UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

   Kathryn Marie Keneally

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

   Assistant Attorney General, Department of Justice, Tax Division

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

   Office: Fulbright & Jaworski, L.L.P.
   666 Fifth Avenue
   New York, NY 10103

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

   1958; Dayton, Ohio

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.

   New York University School of Law
   1988 - 1993 (evening division)
   LL.M. in Taxation, 1993

   Fordham University School of Law
   1979 - 1982
   J.D., 1982

   Cornell University
   School of Industrial and Labor Relations
   1975 - 1979
   B.S., 1979

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have

been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

Partner
Fulbright & Jaworski L.L.P.
666 Fifth Avenue
New York, NY 10103
December 2002 to present

Member
Owen & Davis PC
805 Third Avenue
New York, NY 10022
2000 - 2002

Partner
Kostelanetz & Fink, LLP
Address from 1999 - 2000:
530 Fifth Avenue
New York, NY 10036
Address from 1994 - 1999:
230 Park Avenue
New York, NY 10017
1994 - 2000

Partner
Kostelanetz Ritholz Tigue & Fink
80 Pine Street
New York, NY 10005
1990 - 1994

Associate
Kostelanetz & Ritholz
(name changed to Kostelanetz Ritholz Tigue & Fink in 1990)
80 Pine Street
New York, NY 10005
1985 - 1990

Associate
Skadden Arps Slate Meagher & Flom
919 Third Avenue
New York, NY 10022
1983 - 1985

Law Clerk
Hon. Edward R. Neaher, United States District Judge
U.S. District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201
1982 - 1983

Research Assistant
Skadden Arps Slate Meagher & Flom
919 Third Avenue
New York, NY 10022
Fall, 1981

Summer Associate
Skadden Arps Slate Meagher & Flom
919 Third Avenue
New York, NY 10022
Summer, 1981

Teaching Assistant
Professor Daniel Capra
Fordham University School of Law
140 West 62nd Street
New York, NY 10023
1981 - 1982

Research Assistant
Professor Abraham Abramovsky
Fordham University School of Law
140 West 62nd Street
New York, NY 10023
Fall, 1980

Intern (non-paid)
Hon. Marie G. Santagata
Nassau County Criminal Court
460 Old Country Road
Mineola, NY 11501
Summer, 1980

Intern
New York State Department of Labor
303 West Old Country Road
Hicksville, NY 11801
Summer, 1979

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, nor was I 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.

   Cornell University, Dean's List (two semesters)

   Fordham University School of Law, J.D. awarded *magna cum laude*
   Chapin Award, 1982
   American Jurisprudence Awards:
   - Contracts (1980)
   - Torts (1980)
   - Civil Procedure (1980)
   - Evidence (1981)
   - Labor (1981)
   - Remedies (1981)

   The Thurgood Marshall Award, in recognition of exemplary service to the cause of justice in the United States, awarded by The Association of the Bar of the City of New York, April 27, 1998

   Chambers USA: America's Leading Lawyers for Business, listed in National - Tax Controversy (2008 - 2011), National - Tax Fraud (2010 - 2011), and New York Tax (2008 - 2011)

   "Super Lawyers," Criminal Defense: White Collar, New York, *Law & Politics* magazine (2007 - 2011); Top Fifty Women Lawyers in New York (2009)

   The Legal 500 United States, Tax Controversy (2010 - 2011)

   Marquis Who's Who in the Law, in America, and in the World

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.

   Practitioners' Advisory Group of the U.S. Sentencing Commission
   Member, approx. 1993 to 2008

American Bar Association, Section of Taxation
Member, 1985 - current
Vice Chair, Committee Operations, 2010 - current
Liaison to the Director of the IRS Office of Professional Responsibility, 2009 - current
Council Director, 2007 - 2010
Committee on Civil and Criminal Tax Penalties:
  Chair, 2001 - 2003
  Vice-chair, 1999 - 2001
  Subcommittee Chairperson:
    Department of Justice Procedures, 1994 - 1999
    Current Developments, 1993 - 1994
    Sentencing Guidelines, 1992 - 1993
Committee on Standards of Practice:
  Chair, 2005 - 2007
  Vice-chair, 2003 - 2005
    Liaison, CLE and Membership, 1997 - 1999
Committee on Employment Taxes, Member, 1994 - current
Committee on Appointments to the Tax Court, 2009 - 2011
Nominating Committee, 2006 - 2009
Liaison, ABA Commission for Women in Profession (dates unknown, not current)
Liaison, ABA Committee on Attorney-Client Privilege (dates unknown, not current)

American Bar Association, Section of Litigation
Member, approx. 1983 - 2003

American Bar Association, Criminal Justice Section
Member, approx. 1983 - current

National Institute on Criminal Tax Fraud, Co-chair, 2010 - current
National Institute on Tax Controversy, Co-chair, 2011

American College of Tax Counsel, Fellow, 2003 - current

New York City Bar Association
Member, 1993 - current
Member, Taxation of Business Entities Committee, 2008 - 2009
Member, Criminal Courts Committee, 2004 - 2007
Member, Litigation Committee, 1993 - 1999

National Association of Criminal Defense Lawyers, Member, 1983 - current; Life Member, approx. 1995 - current

New York Council of Defense Lawyers, Member, approx. 1999 - current

New York County Lawyers Association, Member, approx. 1983 - 1993; 2010 - current

Litigation Counsel of America, approx. 2009 - 2011

New York Women's Bar Association, Member, approx. 1997 - 1998

New York State Bar Association, Member, 1983 - 1992

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 – Admitted 1983 – present. There have been no lapses in my 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.

    New York, Appellate Division, First Department – Admitted 1983 - present
    U.S. District Court, Southern District of New York – Admitted 1983 - present
    U.S. Eastern District, Eastern District of New York – Admitted 1983 - present
    U.S. Court of Appeals for the Eleventh Circuit – Admitted 1984 - 2004 (I allowed my membership to lapse due to inactivity.)
    U.S. Tax Court – Admitted 1985 - present
    U.S. Court of Appeals, Second Circuit – Admitted 1995 - present
    U.S. Court of Appeals, Third Circuit – Admitted 1995 - present

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.

    Journal of Tax Practice and Procedure, CCH, Advisory Board, Columnist, Approx. 1998 – current

    National Association of Criminal Defense Lawyers, Advisory Board, Columnist, 1994 – current

    Cornell Club, Approx. 1986 – 2009, member

Fordham Law Alumni Association, 1982 – current, member

In addition, I have from time to time been listed on luncheon or dinner committees for the Fordham Law Alumni Association, the New York Council of Defense Lawyers, the National Association of Criminal Defense Lawyers, and the Feerick Center for Social Justice.

I have made financial contributions to other organizations over the years. I have not included in the list above any organization to which I gave funds and did not otherwise participate in programmatic activities, although the organization may label me as a member.

b. Please indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices

To my knowledge, none of these organizations has discriminated or does discriminate.

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.

I have done my best to identify published materials, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find or remember. I have located the following:

"Criminal Tax Cases" chapter in O. Obermaier and R. Morvillo, *White Collar Crime: Business and Regulatory Offenses,* Law Journal Press (co-authors Elliott Silverman, Peter Fucci), 2011. Copy supplied.

"New IRS Requirement to Report Uncertain Tax Positions: The Need to Safeguard Confidential Analysis," *Fulbright Briefing – Fulbright & Jaworski, LLP* (co-authors James K. Dreyfus and Jeffrey M. Marks), February 2011. Copy supplied.

"The FBAR Penalty: One Court Pushes Back Against the IRS," http://blogs.forbes.com/irswatch. Copy supplied.

"New IRS Holistic Audit Program," *Trust & Estates* (co-authors Stephanie Heilborn and Lindsay Brown), July 2010. Copy supplied.

