

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Katherine Bolan Forrest

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

United States District Judge for the Southern District of New York

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

United States Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Residence: New York, New York

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

1964; New York, New York

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.

1987 – 1990, New York University School of Law; J.D., 1990
1986 – 1988, New York University Graduate School of Arts and Sciences (History Department); No degree received
1982 – 1986, Wesleyan University; B.A. with honors, 1986

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.

2010 – Present

United States Department of Justice, Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Deputy Assistant Attorney General

1989 – 2010

Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, New York 10019
Partner (1998 – 2010)
Associate (1990 – 1997)
Law Clerk (1989 – 1990)
Summer Associate (Summer 1989)

1988

Rutgers University
Blumenthal Hall
249 University Avenue
Newark, New Jersey 07102
Adjunct lecturer in American History

1987 – 1988

Himmelstein & McConnell
Address Unknown (the firm is no longer in business)
New York, New York
Part-time Law Clerk

1987 – 1988

Levinson, Mogulescu & Kaplan
Address Unknown (the firm is no longer in business)
New York, New York
Part-time Receptionist

1986 – 1987

Check Printing Vendor (precise name unknown; no longer in business)
New York, New York
Part-time General Clerk

Other Affiliations (uncompensated):

2006 – 2010

International Senior Lawyers Project
c/o Clifford Chance US LLP
31 West 52nd Street, 4th Floor
New York, New York 10019
Member, Board of Directors

2003 – 2006; 2008 – 2010

The Fund for Modern Courts
351 West 54th Street
New York, New York 10019
Member, Board of Directors

2005 – 2010

Lawyers' Committee For Civil Rights Under Law
1401 New York Avenue, NW, Suite 400
Washington, DC 20005
Member, Board of Directors

2004 – 2010

Urban Assembly, School for Law and Justice / Adams Street Foundation
283 Adams Street
New York, New York 11201
Member, Board of Advisors and Board of Directors

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 was not required to register for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

I attended Wesleyan University on virtually total scholarship. Upon graduation, I received a monthly (\$1,000 per month for 10 months) scholarship from the National Collegiate Athletic Association to attend graduate school. The History Department of New York University's Graduate School of Arts and Sciences waived tuition for my graduate studies (total tuition remission). I received a partial scholarship to attend New York University School of Law.

I have also received the following professional recognition:

Who's Who in the World (2008 – 2010)
Chambers Global: The World's Leading Lawyers for Business (2008 – 2010)
Chambers USA (ranked in antitrust, intellectual property, media) (2007 – 2010)
Who's Who in America (2005 – 2010)
Who's Who in American Law (2005 – 2010)
Who's Who of American Women (2005 – 2010)
Who's Who in the East (2005 – 2010)
IP Law & Business, "Top 50 Under 45" (2008)
Who's Who Legal: The Int'l Who's Who of Business Lawyers (Competition) (2008)
Super Lawyers (New York) (Intellectual Property) (2008)
The Lawdragon 500 Leading Lawyers in America (2007, 2008)
American Lawyer's Top 50 Litigators Under 45, "The Fab 50" (2007)
PLC Which Lawyer? (Competition) (2007)
Super Lawyers (New York) (Intellectual Property) (2007)
Chambers USA (ranked in antitrust, intellectual property) (2005, 2006)
Super Lawyers (New York) (Business Litigation) (2006)
Top 100 Women in Antitrust (Worldwide), Global Competition Review (2004)
Global Competition Review, "40 Under 40, Ten to Watch" (2004)
BTI Consulting: Law Firm Client Service All-Star Team (2001)

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 (1990 – Present)
Member, Antitrust Section (2009)
Chair, Steering Committee for the Antitrust Law's Antitrust Litigation Program (2008 – 2009)
New York State Bar Association (1990 – 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.

New York, 1991. There have been no lapses in membership.

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

Supreme Court of the United States, 2004
United States Court of Appeals for the First Circuit, 2007

United States Court of Appeals for the Second Circuit, 2000
United States Court of Appeals for the Third Circuit, 1995
United States Court of Appeals for the Seventh Circuit, 2003
United States District Court for the Southern District of New York, 1992
United States District Court for the Northern District of New York, 2001
United States District Court for the Western District of New York, 1998
United States District Court for the District of Columbia, 2002

There have been no lapses in membership.

