

Responses of John J. McConnell, Jr.
Nominee to be United States District Judge for the District of Rhode Island
to the Written Questions of Senator Jeff Sessions

- 1. Have you ever represented anyone in a case against the manufacturers of lead-based paint or dealing with lead poisoning, prior to the Rhode Island case? If so, please list each matter and include a description.**

Response: Yes, I represented Renita Jackson and others in an action against former manufacturers of lead pigment for use in paint in Cuyahoga County Common Pleas Court in Ohio. That case was filed on August 11, 1992, and I became involved in 1996. In addition, in the years prior to filing the State of Rhode Island, I represented numerous children and their parents against landlords alleging negligence due to lead-poisoning. These cases on behalf of individual lead poisoned children go back over 15 years and my firm's records do not allow me to identify them with any further particularity.

- 2. Please describe your reasons for designating Brigham and Women's Hospital as the destination for settlement money from DuPont related to the Rhode Island lead paint litigation.**

Response: My firm waived its attorney fees that would be due from the State's settlement with DuPont, on the condition that those fees be directed to a charitable cause. We chose Brigham and Women's Hospital because its doctors were conducting experimental work on treatments for people with mesothelioma, an asbestos-related cancer. This is a cause that my partners and I care deeply about in light of our years of work in the area.

- a. Do you believe it was appropriate to designate lead paint litigation settlement monies to an out of state hospital when such monies should have benefitted the citizens of the State of Rhode Island?**

Response: The money designated to Brigham & Women's Hospital represented attorneys fees that would otherwise have been payable to Motley Rice LLC. I believe it was appropriate for my partners and me to select the recipient of a charitable donation for funds that would otherwise have come to us as attorney fees.

- b. Do you believe it was appropriate to designate lead paint litigation settlement monies to a cause associated with asbestos-related disease, when such monies presumably should have been designated a cause associated with lead poisoning?**

Response: The money designated to Brigham & Women's Hospital represented attorneys fees that would otherwise have been payable to Motley Rice LLC. I believe it was appropriate for my partners and me to select the recipient of a

charitable donation for funds that would otherwise have come to us as attorney fees.

- c. **Prior to designating the DuPont settlement money, did you or your law firm have any preexisting pledge or commitment to donate money to the Brigham and Women's Hospital in Boston? If so, provide the details of that pledge or commitment, including when that pledge or commitment was made; who from your law firm made that pledge or commitment; the amount of the pledge or commitment; and the identity of all representatives or agents at the Brigham and Women's Hospital involved in the pledge or commitment.**

Response: My firm, through my partner Joseph F. Rice, made a commitment on August 15, 2004, to Brigham & Women's Hospital to give or raise \$3 million to help it with its medical research on treatment for mesothelioma. The pledge was made with the lead researcher, Dr. David Sugarbaker.

- d. **Was the DuPont settlement money that was designated to the Brigham and Women's Hospital credited to your and/or your law firm's pledge or commitment to the hospital?**

Response: I would assume so, but I do not know for sure.

- e. **Have you or your firm ever retained Dr. David J. Sugarbaker of the Brigham and Women's Hospital as an expert in a case for which you or your firm was counsel? If so, please identify the case(s) and provide a description for each, including whether Dr. Sugarbaker testified in the matter?**

Response: I have not engaged Dr. Sugarbaker in any case. I have made a diligent inquiry of my firm and do not believe that the firm has retained Dr. Sugarbaker.

- f. **Has Dr. David J. Sugarbaker of the Brigham and Women's Hospital ever referred any plaintiffs or potential plaintiffs to you, your firm, or any attorney at your firm? If so, please identify the case(s) and provide a description for each, including whether they were ultimately used as plaintiffs in any of your cases.**

Response: Dr. Sugarbaker has not referred any plaintiffs or potential plaintiffs to me. I have made a diligent inquiry of my firm and do not believe that Dr. Sugarbaker has referred any plaintiffs or potential plaintiffs to the firm.

