Although I have not represented Chesterfield County or any of its agencies, I have served on several County commissions and boards. For at least two years, I would recuse myself from any cases involving Chesterfield County.

I will also recuse myself from cases involving the Hanover County Attorney's Office, because I have handled many cases as co-counsel with the attorneys there and have developed personal relationships that would give rise to the appearance of a conflict.

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

If confirmed, I will continue to follow the recusal statutes and Canon 3 of the Code of Conduct for United States Judge. I will recuse myself when necessary to resolve any real or apparent conflict of interest.

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.

Throughout my career, I have tried to provide pro bono services as part of my ethical obligation as an attorney.

As part of this effort, I have provided services to Lawyers Helping Lawyers, a charity that assists lawyers with problems involving substance abuse and mental illness. I serve on the state board of LHL, and am a past president. In addition, I serve as a mentor and monitor to attorneys who are recovering from difficulties. Through LHL, I have worked individually with six lawyers, on average for two years each, to help them in recovery from substance abuse problems.

I serve on a local government commission that operates a publically owned nursing home in Chesterfield County.

I am a member of the Governor's Substance Abuse Services Council, which provides advice and guidance to the administration and General Assembly on issues involving drug and alcohol abuse.

In the area of litigation, the Washington Lawyers Committee for Civil Rights and Urban Affairs calls on me periodically to serve as local counsel on major discrimination cases. Within the past five years, I have served as local counsel in a case alleging a pattern and practice of racial discrimination in providing service at Waffle House restaurants. I spent approximately one hundred hours working on that case. Previous to that, I served as local counsel in a suit that alleged a pattern of employment discrimination in Circuit City's central office. The Circuit City case resulted in a month-long trial, and after the case the Washington Lawyers Committee awarded my firm the Outstanding Achievement Award. In both these cases, a small fee was awarded at the end as part of a settlement, but the fee was well below our normal rates.

In my practice I frequently represent indigent individuals. Most recently, I represented an unemployed former member of a local board of supervisors who had been civilly sued for allegedly molesting his step-daughter. Another attorney at my firm and I spent over 200 hours in his defense, without compensation. Currently, I am representing an elderly woman in an attempt to obtain clear title to her home, which has gone several generations in her family without estates being probated.

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.

My state does not have a judicial selection commission to recommend candidates for nomination to the federal courts. However, local and state bar associations interview candidates and make recommendations to Virginia's U.S. Senators.

On February 18, 2009, the Richmond Bar Association, the Metropolitan Richmond Women's Bar Association, the Richmond Criminal Bar Association, the Chesterfield Bar Association, and the Richmond Old Dominion Bar Association held a joint interview in which approximately twenty lawyers questioned me for fifty minutes.

On February 20, 2009, state-wide bars held interviews. The Asian Pacific American Bar Association and the Virginia Hispanic Bar Association jointly interviewed me for approximately thirty minutes. The Virginia State Bar and the Virginia Women Attorneys Association interviewed me separately.

I also submitted written materials to the Virginia Bar Association, the Virginia Association of Defense Attorneys, and the Virginia Trial Lawyers Association.

In April 2009, the staffs of Senators Webb and Warner interviewed me. In September, I had an individual personal meeting with Senators Webb and Warner.

Since November 2009, I have been in contact with pre-nomination officials at the Department of Justice. On January 20, 2010, I was interviewed in Washington by attorneys from the White House Counsel's Office and the Department of Justice.

- 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.

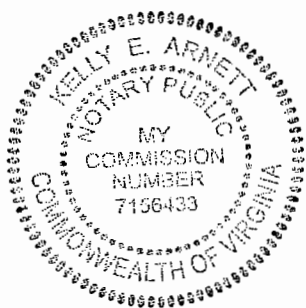
AFFIDAVIT

I, **JOHN ADRIAN GIBNEY, JR.**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

4/13/10

(DATE)

(NAME)



(NOTARY)

My commission expires May 31, 2011