"HIRE Act: Congress Targets Foreign Institutions, Foreign Financial Assets and Foreign Trusts," *Fulbright Briefing – Fulbright & Jaworski, LLP* (co-authors Stephanie E. Heilborn and Michelle Schwartz), April 2010. Copy supplied.

"The Tax Man Cometh," The New York Law Journal, White-Collar Crime, February 2010. Copy supplied.

"IRS Announces New Broad Disclosure Requirements for Uncertain Tax Positions," *Fulbright Briefing – Fulbright & Jaworski, LLP* (co-authors Nancy T. Bowen, Brent Gardner, Charles W. Hall, Richard Lee Hunn, William S. Lee, Gregory M. Matlock, Robert C. Morris, Shawn R. O'Brien, Susan Virginia Sample and Jasper G. Taylor), January 2010. Copy supplied.

"IRS Announces Criteria Used to Determine Disclosure of Swiss Accounts," *Fulbright Briefing – Fulbright & Jaworski, LLP* (co-authors Shawn R. O'Brien, Jasper G. Taylor, III, Gregory M. Matlock, and Matthew T. Theurer), November 2009. Copy supplied.

"IRS Extends Deadline for Voluntary Disclosure Program Until October 15, 2009," *Fulbright Alert – Fulbright & Jaworski, LLP* (co-authors Andrius R. Kontrimas, Shawn R. O'Brien, Jasper G. Taylor III, Lisa Rossmiller, Gregory M. Matlock, Jennifer A. Morgan and Robert C. Morris), September 2009. Copy supplied.

"IRS Extends FBAR Filing Deadline for Certain U.S. Persons Until June 30, 2010," *Fulbright Alert – Fulbright & Jaworski, LLP* (co-authors Andrius R. Kontrimas, Shawn R. O'Brien, James K. Dreyfus, Jasper G. Taylor III, Lisa Rossmiller, Gregory M. Matlock and Jennifer A. Morgan), August 2009. Copy supplied.

"Foreign Bank and Financial Accounts Must be Reported by June 30, 2009," *Fulbright Briefing – Fulbright & Jaworski, LLP* (co-authors Nancy T. Bowen, Richard Lee Hunn, Andrius R. Kontrimas, William S. Lee, Robert C. Morris, Shawn R. O'Brien, Lisa Rossmiller and Jasper G. Taylor III), May 2009. Copy supplied.

"Eager for the Battle," *Careers in Tax Law*, ABA Section of Taxation, 2009. Copy supplied.

"In Remembrance," *ABA Section of Taxation Newsquarterly*, Volume 25, Number 4, Summer 2006 (memorial for Boris Kostelanetz). Copy supplied.

"The Impact of Changes to the U.S. Sentencing Guidelines on Corporate Compliance Programs," *Legal Update – Fulbright & Jaworski, LLP*, May 2004. Copy supplied.

"Civil and Criminal Tax Penalties," *The Tax Lawyer*, Summer 2003. Copy supplied.

"Fraud Offenses Under The Federal Sentencing Guidelines" chapter in *Practice Under the Federal Sentencing Guidelines*, American Bar Association, Criminal Justice Section, Prentice Hall Law & Business (co-author Scott Fenstermaker), 1998. Copy supplied.

"The U.S. Prosecutes Foreign Tax Evasion As A Domestic Crime - With Far-Reaching Consequences," *Journal of Taxation*, April 1998. Copy supplied.

"Congress Loosens Supreme Court's Interpretation of 'Specific Intent'," *Journal of Taxation*, February 1995. Copy supplied.

"Supreme Court Raises 'Specific Intent' Threshold for Some Criminal Violations," *Journal of Taxation*, July 1994. Copy supplied.

"Civil and Criminal Tax Penalties," *The Tax Lawyer*, Summer 1994. Copy supplied.

"Partial Limitation on the Risk of RICO Liability," *CPA Journal*, February 1994. Copy supplied.

"State Regulation of Casino Gambling: Constitutional Limitations and Federal Labor Law Preemption," Fordham Law Review, 1981. Copy supplied.

I authored or co-authored a column entitled "White Collar Crime," which appeared in *The Champion*, the magazine of the National Association of Criminal Defense Lawyers, from January 1996 to 2010. Specific articles that appeared in this column include:

"FCPA Enforcement Update: DOJ Targets the Health Care Industry" (co-authors John E. Kelly, Kimberly S. Walker, and Richard C. Smith), March 2010. Copy supplied.

"*Textron* and Work Product Immunity: The First Circuit Makes Bad Law," November 2009. Copy supplied.

"The Next Wave: Finding the Line Between Puffery And Securities Fraud" (co-author Jonathan S. Abernethy), July 2009. Copy supplied.

"The Second Circuit's Decision in *U.S. v. Stein*: The End of the Holder-Thompson-McNulty Era," November 2008. Copy supplied.

"Supreme Court Holds Prosecution to the Elements of the Crime," June 2008. Copy supplied.

"Bells Tolling for Selective Waiver," April 2008. Copy supplied.

"Aggressive Enforcement of the Foreign Corrupt Practices Act," January-February 2008. Copy supplied.

"Important Lessons in the Attorney-Client Privilege For Corporate Counsel," November 2007. Copy supplied.

"Ethical Considerations in Seeking the Truth" (co-author Mark N. Mutterperl), August 2007. Copy supplied.

"Responding to Government Leaks" (co-authors Kenneth Breen and Thomas Fallati), June 2007. Copy supplied.

"The Threat to a Witness's Right to Counsel" (co-author Kenneth Breen), April 2007. Copy supplied.

"Courts Push Back Against More Aggressive IRS Tactics" (co-author Kenneth Breen), November 2006. Copy supplied.

"Foreign Corrupt Practices Act: Growing Teeth" (co-authors Kenneth Breen and Scott Maberry), August 2006. Copy supplied.

"Defining and Defending Obstruction Charges in the Wake of Arthur *Anderson* and *Quattrone"* (co-author Kenneth Breen), June 2006. Copy supplied.

"Tax Crimes: More Aggressive Government Policies and Practices" (co-author Kenneth Breen), April 2006. Copy supplied.

"New Life for Selective Waiver" (co-author Kenneth Breen), January-February 2006. Copy supplied.

"The KPMG Deferred Prosecution: Warning Flags for Defense Rights" (co-author Kenneth Breen), November 2005. Copy supplied.

"Keeping the Government to its Promises Again," June 2005. Copy supplied.

"Destruction of A Business by the Destruction Of Documents," January-February 2005. Copy supplied.

"Some of the Distortions to Justice Caused by the Sentencing Guidelines," August 2004. Copy supplied.

"Corporate Compliance Programs: From the Sentencing Guidelines to the Thompson Memorandum and Back Again," June 2004. Copy supplied.

"E-mails Sent During the Business Day May Not be Admissible as Business Records," January 2004. Copy supplied.

"Fourth Circuit Upholds Wire Fraud Conviction Based on a Scheme to Evade Foreign Tax," November 2003. Copy supplied.

"Direct Harm to the Privilege from Complying with Government Policy: The *McKesson* case," August 2003. Copy supplied.

"Section 1348: What is 'in connection with' the Sale of Securities?" June 2003. Copy supplied.

"High-Profile Cases and the Media," April 2003. Copy supplied.

"The Sarbanes-Oxley Act: An Overview for Defense Lawyers," March 2003. Copy supplied.

"District Court Grants Rule 41(e) relief Upon Findings of Material False Statements by Special Agent," November 2002. Copy supplied.

"Second Circuit Limits Mail and Wire Fraud Prosecutions," June 2002. Copy supplied.

"The USA Patriot Act: More Statutes that Reach Beyond Their Purpose," April 2002. Copy supplied.