- g. **Has any employee, representative or agent of the Brigham and Women's Hospital ever referred any plaintiffs or potential plaintiffs to you, your firm, or any attorney at your firm? If so, please identify the cases for which he referred plaintiffs, the number of plaintiffs he referred, and whether they were ultimately used as plaintiffs in any of your cases.**

Response: No employee, representative or agent of the Brigham and Women's Hospital has ever referred any plaintiffs or potential plaintiffs to me. I have made a diligent inquiry of my firm and its attorneys and do not believe that any employee, representative or agent of the Brigham and Women's Hospital has referred any plaintiffs or potential plaintiffs to the firm or to its attorneys.

- h. Do you or any other attorney at your firm presently have, or expect to have in the future, any case or cases dealing with asbestos and/or the disease mesothelioma?**

Response: I do not. Attorneys at my firm do.

- 3. At your hearing, I asked you about the editorial you and several of your law partners published in the *Providence Journal* criticizing the Rhode Island Supreme Court's decision in the lead-based paint case. You testified that you meant no disrespect to the Court, that "critiquing the law" in newspaper opinion pieces was normal in Rhode Island, and that your criticism was based on the fact that the Rhode Island Supreme Court "changed the law" of public nuisance in Rhode Island. However, the main thrust of the article, as written, was that the Court's decision "let wrongdoers off the hook without any responsibility for the consequences of their actions," "the state was very close to solving the problem of childhood lead poisoning when the court brought the public-health remedy to a screeching halt," that "the money that these corporations spent on defense lawyers and public-relations firms to influence the outcome of this case [was] simply obscene," and that "lead poisoning is prevalent throughout Rhode Island, but it disproportionately affects the least powerful among us—inner city children, children of color—people without any voice in the system."¹ In short, your primary complaint was not that the law was misapplied; the primary complaint was that "[j]ustice was not served."²**

- a. Do you think a judge's job is to interpret the law and correctly apply it to specific facts, or do you think it is to assure that "justice was served"?**

Response: I believe that a judge's job is to interpret the law and correctly apply it to specific facts.

- b. Why did you criticize the Rhode Island Supreme Court because "justice was not served," when its opinion has proven persuasive as a matter of public nuisance law in a number of other jurisdictions?**

Response: The client, the State of Rhode Island, believed that the Rhode Island Supreme Court misinterpreted existing case law and did not properly apply the law to the facts of the case as found by the trial justice and jury below.

¹ Fidelma Fitzpatrick, Bob McConnell & Jack McConnell, *The Rhode Island Supreme Court got it Terribly Wrong In Its Decision In the Recent Lead-Paint Case*, PROVIDENCE JOURNAL, Aug. 19, 2008.

² *Id.*

4. In its opinion reversing the trial court’s judgment in the lead paint case, the Rhode Island Supreme Court detailed the history of public nuisance law—both its common law roots and its development in Rhode Island—before stating the three elements of a public nuisance cause of action.³ Those three elements are: “(1) an unreasonable interference; (2) with a right common to the general public; (3) by a person or people with control over the instrumentality alleged to have created the nuisance when the damage occurred.”⁴

Analyzing your case under these elements, the Rhode Island Supreme Court ultimately concluded that the State of Rhode Island could not demonstrate any set of facts that would satisfy these three elements. Therefore, the Court held that the trial court had erred when it denied the defendants’ Rule 12(b)(6) motion to dismiss. In so holding, the Court noted that “[e]xpanding the definition of public right based on the allegations in the complaint would be antithetical to the common law and would lead to a widespread expansion of public nuisance law that never was intended,”⁵ that “[t]he law of public nuisance never before has been applied to products, however harmful,” and that “[t]he enormous leap that the state urge[d] [the Court] to take [was] wholly inconsistent with the widely recognized principle that the evolution of the common law should occur gradually, predictably, and incrementally.”⁶

- a. Can you cite any precedent of the Rhode Island Supreme Court holding that a defendant can be held liable for a public nuisance based on a product they manufactured many years before the time the alleged public nuisance arose but did not have control over at the time any injury occurred?

Response: Rhode Island has long recognized that claims for public nuisance can be brought against any entity that creates a condition that unreasonably interferes with the health, safety and comfort of the public. See, e.g., *Citizens for Preservation of Waterman Lake v. Davis*, 420 A.2d 53, 59 (R.I. 1980). In addition, the Rhode Island Legislature has found that lead poisoning in Rhode Island meets this definition of public nuisance, concluding that “Childhood lead poisoning is dangerous to the public health, safety, and general welfare of the people and necessitates excessive and disproportionate expenditure of public funds for health care and special education, causing a drain upon public revenue.” R.I.G.L. § 23-24.6-2(5).

