

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Malachy Edward Mannion

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

United States District Judge for the Middle District of Pennsylvania

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.

Max Rosenn United States Courthouse
197 South Main Street
Wilkes-Barre, Pennsylvania 18701

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

1953; Montreal, Canada

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.

1976 – 1979, Pace University School of Law; J.D., 1979
1972 – 1976, University of Scranton; B.S., 1976

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.

2001 – Present
United States District Court for the Middle District of Pennsylvania
Max Rosenn United States Courthouse
197 South Main Street

Wilkes-Barre, Pennsylvania 18701
Chief United States Magistrate Judge (2011 – Present)
United States Magistrate Judge (2001 – Present)

1997 – 2001
United States Department of Justice
United States Attorney's Office for the Middle District of Pennsylvania
225 North Washington Avenue
Scranton, Pennsylvania 18503
Assistant United States Attorney

1993 – 1997
Hourigan, Kluger, Spohrer & Quinn, PC
434 Lackawanna Avenue
Scranton, Pennsylvania 18503
Litigation Partner

1986 – 1993
United States Department of Justice
United States Attorney's Office for the Middle District of Pennsylvania
225 North Washington Avenue
Scranton, Pennsylvania 18503
Assistant United States Attorney (1986 – 1993)
Chief, Organized Crime Drug Enforcement Task Force (1989 – 1993)
District Office Security Manager (1989 – 1993)

1980 – 1986
Nassau County District Attorney's Office
262 Old Country Road
Mineola, New York 11501
Assistant District Attorney

1977 – 1980
Bartels, Pykett & Aronwald, Esqs.
99 Court Street
White Plains, New York 10601
Litigation Associate (1979 – 1980)
Law Clerk (1977 – 1979)

1976 – 1977
Pace University School of Law
78 North Broadway
White Plains, New York 10603
Student Aide

1975 – 1976
Greater Scranton YMCA
706 North Blakely Street
Dunmore, Pennsylvania 18512
Water Safety Instructor

1969 – 1976
Sugerman's Eynon Drug
Route #6
Eynon, Pennsylvania 18403
Sales Associate

Other Affiliations (Uncompensated):

2008 – Present
Federal Magistrate Judges Association
P.O. Box 267
Scranton, Pennsylvania 18501
President (2011 – Present)
President-Elect (2010 – 2011)
Vice President (2009 – 2010)
Secretary (2008 – 2009)

1996 – 1998
Federal Bar Association – Middle District of Pennsylvania Chapter
(no permanent address)
President (1997 – 1998)
President-Elect (1996 – 1997)

1979 – 1982
Pace University School of Law Alumni Association
78 North Broadway
White Plains, New York 10603
President (1979 – 1980)
Board of Governors (1979 – 1982)

1972 – 1975
Scranton Preparatory School Alumni Board of Governors
1000 Wyoming Avenue
Scranton, Pennsylvania 18509
Board of Governors

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 have registered 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.

Lackawanna County Bar Association special recognition for an outstanding address at the annual Bench/Bar Conference (2001)

Federal Bar Association – Middle District of Pennsylvania Chapter special recognition for outstanding leadership as the MDPA Chapter President (1998)

Director of the Federal Bureau of Investigation – Personal Commendation for outstanding service to the FBI (1993)

Attorney General of Pennsylvania – Personal Commendation for outstanding service to the Commonwealth of Pennsylvania (1993)

District Attorney for the County of Lackawanna – Personal Commendation for excellence in prosecution (1993)

Organized Crime Drug Enforcement Task Force – Mid-Atlantic Region

DOJ/DEA/FBI/ATF/IRS/INS/Treasury/Customs/Dept. of Defense special recognition for outstanding leadership as the Chief of the Middle District of Pennsylvania Task Force (1993)

Federal Bureau of Alcohol, Tobacco and Firearms – Philadelphia District special recognition for outstanding support, dedication and commitment to ATF (1993)

Federal Bureau of Investigation – Scranton Resident Agency special recognition for dedicated service to the FBI (1993)

Immigration and Naturalization Service Liberty Bell Award for outstanding counsel to the INS

Internal Revenue Service – Criminal Investigation Division honorary Special Agent Award in recognition of professional competence and personal diligence (1993)

United States Customs Service – Philadelphia District special recognition for dedication to the work of the Customs Service (1993)

United States Drug Enforcement Administration – Allentown Resident Agency special recognition for dedication to the mission of DEA (1993)

United States Drug Enforcement Administration – Philadelphia Field Division special recognition in appreciation for support and dedication to the mission of DEA (1993)

United States Marshals Service – Middle District of Pennsylvania special recognition for dedication and support of the Marshals Service (1993)

Kingston, Pennsylvania Police Department special recognition for dedication and professionalism in the prosecution of narcotics offenses with the Special Investigation Division (1993)

Wilkes-Barre, Pennsylvania Police Department special recognition for outstanding service to the people of Wilkes-Barre (1993)

United States Attorney's Office – Middle District of Pennsylvania Special Achievement Awards for outstanding service (multiple)

United States Department of Justice Special Achievement Awards for outstanding service (multiple)

Prosecutor of the Year Award– Pennsylvania Narcotics Officers Association (1992)
President’s Scholarship – University of Scranton (1972 – 1976)
Dean’s List (multiple semesters) – University of Scranton (1972 – 1976)
Psi Chi National Honor Society – University of Scranton (1976)
Who’s Who Among American Colleges and Universities (1976)

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.

Administrative Office of United States Courts, Magistrate Judges Advisory Committee
(2010 – Present)

Federal Bar Association – Middle District of Pennsylvania
Third Circuit National Delegate (1998 – 1999)
President (1997 – 1998)
President-Elect (1996 – 1997)

Federal Magistrate Judges Association
President (2011 – Present)
President-Elect (2010 – 2011)
Vice President (2009 – 2010)
Secretary (2008 – 2009)
Third Circuit Director (2003 – 2007)
Chair, E-Communications Committee (2008 – 2011)
Chair, Title Committee (2005 – 2007)
Member, Rules Committee (2003 – 2008)

Judicial Council of the Court of Appeals for the Third Circuit, Automation and
Technology Committee (2010 – Present)

Lackawanna County Bar Association
Civil Rules Committee (1993 – 1997)
Red Mass Committee (1993 – 1997)

Pennsylvania Bar Association

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 (1980) (“retired” pursuant to N.Y. CLS Standards & Admin. Pol. § 118.1(g) and N.Y. CLS Jud. § 468-a)

Pennsylvania (1986) (“inactive” pursuant to Pa. R.D.E. 219(b))

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 (1985)
United States Court of Appeals for the Second Circuit (1985)
United States Court of Appeals for the Third Circuit (1987)
United States District Court for the Middle District of Pennsylvania (1986)
United States District Court for the Eastern District of New York (1980)
United States District Court for the Southern District of New York (1980)
Supreme Court of Pennsylvania (1986)
Supreme Court of New York (1980)

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.

Abington Youth Basketball League
Coach (1990 – 2007)
Abington Youth Soccer League
Coach (1989 – 2005)
Friends of the Poor Thanksgiving Dinner server (1988 – Present)
Friendly Sons of St. Patrick of Lackawanna County (1986 – Present)
Lakeland Girls Softball Association
Coach (2005 – 2008)
Our Lady of Peace School (1989 – Present)
Basketball Coach (1995 – 2008)
Forensics Judge (2001 – Present)
Parent's Association (1989 – 2008)
Junior Academy of Science Advisor (1996 – 2008)
Annual Field Day Judge (1989 – 2008)
Pace University School of Law Alumni Association (1979 – Present)
President (1979 – 1980)
Alumni Board of Governors (1979 – 1982)
Pennsylvania Junior Academy of Science
Regional & State Judge (1996 – 2008)

Saint John Vianney Roman Catholic Parish (formerly Corpus Christi Roman Catholic Parish) (1985 – Present)

Finance Committee (1990 – 2001)

Saint Joseph's Children's Hospital Auxiliary (1985 – Present)

Co-Chair Annual Picnic Booth (1987 – Present)

Scott Township Little League

Coach (1985 – 2005)

Scranton Preparatory School

Alumni Board of Governors (1972 – 1975)

Mock Trial Coach (1998 – Present)

Parent's Association (1996 – Present)

University of Scranton Alumni Association (1976 – Present)

Annual Fund Captain (1990's)

- 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.

As indicated in its name, the Friendly Sons of St. Patrick of Lackawanna County is an annual dinner of Irish-American fathers and sons. Otherwise, to the best of my knowledge, none of the organizations listed in response to Question 11a currently discriminates or previously discriminated on the basis of race, sex, religion, or national origin.

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.

In 2011, as President of the Federal Magistrate Judges Association, I prepared a statement of introduction and goals for the Association during my year as President. That statement was published on the Federal Magistrate Judges Association internal website. Copy supplied.

Hon. Malachy E. Mannion, *Objections Overruled: The Trial Advocacy Course Should Be Mandatory*, 30 Pace L. Rev. 1195, 1206 (2010). 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 participated, as a Federal Magistrate Judges Association Rules Committee member and as a Federal Magistrate Judges Association Executive Board member, in drafting and/or approving the Association's annual review and comments to the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, concerning the annual proposed revisions to the Federal Rules of Evidence, Criminal and Civil Procedure. Copies of those comments are supplied.

As the Third Circuit Director for the Federal Magistrate Judges Association, I drafted the *Federal Magistrate Judge Association Third Circuit Director Election Plan*, which was adopted on November 26, 2004. 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.

To the best of my recollection, I have not given any of the above.

- 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 listed the speaking engagements that I have been able to recall or identify by reviewing my calendar, travel records, resume and other sources available to me. While I have attempted to include each presentation, it is entirely possible that there are a few others for which I have no record or recollection. If there are any others, it is likely that they would have been presented to one of the groups listed below. I normally speak without notes, however, in those instances where I used notes or an outline that I have retained, I have supplied a copy. Similarly, I have supplied any recordings that I am aware exist.

March 13, 2012: Wilkes University Exchange Student Program. I spoke about the United States Constitution and the Federal Court System. I have no notes,

transcripts, or recordings. The address for Wilkes University is 84 West South Main Street, Wilkes-Barre, Pennsylvania 18766.

November 17, 2011: Immigration and Naturalization Ceremony. I have no notes, transcripts, or recordings. The address for the United States District Court for the Middle District of Pennsylvania is 240 West Third Street, Williamsport, Pennsylvania 17701.

June 9-10, 2011: "Rule 16 and E-Discovery," Electronic Discovery in Civil Litigation Instructor for the United States Department of Justice National Advocacy Center, Columbia, South Carolina. Notes and materials supplied.

March 23, 2011: Federal Civil Pretrial Practice Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

March 16, 2011: Federal Tort Claims Seminar Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

February 15-18, 2011: Federal Criminal Trial Advocacy Course Judge and Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

February 10, 2011: Committee for Justice for All Continuing Legal Education Seminar (previously known as the Northeastern Pennsylvania Trial Lawyers Association), Wilkes-Barre, Pennsylvania. I spoke on Ethics for Judges and Trial Lawyers. I have no notes, transcripts or recordings. This group does not have a formal address.

December 2-3, 2010: "Hearsay: The Word that Strikes Fear in the Hearts of Lawyers," Federal Evidence and Civil Litigation Instructor for the United States Department of Justice National Advocacy Center, Columbia, South Carolina. Copy of PowerPoint slides supplied.

November 18-19, 2010: Electronic Discovery in Civil Litigation Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

November 16, 2010: Lackawanna Bar Association Memorial Service, Scranton, Pennsylvania. I spoke *in Memoriam* for Joseph A. Lach, Esquire. Remarks supplied.

October 22, 2010: Federal Civil Pretrial Practice Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

July 29-30, 2010: Federal Civil Pretrial Practice Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

May 25-28, 2010: Electronic Discovery in Civil Litigation Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

April 15, 2010: Marywood University Graduate School. I gave a presentation to graduate students about the Federal Courts. I have no notes, transcripts or recordings. The address for Marywood University is 2300 Adams Avenue, Scranton, Pennsylvania 18509.

April 7, 2010: Pace University School of Law Honors Program. I gave a presentation concerning the Federal Sentencing Guidelines. I have no notes, transcripts or recordings. The address for Pace University School of Law is 78 North Broadway, White Plains, New York 10603.

March 31, 2010: Widener University School of Law. I served as a Hugh B. Pearce Mock Trial Finals Judge. I have no notes, transcripts or recordings. The address for Widener University School of Law is 3800 Vartan Way, Harrisburg, Pennsylvania 17106.

February 4-5, 2010: "Federal Rule of Civil Procedure 68: Offer of Judgment," Federal Civil Pretrial Practice Instructor for the United States Department of Justice National Advocacy Center, Columbia, South Carolina. Copy of Corel presentation slides supplied.