"Second Circuit Fails to Recognize the Right to Timely Disclosure of Impeachment Materials," January 2002. Copy supplied.

"Asserting the Fifth Amendment on a Tax Return," November 2001. Copy supplied.

"Meet the New IRS Criminal Investigation Before it Knocks on Your Client's Door," June 2001. Copy supplied.

"Recent Decisions Threaten to Collapse Money Laundering into the Underlying Specified Unlawful Activity," April 2001. Copy supplied.

"Threat to the Corporation's Attorney-Client Privilege and Work Product Immunity," January 2001. Copy supplied.

"Reversing a Conviction When the Government's Witness Lied," November 2000. Copy supplied.

"Supreme Court Upholds Derivative Use Immunity for the Act of Production," August 2000. Copy supplied.

"Two Trial Courts Differ on the Requirements for Timely Disclosure of Impeachment Materials," June 2000. Copy supplied.

"Sentencing Proceedings May Not Preclude Subsequent Civil Litigation," April 2000. Copy supplied.

"More Harm Done by the Harmless Error Rule," January 2000. Copy supplied.

"The Line Between a Bargain and Extortion," November 1999. Copy supplied.

"District Court Relies on Rule 41(e) to Set Limits Upon the Government's Retention of Seized Evidence," August 1999. Copy supplied.

"Supreme Court Extends Trial Court Role for Nonscientific Experts," June 1999. Copy supplied.

"Ill Advised Government Theories," April 1999. Copy supplied.

"Two Courts Allow Substantial Assistance Downward Departures in the Absence of a Government Motion," January 1999. Copy supplied.

"At a Loss for an Explanation," November 1998. Copy supplied.

"Independent Counsel Overreaches in the Hubbell Indictment," August 1998. Copy supplied.

"Second Circuit Defines Reach of the Work Product Immunity for Corporate Counsel," June 1998. Copy supplied.

"What Montana Needs To Know," April 1998. Copy supplied.

"*Tenzer* Decision: The IRS and its Public Promises," January 1998. Copy supplied.

"Outside-In on Insider Trading," November 1997. Copy supplied.

"Hard Facts & Tax Protestors," August 1997. Copy supplied.

"Extraterritoriality," June 1997. Copy supplied.

"Problem of Sophistication," April 1997. Copy supplied.

"Ins and Outs of Insider Trading," January 1997. Copy supplied.

"A New Look at Criminal Tax Enforcement," November 1996. Copy supplied.

"New Cop on the Corner: Your Bank," August 1996. Copy supplied.

"Importance of an Independent Judiciary," June 1996. Copy supplied.

"Willful Evasion of Payment and Willful Non-Payment of Taxes," April 1996. Copy supplied.

"Increased Use of Search Warrants by the IRS," January 1996. Copy supplied.

I authored or co-authored a column entitled "Practice," for the *Journal of Tax Practice & Procedure*, a publication of CCH, Inc., from 1999 to 2011. Specific articles that appeared in this column include:

"The Last, Best Chance to Disclose Foreign Financial Accounts and Assets – the 2011 Offshore Voluntary Disclosure Program and Beyond!" (co-author Charles P. Rettig), February-March 2011. Copy supplied.

"The FBAR Penalty: One Court Disagrees with the IRS" (co-author Charles P. Rettig), December 2010-January 2011. Copy supplied.

"Final Uncertain Tax Positions Filing Requirements: IRS Addresses Key Concerns" (co-author Charles P. Rettig), October-November 2010. Copy supplied.

"Basic Audit Techniques: Taxpayer Interviews" (co-author Charles P. Rettig), August-September 2010. Copy supplied.

"Holistic Audits: The Price of Being Rich" (co-author Charles P. Rettig), June-July 2010. Copy supplied.

"The IRS Takes a Controversial Position on Uncertain Tax Positions" (co-author Charles P. Rettig), April-May 2010. Copy supplied.

"IRS Return Preparer Strategy: Leveraging Limited Tax Enforcement Resources Through the Registration and Education of the Return Preparer Community" (co-author Charles P. Rettig), February-March 2010. Copy supplied.

"Epilog: The IRS Penalty Memos and the Voluntary Disclosure of Offshore Accounts" (co-author Charles P. Rettig), December 2009-January 2010. Copy supplied.

"*Textron* and Work Product Immunity: A Misguided Decision" (co-author Charles P. Rettig), October-November 2009. Copy supplied.

"Meet the New Director of the Office of Professional Responsibility: An Interview with Karen L. Hawkins" (co-author Charles P. Rettig), August-September 2009. Copy supplied.

"Continuing IRS Guidance for the Voluntary Disclosure of Offshore Accounts" (co-author Charles P. Rettig), June-July 2009. Copy supplied.

"The End of an Era: The IRS Closes in on Offshore Bank Accounts" (co-author Charles P. Rettig), April-May 2009. Copy supplied.

"*Textron* Affirmed: Dual Purposes-Financial Reporting and Anticipating Litigation-Will Not Defeat the Work Product Privilege... in the First Circuit" (co-author Charles P. Rettig), February-March 2009. Copy supplied.

"Undisclosed Foreign Bank Accounts Make Recent News" (co-author Charles P. Rettig), December 2008-January 2009. Copy supplied.

"*United States v. Stein*: The Second Circuit Affirms!" (co-author Charles P. Rettig), October-November 2008. Copy supplied.

"The *Sala* Decision: The IRS's Son-of-BOSS Loss" (co-author Charles P. Rettig), August-September 2008. Copy supplied.

"Liechtenstein Accounts, German Spies and Now the IRS?" (co-author Charles P. Rettig), June-July 2008. Copy supplied.

"Supreme Court Emphasizes Limits on Criminal Tax Enforcement: The *Boulware* Decision" (co-author Charles P. Rettig), April-May 2008. Copy supplied.

"Worker Classification: IRS Launches Questionable Employment Tax Practice Initiative" (co-author Charles P. Rettig), February-March 2008. Copy supplied.

"*Textron*: Careful Reasoning for a Challenging Issue" (co-author Charles P. Rettig), December 2007-January 2008. Copy supplied.

"The Increasingly Risky Business of Tax Gap Evasion and Voluntary Disclosure" (co-author Charles P. Rettig), October-November 2007. Copy supplied.

"Another Troublesome Indictment" (co-author Charles P. Rettig), August-September 2007. Copy supplied.

"Currency Reporting Requirements: Everyone into the Pool!" (co-author Charles P. Rettig), June-July 2007. Copy supplied.

"IRS Enforcement: The Pendulum has Swung Too Far" (co-author Charles P. Rettig), April-May 2007. Copy supplied.

"Expedited Fraud Examinations: A Call for the Return to the Rack and Screw?" (co-author Charles P. Rettig), February-March 2007. Copy supplied.

"The Loss of a Leader, and Look to His Legacy in Tax Ethics" (co-author Charles P. Rettig), December 2006 – January 2007. Copy supplied.

"The KPMG Tax Shelter Indictment: Misguided on the Merits," August-September, 2006. Copy supplied.

"Nonfilers: The Next Enforcement Initiative," February-March 2006. Copy supplied.

"Obstruction of Justice Offenses: Some Lessons from the *Arthur Andersen* Case," February-March 2005. Copy supplied.

"Supreme Court Casts Doubt on Federal Sentencing Guidelines," August 2004. Copy supplied.

"The Government's Clear Focus: Abusive Tax Shelters," February 2004. Copy supplied.

"A New Twist on *Kovel*," August 2003. Copy supplied.

"The Sarbanes-Oxley Act: A Primer," December 2002. Copy supplied.

"Document Retention, Destruction and the Obstruction of Justice," August 2002. Copy supplied.

"Taking the Fifth on a Tax Return," February 2002. Copy supplied.

"Mark Matthews on IRS Criminal Investigation After the Webster Commission," October 2001. Copy supplied.