Rhode Island had long recognized that public nuisance liability could be established when a threat of harm is created, not when actual harm is caused to the public. *Mugler v. Kansas*, 123 U.S. 623, 673 (1887); *Wood v. Picillo*, 443 A.2d 1244 (R.I. 1982).

³ *State v. Lead Indus. Ass’n, Inc.*, 951 A.2d 428, 443-447 (2008).

⁴ *Id.* at 446-47.

⁵ *Id.* at 453.

⁶ *Id.* at 545.

- b. **What precedents, if any, of the Rhode Island Supreme Court do you argue were overturned by the Court's opinion?**

Response: *Wood v. Picillo*, 443 A.2d 1244 (R.I. 1980); *Citizens for Preservation of Waterman Lake v. Davis*, 420 A.2d 53, 59 (R.I. 1980); *Pine v. Kallian*, 1998 WL 34090599 (R.I. Super. 1998), *aff'd*, *Pine v. Kallian*, 723 A.2d 804 (R.I. 1998); *Hydro-Manufacturing Inc. v. Kayser-Roth Corp.*, 640 A.2d 950, 959 (R.I. 1994).

- c. **The Rhode Island Supreme Court stated that its definition of public nuisance was "largely consistent with that of many other jurisdictions, the Restatement (Second) of Torts, and several scholarly commentators."⁷**

- i. **Do you contend that the Court's statement was inaccurate?**

Response: The Rhode Island Supreme Court accurately cited provisions from the Restatement (Second) of Torts. However, it was the State's position that the Court overlooked significant sections of the Restatement (Second) of Torts that compel a different result, namely Restatement (Second) of Torts § 821, cmt. g; Restatement (Second) of Torts § 821B, cmt. b; Restatement (Second) of Torts § 821B(2)(a) and (c); and Restatement (Second) of Torts § 834, cmt. e.

- ii. **Do you contend that the public nuisance law was substantially different than that of other jurisdictions? If so, please cite case law and scholarly treatises that support your contention.**

Response: Before the Rhode Island Supreme Court's decision in the lead paint case, Rhode Island's public nuisance law was substantially the same as public nuisance law in numerous jurisdictions. The State asserted that the Rhode Island Supreme Court's 2008 decision signaled a shift in Rhode Island's interpretation of public nuisance law, and that precedent differs from public nuisance law in many jurisdictions today. *See, e.g., Conn. v. Am. Elec. Power Co.*, 582 F. 3d 309, 357 (2d Cir. 2009); *County of Santa Clara v. Atlantic Richfield Co.*, 137 Cal. App. 4th 292, 306 (Cal. Ct. App. 2006).

- iii. **New Jersey, Connecticut and New Hampshire courts have rendered opinions construing public nuisance in a manner similar to the Rhode Island Supreme Court's opinion in the lead-based paint case. Is it your position that those opinions also misapplied the traditional law of public nuisance?**

Response: I have not analyzed the New Jersey, Connecticut and New Hampshire opinions and so have no positions on them.

⁷ *Id.* at 446.

5. **During the course of the Rhode Island lead paint litigation, the Rhode Island Superior Court fined Attorney General Patrick Lynch several times for contempt of court after he made inflammatory statements to the media. You publicly criticized that, saying “we see hypocrisy in [the defendants] filing motions against the attorney general for saying something publicly while they have two full-time public relations people in court every day trying to affect the press.”⁸**

- a. **If confirmed, would you consider “hypocrisy” a valid consideration in ruling on a motion for sanctions related to inflammatory statements in the media?**

Response: No.

- b. **I am not familiar with the statements that may have been made by the public relations people you mentioned in your statement to the press, but do you think there is a difference between a public relations person trying to make a defendant look good in the press and a statement by a public official about a given case that is likely to inflame the passions of a jury or the public?**

Response: I do not believe anyone should make statements that are likely to inflame the passions of a jury.