November 18-20, 2009: Electronic Discovery in Civil Litigation Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

October 27-29, 2009: Federal Civil Trial Advocacy Course Judge and Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

October 22, 2009: "How to Have a Safe Flight through the Discovery Process," American Bar Association Tort, Trial & Insurance Section Seminar, Washington, DC. I presented on Electronic Discovery in Federal Cases. Materials supplied.

July 30, 2009: Wilkes University Exchange Student Program. I spoke about the United States Constitution and the Federal Court System. I have no notes, transcripts, or recordings. The address for Wilkes University is 84 West South Main Street, Wilkes-Barre, Pennsylvania 18766.

April 28-30, 2009: Federal Civil Trial Advocacy Course Judge and Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

April 24, 2009: Pace University School of Law Honors Program. I gave a presentation concerning the Federal Sentencing Guidelines. I have no notes, transcripts or recordings. The address for Pace University School of Law is 78 North Broadway, White Plains, New York 10603.

March 23-26, 2009: Federal Civil Trial Advocacy Course Judge and Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

March 16, 2009: Marywood University. I gave a presentation to undergraduate students concerning Federal Identity Fraud/Theft Crimes. I have no notes, transcripts or recordings. The address for Marywood University is 2300 Adams Avenue, Scranton, Pennsylvania 18509.

January 8-9, 2009: Federal Civil Pretrial Practice Instructor for the United States Department of Justice National Advocacy Center, Columbia, South Carolina. DVDs supplied.

November 18-19, 2008: Negotiation and Mediation Seminar Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

November 6, 2008: Luzerne County Bar Association Annual Bench/Bar Conference. I presented on Removal to Federal Court pursuant to 28 U.S.C. § 1441. I have no notes, transcripts or recordings. The address for the Luzerne County Bar Association is 200 North River Street, Wilkes-Barre, Pennsylvania 18711.

October 21-23, 2008: Federal Evidence for Civil Litigators Instructor for the United States Department of Justice National Advocacy Center. I have no notes,

transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

July 19-24, 2008: Federal Civil Trial Advocacy Course Judge and Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

April 21-25, 2008: Federal Evidence and Federal Mediation Practice Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

April 3, 2008: Marywood University Graduate School. I gave a presentation to graduate students concerning Federal Criminal Prosecution and Sentencing. I have no notes, transcripts or recordings. The address for Marywood University is 2300 Adams Avenue, Scranton, Pennsylvania 18509.

April 2, 2008: Pace University School of Law Honors Program. I gave a presentation concerning the Federal Sentencing Guidelines. I have no notes, transcripts or recordings. The address for Pace University School of Law is 78 North Broadway, White Plains, New York 10603.

March 26, 2008: Widener University School of Law. I gave a presentation on Legal Writing and Research. I have no notes, transcripts or recordings. The address for Widener University School of law is 3800 Vartan Way, Harrisburg, Pennsylvania 17106.

February 5-7, 2008: Federal Civil Trial Advocacy Course Judge and Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

December 12, 2007: Pennsylvania Trial Lawyers Association Auto Law Seminar, Pittston, Pennsylvania. I presented on Removal to Federal Court pursuant to 28 U.S.C. § 1441. I have no notes, transcripts or recordings. This group does not have a formal address.

December 8, 2007: Pace University School of Law Grand Moot Court. I presided over oral arguments. I have no notes, transcripts or recordings. The address for Pace University School of Law is 78 North Broadway, White Plains, New York 10603.

October 23-26, 2007: Federal Civil Trial Advocacy Course Judge and Instructor for the United States Department of Justice National Advocacy Center. I have no

notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

September 17, 2007: Northwest Area School District Constitution Day. I spoke on the greatness of the United States Constitution. I have no notes, transcripts or recordings. Northwest Area School District's address is 243 Thorne Hill Road, Shickshinny, Pennsylvania 18655.

May 18, 2007: Criminal Courtroom Deputy Training, United States District Court for the Middle District of Pennsylvania. I presented on Federal Courtroom Procedures. I have no notes, transcripts or recordings. The United States District Court address is 235 North Washington Avenue, Scranton, Pennsylvania 18503.

April 14, 2007: Pace University School of Law Grand Moot Court. I presided over oral arguments. I have no notes, transcripts or recordings. The address for Pace University School of Law is 78 North Broadway, White Plains, New York 10603.

March 14, 2007: Pace University School of Law Honors Program. I gave a presentation concerning the Federal Sentencing Guidelines. I have no notes, transcripts or recordings. The address for Pace University School of Law is 78 North Broadway, White Plains, New York 10603.

February 12-15, 2007: Federal Civil Trial Advocacy Course Judge and Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

February 1, 2007: Widener University School of Law. I gave a presentation on Legal Writing and Research. I have no notes, transcripts or recordings. The address for Widener University School of law is 3800 Vartan Way, Harrisburg, Pennsylvania 17106.

October 25, 2006: Equal Employment Opportunity Mock Trial for the Pennsylvania Labor Management Council, Scranton, Pennsylvania. The members of the Scranton Prep Mock Trial Team participated in this event. I acted as the Judge. I have no notes, transcripts or recordings. The organization no longer exists in Scranton, Pennsylvania and therefore has no address.

October 5, 2006: Pace University School of Law 7th Annual Scholarship & Awards Ceremony. I was the Keynote Speaker. I presented on the topic of Honesty, Integrity and Ethics in the Law. I have no notes, transcripts or recordings. The address for Pace University School of Law is 78 North Broadway, White Plains, New York 10603.

October 11, 2006: University of Scranton. I gave a presentation to undergraduate students concerning Ethics and the Law. I have no notes, transcripts or recordings. The address for the University of Scranton is 800 Linden Street, Scranton, Pennsylvania 18510.

June 14-16, 2006: Federal Motion Practice, Brief Writing and a "View from the Bench" Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

April 1, 2006: Pace University School of Law Grand Moot Court. I presided over oral arguments. I have no notes, transcripts or recordings. The address for Pace University School of Law is 78 North Broadway, White Plains, New York 10603.

March 29, 2006: Pace University School of Law Honors Program. I gave a presentation concerning the Federal Sentencing Guidelines. I have no notes, transcripts or recordings. The address for Pace University School of Law is 78 North Broadway, White Plains, New York 10603.

October 24, 2005: United States Attorney for the Middle District of Pennsylvania's Office Conference. I presented on the functions of a United States Magistrate Judge. I have no notes, transcripts or recordings. The address for the United States Attorney for the Middle District of Pennsylvania is William J. Nealon United States Courthouse and Federal Building, 225 North Washington Avenue, Scranton, Pennsylvania 18503.

March 30, 2005: Pace University School of Law Honors Program. I gave a presentation concerning the Federal Sentencing Guidelines. I have no notes, transcripts or recordings. The address for Pace University School of Law is 78 North Broadway, White Plains, New York 10603.

November 18, 2004: Marywood University Graduate School Community Corrections class. I gave a presentation to graduate students concerning the Federal Judiciary. I have no notes, transcripts or recordings. The address for Marywood University is 2300 Adams Avenue, Scranton, Pennsylvania 18509.

October 7, 2004: Boy Scouts of America Citizenship Merit Badge. I spoke to a local Boy Scout troop concerning the Federal Courts at the United States Courthouse located at 197 South Main Street, Wilkes-Barre, Pennsylvania 18701. I have no notes, transcripts or recordings.

October 5, 2004: Age Discrimination in the Workplace Mock Trial for Pennsylvania Labor Management Council. The members of the Scranton Prep Mock Trial Team participated in this event. I acted as the Judge. I have no notes, transcripts or recordings. The organization no longer exists in Scranton, Pennsylvania and therefore has no address.

April 17, 2004: Temple University School of Law LL.M. Trial Advocacy Finals. I judged and critiqued participants in their LL.M. Final Trial Exam. I have no notes, transcripts or recordings. The address of Temple University School of Law is 1719 North Broad Street, Philadelphia, Pennsylvania 19122.

November 15, 2003: Dowling College Graduate School Government and Business class. I spoke on Federal White Collar Crime. I have no notes, transcripts or recordings. The address of Dowling College is 1300 William Floyd Parkway, Shirley, New York 11967.

September 26, 2003: University of Scranton. I gave a presentation to undergraduate students concerning the United States Constitution's Fourth, Fifth and Sixth Amendments. I have no notes, transcripts or recordings. The address for the University of Scranton is 800 Linden Street, Scranton, Pennsylvania 18510.

August 26, 2003: Middle District of Pennsylvania Chapter of the Federal Bar Association Lunch/Learn, Scranton, Pennsylvania. I spoke as part of a panel on the Patriot Act and Terrorism. I have no notes, transcripts or recordings. This group does not have a formal address.

April 5, 2003: Dowling College Graduate School Government and Business class. I spoke on Federal Money Laundering Violations. I have no notes, transcripts or recordings. The address of Dowling College is 1300 William Floyd Parkway, Shirley, New York 11967.

February 28, 2003: University of Scranton. I gave a presentation to undergraduate students concerning the Fourth Amendment to the United States Constitution. I have no notes, transcripts or recordings. The address for the University of Scranton is 800 Linden Street, Scranton, Pennsylvania 18510.

November 23, 2002: Dowling College Graduate School Government and Business class. I spoke on Federal White Collar and Economic Crime. I have no notes, transcripts or recordings. The address of Dowling College is 1300 William Floyd Parkway, Shirley, New York 11967.

October 24, 2002: Boy Scouts of America Citizenship Merit Badge. I spoke to a local Boy Scout troop concerning Basic Constitutional Rights at the United States Courthouse located at 197 South Main Street, Wilkes-Barre, Pennsylvania 18701. I have no notes, transcripts or recordings.

July 11, 2002: Commonwealth of Pennsylvania's "Office of General Counsel University." I spoke as part of a panel on Discovery in the Electronic Information Age. I have no notes, transcripts or recordings. The Office of General Counsel's address is 333 Market Street, 17th Floor, Harrisburg, Pennsylvania 17101.

June 25, 2002: Social Security Law Seminar, Wilkes-Barre, Pennsylvania. I spoke on Social Security Practice before United States Magistrate Judges. I do not have a recollection of the sponsor of this seminar. I have no notes, transcripts or recordings.

May 2002: Masters Leadership Program. I spoke on the United States Court System at the Max Rosenn United States Courthouse, Wilkes-Barre, Pennsylvania. I have no notes, transcripts or recordings. I have no address for this group.

November 10, 2001: Lackawanna Bar Association Annual Bench/Bar Conference. As the Keynote Speaker, I spoke on the Transition from Litigation Attorney to Federal Judge. I have no notes, transcripts or recordings. The address of the Lackawanna Bar Association is 338 North Washington Avenue, Scranton, Pennsylvania 18503.

April 2001: Middle District of Pennsylvania Chapter of the Federal Bar Association Lunch/Learn, Scranton, Pennsylvania. I spoke on Social Security Law and Practice in the Middle District of Pennsylvania. I have no notes, transcripts, or recordings. This group does not have a formal address.

October 27, 2000: Middle District of Pennsylvania Chapter of the Federal Bar Association, Scranton, Pennsylvania. I presented a plaque to retiring U.S. Magistrate Judge Raymond J. Durkin. I have no notes, transcripts, or recordings. This group does not have a formal address.

October 1998: Federal Bench/Bar – Program Organizer/Moderator on Federal Litigation and Ethics. I have no notes, transcripts or recordings. The Middle District of Pennsylvania Chapter of the Federal Bar Association does not have a formal address.

June 1998: Pennsylvania Bar Institute Developments in Federal Practice Seminar. I presented on Ethics and Professionalism. I have no notes, transcripts or recordings. The address of the Pennsylvania Bar Institute is 5080 Ritter Road, Mechanicsburg, Pennsylvania 17055.

May 1998: Middle District of Pennsylvania Chapter of the Federal Bar Association Seminar on the Admissibility of Scientific Evidence in Federal Courts – Program Organizer/Moderator, Wilkes-Barre, Pennsylvania. I have no notes, transcripts, or recordings. This group does not have a formal address.

April 1998: Middle District of Pennsylvania Chapter of the Federal Bar Association Lunch/Learn, Lewisburg, Pennsylvania. I spoke on Pro Bono Practice and Government Lawyers. I have no notes, transcripts, or recordings. This group does not have a formal address.

October 1997: Middle District of Pennsylvania Chapter of the Federal Bar Association Seminar, Scranton, Pennsylvania. I spoke on Federal Litigation and Ethics. I have no notes, transcripts, or recordings. This group does not have a formal address.

October 1996: Lackawanna County Bench/Bar Conference Update on Pennsylvania Litigation Law. I spoke on Recent Pennsylvania Litigation and Evidence Law Decisions. I have no notes, transcripts or recordings. The address of the Lackawanna Bar Association is 338 North Washington Avenue, Scranton, Pennsylvania 18503.