11. Memberships:

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

The Fund for Modern Courts (2003 – 2010)

Member, Board of Directors (2003 – 2010 (leave of absence 2006 – 2008))

International Senior Lawyers Project (2006 – 2010)

Member, Board of Directors (2006 – 2010)

Member, Steering Committee (2008 – 2010)

Lawyers' Committee For Civil Rights Under Law (2000 – 2010)

Member, Board of Directors (2005 – 2010)

Litigation Counsel of America

Trinity School (2007 – 2010)

Member, Trinity Diversity and Religion Committee (2007 – 2010)

Urban Assembly, School of Law and Justice/Adams Street Foundation (2004 – 2010)

Member, Advisory Board (2004 – 2010)

Wesleyan University Athletic Advisory Council (2005 – 2006)

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

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or

national origin either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

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

Katherine Forrest and Jonathan Clarke, "Merger Policy and Financial Distress," NAT'L L. J. (July 5, 2010). Copy supplied.

Katherine Forrest and Jonathan Clarke, "Interlocks Under Section 8 of the Clayton Act: What Directors and Their Counsel Need to Know," Boardmember.com (May 3, 2010). Copy supplied.

Katherine Forrest and Jeffrey Korn, "Competitive Information Sharing In Merger Negotiations: How Much is Too Much?," The M&A Lawyer (Apr. 2007).

Katherine Forrest and Alexandra Carter, "Hey, That's Copyright," N.Y.L.J. (Apr. 23, 2007). Copy supplied.

"Getting the Facts and Offering Meaningful Advice," Inside the Minds – Antitrust Law Client Strategies, 2007. Copy supplied.

"After Responding to the Second Request" (contributing author to chapter), The Merger Review Process, ABA Section of Antitrust Law, Third Edition (2006). Copy supplied.

"Clearance of Cross-Border Transactions: Achieving Consistent US/EU Clearance Results," THE M&A LAWYER (June 2006). Copy supplied.

"The State of the E.U./U.S. Merger Coordination," Mergers & Acquisitions Legal Yearbook 2006 - 2007 (Sept. 2006). Copy supplied.

"EU Aims for US-Style Merger Analysis," comment, INT'L FIN. L. REV. (Nov. 2005). Copy supplied.

"E.U. Shows Continued Signs of Moving Towards U.S. Style Merger Analysis," Cravath, Swaine & Moore LLP M&A/Antitrust Update (Sept. 28, 2005). Copy supplied.

Paul C. Saunders and Katherine B. Forrest, "Focus on Strategy Separates Treatise on Business Litigation from the Pack," N.J.L.J. (Feb. 15, 1999). Copy supplied.

Letter to the Editor: "Don't Blame Single Women if the World's Changing," N.Y. TIMES, May 10, 1987. Copy supplied.

Additionally, I served as editor for the book, "Intellectual Property Law Answer Book 2011," PRACTISING LAW INSTITUTE (Mar. 2011).

- 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.

None.

- 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.

None.

- 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.

February 2, 2011

Panel Member on the ABA Section of Antitrust Law Brown Bag Teleconference entitled "Update from the Antitrust Division," discussing a range of current issues in enforcement of the antitrust laws together with the Assistant Attorney General for Antitrust and two other Deputy Assistant Attorneys General. Washington, DC. Audio recording supplied.

May 11, 2010

Training lecture to Cravath associates, "Responding to Document Requests: Written Responses." New York, New York. I have no notes, transcript or recording. The address of Cravath, Swaine & Moore is 825 Eighth Avenue, New York, New York 10019.

May 11, 2010

Panel Member during a Webinar Discussion on the European Commission's New Rules for Vertical Agreements and Practical Implications for Businesses. London, England (remote participation). I have no notes, transcript or recording. The event was sponsored by Herbert Smith LLP, which is located at Exchange House, Primrose Street, London, EC2A 2HS.

March 12, 2010

Lecture on defending depositions for Cravath associates, Novartis Pharmaceuticals and other clients as requested. New York, New York. Video supplied.

February 26, 2010

Lecture on taking depositions for Cravath associates, Novartis Pharmaceuticals and other clients as requested. New York, New York. Video supplied.

December 8, 2009

Panelist for the Horizontal Merger Guidelines Review Project, "Minority Interests and Failing Firm Defense," sponsored by the Federal Trade Commission and U.S. Department of Justice. New York, New York. I have no notes, transcript or recording. The address of the FTC is 600 Pennsylvania Avenue NW, Washington, DC 20580. The address of the DOJ is 950 Pennsylvania Avenue NW, Washington, DC 20530.

October 16-17, 2009

Training Lectures to Attendees of the ABA Section of Antitrust Law Antitrust Law Litigation Course. Washington, DC. Video supplied.

October 7, 2009

Presentation to Cravath associates and clients as requested, "Antitrust Guidelines for Information Sharing in the Deal Context." New York, New York. Presentation materials supplied.

September 16, 2009

Introduction for Alexandra Nere's talk on intellectual property law in France to Cravath associates. New York, New York. Video supplied.