6. **During the hearing, Senator Whitehouse said that he suggested the public nuisance theory as an approach to the lead paint litigation. A number of news articles have reported that your law partner, Fidelma Fitzpatrick, developed that approach.⁹ You yourself were involved in the multistate tobacco litigation, which had centered on public nuisance law. Please clarify exactly how the public nuisance theory was developed in the lead-paint litigation.**

Response: Rhode Island Attorney General Jeff Pine asked my firm to analyze possible causes of action that might arise given the facts that had been presented. As part of that presentation, the potential cause of action of public nuisance, amongst others, was included in the analysis. This research and analysis was primarily done by my law partner, Fidelma Fitzpatrick. Then Attorney General Whitehouse spearheaded the drafting of the complaint and arguing the motions to dismiss as it related to advancing the theory of public nuisance.

7. **You were involved in a number of cases brought in the late 1990s by state attorneys general against tobacco companies. As a result, you seem to have developed some very strong feelings about tobacco companies and smoking. For example, you once commented to the press about a proposed smoking ban for Rhode Island**

⁸ Peter B. Lord, *Lynch Fined \$5,000 for Contempt of Court*, PROVIDENCE JOURNAL, May 6, 2006, at A-01.

⁹ See, e.g., Brian C. Jones, *How the Lead Paint Case Was Won*, BOSTON PHOENIX, Feb. 28, 2007, <http://thephoenix.com/Boston/news/34782-how-the-lead-paint-case-was-won/>; John O'Brien, *After unsure beginning, public nuisance provided Motley Rice with staying power in Rhode Island*, LEGALNEWSLINE.COM, Dec. 19, 2007, <http://www.legalnewsline.com/news/205426-after-unsure-beginning-public-nuisance-provided-motley-rice-with-staying-power-in-rhode-island>.

restaurants that “the idea of choice in regard to allowing smoking in restaurants is phony and offensive.” You said “‘freedom of choice, my foot! Not when it’s hurting the public health and it’s addicting another generation of kids.’ Sometimes, [you said], there is no room for choice. [You said] some people might like having all-white restaurants so they don’t have to sit with blacks, but we don’t allow it.”¹⁰

a. Do you still stand by your comparison?

Response: I felt strongly about the smoking ban issue, but I regret making that comparison.

b. At one point, you were also quoted in a newspaper article as saying that you would “like Congress to put the cigarette makers out of business, but that it won’t happen in our lifetime because addicted smokers are such a large voting bloc that [politicians] don’t want to step on them.”¹¹ Given your view that cigarette makers should be put out of business, how can you assure this Committee that you will be fair to a cigarette maker or a tobacco company that might come before your court?

Response: My personal opinion about a public health question would have absolutely no role in my application of the law to the facts.

8. You once said in a press interview that “I am an emotional person about injustice at any level—personal, societal, global.”¹² In that same interview, you said that “[t]here are wrongs that need to be righted, and that’s how I see the law.”¹³ As a lawyer, you were free to see the law that way, and you were free to be emotional about what you perceived as injustice; however, as a judge, you will not have either luxury. You will be required to be objective about situations you might perceive as unjust, and your role will not be to “right wrongs.” Your job, as Chief Justice Roberts put it, will be to be a neutral umpire and call the balls and strikes as you see them.

a. Do you still hold those beliefs?

Response: My role as an attorney was to zealously represent my clients within the bounds of the law, professionalism, and ethics. As a judge, I believe that my role would be to be objective and impartial about all situations and apply existing law to the facts before me, not attempting to achieve any particular result.

¹⁰ M. Charles Bakst, *An Opportunity to Save Lives If We Care*, PROVIDENCE JOURNAL, Apr. 12, 2001, at B-01.

¹¹ M. Charles Bakst, *Jack McConnell: Host to First Lady is Lawyer, Operative*, PROVIDENCE JOURNAL-BULLETIN, Dec. 2, 1999, at B-01.

¹² M. Charles Bakst, *Jack McConnell: Taking on the Bad Guys*, PROVIDENCE JOURNAL, Mar. 7, 2005, at B-01.

¹³ *Id.*

- b. Do you think the views you expressed in that article are appropriate for a judge?**

Response: No.