"When the IRS Sends You Money by Mistake, May You Keep It?" August 2001. Copy supplied.

"Targeting Offshore Activities: The IRS's Next Step," February 2001. Copy supplied.

"A New Chief for IRS Criminal Investigation," August 2000. Copy supplied.

"IRS Collection Cannot be Avoided Through Evasion or Contempt," February 2000. Copy supplied.

"IRS: Back to its Mission, But With a New Bag of Tricks," August 1999. Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have done my best to identify any reports, memoranda or policy statements I prepared or contributed in the preparation of, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

In my capacity as Chair of the Standard of Tax Practice Committee for the American Bar Association Section of Taxation, I contributed in the preparation of the following:

Letter dated June 18, 2007, regarding Recommendations for 2007-2008 Guidance Priority List, addressed to Eric Solomon, Assistant Secretary (Tax Policy), Department of the Treasury and Donald L. Korb, Chief Counsel, Internal Revenue Service. Copy supplied.

Letter dated June 6, 2006, regarding Comments Regarding the Proposed Amendments to Circular 230, addressed to Mark W. Everson, Commissioner, Internal Revenue Service. Copy supplied.

In my capacity as Council Director of the Standard of Tax Practice Committee of the American Bar Association Section of Taxation, I participated as a primary contributor to the following:

Letter dated May 28, 2010, regarding Comments on Announcements 2010-9, 2010-17 and 2010-30, addressed to Douglas Shulman, Commissioner, Internal Revenue Service. Copy supplied

In my capacity as Council Director of the Standard of Tax Practice Committee, I participated as a reviewer of the following comments prepared on behalf the American Bar Association Section of Taxation:

Letter dated July 15, 2010, regarding Comments on Circular 230 Section 10.27, addressed to Douglas Shulman, Commissioner, Internal Revenue Service. Copy supplied.

Letter dated June 4, 2009, regarding Comments on Proposed Amendments to Circular 230 § 10.34, addressed to Douglas Shulman, Commissioner, Internal Revenue Service. Copy supplied.

Letter dated November 15, 2007, regarding Legislative Changes Impacting Standards for Imposition of Penalties, addressed to Max Baucus, Chairman, Senate Finance Committee, and Charles Grassley, Ranking Member, Senate Finance Committee. Copy supplied.

Letter dated October 5, 2007, regarding Comments in Response to IRS Notice 2007-39, on the Application of Monetary Penalties in Disciplinary Procedure under Section 822 of the American Jobs Creation Act of 2004, addressed to Linda Stiff, Acting Commissioner, Internal Revenue Service. Copy supplied.

In my capacity as Council Director of the Civil and Criminal Tax Penalties Committee, I participated as a reviewer of the following comments prepared on behalf the American Bar Association Section of Taxation:

Statement of Policy Favoring Reform of Federal Civil Tax Penalties, finalized on April 21, 2009. Copy supplied.

Letter dated August 26, 2008, regarding Comments on Proposed Regulations Under Section 6694 and 6695, addressed to Douglas Shulman, Commissioner, Internal Revenue Service. Copy supplied.

Letter dated April 3, 2008, regarding Comments on the 2007 Amendment to Section 6694 Preparer Penalty, addressed to Douglas Shulman, Commissioner, Internal Revenue Service. Copy supplied.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal

interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Letter dated March 30, 2010, regarding the Voluntary Disclosure Program, addressed to Douglas Shulman, Commissioner and John DiCicco, Acting Assistant Attorney General, Department of Justice, and signed by thirty-two private practitioners. Copy supplied.

Letter dated March 18, 2009, regarding Fraud Enforcement and Recovery Act of 2009 (S. 386), addressed to U.S. Senators Patrick Leahy, Charles Grassley, Edward E. Kaufman, Charles E. Schumer, Max Baucus, U.S. Representatives Charles B. Rangel, Dave Camp, and Eric H. Holder, Jr., U.S. Attorney General, Timothy F. Geitner, U.S. Secretary of the Treasury, Douglas Shulman, Commissioner of Internal Revenue, and signed by thirty-six private practitioners. Copy supplied.

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.

I have done my best to identify transcripts or recordings of all speeches or talks delivered, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

Speaker, "Compliance with the New Schedule UTP Regime: Ethical Issues concerning the Privileges," Continuing Professional Education Presentation given at Marks Paneth & Shron, New York, NY, February 15, 2011, and Anchin Block & Anchin, New York, NY, May 11, 2011. Power point presentation supplied.

Panelist, "Façade Easement Donation - From Drafting through Trial," New York, NY, March 8, 2011. Power point presentation and written materials supplied.

Panelist, "Voluntary Disclosure, Structuring, Forfeitures and Criminal Tax," Paramus, NJ, March 1, 2011. Written materials supplied.

Moderator, "Schedule UTP, Privilege, and Tax Risk Management: Preserving Privilege While Satisfying Tax Compliance," American Bar Association, Section of Taxation, Boca Raton, FL, January 21, 2011. Power point presentation

supplied. A recording that was made of the meeting at which this panel program was presented is also supplied.

Moderator, "Smokin' Hot Issues in IRS Enforcement," American Bar Association, Section of Taxation, Boca Raton, FL, January 22, 2011. Outline supplied. A recording that was made of the meeting at which this panel program was presented is also supplied.

Moderator, "Hot Issues and Priorities in IRS Examination and Appeals," 27th National Institute on Criminal Tax Fraud, American Bar Association, San Francisco, CA, December 3, 2010. Written materials supplied.

Panelist, "From the Experts: Tax Controversy and Tax Litigation Update," 69th Institute on Federal Taxation, New York University School of Continuing and Professional Studies, New York, NY, October 17, 2010. Written materials, power point presentation, and outline supplied.

Panelist, "Evasion, Avoidance, or What? Ethically Navigating the Modern Tax Fraud Case Post-UBS," 46th Annual White Collar Seminar, National Association of Criminal Defense Lawyers, New York, NY, October 1, 2010. Written materials and outline supplied.

Moderator, "Trends in Criminal Tax Enforcement - Exploring Recent Investigative and Trial Issues," 2nd Annual Tax Controversy Forum, New York University School of Continuing and Professional Studies, New York, NY, June 18, 2010. Written materials supplied.

Speaker, "IRS Takes a New Approach with High Wealth Taxpayers: What You Need To Know," New York, NY, June 2, 2010. Power point presentation and outline supplied.

Moderator, "The Prosecution and Defense of Offshore Bank Accounts," American Bar Association, Section of Taxation, San Antonio, TX, January 23, 2010. Outline supplied. A recording that was made of the meeting at which this panel program was presented is also supplied.

Moderator, "The Prosecution and Defense of Offshore Bank Accounts," American Bar Association, CLE Teleconference & Live Audio Webcast, March 3, 2010. Outline and recording supplied.

Panelist, Panel Presentation by Practitioners at the Conference for IRS Special Agents-in-Charge, Washington, D.C. January 28, 2010.

Moderator, "The Ever-Expanding Foreign Corrupt Practices Act: Risk Management, Due Diligence and Compliance Strategies," New York, NY, September 10, 2009. Outline supplied.

Speaker, "Dealing With an Uncooperative Client," American Bar Association, Section of Taxation, Tax Link Live Teleconference & Live Audio Webcast, June 3, 2009. Written materials and recording supplied.

Moderator, "Light at the End of the Tunnel or an Oncoming Train - Special Civil Penalties and Voluntary Disclosures of Undeclared Accounts," American Bar Association, Section of Taxation, New Orleans, LA, January 10, 2009. Written materials supplied. A recording that was made of the meeting at which this panel program was presented is also supplied.

Moderator, "Emerging Issues in U.S. Foreign Corrupt Practice Act," New York, NY, March 14, 2008.