April 16, 2009

Training lecture to Cravath associates, "Drafting Document Requests." New York, New York. Video supplied.

January 21, 2009

Training lecture to Cravath associates, "A Basic Primer on the U.S. Antitrust Laws." New York, New York. Video supplied.

October 1, 2008

Keynote address on choreographic rights at Morphoses Gala. New York, New York. Remarks supplied.

September 28, 2008

Speech to the Practising Law Institute Mergers and Acquisitions Conference, "Developments in the M&A and Regulatory Environment." Chicago, Illinois. I have no notes, transcript, or recording. The address of the Practising Law Institute is 810 Seventh Avenue, 21st Floor, New York, New York 10019.

April 16, 2008

Speech to the New York State Bar Association, "A Changing Legal Landscape: Twombly in Practice" on the current caselaw development of Twombly, including its citation in the Lime Wire case. New York, New York. I have no notes, transcript, or recording. The address of the New York State Bar Association is 1 Elk Street, Albany, New York 12207.

April 2, 2008

Speech to New York University School of Law Students, "Digital IP Issues Today" discussing digital piracy. New York, New York. Outline supplied.

December 19, 2007

Lecture to Cravath associates and clients as requested, "Current Developments in Antitrust Law." New York, New York. Video supplied.

December 13, 2007

Training lecture to Cravath associates and clients as requested, "Document Retention and Spoliation." New York, New York. Video, outline, and presentation materials supplied.

October 5, 2007

Panel Member on the ABA Section of Antitrust Law Antitrust Litigation Course, "Examination of Witnesses." Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of the ABA is 321 North Clark Street, Chicago, Illinois 60654.

September 28, 2007

Speech to the Practising Law Institute Mergers and Acquisitions Conference, "Developments in the M&A and Regulatory Environment." Chicago, Illinois. Materials supplied.

September 27, 2007

Speech to Cravath associates and clients as requested, "Antitrust Guidelines for Information Sharing in the Deal Context." New York, New York. Materials supplied.

July 24, 2007

SEO Corporate Law Program lecture to pre-law interns on torts. New York, New York. The outline for this is identical to the one I used for the same lecture on July 14, 2006, which is supplied.

May 16, 2007

Panel remarks to Time Warner Inc. Legal Staff, "Price Setting and the Antitrust Laws." New York, New York. Video supplied.

March 7, 2007

Speech to the Novartis Antitrust Sounding Board, "Branded and Generic Pharmaceuticals: Issues at the Intersection of Antitrust and Intellectual Property." Via webcast from New York, New York. Presentation materials supplied.

September 21, 2006

"Document Retention in the Electronic Age." Presentation to the Association of American Publishers on legal issues relating to document retention. New York, New York. Outline supplied.

September 18, 2006

Speech to the Practising Law Institute Mergers and Acquisitions Conference, "Developments in the M&A and Regulatory Environment." Chicago, Illinois. I have no notes, transcript, or recording. The address of the Practising Law Institute is 810 Seventh Avenue, 21st Floor, New York, New York 10019.

July 20, 2006

Panel presentation to Cravath associates and clients as requested, "The 'Work For Hire' Doctrine." New York, New York. Video supplied.

July 14, 2006

SEO Corporate Law Program lecture to pre-law interns on torts. New York, New York. Outline supplied above in response to the July 24, 2007 event.

May 9, 2006

Presentation to E-Discovery "A-to-Z" Workshop Conference Attendees, "Preservation & Spoliation." New York, New York. Outline supplied.

April 20, 2006

Training lecture to Cravath associates, "The Current Law Relating to Claims of Spoliation." New York, New York. Outline supplied.

March 10, 2006

Panelist and moderator for roundtable discussion on deposition issues for Cravath associates and clients on request. New York, New York. Video supplied.

November 15, 2005

Training lecture to Cravath associates, "The State of the Law Regarding Document Preservation." New York, New York. I have no notes, transcript, or recording. The address of Cravath, Swaine & Moore is 825 Eighth Avenue, New York, New York 10019.

November 11, 2005

Presentation to Time Warner, Inc. Legal Staff, "Current State of the Law Regarding the Work-for-Hire Doctrine." New York, New York. Video supplied.

June 16, 2005

Panel presentation to the Cravath Litigation Department on the Martha Graham Center cases. New York, New York. Video supplied.

May 9, 2005

Presentation to the Practising Law Institute, "Section 2 of the Sherman Act: Monopolization." New York, New York. Remarks and materials supplied.

February 17, 2005

Training lecture to Cravath associates and clients as requested, "Identification of, and Objection to, Intended Trial Exhibits." New York, New York. Video supplied.