- c. What can you point to in your record to assure this Committee that you will set those beliefs aside?**

Response: I have practiced law professionally and ethically for over 25 years. I have never had an ethical complaint filed against me and I have never had sanctions filed against me or imposed on me. Every judge before whom I have appeared would attest to my integrity and professionalism. I would conduct myself in a similar fashion in the new and different role as a judge if I am fortunate enough to be confirmed by the Senate.

To point to a specific aspect of my record, I was routinely selected by both sides of a dispute as a neutral arbiter in matters in our state court, which reflects my ability to be a fair and impartial judge.

- 9. In 2003, you were quoted in the *Providence Journal-Bulletin* as saying that “Democrats should stand for active government” and that being a Democrat has “meant fighting for economic and social justice and opportunity for all.” Please explain what you meant by “active government.”**

Response: I meant that our political branches of government should actively commit to ensure justice and opportunity for all people.

- 10. As a volunteer lawyer for the ACLU, you brought suit against a detention facility that housed immigrants who were subject to orders of removal. The facts of that case were quite disturbing, and I understand that Immigration and Customs Enforcement did an investigation and found wrong-doing had occurred. During the course of the litigation, you moved the district court to order prison officials to provide you with records to aid in your investigation, but ICE initially failed to approve the release of those records due to federal regulations.¹⁴ While that dispute was ongoing, you commented to the media that you were concerned detainees could be moved and deported who “could be highly relevant witnesses to what appears to be the torture of an innocent man, and I, for the life of me, can’t figure out why [the facility] and the federal government are keeping this information from the family.”¹⁵**

- a. I understand that the context for your statement was slightly different, but do you understand the need for the federal government to keep certain information from disclosure, including information that pertains to**

¹⁴ See Hillary Russ, *Attorney Seeks Records in RI detainee death*, ASSOCIATED PRESS, Dec. 10, 2008.

¹⁵ Karen Lee Ziner, *Hearing on Detainee Who Dies Is Continued*, PROVIDENCE JOURNAL-BULLETIN, Dec. 11, 2008, at 1.

immigration cases, to assure the government's ability to investigate and prosecute crimes?

Response: Yes.

- b. In view of the Supreme Court's ruling in *Boumediene v. Bush*, which held that terrorists held at Guantanamo Bay are entitled to *habeas corpus*, and with the current administration's insistence on trying foreign-combatant terrorists in civilian courts, would you agree that there is sometimes the need for judges to exercise the utmost care when dealing with sensitive information?**

Response: Yes.

- 11. On May 24, 2006, the Rhode Island affiliate of the American Civil Liberties Union filed an administrative complaint with the Rhode Island Division of Public Utilities and Carriers asking for an investigation of Verizon & AT&T's cooperation with the National Security Agency in anti-terrorism surveillance programs.**

- a. According to an administrative order entered by the Department of Public Utilities and Carriers on December 8, 2006, you were appointed as Counsel to the ACLU in this case. Did you, in fact, represent the ACLU in this matter?**

Response: I entered an appearance as counsel.

- i. If so, were you retained by the organization, or did you handle the case on a *pro bono* basis?**

Response: I handled this matter without charging a fee.

- ii. Did you have any involvement in this matter, in any capacity, prior to being appointed counsel to the ACLU?**

Response: No.

- b. On January 19, 2006, the Attorney General of the United States issued a memorandum detailing the administration's position that these activities were legally authorized by Congress' Authorization for Use of Military Force. I understand that many people do not agree with that memorandum; however, did you consider the contents of this memorandum prior to agreeing to represent the Rhode Island ACLU in their complaint against the telecommunications firms for cooperating with the federal government in a program the President and Attorney General of the United States believed was legally proper?**

Response: No.

- c. **In 2008, the Congress passed the FISA Amendments Act of 2008, which, among other things, prohibited actions against electronic communication service providers for cooperating with federal authorities in national security surveillance activities that the President and Attorney General of the United States believe are legal. That measure passed the Senate by a vote of 68-29, and the House of Representatives with a vote of 293 to 129. Thereafter, the ACLU filed a lawsuit in the Southern District of New York challenging the constitutionality of the law.**

- i. **Were you supportive of this lawsuit?**

Response: I did not know about the law suit and had no involvement in it. I do not have sufficient information to have a view of the law suit.