December 1995: Pennsylvania Bar Institute Civil Trial Advocacy in Federal Court Seminar, Mechanicsburg, Pennsylvania. I have no notes, transcripts or recordings. The address of the Pennsylvania Bar Institute is 5080 Ritter Road, Mechanicsburg, Pennsylvania 17055.

April 1995: Georgetown University Law School Federal Civil Litigation Practice. I spoke on Federal Procedure and Trial Tactics. I have no notes, transcripts or recordings. The address for Georgetown School of Law is 600 New Jersey Avenue, NW, Washington, DC 20001.

October 1994: Kings College. I gave a presentation to undergraduate students concerning Federal Constitutional Law. I have no notes, transcripts or recordings. The address for Kings College is 133 North Franklin Street, Wilkes-Barre, Pennsylvania 18701.

April 1994: Kings College. I gave a presentation to undergraduate students concerning the Fourth Amendment/Search and Seizure. I have no notes, transcripts or recordings. The address for Kings College is 133 North Franklin Street, Wilkes-Barre, Pennsylvania 18701.

September 1993: Pennsylvania State Police Electronic Surveillance Seminar. I spoke on Federal Wiretap Law. I have no notes, transcripts or recordings. The address of the Pennsylvania State Police Training Academy is 175 East Hershey Park Drive, Hershey, Pennsylvania 17033.

July 1993: Federal Criminal Trial Advocacy Course Instructor for the United States Department of Justice Attorney General's Advocacy Institute, Washington, DC. I have no notes, transcripts or recordings. The Attorney General's Advocacy Institute has since been replaced by the National Advocacy Center. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

June 1993: Federal Narcotics Prosecution Seminar Instructor for the United States Department of Justice Attorney General's Advocacy Institute, Phoenix, Arizona. I have no notes, transcripts or recordings. The Attorney General's Advocacy

Institute has since been replaced by the National Advocacy Center. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

October 1992: Fourth Annual Pennsylvania Narcotics Officers Association Conference, Philadelphia, Pennsylvania. I presented on Federal Narcotics Prosecution and Asset Forfeiture Laws. I have no notes, transcripts or recordings. This group does not have a formal address.

September 1992: Internal Revenue Service International Narcotics and Money Laundering Seminar, Virginia Beach, Virginia. I presented on International Money Laundering and Tax Prosecution. I have no notes, transcripts or recordings. The address of the IRS is 1111 Constitution Avenue, NW, Washington, DC 20004.

June 1992: Federal Criminal Trial Advocacy Course Instructor for the United States Department of Justice Attorney General's Advocacy Institute, Washington, DC. I have no notes, transcripts or recordings. The Attorney General's Advocacy Institute has since been replaced by the National Advocacy Center. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

June 1992: United States Attorney for the Middle District of Pennsylvania's Federal/State/Local cooperative criminal investigation and prosecution seminar, Lewisburg, Pennsylvania. I presented on Federal Programs in Support of State/Local Law Enforcement. I have no notes, transcripts or recordings. The address for the United States Attorney for the Middle District of Pennsylvania is William J. Nealon United States Courthouse and Federal Building, 225 North Washington Avenue, Scranton, Pennsylvania 18503.

May 1992: United States Attorney for the Middle District of Pennsylvania's Asset Forfeiture/Equitable Sharing Seminar, Lewisburg, Pennsylvania. I presented on Federal Asset Forfeiture Laws. I have no notes, transcripts or recordings. The address for the United States Attorney for the Middle District of Pennsylvania is William J. Nealon United States Courthouse and Federal Building, 225 North Washington Avenue, Scranton, Pennsylvania 18503.

March 1992: Mid-Atlantic Great Lakes Organized Crime Law Enforcement Network (MAGLOCLN) Major Crimes Seminar, Wilkes-Barre, Pennsylvania. I presented on Federal Narcotic Investigations and Prosecutions. I have no notes, transcripts or recordings. This group does not have a formal address.

February 1992: United States Attorney for the Middle District of Pennsylvania's Armed Career Criminal Seminar for State and Local Prosecutors and Law Enforcement Officials, Forty-Fort, Pennsylvania. I presented on Federal Armed Career Criminal Laws. I have no notes, transcripts or recordings. The address for

the United States Attorney for the Middle District of Pennsylvania is William J. Nealon United States Courthouse and Federal Building, 225 North Washington Avenue, Scranton, Pennsylvania 18503.

January 1992: Federal Criminal Trial Advocacy Course Instructor for the United States Department of Justice Attorney General's Advocacy Institute, Washington, DC. I have no notes, transcripts or recordings. The Attorney General's Advocacy Institute has since been replaced by the National Advocacy Center. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

December 1991: Federal Criminal Trial Advocacy Course Instructor for the United States Department of Justice Attorney General's Advocacy Institute, Los Angeles, California. I have no notes, transcripts or recordings. The Attorney General's Advocacy Institute has since been replaced by the National Advocacy Center. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

September 1991: Internal Revenue Service International Narcotics and Money Laundering Seminar, Virginia Beach, Virginia. I presented on International Money Laundering and Tax Prosecution. I have no notes, transcripts or recordings. The address of the IRS is 1111 Constitution Avenue, NW, Washington, DC 20004.

July 1991: Federal Criminal Trial Advocacy Course Instructor for the United States Department of Justice Attorney General's Advocacy Institute, Washington, DC. I have no notes, transcripts or recordings. The Attorney General's Advocacy Institute has since been replaced by the National Advocacy Center. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

March 1991: Internal Revenue Service Financial Training Seminar. I presented on Money Laundering and Currency Transaction Reporting Laws, Wilkes-Barre, Pennsylvania. I have no notes, transcripts or recordings. The address of the IRS is 1111 Constitution Avenue, NW, Washington, DC 20004.

February 1991: Federal Criminal Trial Advocacy Course Instructor for the United States Department of Justice Attorney General's Advocacy Institute, Washington, DC. I have no notes, transcripts or recordings. The Attorney General's Advocacy Institute has since been replaced by the National Advocacy Center. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

September 1990: Internal Revenues Service Organized Crime Drug Enforcement Task Force Conference, Virginia Beach, Virginia. I presented on International Money Laundering and Tax Prosecution. I have no notes, transcripts or

recordings. The address of the IRS is 1111 Constitution Avenue, NW, Washington, DC 20004.

July 1990: Federal Criminal Trial Advocacy Course Instructor for the United States Department of Justice Attorney General's Advocacy Institute, Washington, DC. I have no notes, transcripts or recordings. The Attorney General's Advocacy Institute has since been replaced by the National Advocacy Center. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

May 1990: United States Attorney for the Middle District of Pennsylvania's Armed Career Criminal Seminar for State and Local Prosecutors and Law Enforcement Officials, Scranton, Pennsylvania. I presented on Federal Armed Career Criminal Laws. I have no notes, transcripts or recordings. The address for the United States Attorney for the Middle District of Pennsylvania is William J. Nealon United States Courthouse and Federal Building, 225 North Washington Avenue, Scranton, Pennsylvania 18503.

May 1990: United States Attorney for the Middle District of Pennsylvania's Armed Career Criminal Seminar for State and Local Prosecutors and Law Enforcement Officials, Harrisburg, Pennsylvania. I presented on Federal Armed Career Criminal Laws. I have no notes, transcripts or recordings. The address for the United States Attorney for the Middle District of Pennsylvania is William J. Nealon United States Courthouse and Federal Building, 225 North Washington Avenue, Scranton, Pennsylvania 18503.

- 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.

Sarah Hofius Hall, *Prep's Mock Trial Team Headed to National Competition*, Scranton Times-Tribune, May 4, 2010. Copy supplied.

A Destined Public Servant, Pace Law School Magazine, Spring 2010, at 18. Copy supplied.

Chris Parker, *Judge Orders Aucker to Work at Veterans Hospital in Iowa; For Falsifying Military Records, He'll Also Be on Probation 2 Years*, Allentown Morning Call, Oct. 19, 2000, at B1. Copy supplied.

David Slade, *Aucker to Plead Guilty to Falsifying His Record; Panther Valley's Ex-Chief Signs Papers that Transfer the Federal Military Charge to Iowa*, Allentown Morning Call, Mar. 25, 2000, at B5. Copy supplied.

Chris Parker, *Ex-Superintendent's Arraignment Delayed*, Allentown Morning Call, Feb. 10, 2000, at B1. Copy supplied.

Bonnie Adams, *Ex-School Head Faces Fraud Charge for Allegedly Lying about Military Record*, Wilkes-Barre Times Leader, Jan. 24, 2000, at 3A. Copy supplied.

Chris Parker, *Ex-Schools Superintendent Faces Arraignment Feb. 11*, Allentown Morning Call, Jan. 17, 2000, at B01. Copy supplied.

Chris Parker, *Aucker Hit by Charge of Altering His Records*, Allentown Morning Call, Jan. 7, 2000, at A01 (reprinted in multiple outlets). Copy supplied.

Drug Prison Term Never Imposed Due to Mixup, Associated Press, Sept. 17, 1999. Copy supplied.

Chuck Ayers, *Judge Decides Alien Must Stay for Carbon Trial*, Allentown Morning Call, July 22, 1998, at B1. Copy supplied.

Chuck Ayers, *Businessman Posts Bail, But Doesn't Leave Prison*, Allentown Morning Call, Jan. 9, 1998, at B1. Copy supplied.

Jerry Lynott, *Conaham Asks Judicial Board to Open Up Luzerne County*, Wilkes-Barre Times Leader, Aug. 18, 1994, at 1A. Copy supplied.

Jerry Lynott, *Kingston Cocaine Dealer Loses His Share of Tavern*, Wilkes-Barre Times Leader, Apr. 14, 1993, at 3A. Copy supplied.

Walt Roland, *Cocaine Suspects Face Arraignment*, Allentown Morning Call, Jan. 28, 1993, at B3. Copy supplied.

David Herzog, *American Dream Sours for Two After Drug Indictments*, Allentown Morning Call, Apr. 7, 1991. Copy supplied.

Bob Laylo, *Carbon Arrest Helps Topple Empire*, Allentown Morning Call, Apr. 29, 1990, at B01. Copy supplied.

Associated Press, *Restaurant Raid Turns Up Food Intended for Home*, Philadelphia Inquirer, Feb. 17, 1989. Copy supplied.

Associated Press, *Two Are Found Guilty in Appointment of Police*, Philadelphia Inquirer, May 20, 1988. Copy supplied.

Sean Connolly, *Jim Thorpe Faces U.S. Court in Drugs Case*, Allentown Morning Call, Apr. 18, 1988, at B1. Copy supplied.

David Singleton, *Treatment Ordered for Blast Suspect*, Philadelphia Inquirer, Mar. 21, 1987. Copy supplied.

The Wrong Man, United Press International, Nov. 24, 1982. 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 was appointed as a United States Magistrate Judge in 2001, and continue to serve in that position. United States Magistrate Judges are judges in the United States District Court System as described in 28 U.S.C. § 631 et seq.: "Upon consent of the parties, a full time United States Magistrate Judge... may conduct any and all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case..." 28 U.S.C. § 636. In consent matters, a Magistrate Judge has virtually the same jurisdiction as an Article III District Judge, including that appeals from the Magistrate Judge's consent cases normally go directly to the Court of Appeals. In non-consent matters, "a District Judge may designate a Magistrate Judge to hear and determine any pretrial matter pending before the court." 28 U.S.C. § 631. Unlike a consent case, if the pretrial matter would be dispositive of the case, the Magistrate Judge prepares a Report and Recommendation outlining proposed findings of facts and conclusions of law for consideration by the District Judge. In criminal matters, Magistrate Judges have jurisdiction over misdemeanor and petty offenses. A Magistrate Judge also has jurisdiction over preliminary felony criminal matters including, but not limited to, initial appearances, arraignments, bail determinations, pleas, search and arrest warrants.

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

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- i. Of these, approximately what percent were:

jury trials:	25%
bench trials:	75%
civil proceedings:	30%
criminal proceedings:	70%

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

See attached list.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the

case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Schmidt v. Aponick*, 4:06-cv-997. Opinion supplied.

This was a federal civil rights action alleging a violation of the Fourth Amendment of the United States Constitution. The plaintiff alleged that when signaled by a Pennsylvania state trooper to pull over for a traffic violation, he failed to stop and instead led the trooper on a 13 mile vehicle chase. With the state trooper in pursuit, the plaintiff smashed his truck into a gate thereby disabling the vehicle in a remote wooded area. The plaintiff fled on foot and was pursued by a trooper into a wooded state game land area, where he was caught and advised that he was under arrest. According to the plaintiff, upon being caught, the state trooper began beating the plaintiff with his baton, and with the plaintiff face down on the ground, the state trooper put his knee into the plaintiff's back and forced his arms behind his back. The plaintiff alleged that he suffered a shoulder injury that required surgical repair. Additionally, the plaintiff complained of injury to his leg, neck and finger, bruising on various parts of his body and open wounds which required closure. Prior to trial, counsel for both sides submitted motions *in limine* attacking the opposing medical experts. Both motions were denied as I ruled that each expert was qualified to testify. This case was tried before a jury. A verdict was returned for the defendant. No appeal was taken.