October 29, 2004

Speech to the National Council on the Arts, "Martha Graham Dance Company and the Issue of Copyright." Washington, DC. Remarks supplied.

October 28, 2004

Training lecture to Cravath associates and clients as requested, "Responding to a Document Request." New York, New York. Video supplied.

October 20, 2004.

Presentation to the New York State Bar Association, Committee on Fine Arts, "Work-for-Hire: The Martha Graham Decision." Westchester, New York. Remarks supplied.

October 7, 2004

Training lecture to Cravath associates and clients as requested, "Drafting a Complaint." New York, New York. Video supplied.

January 30, 2004

Training lecture to Cravath associates and clients as requested, "Identification of, and Objection to, Intended Trial Exhibits." New York, New York. Video supplied.

October 15, 2003

Training lecture to Cravath associates and clients as requested, "Drafting Document Requests." New York, New York. Video supplied.

October 1, 2003

Training lecture to Cravath associates and clients as requested, "Drafting a Complaint." New York, New York. Video supplied.

June 18, 2003

Training lecture to Cravath associates and clients as requested, "Theories of Copyright Infringement." New York, New York. Video supplied.

March 29, 2003

Panel Member for the IP Section of the New York State Bar Association, "Ownership Rights for Creative Works in Light of the Martha Graham Decision." Rye Brook, New York. I have no notes, transcript, or recording. The address of the New York State Bar Association is 1 Elk Street, Albany, New York 12207.

February 1, 2003

Remarks to Dance/USA Winter Council, New York, "Ownership of Choreography: Several Possibilities," discussing the Martha Graham Center decision. New Orleans, Louisiana. Outline supplied.

January 28, 2003

Training lecture to Cravath associates and clients as requested, "Identification of, and Objection to Intended Trial Exhibits." New York, New York. Video supplied.

December 13, 2002

Speech to the Association of American Publishers, "Work-for-Hire and Public Domain Issues Under the Copyright Laws: When You Own It, When You Don't." New York, New York. Remarks supplied.

November 20, 2002

Remarks to the Dance Funders Group, "Assignment, Work-for-Hire and Dance." New York, New York. I have no notes, transcript, or recording. The organization is defunct and has no physical address.

October 17, 2002

Speech to New York Grantmakers for the Arts, "Who Owns a Dance and How to Keep it Clear." New York, New York. I have no notes, transcript, or recording. The organization is defunct and has no physical address.

June 21, 2002

Panel presentation to Time Warner, Inc. Legal Staff, "Liability and Safe Harbors for the Digital Distribution of Content." New York, New York. Video supplied.

June 19, 2002

Moderator of panel for Cravath lawyers and clients as requested, "Recent Ethical Issues in Our Litigation Practice." New York, New York. Video supplied.

March 20, 2001

Panel Member at the Fordham Symposium on Digital Audio Issues, "Fair Use and the Exchange of Digital Audio Files." New York, New York. Transcript supplied.

April 28, 2000

Panel presentation to Time Warner, Inc. legal staff, "Internet Litigation: Current Issues." New York, New York. Video supplied.

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

Jean Eaglesham and Justin Baer, "Wall Street Sheriffs' Set Sights on Taxpayers," FINANCIAL TIMES (Sept. 2, 2010). Copy supplied.

Nate Raymond, "Lawyer Dollars Back Quest for 'Professionally Prepared' Candidate," N.Y.L.J. (July 27, 2010). Copy supplied.

Jenna Greene, "Airline Deal Gets N.Y. and D.C. Counsel," NAT'L L.J. (May 10, 2010). Copy supplied.

Interview for "Introducing ISLP's Newest Board Members," THE ISLP NEWS (Fall 2007). Copy supplied.

"Cablevision Remote PVR Plans Can't Proceed, Judge Says," COMMUNICATIONS DAILY (Mar. 26, 2007) [similar article in multiple sources]. Copy supplied.

Elizabeth Goldberg, "FAB Fifty Young Litigators," AM. LAW. (Jan. 2007). Copy supplied.

Chris Pasles, "Graham Center Wins Dance Rights," LOS ANGELES TIMES (July 14, 2006). Copy supplied.

Kate Taylor, "Martha Graham Pirouettes From Court Onto Stage," N.Y. SUN (July 13, 2006). Copy supplied.

Daniel J. Wakin, "Martha Graham Center Wins Another Round in Legal Fight," N.Y. TIMES (June 29, 2005). Copy supplied.

Lisa Lerer, "Cravath Adopts a New York High School – And Finds a New Passion," AM. LAW. (June 2005). Copy supplied.

"News in Brief," N.Y.L.J. (Jan. 26, 2005). Copy supplied.