- ii. **Do you believe that the authority of the Federal government under the Foreign Intelligence Surveillance Act, as amended by the FISA Amendments Act of 2008, violates the Fourth Amendment to the Constitution? Please explain your answer.**

Response: I have no opinion about this matter, having never dealt with it before, researched it, or considered it.

12. **Please provide a list of any matters in which you have provided any legal services to the American Civil Liberties Union (or any affiliate thereof), in which the United States, an agent, agency or department of the federal government, a State, or an agent, agency or department of a state government was a defendant or intervenor in the case. For each case, please indicate whether you were retained or handled the matter on a volunteer basis.**

Response: I have never provided legal services to the ACLU or any affiliate thereof. In the *Ng v. Central Falls Detention Facility* case, I am listed as a cooperating attorney of the Rhode Island affiliate of the ACLU. In that capacity, however, I do not provide legal services to the ACLU or its affiliate.

13. **According to the organization's website, Amnesty International's position on the death penalty is as follows:**

"The death penalty is the ultimate denial of human rights. It is the premeditated and cold-blooded killing of a human being by the state. This cruel, inhuman and degrading punishment is done in the name of justice. It violates the right to life as proclaimed in the Universal Declaration of Human Rights. Amnesty International opposes the death penalty in all cases without

exception regardless of the nature of the crime, the characteristics of the offender, or the method used by the state to kill the prisoner.¹⁶

Do you agree with that statement?

Response: No.

- 14. You reported in your questionnaire that you have been a member of the American Constitution Society since 2008. In its mission statement, the ACS includes the following: “ACS believes that law can and should be a force for improving the lives of all people. We are revitalizing and transforming legal and policy debates in classrooms, courtrooms, legislatures and the media.”¹⁷**

- a. Do you share the view that the law should be a force for improving the lives of all people?**

Response: I believe that when the law is fairly and impartially applied, it improves our country and the lives of the people in it.

- b. The ACS has also recently published a book, entitled *Keeping Faith with the Constitution*, co-authored by ACS leaders Pamela Karlan, Christopher Schroeder, and Goodwin Liu, that discusses how that institution sees the proper role of a judge in interpreting the U.S. Constitution. In the very first line of that book, the authors say that “Justice Oliver Wendell Holmes was right when he said that the words of the Constitution ‘have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters.’”¹⁸ The book goes on to say that**

“interpreting the Constitution . . . requires adaptation of its broad principles to the conditions and challenges faced by successive generations. The question . . . is not how the Constitution would have been applied at the founding, but rather how it should be applied today . . . in light of changing needs, conditions, and understandings of our society.”¹⁹

- i. Do you agree with these statements?**

Response: No.

¹⁶ Abolish the death penalty – Amnesty International, <http://www.amnesty.org/en/death-penalty> (last visited May 20, 2010).

¹⁷ American Constitution Society, <http://www.acslaw.org/> (last visited May 20, 2010) .

¹⁸ GOODWIN LIU, PAMELA S. KARLAN & CHRISTOPHER H. SCHROEDER, *KEEPING FAITH WITH THE CONSTITUTION* 1 (2009).

¹⁹ *Id.* at 2.

- ii. The book is also very critical of originalism and strict construction as interpretive approaches, saying that “neither originalism nor strict construction has proven to be a persuasive or durable methodology, not least because they cannot explain many of the basic constitutional understandings we now take for granted.”²⁰ Do you agree with that statement?

Response: No.

- c. In a paper entitled “The Right and Wrong Kinds of Judicial Activism,” recently published by the ACS, Professor Alan B. Morrison argues that

“it is most appropriate for the Court to intervene and overturn legislative decisions when there is some reason to believe that our system of representative government has not worked and that the protections that the Constitution is supposed to afford are lacking. The most common circumstance of appropriate intervention is to safeguard rights of a racial or other minority that were not adequately represented in the political process. There is another important area to which this theory is also applicable: where the structural protections afforded by the Constitution’s specific guarantees of separation of powers or federalism have broken down because of an imbalance in legislative powers.”²¹

Do you agree with that statement?

Response: No.