Panelist, "Strategies and Techniques in Tax Controversy and in Tax Court Litigation," 66th Institute on Federal Taxation, New York University School of Continuing and Professional Studies, New York, NY, October 21, 2007. Outline supplied.

"Tax Shelter Prosecution Update," American Bar Association, Section of Taxation, Vancouver, Canada, September 29, 2007. A recording that was made of the meeting at which this presentation was presented is also supplied.

"Tax Shelter Prosecution Update," American Bar Association, Section of Taxation, Lake Las Vegas, January 19, 2008. A recording that was made of the meeting at which this presentation was presented is also supplied.

Moderator, "Ethics Lessons From the Shelter Wars: What All Practitioners Can Learn From the IRS's Increased Disciplinary and Criminal Enforcement Efforts," 54th Annual Taxation Conference, University of Texas School of Law, Houston, TX, November 1, 2006. Outlines supplied.

Program Chair, "Document Retention & Discovery in an E-World: How to Avoid Ethical, Civil & Criminal Penalties," New York City Bar Association, New York, NY, January 19, 2006. Meeting materials supplied. A recording was made of this presentation. I have made a search of my personal files and I have made inquiries through the New York City Bar Association, but I have not been able to locate or obtain a copy.

Panelist, "The Impact of *U.S. v. Pasquantino,*" American Bar Association, Section of Taxation, San Francisco, CA, September 17, 2005. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Panelist, "New Circular 230 Written Opinions and Advice Regulations," American Bar Association, Section of Taxation, Washington, D.C., May 21, 2005. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Moderator, "Recent Developments in Tax Shelters," American Bar Association, Section of Taxation, San Diego, CA, January 20, 2005. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Panelist, "Whistle While You Work: The Neutral as Whistleblower," American Bar Association, Section of Dispute Resolution, New York, NY, April 15, 2004.

Panelist, "The Tax Lawyer's Dilemma: The Intersection of Non-Enforcement and Ethics," American Bar Association, Section of Taxation, Orlando, FL, January 30, 2004. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Faculty, "Securities Fraud," Seventeenth Annual National Institute on White Collar Crime, American Bar Association, San Francisco, CA, March 6, 2003.

Panelist, "A View from Wall Street: Investor Relations Concerns in the Midst of High-Profile Litigation," NorthStar Conference on Effectively Managing Public Relations for High-Profile Litigation, New York, NY, January 27, 2003. Outline supplied.

Moderator, "Enron and Ethics: What Tax Lawyers Need To Know," American Bar Association, Section of Taxation, Washington, D.C., May 11, 2002. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Faculty, "Nuts & Bolts II – Pre-Trial and Trial Techniques," Sixteenth Annual National Institute on White Collar Crime, American Bar Association, Miami, FL, March 1, 2002.

Faculty, "Here Today – Gone Tomorrow: Seizing, Freezing and Forfeiting Assets," Fifteenth Annual National Institute on White Collar Crime, American Bar Association, CA, March 8, 2001.

Moderator, "Ethics and Crime – What Tax Practitioners Need To Know," American Bar Association, Section of Taxation, Scottsdale, AZ, January 13, 2001. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Panelist, "Hot Developments in Money Laundering, Currency Transactions, and International Enforcement," American Bar Association, Section of Taxation, Los Angeles, CA, October 14, 2000. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Panelist, "Expert Witnesses - Getting Inside the Defendant's Mind: Intent, Good Faith and Mental Capacity Issues," American Bar Association, Section of Taxation, Atlanta, GA, August 7, 1999. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Faculty, "Collateral Consequences of Criminal Investigations and Convictions," Thirteenth Annual National Institute on White Collar Crime, American Bar Association, San Francisco, CA, March 4, 1999.

Moderator, "When the Defendant or the Money Crosses the Border: Selected Issues in International Law Enforcement," American Bar Association, Section of Taxation, Toronto, Canada, August 1, 1998. I have located a partial recording of this presentation, which is supplied.

Moderator, "How to Keep Your Civil Employment Tax Case from Becoming a Criminal Matter," American Bar Association, Section of Taxation, Washington, D.C., May 15, 1998. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Faculty, "A Good Offense Is the Best Defense: Available Defenses in the '90s," Twelfth Annual National Institute on White Collar Crime, American Bar Association, San Francisco, CA, March 5, 1998.

Panelist, "International Discovery in Criminal Cases," The Association of the Bar of the City of New York, April 7, 1997.

Panelist, "Trial Practice I: Mock Trial Presentation, Section 6672, Trust Fund Recovery Penalty," American Bar Association, Section of Taxation, Orlando, FL, August 2, 1996. Recording supplied.

Panelist, "Employee or Independent Contractor," American Bar Association, Section of Taxation, Washington, D.C., May 11, 1996. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Moderator, "Trial Practice – Examining the IRS Special Agent," American Bar Association, Section of Taxation, Washington, D.C., May 20, 1995. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Panelist, "Ethics for the Tax Practitioner," Mini-Program, American Bar Association, Section of Taxation, Washington, D.C., May 15, 1994. Recording supplied.

Speaker, "Ethics in Tax Practice," National Association of State Bar Tax Sections, Annual Conference, Washington, D.C., October 30, 1993.

Panelist, "Ethics in Tax Practice," American Bar Association, Section of Taxation, New York, NY, August 7, 1993. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Panelist, Panel on Immunity, American Bar Association, Section of Taxation, San Diego, CA, February 6, 1993. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

In addition to the above, I served as the chair for three subcommittees of the ABA Section of Taxation Committee on Civil and Criminal Tax Practice, specifically, the Subcommittee for Department of Justice Procedures, August 1994 to July 1999; the Subcommittee for Current Developments, August 1993 to July 1994; and the Subcommittee for Sentencing Guidelines, August 1992 to July 1993. The Committee on Civil and Criminal Tax Practice met three times annually in conjunction with the ABA Section of Taxation conferences, and for each of the three subcommittees, I gave reports on recent legal developments at most if not all of the meetings. In most instances, there would have been written materials distributed to the audience, which I can no longer locate. A recording was made of the meetings at which these reports were presented. I have made a search of

my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain copies.

Also, I served as the chair of the ABA Section of Taxation Committee on Civil and Criminal Tax Penalties from August 2001 through July 2003, and as the chair of the ABA Section of Taxation Committee on Standards of Tax Practice from August 2005 through July 2007. Each committee met three times annually in conjunction with the ABA Section of Taxation conferences, and I conducted all such meetings during my tenure as chair of each of these committees. I did not make substantive presentations at any of these committee meetings.

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 done my best to identify all interviews given, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

"'Mayo' Ruling Raises Bar for Challenges To Tax Regulations, Practitioners Say," BNA Daily Tax Report, February 14, 2011. Copy supplied.

"IRS Reduces Penalties For Tax Cheats," Associated Press, February 8, 2011, and reprinted in other media outlets, including Houston Chronicle, February 8, 2011; CBSNews.com, February 8, 2011, MSNBC.com, February 8, 2011, Yahoo! Finance, February 8, 2011; Everett Leader-Herald News Gazette, February 9, 2011; Courier-Post Online, February 13, 2011; Virginia Pilot and Ledger-Star, February 21, 2011. Copies supplied.

"A Wish List for the Possible Second Offshore Voluntary Disclosure Program," Tax Analysts, January 13, 2011. Copy supplied.

"NYCLA, Law Firm Program Aids Taxpayers Before U.S. Tax Court," New York Law Journal, November 16, 2010. Copies supplied.

"IRS Help for Struggling Taxpayers Contrasts with Enforcement Push," Tax Notes, April 5, 2010. Copy supplied.

"Scorched Earth in Son-of-Boss Cases," Tax Analysts, July 7, 2008. Copy supplied.