Anonymous, "Death in the Family," SAN FRANCISCO WEEKLY (Oct. 13, 2004). Copy supplied.

Bernadine Cassell, "Skills Maven," NAT'L L.J. (Apr. 7, 2003). Copy supplied.

Lewis Segal, "Martha Graham Dance Center Wins Custody Battle," LOS ANGELES TIMES (Aug. 24, 2002). Copy supplied.

"Center, School Can Keep Graham Name," WASHINGTON POST (July 3, 2002). Copy supplied.

Karin Lipson, "Dancing Around the Issues," NEWSDAY (May 6, 2002). Copy supplied.

"Dueling Leos Are Studios' Double Trouble," N.Y. DAILY NEWS (Apr. 9, 2002). Copy supplied.

Eileen Fitzpatrick, "Labels File Copyright Suit Against MP3Board.com," BILLBOARD (July 8, 2000). Copy supplied.

Omar L. Gallaga, "Music-Trading Web Site Violates Law," AUSTIN AMERICAN-STATESMAN (Apr. 29, 2000). Copy supplied.

Lynn Saxberg, "Music Industry Hails 'Sanity' in MP3.com Ruling," OTTAWA CITIZEN (Apr. 29, 2000). Copy supplied.

Devlin Barrett, "Judge Strikes Sour Note for 'MP3' Hit Tunes," N.Y. POST (Apr. 29, 2000). Copy supplied.

Larry Neumeister, "Judge Finds Against MP3.com in Copyright Infringement Case," ASSOCIATED PRESS (Apr. 28, 2000) [similar articles printed in multiple outlets]. Copy supplied.

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

I have not served as a judge.

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

i. Of these, approximately what percent were:

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

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

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have

come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

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

15. Public Office, Political Activities and Affiliations:

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

Member, Disciplinary Committee, New York State Supreme Court, Appellate Division, First Department (2008 to 2010) (appointed by Roy Reardon, Chairman of Disciplinary Committee)

- 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 not held office in any political party or election committee. I provided some very limited legal services to the John F. Kerry campaign on a volunteer basis in 2004. In 2009, I also hosted two fundraisers for Eric Dinallo, who ran for Attorney General of the State of New York.

16. Legal Career: Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.

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

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.

1990 – 2010
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, New York 10019
Partner (1998 – 2010)
Associate (1990 – 1997)

2010 – Present
United States Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20580
Deputy Assistant Attorney General

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

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

I began my legal career at Cravath, Swaine & Moore LLP, first as an associate and ultimately as a partner. Cravath is a full-service law firm headquartered in New York. As a partner, I was a generalist litigator handling a variety of matters in the areas, inter alia, of antitrust, intellectual property, contracts, employment issues, accounting fraud, and securities litigation.

I also was involved in the management of Cravath. Specifically, I was one of five members of Cravath's Partner Review Committee ("PRC") from January 2007 to October 2010. The PRC was responsible for reviewing partner performance and, where appropriate, making recommendations regarding disciplinary action. I also served as Administrative Managing Partner from January 2010 to October 2010. In this capacity, I oversaw a range of administrative functions necessary to the entire firm. I also ran Cravath's Continuing Legal Education program for litigators from 1998 to 2005.

I am currently employed as a Deputy Assistant Attorney General in the Antitrust Division of the United States Department of Justice. In this capacity, I am actively involved in overseeing the entire range of criminal and civil enforcement actions underway in the Antitrust Division. I am intimately involved in every phase of most major matters, including litigation planning and execution. I am also involved in matters affecting appellate litigation and international cooperation.

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

Throughout the course of my career at Cravath, Swaine & Moore LLP, my typical clients were large, multi-national corporations across a spectrum of industries including emerging technologies, healthcare, airlines, manufacturing, beverages and consumer goods, banking, and pharmaceuticals. I specialized in areas relating to digital technologies and the Internet.

As a Deputy Assistant Attorney General in the Antitrust Division of the United States Department of Justice, my sole client is the United States government.

- 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.

While at Cravath, approximately 60% of my practice arose from traditional litigation, with the remaining 40% arising from counseling clients. I appeared in court whenever the matter required it, at least every month, often more frequently.

As a Deputy Assistant Attorney General in the Antitrust Division, my responsibilities routinely involve decisions about litigation, including decisions to exercise prosecutorial discretion and not pursue an enforcement action. In this capacity, my practice has been entirely on behalf of this agency, and has been 50% criminal and 50% civil. I have not appeared in state or federal court since I have been at the Department of Justice.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 80% |
| 2. state courts of record: | 20% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 0% |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 98% |
| 2. criminal proceedings: | 2% |

- 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.