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2. *Dorkoski v. Pensyl, et al.*, 4:05-cv-705, 2007 U.S. Dist. LEXIS 17114 (M.D. Pa. Mar. 9, 2007).

This was a federal civil rights action alleging unreasonable force, malicious prosecution, assault and battery, conspiracy and due process violations under the Fourth and Fourteenth Amendments of the United States Constitution. The plaintiff, a 72-year-old man, became involved when his son fled police onto the plaintiff's property and into the plaintiff's garage. When the defendants arrived on the plaintiff's property, the plaintiff ordered them off of his property unless they possessed a warrant. An altercation ensued between the plaintiff and the defendants involving a steel pipe. The defendants forcefully took the plaintiff to the ground and removed a set of keys from his pocket to access the garage. The plaintiff alleges he was beaten without cause, arrested on false charges designed to cover up the defendants' activities and held in a jail cell without probable cause. The plaintiff claimed multiple injuries requiring hospitalization, medication, physical therapy and substantial medical indebtedness. Prior to trial, I granted partial summary judgment to some defendants and denied summary judgment on a number of other claims. This case was tried before a jury. A verdict was returned for the defendants. No appeal was taken.

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Counsel for the Defendants:

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William J. Ferren & Associates
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West Chester, PA 19381
(610) 701-3263

Janelle E. Fulton
Rubin, Fortunato & Harbison, P.C.
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Paoli, PA 19301
(610) 408-2038

3. *Kress v. Birchwood Landscaping*, 3:05-cv-566. Report and recommendation supplied.

This was a federal employment discrimination suit based upon allegations of sexual harassment, retaliation and hostile work environment under Title VII of the Civil Rights Act of 1964 and the Pennsylvania Human Relations Act. In addition, plaintiff alleged discrimination under the Federal Equal Pay Act based upon gender discrimination. The plaintiff was hired by the garden center as a salesperson. Over time she began working with the landscape designer and foreman but alleged she did not receive the same pay because she was a female. Additionally, during this time the owner allegedly made numerous unwanted sexual advances to the plaintiff, including asking her out, giving her gifts and stating that if she was nice to him she could get a raise. The plaintiff allegedly rejected these advances and was punished by being required to work as landscape designer foreman but without the same pay as her male counterpart. Prior to trial, and before the parties had consented to my full jurisdiction, defense counsel submitted a motion for summary judgment. I recommended that the motion be granted with respect to several claims, and denied as to others. The District Judge adopted the report and recommendation in its entirety. 2007 U.S. Dist. LEXIS 17630 (M.D. Pa. Mar. 14, 2007). The parties later consented to my full

jurisdiction and this case was tried before a jury. A verdict was returned for the defendant. No appeal was taken.

Counsel for the Plaintiff:

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(570) 586-8604

Counsel for the Defendant:

Raymond P. Wendolowski
Law Offices of Raymond P. Wendolowski
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(570) 270-9180

Timothy P. Polishan
Kelley & Polishan, LLC
259 South Keyser Avenue
Old Forge, PA 18518
(570) 562-4520

4. *Imbergamo v. Castaldi, et al.*, 3:04-cv-292, 392 F. Supp. 2d 686 (M.D. Pa. 2005).

This was a federal civil rights action alleging unreasonable seizure, excessive force, malicious prosecution, and due process violations under the Fourth and Fourteenth Amendments of the United States Constitution. The plaintiff, a diabetic, was acting in a strange manner which resulted in his girlfriend calling an ambulance. When the ambulance arrived the plaintiff took off into the woods without shoes and was unable to be apprehended. The ambulance company contacted the Pennsylvania State Police for assistance. Upon arrival, the troopers located the plaintiff and convinced him to speak with them. There was no indication of any criminal activity on the part of the plaintiff. As the troopers got closer to the plaintiff, he was distracted and tackled to the ground by them. The plaintiff suffered multiple injuries, which allegedly resulted in his total disability. The ambulance company defendants cross claimed against the State Police defendants. Prior to trial, the State Police defendants moved for summary judgment on the malicious prosecution claim. Finding that the plaintiff had previously entered into a negotiated plea of guilty, I dismissed that claim. This case was tried before a jury and a verdict was returned for the plaintiff. However,

before judgment was entered, the parties agreed to settle the case. No appeal was taken.

Counsel for the Plaintiff:

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(570) 829-4860

Shelley L. Centini
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Counsel for the Defendants:

Amanda L. Smith
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R. Douglas Sherman
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5. *Mauer v. Susquehanna Twp., et al.*, 4:03-cv-306. Opinion supplied.

This was a federal civil rights action alleging excessive force, malicious prosecution, and a *Monell* claim for lack of proper training against a municipality in violation of the First, Fourth, Fifth and Fourteenth Amendments of the United States Constitution. Plaintiff alleged that he was approached by the police at his

apartment because of a complaint by a neighbor of excessive noise. The police officer allegedly banged on the plaintiff's apartment door for some time without response. When the plaintiff did respond, he was advised he was being placed under arrest for disorderly conduct and asked for identification. The plaintiff attempted to retreat into his apartment and a struggle ensued. According to the plaintiff, he was dragged into the public hallway, violently thrown to the ground and beaten. The plaintiff was charged with various criminal offenses, some of which he was later acquitted of. Prior to trial, I granted summary judgment with respect to a police officer and the township he worked for based upon a lack of any allegations of personal involvement. I also granted summary judgment in favor of an individual defendant on the allegations that the arrest lacked probable cause. I denied summary judgment on the excessive force, assault and battery claims. This case was tried before a jury. A verdict was returned for the defendant. No appeal was taken.

Counsel for the Plaintiff:

Andrew J. Ostrowski
4311 North Sixth Street
Harrisburg, PA 17110
(717) 221-9500

Counsel for the Defendants:

John P. Gonzales
Marshall, Dennehey, Warner, Coleman & Goggin
1845 Walnut Street
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(215) 575-2871

Megan Cinberg
Marshall, Dennehey, Warner, Coleman & Goggin
620 Freedom Business Center, Suite 300
King of Prussia, PA 19406
(610) 354-8275

6. *Salvato v. Wal-Mart, Inc.*, 3:00-cv-1697.

This case was a diversity action alleging libel, slander and assault in violation of Pennsylvania law. The defendant refused to sell the plaintiff a firearm after she allegedly indicated that she intended to use the weapon to harm a neighbor. When the plaintiff left the store, she indicated that she would purchase her gun somewhere else. An employee of Wal-Mart then contacted local sporting goods stores to warn them of the plaintiff's intention. The plaintiff denied these facts and alleged that this incident ruined her reputation such that she was unable to shop at

other stores. This case was tried before a jury. A verdict was returned for the plaintiff. No appeal was taken.

Counsel for the Plaintiff:

Richard J. Orloski
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111 North Cedar Crest Boulevard
Allentown, PA 18104
(610) 433-2363

Counsel for the Defendant:

Patrick J. McDonnell
McDonnell & Associates, P.C.
Metropolitan Business Center
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(570) 346-0745

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507 Linden Street
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7. *Valenti, et al. v. Allstate Insurance*, 3:99-cv-1234, 243 F. Supp. 2d 200 (M.D. Pa. 2002); 243 F. Supp. 2d 221 (M.D. Pa. 2003); *aff'd*, *Valenti v. Allstate Ins. Co.*, 94 Fed. Appx. 970 (3d Cir. 2004).

This was a diversity action for bad faith, breach of contract and punitive damages against the plaintiff's insurance carrier pursuant to Pennsylvania law. The plaintiff alleged a failure to pay claims related to a significant property fire. The defendant insurance company filed a counterclaim alleging insurance fraud and arson by the plaintiff as justification for the nonpayment of the claim, and seeking reimbursement for the costs of the investigation into the fire. This case was tried before a jury and a verdict was returned for the defendant/counterclaim-plaintiff. Following trial, counsel for the plaintiff submitted post-trial motions pursuant to

Fed. R. Civ. P. 50 and 59 claiming the court erred in its *in limine* rulings, its determination that the insurance policy in question was joint and the sufficiency of the evidence relating to the jury verdict in favor of the defendant/counterclaim-plaintiff on its insurance fraud claim. I denied each post-trial motion. The case was appealed to the Third Circuit and affirmed.

Counsel for the Plaintiffs:

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Counsel for the Defendants:

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8. *Eisenberry v. Shaw Brothers, et al.*, 3:08-cv-1337, 2010 U.S. Dist. LEXIS 81345 (M.D. Pa. Aug. 11, 2010), *aff'd*, 421 Fed. Appx. 239 (3d Cir. 2011).

This was a diversity case involving allegations of failure to properly maintain a rented premises by both the licensee who used the premises and the out of possession landlord who owned the property. The plaintiff alleged that as a result of these failures he sustained catastrophic injuries resulting in the plaintiff becoming a paraplegic. This case was tried before a jury. A verdict was returned

for the plaintiff. Following trial, counsel for one defendant submitted post-trial motions pursuant to Fed. R. Civ. P. 50 claiming, as a matter of law, that the court had erred in allowing the case to go to the jury. I denied the motion. The case was appealed to the Third Circuit and affirmed.

Counsel for the Plaintiff:

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Counsel for the Defendants:

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9. *Brown, et al. v. United States*, 3:07-cv-621, 2008 U.S. Dist. LEXIS 52986 (M.D. Pa. July 7, 2008).

This was a Federal Tort Claims Act action alleging negligence by a federal military employee, during and in the course of his federal employment, resulting in severe pain, suffering and permanent injuries to plaintiff. The plaintiff alleged that the defendant was negligent in the operation of a government owned vehicle driven by the plaintiff in the course of his employment as a military recruiter. Because this was a federal tort claim action it was tried before me without a jury. Judgment was entered in favor of the plaintiff. No appeal was filed.

Counsel for the Plaintiff:

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10. *Sampson Fire Sales Inc., et al. v. Oaks, et al.*, 4:99-cv-1208, 201 F.R.D. 351 (M.D. Pa. 2001), *aff'd*, 55 Fed. Appx. 87 (3d Cir. 2003).

This was a diversity action alleging misrepresentation and fraud, breach of lease, unjust enrichment, promissory estoppel and breach of agreement and contract to sell/purchase Sampson Fire Sales Inc. of Pennsylvania by North American Fire Equipment Co. of Alabama and North Alabama Fire Equipment Co. This complicated action included counterclaims for breach of contract, fraud and misrepresentation as well. In addition to the underlying action there were interesting issues concerning attorney-client privilege. Prior to trial, counsel for the plaintiff inadvertently disclosed alleged attorney/client privileged material to a defendant. Defense counsel thereafter included this information in a reply brief. When it was discovered, plaintiff's counsel moved to strike and seal the reply brief, strike defendants' answer and impose sanctions on defense counsel. I granted the motion to the extent that the brief was sealed, and denied the motion as to the request to strike defendants' answer and impose sanctions. This case was tried before a jury. A verdict was returned for the defendant. The case was appealed to the Third Circuit and affirmed.

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- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *In the Matter of the Extradition of Harshbarger*, 600 F. Supp. 2d 636 (M.D. Pa. 2009).

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2. *Franceschelli v. Verizon Pa., Inc.*, 2011 U.S. Dist. LEXIS 36180 (M.D. Pa. Apr. 4, 2011).

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3. *Rahemtulla v. Hassam, et al.*, 539 F. Supp. 2d 755 (M.D. Pa. 2008).

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4. *Zuder v. Aigeldinger, et al.*, 2007 U.S. Dist. LEXIS 64139 (M.D. Pa. 2007).

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5. *Ainbinder, et al. v. White Ash Land Association*, 363 F. Supp. 2d 762 (M.D. Pa. 2005).

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6. *Knoblauch v. Metropolitan Life Insurance Co, et al.*, 315 F. Supp. 2d 636 (M.D. Pa. 2004).

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7. *Sinde v. Gerlinski*, 252 F. Supp. 2d 144 (M.D. Pa. 2003).

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8. *Valenti v. Allstate Insurance Co.*, 243 F. Supp. 2d 200 (M.D. Pa. 2003).

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9. *Evan v. Estell*, 203 F.R.D. 172 (M.D. Pa. 2001).

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10. *Sampson Fire Sales, Inc., et al. v. Oaks, et al.*, 201 F.R.D. 351 (M.D. Pa. 2001).

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

Patterson v. Pennsylvania Office of Inspector General, 2006 U.S. Dist. LEXIS 59532 (M.D. Pa. Aug. 23, 2006), *aff'd*, 243 Fed. Appx. 695 (3d Cir. 2007), *cert. denied*, 552 U.S. 976 (2007).