"Free: Legal Consequences Uncertain," reported by New York Law Journal, March 12, 2008, and reprinted in Connecticut Law Tribune, March 12, 2008. Copies supplied.

"Judge Ponders Dismissing KPMG Case: Experts," reported by Reuters, May 31, 2010, and reprinted in other media outlets, including on May 31, 2010: KSUT-FM Radio (Ignacio, CO); Earth Times (NY); Yahoo! Finance Singapore; Fidelity+; New York Times; WRVO-FM Radio (Oswego, NY); WXXI NewsRadio AM (Rochester, NY); Washington (DC) Post; CNBC World Network; WOOD-TV Channel 8 (Grand Rapids, MI); Boston Globe; WAMC-Radio 90.3 FM (Albany, NY); Oregon Public Broadcasting (Portland, OR); and Yahoo! Finance; and on June 1, 2010: Money Central (Redmond, WA); WUSF 89.7 FM Radio (Tampa, FL); WNED-AM 970 Radio (Buffalo, NY); KWGS Radio 89.5 FM (Tulsa, OK); KIAL AM 1450 Radio (AK); APTI NewsRoom (Anchorage, AK); KENW-TV; KERA 90.1 Radio (Dallas, TX); Earthtimes.org; MSN Money (UK); Canada.com; KPLC-TV; WIStv. Copies supplied.

"IRS Aims High: Enforcement spotlight to focus on high-profile CPAs, Attorneys." Accounting Today, May 1, 2006. Copy supplied.

"IRS Aims High," Accounting Today, April 27, 2006. Copy supplied.

"Transparency at the IRS Office of Professional Responsibility: A Two-Way Street?" Tax Analysts, February 6, 2006. Copy supplied.

"Networking for Women Lawyers," Strategies: The Journal of Legal Marketing, January 2006. Copy supplied.

"Government Officials Take on Tax Bar Over Circular 230 Changes," Tax Analysts, May 24, 2005. Copy supplied.

"Of Motives and Memos: The Supreme Court Will Hear The Tale of Arthur Andersen's Fall," The National Pulse, April 2005. Copy supplied.

"U.S. Offers A Tax Amnesty on Undisclosed Offshore Income," The International Herald Tribune, January 15, 2003. Copy supplied.

"IRS Weighs a Deal for Tax-Dodge Participants," Wall Street Journal, January 14, 2003. Copy supplied.

"G.E. Perks Raise issues About Taxes," The New York Times, September 9, 2002. Copy supplied.

"Police Oppose 'Attempted' Crimes," reported by Associated Press Online, June 23, 2002, and reprinted by multiple media outlets, including additional articles in the Associated Press, July 23, 2002 and July 24, 2002, and the Philadelphia Inquirer, July 24, 2002. Copies supplied.

"The IRS Out of Control," The Wall Street Journal, June 17, 2002. Copy supplied.

"IRS Looking Into the Use of Offshore Bank Accounts to Avoid Paying Taxes," Marketplace, March 26, 2002. Recording supplied.

"Legal Experts not Surprised D.A. Escaped Charges," The Journal News, February 25, 1999. Copy supplied.

"Judge in Crazy Eddie Case is Taken Off Civil Suit," The Philadelphia Inquirer, November 29, 1995. Copy supplied.

"Dial-A-Mattress Number Up? Fraud Taxes Bedding Firm's Future," Crain's New York Business, September 26, 1994. Copy supplied.

13. **Public Office, Political Activities and Affiliations**:

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

I have never been a candidate for public office, nor have I been nominated unsuccessfully for appointed office.

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

In 2008, I was a volunteer poll watcher in Pennsylvania for the Obama / Biden Presidential Campaign.

While in high school, I was a member and may have been an officer of the Nassau County Young Democrats. Prior to and during high school and college, I worked as a volunteer for the Nassau County Democratic Party, and did volunteer work on a number of political campaigns.

14. **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
Hon. Edward R. Neaher, United States District Judge
U.S. District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201
September 1982 to August 1983

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

I have not practiced as a solo practitioner.

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.

Skadden Arps Slate Meagher & Flom
919 Third Avenue
New York, NY 10022
(Current Address: 4 Times Square, NY, NY 10036)
Associate, 1983 – 1985

Kostelanetz & Ritholz
(name changed to Kostelanetz Ritholz Tigue & Fink in 1990)
80 Pine Street
New York, NY 10005
Associate, 1985 – 1990
Partner, 1990 - 1994

Kostelanetz & Fink, LLP
Address from 1999 – 2000:
530 Fifth Avenue
New York, NY 10036
Address from 1994 – 1999:
230 Park Avenue
New York, NY 10017
(Current address: 7 World Trade Center, NY, NY 10007)
Partner, 1994 - 2000

Owen & Davis PC
805 Third Avenue
New York, NY 10022
Member, 2000 - 2002

Fulbright & Jaworski L.L.P.
666 Fifth Avenue
New York, NY 10103
Partner, December 2002 to present

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

I have never served as a mediator or arbitrator.

b. Describe:

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

From 1983 through 1985, I was an associate with Skadden Arps Slate Meagher & Flom. My practice included complex commercial litigation and pro bono criminal defense matters.

From 1983 through 1994, I was an associate and, starting in 1990, a partner of the Kostelanetz & Ritholz firm, which changed its name in 1990 to Kostelanetz Ritholz Tigue & Fink. My practice included criminal tax defense, other white collar criminal defense, and tax controversy, as well as complex commercial litigation matters involving fraud, civil RICO, securities, and similar issues. In 1994, the firm of Kostelanetz Ritholz Tigue & Fink dissolved, and I became a partner of Kostelanetz & Fink. My practice remained the same.

From 2000 through 2002, I was a member in the firm of Owen & Davis PC. My practice was primarily commercial litigation, as well as tax controversy and criminal tax defense.

From 2002 through today, I have been and am a partner of Fulbright & Jaworski, LLC. In 2003 and 2004, my practice was commercial litigation, tax controversy and criminal tax defense. From 2004 through today, my practice is primarily tax controversy and criminal tax defense.

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

In all periods of my legal career, I have represented a wide array of clients, including large and small corporations, financial institutions, non-profit organizations, and individuals.

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

My practice has consisted entirely of representation in tax controversies, criminal tax defense, and commercial litigation. In all periods of my legal career, I have appeared in court either occasionally or frequently, depending on the demands of the specific cases.

i. Indicate the percentage of your practice in:
   1. federal courts -- 60% (including U.S. Tax Court, grand jury)
   2. state courts of record -- 10%
   3. other courts -- none
   4. administrative agencies – 30% (including IRS)

ii. Indicate the percentage of your practice in:
   1. civil proceedings – 65% (including IRS, civil fraud, RICO, and similar)
   2. criminal proceedings – 35%

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

I was chief counsel for two trials. I was associate counsel in trial on four cases, ranging in duration from two weeks to three months. I was also associate counsel on two additional cases for which I had primary responsibility for all motions and jury charge requests, but did not participate at trial.

i. What percentage of these trials were:
   1. Jury – 67%;
   2. non-jury – 33%.

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 U.S. Supreme Court as counsel of record on the merits. I served as counsel in a pro bono death penalty matter encaptioned *Stephens v. Kemp*, 464 U.S. 1027 (1983) and 469 U.S. 1043 (1984), for which petitions for a stay of execution and one or more petitions for certiorari were filed. I do not have copies of these petitions.