15. When you were chair of the Myrth York Gubernatorial campaign, columnist Charles Bakst of the *Providence Journal* said that he found you “prone to overnight or early morning emails or phone messages goading [him] to write something critical of York’s opponents, or needling [him] for a column he didn’t like. During [York’s] Primary with Attorney General Sheldon Whitehouse, [he] punched [his] voice mail one day to hear McConnell saying, ‘Oh, I’m sorry, I thought this was the Whitehouse campaign,’ then abruptly hanging up.”²²

- a. Was that statement accurate?

Response: In the middle of a political campaign against Sheldon Whitehouse, I called a columnist with whom I had a long-standing informal relationship to

²⁰ *Id.* at 5.

²¹ Alan B. Morrison, *The Right and Wrong Kinds of Judicial Activism*, AMERICAN CONSTITUTION SOCIETY ISSUE BRIEF, May 2010, available at <http://www.acslaw.org/files/ACS%20Issue%20Brief%20-%20Morrison%20Judicial%20Activism.pdf>.

²² *Id.*

complain in jest about a position he took by leaving a message in which I said ““Oh, I’m sorry, I thought this was the Whitehouse campaign.”

- b. If yes, do you feel that sort of behavior would be appropriate for a public official?**

Response: I do not believe it would be appropriate for a judge. At the time of that comment I was not a public official, but rather a political volunteer in the middle of a heated campaign. Given my long-standing and informal relationship with the columnist, it was meant only as a joke.

- c. Do you think that this and other comments you have made in the political arena might have an effect on how some parties would perceive your fairness and objectivity on the bench?**

Response: I believe that most people who know me, and certainly those that have observed me in a professional setting would realize that I understand the difference between being an advocate in the legal or political system and being in a new role as an impartial and fair judge if I am confirmed by the Senate.

- 16. You have made some very unkind comments about Republicans in public, comments that give me concern about your ability to be objective and fair to different viewpoints. For example, when Republican Governor Lincoln Almond kept the Rhode Island government open during a snowstorm in 1996, you commented to the press that the decision was “typical of the cold-hearted Republican attitude of disregarding workers’ needs.”²³ You went on to argue against the governor’s appeal to the cost efficiency of keeping agencies open by saying that “[w]e could bring child labor back, which would be cheaper, too.”²⁴**

- a. Did you truly believe that Republicans have a typical “cold-hearted attitude of disregarding workers’ needs”?**

Response: No. I regret having made that comment and do not believe it to be true.

- b. Do you truly believe that keeping government offices open during a snowstorm in New England, even a particularly bad storm, is equivalent to the use of child labor?**

Response: No.

²³ M. Charles Bakst, *Almond in Storm: What You Saw Is The Way Gov. Is*, PROVIDENCE JOURNAL-BULLETIN, Jan. 11, 1996, at B-01.

²⁴ *Id.*

- c. **Given your view of the character of Republicans, do you believe you could be fair to a Republican or conservative person or group that came before you if confirmed?**

Response: Yes, I believe that, if confirmed as a judge by the Senate, I would be fair to all who came before me, regardless of any person's party affiliation or their political leanings.

17. **The *Providence Journal* recently reported the following:**

"[Senator] Reed said McConnell could add balance to the large number of corporate lawyers on the federal bench. 'We need more guys there who care about the little guy,' Reed said, referring to McConnell's representation of people with illnesses caused by asbestos, tobacco and other products."

- a. **Do you agree with Senator Reed that you "could add balance to the large number of corporate lawyers on the federal bench"? If so, how?**

Response: I am not sure of the context of Senator Reed's quote. I assume that Senator Reed made the decision to recommend me for the district court position based on his knowledge of our State and on his experience in nominating judges to the bench. I defer to his expertise in this area.

- b. **Do you agree with Senator Reed that "[w]e need more [judges] who care about the little guy"?**

Response: I believe that Rhode Island, indeed every state in the nation, needs judges who care about all litigants, no matter who they are or from where they come.

18. **Please describe with particularity the process by which these questions were answered.**

Response: I received these questions Thursday evening May 20, 2010 through the Department of Justice (DOJ). I reviewed the questions and I prepared my responses to them. I later discussed my responses with the DOJ. I then finalized my responses. On May 24, 2010 I asked the DOJ to forward my responses to the Senate Judiciary Committee on my behalf.

19. **Do these answers reflect your true and personal views?**

Response: Yes.