- 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.

In the following cases, I entered final orders that were appealed to either the District Court or the Third Circuit and reversed.

Scottsdale Insurance Co. v. Bieber Associates, Inc. et al., 262 F. Supp. 2d 477 (M.D. Pa. 2003), *rev'd*, 105 Fed. Appx. 340 (3d Cir. 2004). In this declaratory judgment action, Scottsdale sought to be relieved of its obligations under a liability insurance policy on the grounds of late notice. Because Scottsdale had, *inter alia*, investigated the claim, negotiated with the injured plaintiff's counsel and made at least one pre-complaint offer to settle, I ruled that this evidence was sufficient to conclude that Scottsdale had notice of the claim. The Court of Appeals disagreed and held that there were unresolved issues of fact as to Scottsdale's knowledge. The parties settled the suit before any further proceedings could be scheduled.

In re Scranton Housing Authority, 436 F. Supp. 2d 714 (M.D. Pa. 2006), *vacated*, 487 F. Supp. 2d 530 (M.D. Pa. 2007). In this motion pursuant to Fed. R. Crim. P. 41(g) to unseal the affidavit of probable cause and for the return of property, in a case where I had authorized the underlying warrant, I ruled that a magistrate judge who has the authority to issue the search warrant and order its sealing pursuant to Rule 41 also retains the authority to unseal the affidavits and decide the motion for return of property. On appeal, the District Judge ruled that a magistrate judge does not have jurisdiction to entertain a Rule 41(g) motion to unseal and for the return of property.

According to the records of the clerk of court for the Middle District of Pennsylvania, as a United States Magistrate Judge, I have authored over 1340 "Report and Recommendations" ("R&Rs"). Every R&R is subject to review by the District Court, and I have been adopted in approximately 95% of those cases. The clerk of court has attempted to identify reports that were not adopted, or adopted in part, and I have listed the cases below. I have included cases in which the decision not to adopt related to some substantive disagreement with my R&R. Therefore this list does not include, for example, cases in which the District Judge allowed another opportunity to file an untimely amended document, payment of an untimely filing fee, or the late filing of the proper paperwork. Also excluded are cases in which the R&R was not adopted due to an intervening change of circumstances or because a party withdrew a claim after reviewing my R&R. It is possible there are others, however, because if they were not properly docketed there is no way to identify those cases.

Askew v. Paone, et al., 3:10-cv-2401, 2012 U.S. Dist. LEXIS 67014 (M.D. Pa. Jan. 11, 2012), *adopted in part*, 2012 U.S. Dist. LEXIS 67270 (M.D. Pa. May 14, 2012). The District Court adopted, in part, the recommendation; however, it allowed the plaintiff a limited discovery period on one issue, after plaintiff submitted new evidence in his objections to the report and recommendation.

Rockmore v. Harrisburg, et al., 1:10-cv-2652, USDC-MDPA, *not adopted*, 2012 U.S. Dist. LEXIS 37349 (M.D. Pa. Mar. 20, 2012). My report recommended that a motion to dismiss, based upon statute of limitations, be denied pending discovery on the issue of equitable tolling. The District Court did not adopt the report and instead dismissed the case. Copy supplied.

Kitchen v. Astrue, 3:10-cv-2150, USDC-MDPA, *not adopted*, 2012 U.S. Dist. LEXIS 13639 (M.D. Pa. Feb. 3, 2012). The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, finding that the matter should be remanded to the Commissioner for further consideration of conflicts in the medical opinions of some doctors.

Gray v. United States, 1:10-cv-1772, 2011 U.S. Dist. LEXIS 116780 (M.D. Pa. Aug. 17, 2011), *adopted in part*, 2011 U.S. Dist. LEXIS 112319 (M.D. Pa. Sept. 30, 2011). My report was adopted in part, however, the District Court dismissed the entire case after finding that the FTCA discretionary function defense applied.

Ward v. Kaminski, 1:10-cv-1276, USDC-MDPA, *adopted in part*, 2011 U.S. LEXIS 110699 (M.D. Pa. Sept. 28, 2011). The District Court did not agree that the plaintiff's claim only spoke to breach of contract and therefore could not be pursued in a Bivens action. Copy supplied.

Young v. Commonwealth of Pennsylvania, et al., 3:09-cv-2513, USDC-MDPA. The case was remanded with directions to issue a notice of election allowing the petitioner an opportunity to re-file a habeas corpus petition despite his failure to raise the issue in the state court proceeding. Copies supplied.

Hammond v. Wilkes-Barre, et al., 3:09-2310, 2010 U.S. Dist. LEXIS 142402 (M.D. Pa. Sept. 17, 2010), *adopted in part*, 2011 U.S. Dist. LEXIS 34312 (M.D. Pa. Mar. 30, 2011). The District Court adopted the recommendation to dismiss some counts in the complaint but went further than the recommendation and dismissed the entire complaint.

Nguyen v. United States Citizenship & Immigration Service, et al., 1:09-cv-2211, 2010 U.S. Dist. LEXIS 90256 (M.D. Pa. May 12, 2010), *adopted in part*, 2010 U.S. Dist. LEXIS 90234 (M.D. Pa. Aug. 31, 2010). The District Court dismissed the case for lack of jurisdiction, but noted that if that finding was incorrect, it agreed that the matter must be dismissed for the reasons contained in the report and recommendation.

Desavage v. Grove, et al., 3:09-cv-1204, 2009 U.S. Dist. LEXIS 70570 (M.D. Pa. July 2, 2009), *adopted in part*, 2009 U.S. Dist. LEXIS 70572 (M.D. Pa. Aug. 6, 2009). My report was adopted in part, but remanded to consider the prisoner's equal protection claim that he was removed from his prison employment in the bakery for improper reasons.

Evans v. York County Adult Probation and Parole Dep't, et al., 1:09-cv-1013, 2010 U.S. Dist. LEXIS 131066 (M.D. Pa. Sept. 28, 2010), *adopted in part*, 2010 U.S. Dist. LEXIS 131007 (M.D. Pa. Dec. 10, 2010). The report was adopted with respect to the dismissal of the claims against the state entity, but not adopted with respect to an individual defendant because the District Court found that he was not entitled to qualified immunity.

Sharpe v. County of Dauphin, et al., 1:09-cv-989, 2010 U.S. Dist. LEXIS 92794 (M.D. Pa. Aug. 10, 2010), *adopted in part*, 2010 U.S. Dist. LEXIS 92799 (M.D. Pa. Sept. 7, 2010). The District Court adopted in part the recommendation, however, it allowed the *Monell* claim to proceed and dismissed the Due Process claims against some defendants.

Balter v. Martinez, 3:09-cv-504, 2010 U.S. Dist. LEXIS 72875 (M.D. Pa. May 12, 2010), *not adopted*, 2010 U.S. Dist. LEXIS 72738 (M.D. Pa. July 20, 2010). The District Court did not adopt the recommendation that the case be dismissed, without prejudice, as a result of plaintiff's admitted failure to exhaust. Rather, the District Court directed that the case be transferred to another district.

Pavuscko v. Fiala, 4:08-cv-1878, 2010 U.S. Dist. LEXIS 78529 (M.D. Pa. June 22, 2010), *adopted in part*, 2010 U.S. Dist. LEXIS 78528 (M.D. Pa. Aug. 4, 2010). The District Court granted summary judgment to the defendant on all counts, rather than just on those recommended in the report.

Frankenberry v. FBI, et al., 3:08-cv-1565 USDC-MDPA, *adopted in part*, 2012 U.S. Dist. LEXIS 39027 (M.D. Pa. Mar. 21, 2012). The District Court adopted in part the recommendation by denying the plaintiff's motion for summary judgment but did not adopt the recommendation to grant summary judgment in favor of the defendants, finding that they had not shown a proper FOIA basis to withhold information. Copy supplied.

Frankenberry v. FBI, et al., 3:08-cv-1565, 2010 U.S. Dist. LEXIS 35098 (M.D. Pa. Jan. 29, 2010), *adopted in part*, 2010 U.S. Dist. LEXIS 35078 (M.D. Pa. Apr. 7, 2010). The District Court adopted in part the recommendation to deny the plaintiff's request for a TRO/Injunction but did not adopt the recommendation to grant summary judgment in favor of the defendants.

Sanders v. Downs, et al., 3:08-cv-1560, 2009 U.S. Dist. LEXIS 125655 (M.D. Pa. Nov. 25, 2009), *adopted*, 2010 U.S. Dist. LEXIS 21429 (M.D. Pa. Mar. 9, 2010), *aff'd in part and vacated in part and remanded*, 420 Fed. Appx. 175, 2011 U.S. App. LEXIS 5855 (3d Cir. Mar. 22, 2011). The District Court adopted the report and recommendation in full, however, on appeal the Third Circuit reversed and remanded on the issue whether the statute of limitation had expired.

Banks, et al. v. Gallagher, et al., 3:08-cv-1110, 2010 U.S. Dist. LEXIS 141544 (M.D. Pa. Dec. 13, 2010), *adopted in part*, 2010 U.S. Dist. LEXIS 141540 (M.D.

Pa. Feb. 22, 2011). The District Court adopted all recommendations except it allowed one party the opportunity to amend his complaint.

Stephens v. Klopotosky, et al., 1:08-cv-1029, 2009 U.S. Dist. LEXIS 124759 (M.D. Pa. Oct. 29, 2009), *not adopted*, 2010 U.S. Dist. LEXIS 10188 (M.D. Pa. Feb. 5, 2010). The District Court did not adopt the recommendation to dismiss the petition because it was filed outside of the one year statute of limitations.

Houseknecht v. Brulo, et al., 3:08-cv-482, 2009 U.S. Dist. LEXIS 106922 (M.D. Pa. Aug. 6, 2009), *not adopted*, 2009 U.S. Dist. LEXIS 106197 (M.D. Pa. Nov. 12, 2009). The District Court did not adopt the recommendation of dismissal for the reasons recommended, but dismissed the case for other reasons.

Bryan v. Astrue, 3:07-cv-2121, USDC-MDPA, *adopted*, 2009 U.S. Dist. LEXIS 19652 (M.D. Pa. Mar. 12, 2009), *aff'd in part and rev'd in part*, 383 Fed. Appx. 140; 2010 U.S. App. LEXIS 11386 (3d Cir. June 4, 2010). The District Court adopted the report and recommendation in full, however, on appeal the Third Circuit reversed and remanded on one aspect of the plaintiff's residual functional capacity. Copy supplied.

Zagata v. Astrue, 4:07-cv-1882, USDC-MDPA. The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, finding there was not substantial evidence supporting the Commissioner's decision as to the plaintiff's residual functional capacity. Copies supplied.

Sands v. Astrue, 4:07-cv-1435, 2008 U.S. Dist. LEXIS 113615 (M.D. Pa. June 6, 2008), *adopted in part*, 2008 U.S. Dist. LEXIS 49908 (M.D. Pa. June 25, 2010). The District Court adopted the recommendation in part, however, it remanded the case to the Commissioner of Social Security concerning the plaintiff's residual functional capacity determination.

Sponenberg v. Astrue, 4:07-cv-1300, USDC-MDPA, *not adopted*, 2008 U.S. Dist. LEXIS 46782 (M.D. Pa. June 16, 2008). The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, instead remanding the case to the Commissioner for further consideration of new evidence. Copy supplied.

Wall v. Miner, 3:07-cv-1127, USDC-MDPA, *adopted in part*, 2008 U.S. LEXIS 122825 (M.D. Pa. May 22, 2008). The report was adopted in part, dismissing the *Bivens* claim against any employees of the Public Health Service but allowing the claim to go forward at this stage of the proceedings against the non-medical employees. Copy supplied.

Zucker v. Astrue, 3:07-cv-710, 2008 U.S. Dist. LEXIS 113025 (M.D. Pa. Mar. 21, 2008), *adopted in part*, 2008 U.S. Dist. LEXIS 42915 (M.D. Pa. May 30, 2008).

The District Court adopted the recommendation in part, however, it remanded the case to the Commissioner because it believed the hypothetical question used by the Commissioner was incomplete.

McDonough v. Astrue, 4:07-cv-613, USDC-MDPA, *not adopted*, 2008 U.S. Dist. LEXIS 49974 (M.D. Pa. June 30, 2008). The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, instead remanding the case to the Commissioner for further consideration of certain medical evidence. Copy supplied.

Shields v. Astrue, 3:07-cv-417, USDC-MDPA, *not adopted*, 2008 U.S. Dist. LEXIS 74519 (M.D. Pa. Sept. 8, 2008). The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, instead remanding the case to the Commissioner for further consideration of the weight to be given certain medical evidence. Copy supplied.