Seven. I have been lead counsel on three trials in federal court that went to judgment. I was also lead counsel in a fourth case that had a two-day "summary trial" in which judgment was entered. As an associate, I tried a breach of contract case to judgment (in state court) and, in federal court, participated in one case tried to verdict, and one to judgment.

I have also been lead counsel on eight appeals (six of which were in the Second Circuit and two in the New York State Appellate Division).

i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 83% |
| 2. non-jury: | 17% |

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

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

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

- a. the date of representation;

- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
 - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. Cartoon Network LP, LLLP v. CSC Holdings, Inc., 536 F.3d 121 (2d Cir. 2008); Judges John M. Walker, Robert D. Sack, and Debra Ann Livingston; approximately May 2006 to June 2009.

This case related to a new service that Cablevision has proposed to launch in which they would copy cable programming at a subscriber's request using a technology called the "remote-storage DVR" or "RS-DVR." My clients (Plaintiffs, the Cartoon Network and CNN), as well as other content providers represented by another firm, brought a declaratory judgment action claiming that such copying should subject Cablevision to secondary liability for copyright infringement. The issue on appeal was whether in the context of robotic or automated copying, a showing of "human volition" is required to prove copyright infringement. The district court had found that Cablevision's service would result in secondary liability for infringement. The Second Circuit disagreed and found that Cablevision had not exercised sufficient "human volition." I served as lead counsel.

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2. The Martha Graham Sch. & Dance Found., Inc. v. Martha Graham Ctr. of Contemporary Dance, 2002 WL 1467852 (2d Cir. July 2, 2002); The Martha Graham Sch. & Dance Found., Inc. v. Martha Graham Ctr. of Contemporary Dance, 224 F. Supp. 2d 567 (S.D.N.Y. 2002), *aff'd in part, rev'd in part*, 380 F.3d 624 (2d Cir. 2004); approximately August 2006 to May 2010; The Martha Graham Sch. & Dance Found., Inc. v. Martha Graham Ctr. of Contemporary Dance, 374 F. Supp. 2d 355 (S.D.N.Y. 2005), *aff'd*, 466 F.3d 97 (2d Cir. 2006); approximately August 2006 to May 2010

I was lead trial and appellate lawyer in a series of three cases relating to trademark and copyright on behalf of my client, the Martha Graham Center of Contemporary Dance, Inc., and the Martha Graham School of Contemporary Dance. All of the Martha Graham trials and appeals related to the ownership of the “Martha Graham” name (the trademark appeal) or the ownership of Martha Graham’s choreography and related sets and costumes.

The issue on the trademark appeal was whether the name The Martha Graham Center for Contemporary Dance (the “Center”) had the right, via assignment or irrevocable license from Martha Graham, to use the name “Martha Graham” in connection with the Center. After a trial, the district court had found that the Center had such a right, and the Second Circuit affirmed.

Both copyright trials were in the District Court for the Southern District of New York, and focused on the factual record for ownership by virtue of assignment or the work-for-hire doctrine. On appeal, the primary question was whether the factual record and law supported a finding that dances, sets and costumes were owned by the Martha Graham Center for Contemporary Dance by assignment or work-for-hire. The District Court held that: (1) defendants owned copyrights in dances created by choreographer as employee; (2) some dances were in public domain; (3) copyrights in commissioned dances were owned by commissioning parties; (4) choreographer implicitly assigned copyrights in pre-employment dances to company; (5) interest in copyright during renewal term belonged to legatee; and (6) legatee breached fiduciary duties he owed as director and

employee of defendants. One issue on appeal was whether a creative genius can have a “work-for-hire.” On the appeal of the first copyright trial, the District Court was affirmed in part, reversed in part, vacated and remanded; on the appeal of the second copyright trial, the Court’s decision was affirmed.

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3. Arista Records LLC v. Lime Wire LLC, 06 CV 05936; United States District Court for the Southern District of New York; Judge Gerard E. Lynch; approximately August 2006 to May 2010.

I was lead counsel representing the major record companies as plaintiffs in a copyright infringement case relating to peer-to-peer filesharing software developed and provided by Lime Wire LLC. My clients, a group of record companies, alleged that Lime Wire LLC’s software had induced and contributed to the infringement of billions of sound recordings over the Internet. Before I left

Cravath, the antitrust counterclaims were successfully dismissed; I understand that damages issues relating to the affirmative copyright claims are still pending.

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4. Brantley v. NBC Universal, Inc., 07 CV 06101 (CAS); United States District Court for the Central District of California; Judge Christina A. Snyder; approximately September 2007 to October 2010.