15. **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 the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Pierre v. Commissioner*, 133 T.C. 24 (2009) and T.C. Memo 2010-106, U.S. Tax Court, Hon. Diane L. Kroupa. I was lead trial counsel for the taxpayer Suzanne Pierre. The taxpayer was the sole member of a limited liability corporation. She gave gifts of interests in the LLC to trusts that she had established for her son and granddaughter, and then sold the remaining interests in the LLC to each of the trusts. The threshold issue in the case was one of first impression: in a precedent-setting decision by the full Tax Court, reported at 133 T.C. 24 (2009), the Tax Court held that the transfer of an interest in a single member LLC should be treated as a gift for tax purposes. In a separate decision, the trial judge resolved all remaining issues, and held substantially in the taxpayer's favor on the value of the gifts and the interests that she sold. Counsel for the Commissioner of the Internal Revenue Service was Lydia Branche, whose current title and address are Associate Area Counsel, Office of Chief Counsel, Internal Revenue Service, One Newark Center, Suite 1500, Newark, NJ 07102, 973-645-2462.

2. *Gross v. Commissioner*, T.C. Memo. 2008-221, U.S. Tax Court, Hon. James S. Halpern. I was lead trial counsel for the taxpayer Bianca Gross. The taxpayer gifted interests in a family partnership to her daughters. The Internal Revenue Service contended that the parties had failed to form a limited partnership under New York law. The trial judge held that the parties had agreed orally to form a partnership on the same terms as a limited partnership, and upheld the tax treatment of the gifts. Counsel for the Commissioner of the Internal Revenue Service was Gerard Mackey, Esq., Internal Revenue Service, Office of Chief Counsel, 33 Maiden Lane, 14th Floor, New York, NY 10038, 917-421-4736.

3. *Wedelstedt v. United States*, U.S. District Court for the District of Colorado, Hon. Richard Matsch. I was lead counsel for the plaintiff. The Internal Revenue Service contended that the plaintiff was not the true owner of his business, but that he was acting as a nominee for a third party who had been convicted of tax evasion and other offenses. The IRS commenced a levy action against the taxpayer's business, and plaintiff filed a wrongful levy action. Following discovery, the IRS conceded in full. This matter was commenced in 1994 and concluded in approximately 1995. I have been unable to locate or to recall any information concerning the docket number or the name of counsel for the United States. To the best of my recollection, there was no reported decision in the case.

4. *Barr v. United States*, 89-2 U.S. Tax Cas. (CCH) P9543 (E.D.N.Y. 1989), Hon. Eugene Nickerson. The plaintiff in this case had previously been convicted in connection with certain state crimes. The Internal Revenue Service asserted that he was liable for penalties as a tax shelter promoter based on the prior conviction. I was lead counsel in opposition to the Government's motion for summary judgment, on which the court ruled in favor of my client. Counsel for the United States was M. Lawrence Noyer, Jr., then-Assistant United States Attorney. I have no information concerning current address or telephone number.

5. *United States v. Marcos*, No. SSSS 87 Cr. 598 (JFK), U.S. District Court, Southern District of New York, Hon. John F. Keenan. In 1988, the United States indicted Ferdinand Marcos, the former President of the Philippines, his wife, former Philippines First Lady Imelda Marcos, and Adnan Khashoggi, on RICO and other charges. The central allegation in the case was that the defendants had engaged in acts to loot the treasury of the Philippines and other wrongful acts, and that they had invested the funds in real estate in New York and in other assets. I was associate counsel during the grand jury investigation and trial. I had substantial responsibility for pretrial submissions to the U.S. Department of Justice on behalf of President Marcos and Mrs. Marcos. President Marcos died prior to trial. I had primary responsibility for all motions, discovery, and jury charge requests submitted on behalf of Mrs. Marcos. Mrs. Marcos and Mr. Khashoggi were acquitted on all counts. Reported decisions that I have been able to locate are at 1990 U.S. Dist. LEXIS 6541; 1990 U.S. Dist. LEXIS 5023; 1990 U.S. Dist. LEXIS 3280; 1990 U.S. Dist. LEXIS 2678 1990; U.S. Dist. LEXIS 2317; 1990 U.S. Dist. LEXIS 2049; 1990 U.S. Dist. LEXIS 1684; 1990 U.S. Dist. LEXIS 1603. The senior partner at my firm representing Mrs. Marcos was John J. Tigue, Jr., who is now deceased. Trial counsel for Mrs. Marcos was Gerry Spence, The Spence Law Firm, LLC, 15 South Jackson Street, Jackson, Wyoming 83001, 800-967-2117, 307-733-7290. Counsel for defendant Adnan Khashoggi was James P. Linn, who is now deceased. Lead counsel for the United States was Charles G. LaBella, whose current address is Office of the U.S. Attorney, 880 Front Street, Suite 6293, San Diego, CA 92101.

6. *Bingham v. Zolt,* U.S. District Court, Southern District of New York, Hon. Kenneth Conboy. The plaintiff in this matter was the Administrator of the Estate of Robert Marley, the reggae performer. The claims, which included civil RICO and fraud allegations, were brought against two attorneys, an accountant, and their respective firms, alleging that certain documents had been backdated to transfer valuable royalty rights from the Estate to third-party defendant Rita Marley. My client, Martin Oliner, was a tax attorney. The allegedly backdated documents were used to implement tax planning. The complaint was filed in approximately 1986, and the case was tried in 1992. At the inception, I was associate counsel. Over time, I took primary responsibility for all discovery, motions, and jury charge requests, and I was associate counsel at trial. Mr. Oliner was found not liable following a three-month jury trial. The reported decision that I have located is at 683 F. Supp. 965 (SDNY 1988). Lead trial counsel for Mr. Oliner was Robert S. Fink, whose current address is Kostelanetz & Fink LLP Seven World Trade Center, New York, NY 10007, 212-808-8100. Lead counsel for the plaintiff was

Robert Brundige, Jr., Hughes Hubbard & Reed, whose current address I understand to be 101 Hudson Street, Suite 3601, Jersey City, NJ 07302-3910, 201-946-5701. Counsel for co-defendant Marvin Zolt, was Ray Beckerman, whose current address I understand to be Ray Beckerman, P.C., 108-18 Queens Boulevard, 14th Floor, Forest Hills, NY 11375, 718-544-3434. Counsel for co-defendant David Steinberg was Jeremy Mishkin, Montgomery, McCracken, Walker & Rhoads, 123 South Broad Street, Philadelphia, PA 19109, 215-772-1500. Counsel for co-defendant Coudert Brothers was Paul D. Friedland, whose current address is White & Case LLP, 1155 Avenue of the Americas, New York, NY 10036, 212 819 8917. Counsel for co-defendants Greenstein Gorelick et al. and Bluestein Rutstein et al. were John V. Fabiani, 570 Lexington Avenue, New York, NY 10022, 212-644-4420, and James Nunemaker, whose current address I do not have. Counsel for third-party defendant Rita Marley was Kaare Phillips, whose current address is Deloitte Consulting LLC, 1633 Broadway, New York, NY 10019, 212-492-4149.

7. *Securities and Exchange Commission v. Antar*, U.S. District Court, District of New Jersey, Hon. Nicholas Politan. This matter involved SEC enforcement action concerning the business Crazy Eddie, Inc. I was associate counsel for defendant Sam M. Antar from approximately 1992 through 1994, and lead counsel from 1994 through approximately 1996. My client had been a one-third owner of Crazy Eddie prior to its initial public offering. In a decision reported at 71 F.3d 97 (1995), which I argued, the Third Circuit ordered the disqualification of the trial judge. At some point following that decision, I withdrew from the matter by mutual agreement with my client. Counsel for Securities and Exchange Commission was Richard Simpson, whose current address I understand to be 100 F Street, N.E., Washington, D.C. 20549-4030, (202) 551-4492. Counsel for co-defendant Alan Antar was Gerald Krovatin, Esq., whose current address I understand to be Krovatin Klingeman, LLC, 744 Broad Street, Suite 1903, Newark, NJ 07102 973-424-9777.