Benson v. Forney, et al., 4:07-cv-352, USDC-MDPA, *adopted in part*, 2007 U.S. Dist. LEXIS 43241 (M.D. Pa. June 14, 2007). The report was adopted in part, dismissing the claims against some defendants. However, the District Court went further than the recommendation and dismissed all claims. Copy supplied.

Fowler v. Borough of Dallas, 3:07-cv-276, 2009 U.S. Dist. LEXIS 96221 (M.D. Pa. July 27, 2009), *adopted in part*, 2009 U.S. Dist. LEXIS 90341 (M.D. Pa. Sept. 30, 2009). The District Court adopted the recommendation in part, however, it found that the ADEA claim may go forward at this stage of the proceedings.

Horton v. Harrisburg, et al., 1:06-cv-2338 USDC-MDPA, 2009 U.S. LEXIS 63428 (M.D. Pa. July 23, 2009). The report was adopted in part, dismissing all claims as recommended except the state law claims against one defendant and the intentional infliction of emotional distress claim against another defendant. Copy supplied.

Ames v. Astrue, 1:06-cv-2214, USDC-MDPA, *not adopted*, 2008 U.S. Dist. LEXIS 4552 (M.D. Pa. Jan. 22, 2008). The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, instead remanding the case to the Commissioner to more specifically explain why the ALJ rejected plaintiff's subjective complaints. Copy supplied.

Candido v. Hogsten, 3:06-cv-1112, USDC-MDPA, *adopted*, 2008 U.S. Dist. LEXIS 15662 (M.D. Pa. Feb. 29, 2008) *rev'd*, 315 Fed. Appx. 405, 2009 U.S. App. LEXIS 4635 (3d Cir. Mar. 5, 2009). The District Court adopted the report and recommendation in full, however, on appeal the Third Circuit reversed the District Court and remanded for further findings on the issue of exhaustion of administrative remedies. Copy supplied.

Chambers v. Beard, 3:06-cv-980, 2007 U.S. Dist. LEXIS 58091 (M.D. Pa. Aug. 9, 2007), *not adopted*, 2008 U.S. Dist. LEXIS 108875 (M.D. Pa. Mar. 5, 2008). My report recommending the allowance of discovery in this habeas corpus case was not adopted, as the District Court found that discovery was not necessary.

Massi v. Hollenbach, et al., 4:06-cv-34, USDC-MDPA, *adopted in part*, 2007 U.S. Dist. LEXIS 14787 (M.D. Pa. Mar. 2, 2007). The District Court adopted the recommendation in part, however, it allowed the case to proceed at this stage against some prison administrative staff, finding sufficient personal involvement had been shown. Copy supplied.

Glicos v. Astrue, 3:05-cv-2561, USDC-MDPA. The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, finding that the Administrative Law Judge had inadequately evaluated the medical evidence. Copies supplied.

Brownawell v. Barnhart, 1:05-cv-2076, USDC-MDPA, *rev'd*, 554 F.3d 352 (3d Cir. 2008). The District Court adopted the report and recommendation in full, however, on appeal the Third Circuit reversed and granted benefits to the plaintiff. Copies supplied.

Koljenovic v. Decker, 3:05-cv-1109, 2006 U.S. Dist. LEXIS 85637 (M.D. Pa. June 26, 2006), *adopted in part*, 2006 U.S. Dist. LEXIS 78755 (M.D. Pa. Oct. 27, 2006). The District Court adopted the recommendation in part, however, rather than ordering an immediate hearing concerning the petitioner's immigration detainer, the District Court merely ordered the petitioner's immediate release.

Mitrow v. Verizon, et al., 3:05-cv-64, USDC-MDPA, *adopted in part*, 2007 U.S. Dist. LEXIS 28829 (M.D. Pa. Apr. 19, 2007). The report was adopted on all issues except one related to the amount of FMLA leave available to the plaintiff. Copy supplied.

Velazquez v. Grace, 4:04-cv-2348, USDC-MDPA. The District Court did not adopt the recommendation; rather it was remanded to decide whether the plaintiff's violation of the statute of limitations should be equitably tolled. Copies supplied.

Angelatos v. US Food Service, Inc., et al., 4:04-cv-2033, USDC-MDPA, *adopted in part*, 2007 U.S. Dist. LEXIS 12646 (M.D. Pa. Feb. 23, 2007). The District Court adopted, in part, the recommendation and dismissed the disability and age discrimination claims, however, it did not adopt the recommendation that the gender discrimination claim be dismissed at this stage of the litigation. Copy supplied.

Zeglen v. Pappert, et al., 3:04-cv-1940, 2007 U.S. Dist. LEXIS 96734 (M.D. Pa. Nov. 30, 2007), *adopted in part*, 2008 U.S. Dist. LEXIS 20344 (M.D. Pa. Mar.

12, 2008). The District Court adopted, in part, the recommendation that the motion to dismiss the action be denied, however, the court did dismiss a portion of the action.

Coleman v. Smith, 3:04-cv-1753, USDC-MDPA. The District Court adopted the recommendation in part, however it remanded the case for further briefing on the issue of educational good time credit. Copies supplied.

Foley v. Barnhart, 3:04-cv-670, USDC-MDPA, *not adopted*, 432 F. Supp. 2d 465 (M.D. Pa. 2005). The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, finding that the Administrative Law Judge's decision was not based upon substantial evidence. Copy supplied.

Lane v. Barnhart, 1:04-cv-386, USDC-MDPA. The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, finding that the Administrative Law Judge's decision was not based upon substantial evidence. Copies supplied.

Casavecchia v. Barnhart, 3:04-cv-93, USDC-MDPA. The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, finding that the Administrative Law Judge was required to apply a different analysis when considering the plaintiff's medical impairment. Copies supplied.

Tsai v. Ashcroft, et al., 3: 03-cv-2412, USDC-MDPA, *not adopted*, 2004 U.S. Dist. LEXIS 11294 (M.D. Pa. May 11, 2004). The report recommending that this post-removal detention petition be referred for administrative review to the INS was not adopted; rather, the petition was permitted to go forward. Copy supplied.

Gutierrez v. Commissioner, 3:03-cv-2401, USDC-MDPA. The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, finding that the Administrative Law Judge's decision was not based upon substantial evidence. Copies supplied.

Barnett v. Pugh, et al., 1:03-cv-1750, USDC-MDPA. The District Court did not adopt the recommendation that the defendant's motion to dismiss be denied, but instead converted the motion to one for summary judgment and ordered additional briefing on the converted motion. Copies supplied.

McKeithan v. Jones, et al., 1:03-cv-1318, USDC-MDPA, *adopted in part*, 2005 U.S. Dist. LEXIS 43258 (M.D. Pa. June 3, 2005). The District Court adopted, in part, the recommendation and dismissed additional claims that it construed as not independent but within the parameters of the claims to be dismissed. Copy supplied.

Hakeem v. United States, et al., 3:03-cv-98, 2006 U.S. Dist. LEXIS 95800 (M.D. Pa. July 18, 2006), *adopted in part*, 2007 U.S. Dist. LEXIS 18177 (M.D. Pa. Mar. 13, 2007). The District Court adopted the recommendation in part, however, it allowed an allegation of deliberate indifference to proceed, finding there were questions of fact that would require more discovery.

Colon v. Colonial Intermediate Unit 20, et al., 3:02-cv-2123, 2006 U.S. Dist. LEXIS 94916 (M.D. Pa. Mar. 10, 2006), *adopted in part*, 2006 U.S. Dist. LEXIS 54273 (M.D. Pa. Aug. 4, 2006). The report was adopted in part, except as to the recommendation that an argument concerning individual capacity liability had been waived.

Seawright v. Kyler, et al., 1:02-cv-1815, USDC-MDPA. The District Court adopted the recommendation in part, however, it allowed the allegations of First Amendment retaliation to go forward at this stage of the proceedings. Copies supplied.

Stuber v. Olom, et al., 4:02-cv-1612, USDC-MDPA. The District Court adopted the recommendation in part, however, it allowed the allegations in a pendent state claim to go forward and required an amended complaint. Copies supplied.

Green v. Department of Corrections, et al., 1:02-cv-414, USDC-MDPA. The District Court adopted the recommendation in part, however, it allowed the allegations of deliberate indifference by failure to act to proceed against one additional defendant. Copies supplied.

Drayton v. Kyler, et al., 4:02-cv-77, USDC-MDPA. The District Court adopted the recommendation in part, however, it allowed the allegations of an Eighth Amendment violation to proceed at this stage of the pleadings. Copies supplied.

Telesha v. Barnhart, 3:01-cv-2371, USDC-MDPA, *not adopted*, 2003 U.S. Dist. LEXIS 16359 (M.D. Pa. Mar. 31, 2003). The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, finding that the matter should be remanded to the Administrative Law Judge for further consideration. Copy supplied.

Wirs v. Davis, et al., 3:01-cv-2150, USDC-MDPA. The District Court adopted the report, however, on the allegation of ineffective assistance of counsel, it did so for other reasons. Copies supplied.

Calcek v. Commissioner of Social Security, 3:01-cv-1664, USDC-MDPA, *not adopted*, 2003 U.S. Dist. LEXIS 13564 (M.D. Pa. July 31, 2003). The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, instead remanding the case to the Commissioner for consideration of the plaintiff's potential mental impairment. A copy of my opinion is not available.

Munley v. Chase-Pitkin, 3:01-cv-1505, USDC-MDPA. The District Court adopted the recommendation in part, however, it allowed the allegations of age discrimination to go forward for reasons set forth on the record at oral argument. Copies supplied.

James v. York County Police Department, et al., 1:01-cv-1015, 2004 WL 3331865 (M.D. Pa. Aug. 17, 2004), *adopted in part*, 2005 WL 1154500 (M.D. Pa. 1154500). The District Court adopted the recommendation in part, however, it allowed the alleged *Monell* violations against the police department to proceed.

Schorr v. Borough of Lemoyne, et al., 1:01-cv-930, USDC-MDPA, 2002 U.S. Dist. LEXIS 25668 (M.D. Pa. Dec. 27, 2002), *adopted in part*, 243 F. Supp. 2d 232 (M.D. Pa. 2003). The report was adopted in part except as to the recommendation that the ADA claim be dismissed against the police commission.

Smith v. Morgan, et al., 1:01-cv-817, USDC-MDPA. The District Court adopted the recommendation in part, however, rather than remand the case to allow service on one remaining unserved defendant, the District Court dismissed the entire case. Copies supplied.

Greer v. Smith, et al., 4:01-cv-78, USDC-MDPA. The District Court did not adopt the recommendation that the defendants' motion to dismiss and motion for summary judgment be denied, but instead granted the motions and dismissed the case. Copies supplied.

Eberhart v. Massanari, 3:00-cv-817, USDC-MDPA, *not adopted*, 172 F. Supp. 2d 589 (M.D. Pa. 2001). The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed; instead, it awarded benefits to the plaintiff. Copy supplied.

- 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.

As a United States Magistrate Judge all of my decisions are filed on the United States District Court for the Middle District of Pennsylvania's Electronic Case Filing System (ECF). The vast majority of my decisions are on nondispositive matters such as motions to enlarge the discovery deadlines, motions to amend pleadings, motions to compel or resolve discovery disputes and other similar motions. It is virtually impossible to estimate the number of such decisions. While those decisions generally are not published, as one of the judges who has signed onto the Courtweb program, all of my memorandum opinions and reports and recommendations, since July 2004, are available for public search, free of charge on Courtweb.

- 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.

Telepo v. Martin, 257 F.R.D. 76 (M.D. Pa. 2009)

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

I have never sat by designation on a federal appeals court.

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

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

The United States District Court for the Middle District of Pennsylvania has an automated conflict screening software program to identify conflicts of interest for each judge. I have included on that list, and recused myself from cases involving, any individuals or companies with which I have a financial or personal relationship that could be considered a conflict of interest under the Code of Conduct for United States Judges and/or 28 U.S.C. § 455. I am provided a copy of that list each month and I scrupulously review it to ensure it is up to date. I do not believe I have ever been requested to recuse myself from a case by counsel. In our district, once a judge has been assigned a pro se prisoner case, all future cases from the same pro se litigant are assigned to the same judge. This has occasionally resulted in a prisoner who was unhappy with a prior ruling requesting that I be recused from his case because of that prior ruling. This request would normally go to the District Judge co-assigned to the case. I have never felt biased or prejudiced toward any litigant whose case has been properly before me and to the best of my knowledge, I have never been recused by a

District Judge from a case. The following list includes those cases where the clerk of court has been able to identify that I recused myself. In each category of cases, I have included a brief explanation of the reason for my recusal.

In each of the following cases, I recused myself, sua sponte, because counsel for one of the parties or the party was a personal friend.

Odom v. Borough of Taylor, et al., 3:05-cv-341 USDC-MDPA.

Ballard v. Immel, et al., 1:04-cv-720 USDC-MDPA.