I was the lead counsel representing defendants Time Warner Cable, Inc. and Turner Broadcasting Systems, Inc. in a purported consumer class action alleging violations of Section 1 of the Sherman Act. Plaintiffs claim that defendant programming providers (such as TBS, Disney, etc.) and distributors (such as Time Warner Cable, Comcast, DirecTV, etc.) have entered into anticompetitive contracts requiring the sale of programming on a bundled (versus à la carte) basis, resulting in a diminution of competitive alternatives and foreclosure of independent programming providers. The case is still pending.

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5. Am. Movie Classics Co. v. Time Warner Entm't L.P. and Time Warner Cable, Inc., 2005 WL 3487852 (N.Y. Sup. Ct. July 8, 2005); New York Supreme Court; Judge Bernard J. Fried; approximately November 2003 to October 2005.

This was a contractual dispute regarding whether American Movie Classics ("AMC") was providing the programming it had contracted to provide Time Warner Cable ("TWC"). I was lead counsel representing Defendants-Counterclaim Plaintiffs, Time Warner Entertainment Company, L.P. and Time Warner Cable Inc. The issue in the case was, in part, how to define a "classic motion picture film." The judge denied AMC's motion for summary judgment. TWC's cross-motion for summary judgment was granted as follows: (1) summary judgment was granted on Time Warner's first counterclaim as to liability only; the issue of damages remained for trial; (2) summary judgment was granted on Time Warner's second counterclaim, and therefore, Time Warner was entitled to a declaration that Time Warner Cable may terminate the 1993 Agreement, as Amended; and (3) that the Amended Complaint was dismissed.

Co-counsel:
None

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6. Chambers v. Time Warner, Inc., 282 F.3d 147 (2d Cir. 2002); Judges Richard Cadamone, Rosemary S. Pooler, and Barrington D. Parker; approximately April 2000 to August 2003; Silvester v. Time Warner, Inc., 787 N.Y.S.2d 870 (2d Dep't 2005); New York Supreme Court, Appellate Division, First Department, Associate Justices Richard T. Andrias, Joseph B. Sullivan, John W. Sweney, Jr., Peter Tom, and Betty Weinberg Ellerin; approximately August 2002 to January 2006

I represented Time Warner, Inc. in two matters addressing whether recording contracts entered into prior to the Internet could be interpreted to have conveyed rights to digitally distribute sound recordings over the Internet. While the matters occurred in both Federal and then State Court, they are essentially the same matter.

The Second Circuit found that on a motion to dismiss, the District Court had improperly considered certain codes of fair practice on copyright claims without converting the motion to dismiss into a motion for summary judgment; and that on the Lanham Act claim, the court below erred in relying on only one example of the allegedly deceptive conduct set forth in the complaint, without considering the other conduct raised by the artists' allegations. The District Court opinion was vacated and remanded; the case was refiled in State Court and was dismissed on a motion to dismiss, and that dismissal was then affirmed by the Appellate Division.

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7. UMG Recordings, Inc. v. MP3.com, Inc., 92 F. Supp. 2d 349 (S.D.N.Y. 2000); Judge Jed S. Rakoff; approximately January 2000 to November 2000.

I represented the record companies owned by the Warner Music Group in an action against the Internet Service, MP3.com, for direct infringement. MP3.com argued, inter alia, that digital copies of sound recordings were not cognizable copies under the copyright laws and/or they had a fair use right to make reproductions of the sound recordings. I was lead counsel for several of the plaintiff record companies. The Court held that the plaintiffs were entitled to partial summary judgment holding the defendant to have infringed on the plaintiffs' copyrights.

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8. Adelphia Commc'ns Corp. v. Deloitte & Touche LLP, Court of Common Pleas, Philadelphia Co., Pennsylvania, Index 000598; Judge Howland W. Abramson; approximately November 2002 to November 2006.

The “Adelphia” cases were a series of actions involving claims against Deloitte & Touche alleging accounting malpractice and securities laws violations. I was co-lead counsel to Deloitte & Touche LLP. The claims arose from the failure and bankruptcy of Adelphia Communications Corp. – a cable company run by the Rigas family. I spent the majority of my time on the accounting case brought by Adelphia against Deloitte.

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9. Arista Records, Inc. v. MP3Board, Inc., 2002 WL 1997918 (S.D.N.Y. Aug. 29, 2002); Judge Sidney H. Stein; approximately June 2000 to September 2003.

This was a copyright infringement case brought by a number of record companies against MP3Board. I was lead counsel for Atlantic Recording Corporation, Elektra Entertainment Group, Inc. and Warner Bros. Records Inc. MP3Board owned and operated an Internet service that provided users with the ability to search for, locate, link to and download sound recordings over the Internet. The case settled favorably after discovery.