8. *Guess?, Inc. v. Spiegelman*, U.S. District Court, Central District of California. This matter involved an action for civil RICO and other claims brought by Guess?, Inc. against counsel for Jordache Enterprises. It was related to other actions that were brought between and among the shareholders of Guess?, Inc. and Jordache Enterprises. I had primary responsibility for all legal briefing, and participated in all discovery. The matter began in the mid-1980s, and was settled in approximately 1990. Lead counsel for the defendant was Edward M. Spiro, whose current address is Morvillo Abramowitz et al., 565 5th Avenue, New York, NY 10017, 212-856-9600. Lead counsel for Guess?, Inc. was Howard Weitzman, whose current address is Kinsella Weitzman Iser Kump & Aldisert LLP, 808 Wilshire Blvd. 3rd Floor, Santa Monica, CA 90401, 310-566-9800.

9. *United States v. Miller*, Docket No. 95-5404 and 95-5426, Eleventh Circuit Court of Appeals. I was appellate counsel in this matter in 1996 and 1997. The central issue was whether the defendant should be resentenced due to a breach of the plea agreement by the United States. Following full briefing on appeal, the Government conceded the issue, and the appeal was dismissed and the case was remanded. I can no longer recall the names of counsel for the United States.

10. *Hevesi v. Metropolitan Transportation Authority*, 827 F. Supp. 1069 (S.D.N.Y. 1993), Hon. Kimba M. Wood. This matter was an injunction action in which a candidate for public office challenged the policy of a billboard company not to negotiate rate discounts with political candidates. I was responsible for briefing and participated in all discovery in the action on behalf of the defendant billboard company. The court denied the preliminary injunction, and plaintiffs did not proceed with the case. Counsel for the plaintiff was Daniel R. Bright. I do not have his current address or contact information.

16. **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.)

The most significant part of my practice since joining Fulbright & Jaworski LLP, in addition to the litigation matters discussed above, has been the representation of taxpayers in IRS civil examinations and criminal matters. For example, from 2004 through 2011, I headed a team representing over one hundred high net worth individuals before the Internal Revenue Service relating to investments in "listed transactions," including presentations to the IRS personnel drafting a global settlement initiative, representation before IRS Examination and Appeals and guidance to taxpayers concerning settlement proposals. I have also represented numerous individuals in connection with voluntary disclosures to the Internal Revenue Service, including in connection with the IRS's recent enforcement initiative concerning offshore bank accounts, and in other matters.

Throughout my career, I have represented individuals who were identified as witnesses, subjects, or targets of state and federal grand jury investigations in criminal tax and other white collar criminal investigations. I have also represented individuals in plea negotiations and sentencing. In addition to the items listed in response to question 15, I have participated as associate counsel for the defendant in three criminal tax prosecutions, and one criminal prosecution for obstruction of justice, that were tried to verdict. I was also lead counsel in one appellate case involving criminal tax issues and two additional criminal appeals. I have also represented numerous individuals and companies before IRS Examination and IRS Appeals, and I have represented a number of taxpayers in several Tax Court matters that were resolved prior to trial. I have also represented individuals and companies in state and local civil and criminal tax matters in New York.

As examples of other significant tax matters, I negotiated with the IRS for a civil resolution of corporate, personal and income tax liability in a complex matter that resulted from omitted income and a cash payroll. I have been and am currently representing a not-for-profit entity in connection with IRS examinations of its donors,

and in connection with the preparation of its officers and employees who have been called as witnesses in trials in several trials.

I have represented clients in a range of white collar criminal defense matters. In addition to tax matters, I have participated in internal corporate investigations involving securities, Foreign Corrupt Practices Act, and other financial crimes issues. As examples, I participated in the representation of a major defense contractor in a securities investigation, which resulted in a decision not to prosecute. I represented a family of prominent South American business owners and negotiated the release of more than $50 million in bank accounts that had been frozen by the United States under civil forfeiture statutes. I was part of a team of attorneys who represented defendants in a civil RICO matter brought by the United States concerning the private sanitation industry. I have also represented clients in commercial litigation matters.

I do not engage and have not engaged in lobbying activities on behalf of any clients.

17. **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.

Faculty, Course on fraud and criminal tax issues in IRS examinations, National Tax Practice Institute, Las Vegas, Nevada, July 11-13, 2001.

Instructor, "Civil and Criminal Tax Penalties and Monetary Offenses," New York State Society of Certified Public Accountants/Foundation for Accountant Education, presented in New York, New York, November 14, 1995, and August 22, 1996. Copy of course materials supplied.

Instructor, "Civil and Criminal Liability: What The Accountant Needs To Know," The Center for Professional Education, Inc., presented in Saddle Brook, New Jersey, June 3, 1994, Clark, New Jersey, July 12, 1995, and Philadelphia, Pennsylvania, October 20, 1994, May 1, 1995, and September 1, 1995.

18. **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.

If I am confirmed, I will resign as a partner of Fulbright & Jaworski LLP. Pursuant to the terms of the partnership agreement, I will receive a refund of my capital account. Under the terms of the partnership agreement, a payment of approximately 80% of the refund of my capital account will be made within six months of my resignation from the firm. The remaining portion of my capital account will be paid in April 2012 after a final

accounting is completed. I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the ability or willingness of Fulbright & Jaworski LLP to meet its obligations to make these payments to me, unless I first obtains a written waiver pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption pursuant to 18 U.S.C. § 208(b)(2).

Under the partnership agreement, within 90 days of withdrawal from Fulbright & Jaworski LLP, I will receive compensation for calendar year 2011 based on an objective formula, prorated for the number of days for which I was a member of the firm. Under this formula, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the ability or willingness of Fulbright & Jaworski LLP to pay this compensation, unless I first obtain a written waiver pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption pursuant to 18 U.S.C. § 208(b)(2).

I will continue to participate in the Fulbright & Jaworski LLP Defined Benefit Plan. Accordingly, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the ability or willingness of Fulbright & Jaworski LLP to meet its obligations to me under the defined benefit plan, unless I first obtains a written waiver pursuant to 18 U.S.C. § 208(b)(1), or qualifies for a regulatory exemption pursuant to 18 U.S.C. § 208(b)(2).

I also have a Fulbright & Jaworski LLP Cash Balance Defined Benefit Plan. I will rollover this plan into non-conflicting assets in a qualifying IRA within 120 days of my withdrawal from the firm. I also participate in the Fulbright & Jaworski LLP Profit Sharing Plan. I will rollover the assets in this plan into non-conflicting assets within 120 days of my withdrawal from the firm.

Pursuant to the terms of the partnership agreement, I will receive a payment of the amount in my Fulbright & Jaworski LLP 401(k) Account which I will roll over into non-conflicting assets. This payment will be made within 30 days of my withdrawal from the firm.

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

    I have no plans for outside employment.

20. **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 SF-278 Financial Disclosure Report.

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

    See attached Net Worth Statement.

22. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors 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.

       In connection with the nomination process, I have consulted with the Department of Justice's ethics office to identify potential conflicts of interest. The Department of Justice's ethics office works with the Office of Government Ethics when identifying these potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

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

       In connection with the nomination process, I have consulted with the Department of Justice's ethics office to identify potential conflicts of interest. The Department of Justice's ethics office works with the Office of Government Ethics when identifying these potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

23. **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. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

    I participate in the Tax Court Calendar Call project that is conducted by the New York County Lawyers Association. As part of this project, I attend the Tax Court calendar calls in New York, and offer consulting services to pro se petitioners. I have devoted approximately forty hours to this program, both through attendance at the Tax Court and in related organizational activity, over the last twelve months.

AFFIDAVIT

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

September 23, 2011
(DATE)

(NAME)

(NOTARY)

INDIA DECARMINE
Notary Public, State of New York
No. 02DE5060491
Qualified in Suffolk County
Commission Expires May 20, 2014