Luzerne Optical Laboratories, Ltd. v. Emerging Vision, Inc., 4:03-cv-2372 USDC-MDPA.

Femley v. Pocono Ambulatory Surgery Center, 3:03-cv-946 USDC-MDPA.

Dutter v. Commissioner of Social Security, 4:03-cv-719 USDC-MDPA.

Doe v. Ensey, et al., 3:02-cv-444 USDC-MDPA.

Parry v. Commissioner of Social Security, 1:01-cv-1715 USDC-MDPA.

Bloom v. County of Lackawanna, et al., 3:01-cv-1429 USDC-MDPA.

Franceschelli v. Commissioner of Social Security, 3:01-cv-1332 USDC-MDPA.

In each of the following cases, I recused myself, sua sponte, because counsel, a party or witness was affiliated with my former law firm.

Merrill, Lynch, Pierce, Fenner & Smith, Inc. v. The County of Luzerne, 3:04-cv-1506 USDC-MDPA.

Battista v. Highmark Life & Casualty Co., 3:04-cv-853 USDC-MDPA.

Tooley v. Urban, et al., 3:02-2336 USDC-MDPA.

Pizzella v. Makowski, et al., 3:02-cv-908 USDC-MDPA.

Leap v. Stoudsburg Area School District, et al., 3:01-cv-30 USDC-MDPA.

Kelly v. Hazelton General Hospital, et al., 3:00-cv-1127 USDC-MDPA.

Laborers Local Union No 158 v. 78 Construction Corp., et al., 4:00-cv-181 USDC-MDPA.

In each of the following cases, I recused myself, sua sponte, because I was familiar with the matter, or one of the parties, as a direct result of my prior employment as an Assistant United States Attorney in the Middle District of Pennsylvania.

Shemonsky v. Social Security Administration, 4:07-cv-236 USDC-MDPA.

Locskai v. U.S. Department of Justice, et al., 3:05-cv-636 USDC-MDPA.

Schutz v. Conahan, et al., 4:03-cv-1508 USDC-MDPA.

Dalrymple v. United States, et al., 4:03-cv-905 USDC-MDPA.

In each of the following cases, I recused myself, sua sponte, because I had a financial investment with one of the parties or their parent companies.

McCullough, et al. v. Wells Fargo Home Mortgage, et al., 3:10-cv-1698 USDC-MDPA.

Munley v. Discover Financial Services, et al., 3:07-cv-1053 USDC-MDPA.

Collins v. Prudential Investment and Retirement Services, et al., 3:01-cv-1765 USDC-MDPA.

In each of the following cases, I recused myself, sua sponte, because I had represented one of the parties in the case when I was in private practice.

Houston v. Klopotoski, et al., 1:10-cv-1964 USDC-MDPA.

Purnell v. Wynder, et al., 4:03-cv-1830 USDC-MDPA.

Nealon v. Commonwealth of Pennsylvania, et al., 3:02-cv-1681 USDC-MDPA.

Henry v. Stanish, et al., 3:00-cv-1700 USDC-MDPA.

In the following case, I recused myself, sua sponte, because counsel for one of the parties had been appointed as a member of my Merit Selection Reappointment Panel.

Gulick v. City of Nanticoke, et al., 3:08-cv-717 USDC-MDPA.

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed

you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public office other than my present judicial office. I have never had an unsuccessful candidacy for elective office or unsuccessful nomination for appointed office.

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

I have not held any office in or rendered any services to any political party or election committee. I have not held any position or played any role in a political campaign.

16. **Legal Career:** Answer each part separately.

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

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

I never served as a law clerk to a judge.

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

I have never practiced law alone.

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

1979 – 1980

Bartels, Pykett & Aronwald, Esqs.

99 Court Street

White Plains, NY 10601

Litigation Associate

1980 – 1986

Nassau County District Attorney's Office

262 Old Country Road

Mineola, NY 11501

Assistant District Attorney

1986 – 1993

United States Department of Justice
United States Attorney's Office for the Middle District of Pennsylvania
225 North Washington Avenue
Scranton, PA 18503
Assistant United States Attorney (1986 – 1993)
Chief, Organized Crime Drug Enforcement Task Force (1989 – 1993)
District Office Security Manager (1989 – 1993)

1993 – 1997

Hourigan, Kluger, Spohrer & Quinn, PC
434 Lackawanna Avenue
Scranton, PA 18503
Litigation Partner

1997 – 2001

United States Department of Justice
United States Attorney's Office for the Middle District of Pennsylvania
225 North Washington Avenue
Scranton, PA 18503
Assistant United States Attorney

- 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.

As a member of the Lackawanna Bar Association, I was appointed, usually once a year, by the Lackawanna County Clerk of Court and required to sit as a member of the three-person arbitration panels in the Court of Common Pleas of Lackawanna County. The hearings lasted no more than one day each. I have no records from these matters as any file would have been returned to the Lackawanna County Clerk of Court at the end of the day. Otherwise, I have not served as a mediator or arbitrator.

b. Describe:

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

From 1979 to 1980, I was a litigation associate at Bartels, Pykett & Aronwald, Esqs., in White Plains, New York, responsible for the preparation of pleadings, legal research, witnesses and exhibits in both federal and state court civil and criminal matters. I handled litigation and witness preparation for trial, examinations before trial and hearings.

From 1980 to 1986, I was an Assistant District Attorney in Nassau County, New York. I tried numerous jury and non-jury cases. My career included handling traffic offenses, arraignments, pleas, misdemeanor trials, grand jury presentments, and major felony trials, including but not limited to homicide, armed robbery, residential and commercial burglary, rape and other sexual offenses, narcotic distribution, escape, assault, grand larceny, extortion, economic crime and corruption. In addition, I was a member of the rackets bureau where I investigated, presented to the grand jury and prosecuted major cases against members of traditional organized crime, Columbian cartels and outlaw motorcycle gangs. I authored and supervised numerous eavesdropping and search warrants, and initiated and supervised complex undercover and covert investigations. I also was the Trial Supervisor responsible for litigation supervision and instruction of 41 Assistant District Attorneys in the District Court Bureau.

From 1986 to 1993 and again from 1997 to 2001, I was an Assistant United States Attorney in the Middle District of Pennsylvania. Early in my career as an AUSA, the Middle District of Pennsylvania was not divided into Civil and Criminal Divisions. Therefore, I represented the United States in both civil and criminal cases. My civil responsibilities included representing various federal agencies in Federal Tort Claim Act cases and complex medical malpractice cases originating out of the Wilkes-Barre, Pennsylvania Veterans Administration Hospitals. I also represented the United States in social security claims, civil litigation, tax matters and HUD cases, to name a few. My criminal responsibilities included investigation and prosecution of the full panoply of federal criminal matters, including but not limited to organized crime and RICO violations, political corruption, fraud, violent crime, counterfeiting, interstate transportation in aid of racketeering, money laundering, income tax and narcotics violations. Beginning in 1989, the United States Attorney's Office split into divisions. I was selected as the Chief of the Organized Crime Drug Enforcement Task Force. As chief, I was responsible for all large scale national and international drug prosecutions and organized crime prosecutions. I directed the task force comprised of other AUSAs, DEA agents, FBI agents, ATF agents, IRS agents, Customs agents, INS agents, U.S. Marshals and Defense Department agents. Our goal was to attack organized crime using complex civil and criminal strategies to seize illegal assets, dismantle criminal organizations and prosecute their members. In addition, I continued to be assigned other high profile cases including political corruption and other sensitive investigative matters.

During my years in the United States Attorney's Office, I was appointed as the District Office Security Manager and received a top secret United States government clearance and overall responsibility for all sensitive, secret and top secret information in the District. During my time in the Office, I tried more cases before juries than any other AUSA in the office

at that time. I also acted as a mentor and trial advisor to many AUSAs. I also personally researched, briefed and argued many cases before the United States Court of Appeals for the Third Circuit.

From 1993 to 1997 at Hourigan, Kluger, Spohrer & Quinn, PC (now Hourigan, Kluger & Quinn, PC), I handled complex litigation matters in both federal and state court. As a litigation partner, I was responsible for a varied case load, the vast majority of which were sophisticated and complex medical malpractice matters. I represented both plaintiffs and defendants in both state and federal court. I tried to successful jury verdict a number of civil cases, represented clients at numerous judicial hearings and argued before Pennsylvania appellate courts. In addition to medical malpractice cases, I handled commercial litigation, breach of contract cases, bad faith insurance litigation and many other civil litigation matters.

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

As a litigation associate with Bartels, Pykett & Aronwald, Esqs. from 1979 to 1980, my clients included private individuals, businesses, and corporations. I did not specialize in any particular area of law at this time.

From 1980 to 1986 as an Assistant District Attorney at the Nassau County District Attorney's Office, my client was the state of New York. I specialized in state criminal prosecution.

From 1986 to 1993 and again from 1997 to 2001 as an Assistant United States Attorney in the Middle District of Pennsylvania my client was the United States. I specialized in affirmative civil litigation, defensive civil litigation and criminal prosecution.

Finally from 1993 to 1997, as a litigation partner at Hourigan, Kluger, Spohrer & Quinn, PC, my clients included private individuals, businesses, corporations, governmental agencies and subdivisions. I specialized in state and federal civil litigation with an emphasis on medical malpractice.

- 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.

In all of my professional positions I have appeared in court frequently.

- i. Indicate the percentage of your practice in:
 - 1. federal courts: 85%
 - 2. state courts of record: 10%

- 3. other courts: 4%
- 4. administrative agencies: 1%

ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 50%
- 2. criminal proceedings: 50%

- 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.

More than 100 as sole counsel and/or chief counsel.

i. What percentage of these trials were:

- 1. jury: 40%
- 2. non-jury: 60%

- 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 never practiced before the Supreme Court of the United States.

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

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

1. *United States v. Chipps*, D.C. No. 3: CR-97-66, *aff'd*, 230 F.3d 1349, 2000 U.S. App. LEXIS 22864 (3d Cir. 2000), *cert. denied*, 531 U.S. 1057 (2000); before the Honorable Robert J. Cindrich, United States District Judge for the Western District of Pennsylvania sitting by designation as a judge of the United States District Court for the Middle District of Pennsylvania.

On July 22, 1997, a federal grand jury sitting in the Middle District of Pennsylvania indicted Chippis for threatening to assault and murder United States District Judge William J. Nealon, as well as threatening to blow up the federal building in Scranton, Pennsylvania. The Honorable Robert J. Cindrich, United States District Judge from the Western District of Pennsylvania, was designated by the Third Circuit to sit by designation as a Judge in the Middle District of Pennsylvania to hear this case. On the day originally set for trial, the defendant fled to Canada. Working with the United States Department of State, I litigated the defendant's return and superseded his indictment to add additional charges related to his flight. I represented the United States throughout the investigation, extradition, trial and appeal. Following a jury trial in May 1998, the defendant was convicted. He appealed his conviction to the Third Circuit. The conviction was affirmed. The defendant petitioned the United States Supreme Court for a writ of Certiorari. That petition was denied.

Counsel for the Defendant:

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88 North Franklin Street
Wilkes-Barre, PA 18701
(570) 472-9593

Karen Sirianni Gerlach
Federal Public Defender
415 Convention Tower
960 Penn Avenue
Pittsburgh, PA 15222
(412) 644-6565

Daniel I. Siegel
Appellate Counsel
Federal Public Defender
100 Chestnut Street #306
Harrisburg, PA 17101
(717) 782-2237

2. *United States v. Thomas and Sheridan*, D.C. No. 3:CR-88-44, *aff'd*, *United States v. Thomas*, 866 F.2d 1413 (3d Cir. 1988), *United States v. Sheridan*, 866 F.2d 1414 (3d Cir. 1988); before the Honorable William J. Nealon, United States District Court for the Middle District of Pennsylvania.

On March 14, 1988, a federal grand jury sitting in the Middle District of Pennsylvania indicted Thomas and Sheridan for mail fraud and conspiracy in a case that became known as "Examscam." This was a political corruption case involving the Scranton police department and the Scranton Civil Service Commission's fixing of the Civil Service examination to assure the hiring of

politically selected police officers. I represented the United States throughout the lengthy investigation, trial and appeal. Following a jury trial in May 1988, the defendants were convicted. They separately appealed their convictions to the Third Circuit. The convictions were affirmed.

Counsel for the Defendants:

Michael J. Barrasse
200 North Washington Avenue, 3rd Floor
Scranton, PA 18503
(570) 963-6452

Robert J. Farrell
Deceased

Michael J. Eagan, Jr.
Foley, McLane, Foley, McDonald & MacGregor
600 Linden Street
Scranton, PA 18501
(570) 342-8194

William J. Hall, Jr.
307 North Blakely Street
P.O. Box 272
Dunmore, PA 18512
(570) 342-3799

3. *United States v. Belletiere*, D.C. No. 3:CR-90-165, *aff'd in part, rev'd in part*, 971 F.2d 961 (3d Cir. 1992); before the Honorable Edwin M. Kosik, United States District Court for the Middle District of Pennsylvania.