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10. In re Aimster Copyright Litig., Case No.: 1:01-cv-08933; United States District Court for the Northern District of Illinois; Judge Marvin E. Aspen; approximately July 2001 to June 2009 (I understand this matter is still pending).

This is a copyright infringement action that was stayed for an extended period of time due to the bankruptcy of the defendant. The case involved copyright infringement claims relating to a type of peer-to-peer filesharing software that allowed for the searching, locating and downloading of audio and video files. I was lead counsel on behalf of plaintiffs Time Warner Entertainment Company, L.P. (specifically HBO) and New Line Cinema Corporation.

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

Throughout my time as a partner at Cravath, Swaine & Moore, LLP, I counseled a variety of clients on antitrust, intellectual property and commercial matters. I spent significant time counseling clients in matters relating to the digital/Internet environment. In addition, I represented many clients in mergers, sales of assets and investigations conducted by the Department of Justice or Federal Trade Commission.

Among the most significant was the merger of United Airlines, Inc. and Continental Airlines, Inc. In that matter, private plaintiffs sought to enjoin the merger in the summer of 2010. A hearing for a preliminary injunction was held before Judge Richard Seeborg in the Northern District of California, at which the plaintiffs' request was denied. I was the lead attorney at the hearing and acted on behalf of United Airlines, Inc. In connection with this merger, I also advised the client on all aspects of its merger control review under the Hart-Scott-Rodino Act.

I have not performed any lobbying activities on behalf of any client or organization.

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

Survey of American Women's History, Rutgers University (Fall 1988). This course was a historical overview from 1860 to present of American women's history. I do not have the syllabus and have not been able to obtain one.

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 am entitled to fixed quarterly payments in the amount of \$95,715 each, for a period of ten years from Cravath, Swaine & Moore, LLP.

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.

None; I will not pursue any outside employment if I am fortunate enough to be confirmed as a judge.

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

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.

For a period of time, matters involving Cravath, Swaine & Moore, LLP or Time Warner, Inc. would present a potential conflict of interest. I would recuse myself from such matters consistent with applicable rules. I have no financial arrangements that would otherwise cause conflicts of interest. Matters relating to my immediate family and siblings, if any were to arise (none are pending) would also present a conflict of interest.

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

I will handle all matters involving actual or potential conflicts of interest through the careful and diligent application of the Code of Conduct for United States Judges as well as other relevant Canons and statutory provisions, e.g., 28 U.S.C. § 455.

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 been committed to pro bono work for a number of different clients, covering a wide spectrum of legal issues. In the mid-1990's, I was involved in two pro bono trials – a school desegregation case tried in federal court before Judge Robinson (D. Del.), and a negligence case relating to the sale of a "kit gun" before Judge Weinstein (E.D.N.Y.), Halberstam v. S.W. Daniel, Inc. I argued a criminal appeal for the Appellate Defenders' Office and, while a partner at Cravath, Swaine & Moore LLP, oversaw associates who argued criminal appeals. I have also litigated several matters for artists or arts-related organizations relating to ownership of copyrights and copyright infringement, on a pro bono basis. For instance, I represented the Martha Graham Dance Company at both the trial and appellate level. I am also involved in several non-profit organizations whose missions are devoted to service of the disadvantaged. These include the Urban Assembly, School for Law & Justice; the Lawyers' Committee for Civil Rights Under the Law; the International Senior Lawyers Project; and the Fund for Modern Courts.

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.

I submitted a Confidential Questionnaire to the Chairman of the Judicial Screening Panel for Senator Charles E. Schumer ("the Panel") on November 25, 2008. My then partner (since deceased) Robert Joffe was a member of the Panel but recused himself from all matters relating to my candidacy. On March 13, 2009, I was interviewed by the Panel. On November 7, 2009, I met with Senator Schumer. On January 28, 2011, I was informed that Senator Schumer would recommend my name to President Obama. Since that date, I have been in contact with pre-nomination officials at the U.S. Department of Justice. On March 4, 2011, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On May 4, 2011, the President submitted my nomination to the Senate.

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

No.

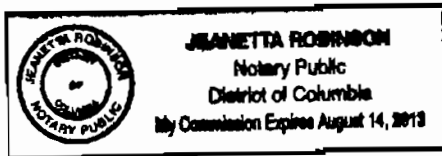
AFFIDAVIT

I, Katherine B. Forrest, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

5/2/11
(DATE)

K. Forrest
(NAME)

[Signature]
(NOTARY)



Sworn to and subscribed before me, in my presence
this 29 day of May, 2011. A Notary Public
Notary Public, in and for the State of Virginia
[Signature] Notary Public
My commission expires August 14, 2013