On June 5, 1990 and November 29, 1990, a federal grand jury sitting in the Middle District of Pennsylvania indicted Belletiere for an international drug conspiracy resulting in the distribution of multiple kilogram quantities of cocaine purchased from Columbians through Miami, Florida and distributed through a network known as the "Empire" in Northeastern Pennsylvania. Belletiere's indictment was superseded before trial to include income tax evasion and asset forfeiture counts. I represented the United States throughout the investigation, trial and appeal. Following a jury trial in April 1991, in which over 400 exhibits were introduced, the defendant was convicted on all 27 counts. He appealed his conviction to the Third Circuit. The conviction was affirmed, however the sentence imposed by Judge Kosik was reversed and remanded for resentencing.

Counsel for the Defendant:

Leonard A. Sands
Sands & Moskowitz
Bayview Executive Plaza
3225 Aviation Avenue, Suite 300
Coconut Grove, FL 33133
(305) 285-1500

4. *Gilbride v. Rhiew*, CCP Lackawanna 90-CV-883; before the Honorable James J. Munley, Judge of the Lackawanna County Court of Common Pleas.

I represented Dr. Rhiew, a radiologist in this multi-million dollar medical negligence case where the plaintiff alleged that the defendant failed to properly diagnose his esophageal cancer resulting in severe pain, suffering and premature death. I represented Dr. Rhiew throughout the pre-trial and trial stages. The case was tried before a jury in the Court of Common Pleas of Lackawanna County. The jury returned a verdict in favor of my client. No appeal was taken from the verdict.

Counsel for the Plaintiff:

Mark C. Cavanaugh
Dugan, Brinkman, Maginnis, and Pace
1880 John F. Kennedy Boulevard, Suite 1400
Philadelphia, PA 19103
(215) 563-3500

5. *Gigliotti v. Larkin and De Sai*, CCP Lackawanna 91-CV-4002, before the Honorable Carmen D. Minora, Judge of the Lackawanna County Court of Common Pleas.

I represented the defendant, Dr. Larkin, in this medical negligence suit brought against him by the plaintiff and her family. Dr. Larkin performed surgery on the plaintiff, which resulted in an uncontrolled bleed and a resulting embolus. The embolus caused a stroke which resulted in the inability of the plaintiff to walk or function. I represented Dr. Larkin throughout the pre-trial and trial stages. The case was tried before a jury in the Court of Common Pleas of Lackawanna County. The jury returned a verdict in favor of my client. The case was later settled. No appeal was taken.

Counsel for the Plaintiff:

Kenneth M. Rothweiler
Eisenberg, Rothweiler, Winker, Eisenberg & Jeck, P.C.
1634 Spruce Street

Philadelphia, PA 19103
(215) 268-7153

F. Philip Robin
Kolsby, Gordon, Robin, Shore & Bezar
2000 Market Street, 28th Floor
Philadelphia, PA 19103
(215) 851-9700

Counsel for the Co-Defendant:

John J. Aponick
Marshall, Dennehey, Warner, Coleman & Goggin
50 Glenmaura National Boulevard
Moosic, PA 18507
(570) 496-4618

Frank G. Wenzel, Jr.
Polachek & Clark, P.C.
Phoenix Plaza Suite 600
22 East Union Street
Wilkes-Barre, PA 18701
(570) 822-8515

6. *Tucker v. Gentilezza, Bessoir, et al.*, CCP Lackawanna 91-CV-1633; before the Honorable S. John Cottone, Judge of the Lackawanna County Court of Common Pleas.

I represented Dr. Gentilezza, a physiatrist, in this medical negligence case where the plaintiff alleged that the defendants failed to properly prescribe and supervise the plaintiff's rehabilitation program, leading to severe and permanent disability. I represented Dr. Gentilezza throughout the pre-trial and trial stages. The case was tried before a jury in the Court of Common Pleas of Lackawanna County. The jury returned a verdict in favor of my client. No appeal was taken.

Counsel for the Plaintiffs:

Alan M. Feldman
Feldman, Shepherd, Wohlgelemler, Tanner, Weinstock & Didig, LLP
1845 Walnut Street, 25th Floor
Philadelphia, PA 19103
(215) 567-8300

Carol Nelson Shepherd
Feldman, Shepherd, Wohlgelemler, Tanner, Weinstock & Didig, LLP
1845 Walnut Street, 25th Floor

Philadelphia, PA 19103
(215) 567-8300

Counsel for the Co-Defendant:

David L. Rohde
5104 Township Line
Drexel Hill, PA 19026
(610) 449-1707

7. *United States v. Sweeting*, D.C. No. 3: CR 99-139, *aff'd*, 251 F.3d 155 (3d Cir. 2000); before the Honorable Edwin M. Kosik, United States District Court for the Middle District of Pennsylvania.

On June 8, 1999, a federal grand jury sitting in the Middle District of Pennsylvania indicted Sweeting for bank fraud, counterfeiting and money laundering offenses. Sweeting, together with others, conspired to defraud banks in Scranton, New York and Detroit of approximately \$1,000,000 in counterfeit cashier's checks. I represented the United States throughout the investigation, trial and appeal. Following a jury trial in September 1999, the defendant was convicted. He appealed his conviction to the Third Circuit. The conviction was affirmed.

Counsel for the Defendant:

Gino A. Bartolai, Jr.
88 North Franklin Street
Wilkes-Barre, PA 18701
(570) 472-9593

Daniel I. Siegel
Appellate Counsel
Federal Public Defender
100 Chestnut Street
Harrisburg, Pennsylvania 17101
(717) 782-2237

8. *United States v. Gilbert*, D.C. No. 3:CR 91-215, *rev'd*, 1995 U.S. LEXIS 5009 (3d Cir. Feb. 8, 1995), *cert. denied*, 515 U.S. 1128 (1995); before the Honorable Edwin M. Kosik, United States District Court for the Middle District of Pennsylvania.

On October 29, 1991 and July 7, 1992, a federal grand jury sitting in the Middle District of Pennsylvania indicted Gilbert as an armed career criminal for possession of weapons. Gilbert had an extensive history of violent felony offenses. He threatened to harm and kill his neighbors and their young daughter,

and he frequently shot firearms into the neighbor's back yard where the child's swing set was located. I represented the United States throughout the investigation, trial and appeal. Following a jury trial in November 1992, the defendant was convicted. I requested approval from the Solicitor General of the United States to appeal the sentence imposed by the District Judge, which was granted. The Third Circuit granted my appeal, reversed the District Court and remanded with instructions that the District Court impose the 15-year mandatory sentence required for armed career criminals. The defendant's application for appeal to the United States Supreme Court was denied.

Counsel for the Defendant:

Gerard Edmund Grealish
Kane Professional Building
116 North Washington Avenue, Suite 3H
Scranton, PA 18503
(570) 346-0277

9. *United States v. Beck*, D.C. No. 3:CR-98-178, *aff'd*, 242 F.3d 372 (3d Cir. 2000), *cert. denied*, *Beck v. United States*, 531 U.S. 1180 (2001); before the Honorable William J. Nealon, United States District Court for the Middle District of Pennsylvania.

On July 28, 1998, a federal grand jury sitting in the Middle District of Pennsylvania indicted Beck for attempted bank robbery. Beck threatened to blow up the Mellon Bank in Wilkes-Barre, Pennsylvania, unless the bank president delivered \$50,000 to a remote location. If the bank did not comply, Beck threatened to take bank employees as hostages. I represented the United States throughout the investigation, trial and appeal. Following a jury trial in August 1999, the defendant was convicted. He appealed his conviction to the Third Circuit. The conviction was affirmed. The defendant's application for appeal to the United States Supreme Court was denied.

Counsel for the Defendant:

Gino A. Bartolai, Jr.
88 North Franklin Street
Wilkes-Barre, PA 18701
(570) 472-9593

10. *United States v. Carlin*, D.C. No. 4:CR-86-128, *aff'd*, 833 F.2d 307 (3d Cir. 1987), *cert. denied*, *Carlin v. United States*, 485 U.S. 965 (1988); before the Honorable Malcolm Muir, United States District Court for the Middle District of Pennsylvania.

On July 22, 1986, a federal grand jury sitting in the Middle District of Pennsylvania indicted Carlin for murder in the first degree. Carlin, a white male, had murdered a black male to gain admission into the Arian Brotherhood, a white supremacist gang. I represented the United States throughout the pre-trial, trial and appeal. Following a jury trial in January 1987, the defendant was convicted of murder in the first degree. He appealed his conviction to the Third Circuit. The conviction was affirmed. The defendant's application for appeal to the United States Supreme Court was denied.

Counsel for the defendant:

James V. Wade
Federal Public Defender
100 Chestnut Street
Harrisburg, PA 17101
(717) 782-2237

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

I was the lead prosecutor in the investigation of the Attorney General of the Commonwealth of Pennsylvania. That lengthy and complex investigation involved the acceptance of illegal campaign contributions from donors, who in turn requested protection for their illegal gambling activities. This high profile investigation remained completely confidential without a single public leak, over the multi-year period during my tenure as the lead prosecutor. When I left the United States Attorney's Office to enter private practice, the case was successfully concluded with the Attorney General's plea of guilty and subsequent sentence.

I was the lead prosecutor in the investigation of Pennsylvania's largest pornographer. Following a lengthy multi-agency, multi-district investigation into money laundering, tax evasion and obscenity, a plea agreement was negotiated, however the defendant died prior to the entry of his plea of guilty.

I was the lead prosecutor in the Immigration and Naturalization Service's nationwide investigation of Wal-Mart's use of undocumented aliens as independent sub-contractors performing maintenance and cleaning duties at Wal-Mart stores across the country. This investigation was successfully concluded by another AUSA when I was appointed to the bench as a United States Magistrate Judge.

I have been involved in the Federal Magistrate Judges Association since 2003, when I was first elected to the Board of Directors as the representative of my colleagues from the Third Circuit. From 2008 to the present, I have been elected by my fellow Magistrate Judges throughout the country to be their National Secretary, Vice President, President-Elect and now President of the Association. I have met regularly with the Director of the Administrative Office of United States Courts and the Chief of the Magistrate Judges Division to discuss ways to make the United States Magistrate Judges system more efficient, productive and uniform throughout the United States. As the President, I have been invited to meet with the Chief Justice of the Supreme Court and the Magistrate Judges Committee of the Judicial Conference of the United States, and I have been appointed as a member of the Administrative Office of United States Courts Magistrate Judges Advisory Committee. I also attend the Judicial Conference's Judicial Branch Committee meetings.

I have never performed any lobbying activities on behalf of clients or corporations.

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.

I have not taught a course at an institution of higher learning.

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.

None.

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.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I will continue to use the automated conflict of interest software available in my court to identify any conflicts of interest. I presently do not foresee any categories of individuals or litigation that pose a potential conflict of interest for me.

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

If confirmed, I will continue to closely follow the Code of Conduct for United States Judges and its advisory opinions. In addition, I will also continue my practice of reviewing, on a monthly basis, my automated recusal list to identify any potential conflicts of interest.

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

As an Assistant United States Attorney, I researched and presented lectures on the need for, as well as the ethics of, pro bono activities by government lawyers. In private practice, I organized and formalized the pro bono program still in use by the Federal Bar Association in the Middle District of Pennsylvania. I was the Middle District of Pennsylvania Chapter President who initiated the pro bono program and appointed the first Middle District of Pennsylvania Pro Bono Chair. The program has flourished over the years and provides experienced attorneys to represent indigent individuals when requested by the federal court. As a United States Magistrate Judge, I am precluded from the practice of law and ethically unable to personally accept any pro bono assignments. In my personal capacity, I have been active in many organizations that specifically aid the poor and disadvantaged, such as the Friends of the Poor, in Scranton, Pennsylvania.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and

the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In approximately April 2011, Senator Robert P. Casey and Senator Patrick Toomey formed a Judicial Merit Selection Panel to consider candidates for two vacancies on the United States District Court for the Middle District of Pennsylvania. On July 1, 2011, I submitted my application. I was interviewed by the Panel on October 18, 2011, in Scranton, Pennsylvania. It is my understanding that I was among the individuals recommended by the Panel for further consideration by the Senators. I was contacted by Senator Casey on January 23, 2012, and met with him on February 1, 2012. I also met with Senator Toomey on February 1, 2012. I understand that the Senators jointly submitted my name to the White House for vetting as a potential nominee.

Since March 9, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 11, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On May 17, 2012, 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, MALACHY E. MANNION, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

5-18-12

(DATE)

M E M

(NAME)

Sharon West

(NOTARY)

SHARON D. WEST
Notary Public, District of Columbia
My Commission Expires October 31, 2012