

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Mary Susan McElroy

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

United States District Judge for the District of Rhode Island

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.

Rhode Island Public Defender
160 Pine Street
Providence, Rhode Island 02903

Residence: Coventry, Rhode Island

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

1965; Providence, Rhode Island

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.

1988 – 1992, Suffolk University School of Law; J.D., 1992

1983 – 1987, Providence College; B.A., 1987

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.

1994 – 2006; 2012 – present
Rhode Island Public Defender
160 Pine Street

Providence, Rhode Island 02903
Rhode Island Public Defender (2012 – present)
Assistant Rhode Island Public Defender (1994 – 2006)

2006 – 2012
Federal Defender for the Districts of Massachusetts, New Hampshire and Rhode Island
Ten Weybosset Street, Suite 300
Providence, Rhode Island 02903
Assistant Federal Defender

1993 – 1994
Tate and Elias LLC
321 South Main Street, Suite 300
Providence, Rhode Island 02903
Associate Attorney

1992 – 1993
Rhode Island Supreme Court
250 Benefit Street
Providence, Rhode Island 02903
Law Clerk to the Honorable Donald F. Shea (retired)

1988 – 1992
Rhode Island Office of the Attorney General
72 Pine Street
Providence, Rhode Island 02903
Clerk/paralegal

1984 – 1991 (approximate)
Rocky Point Amusements
Now defunct
Warwick, Rhode Island
Waitstaff (part-time)

1987 – 1988 (approximate)
The Personnel People
One Turks Head Place, Suite 1030
Providence, Rhode Island 02903
Temporary employee

Other Affiliations (uncompensated):

2013 – present
Rhode Island Attorney General's Criminal Justice Hall of Fame Committee
No physical address
Providence, Rhode Island 02903

Board Member

2012 – present
Governor's Interagency Council on Homelessness
One Capitol Hill
Providence, Rhode Island 02908
Board Member

2012 – present
Rhode Island Criminal Justice Policy Board
311 Danielson Pike
North Scituate, Rhode Island 02857
Board Member

1996 – present
Rhode Island Association of Criminal Defense Lawyers
No physical address
Providence, Rhode Island 02903
Board Member (1996 – present)
President (2012 – 2014)
Communications Secretary (2008 – 2010)
Corresponding Secretary (1998 – 2000)

1994 – 1996
Caritas/Corkery House
166 Pawtucket Avenue
Pawtucket, Rhode Island 02860
Board Member

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 United States military. I was not required to register for the 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.

Rhode Island Coalition for the Homeless Advocacy Award (2015)

William F. Reilly Scholarship to attend National Criminal Defense College (1997)

American Jurisprudence Award, Practical Trial Evidence, Suffolk University Law School

(1992)

Liberal Arts Honors Program, Providence College (1983 – 1987)

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.

Federal Bar Association, Rhode Island Chapter

Membership Chair (approximately 2011 – 2012)

Municipal Court Incarceration Working Group (2013 – present)

National Association of Public Defense (2014 – present)

Rhode Island Association of Criminal Defense Lawyers

Board Member (1996 – present)

President (2012 – 2014)

Communications Secretary (2008 – 2010)

Corresponding Secretary (1998 – 2000)

Rhode Island Attorney General's Criminal Justice Hall of Fame Committee

Board Member (2013 – present)

Rhode Island Bar Association

Criminal Bench/Bar Committee (2010 – 2012)

Rhode Island Criminal Justice Policy Board

Board Member (2012 – present)

United States District Court for the District of Rhode Island, Local Rules Review Committee

Chair, Criminal Rules Subcommittee (2010 – 2012)

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.

Rhode Island, 1992

Massachusetts, 1994

There have been no lapses in membership in Rhode Island. I have never practiced law in Massachusetts. Accordingly, I have always been an inactive member of the Massachusetts Bar, with the exception of the period from April 2011 to January 2012, during which my inactive membership lapsed as I considered relinquishing my bar membership in Massachusetts.

- 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.

U.S. Court of Appeals for the First Circuit, 2007
U.S. District Court for the District of Rhode Island, 1993

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.

Caritas/Corkery House, Board Member (1994 – 1996)

Coventry Public Schools PTA Washington Oak Elementary School
(approximately 2007 – 2010)

Governor's Interagency Council on Homelessness, Board Member (2012 – present)

March of Dimes Rhode Island Chapter, Coordinator of "Noah's Team" (2002 – 2005)

Rhode Island Justice Reinvestment Working Group (2015 – present)

Sophia Academy, Mentor (2010 – 2012)

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

To the best of my knowledge, none of the listed organizations 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.

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.

With Andrew Horowitz, "Journal Should Have Criticized Judge," *The Providence Journal*, September 7, 2014. Copy supplied.

With Steven Brown, "DNA Bill Assaults Our Liberties in Rhode Island," *The Providence Journal*, May 22, 2014. Copy supplied.

"President's Column: Balancing Interests in the Criminal Justice System," *RIACDL Newsletter*, Fall 2013. Copy supplied.

"President's Column" *RIACDL Newsletter*, Fall 2012. 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.

As the Public Defender for the State of Rhode Island, I issued a letter on August 19, 2014 to a judge on the Rhode Island Superior Court in response to a recent court ruling. Copy supplied.

As a member of the Local Rules Committee for the United States District Court for the District of Rhode Island from 2010 to 2012, I approved the recommendations for amendments to the local rules. In 2011 and 2012, as Chair of the Criminal Rules Subcommittee, I reported on the rule changes reviewed and recommended by the subcommittee. Copies of the committee reports are 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.

As the Public Defender for the State of Rhode Island from 2012 to the present, I sign many letters that either support or oppose state legislative initiatives. The Rhode Island Public Defender's legislative liaison manages RIPD legislative policy and response. Copies of all letters that I have been able to locate are supplied. I also submit written testimony to the Rhode Island House of Representatives and Rhode Island Senate regarding certain bills. Copies of all written testimony that I have been able to locate are supplied.

As the chief financial officer for the agency, I also provided oral testimony on behalf of the Rhode Island Public Defender portion of the governor's budget before the Rhode Island House of Representatives Finance Committee in 2013, 2014 and 2015. I also testified before the Senate Finance Committee in 2014. I have no notes, transcript, or recordings of this testimony. In 2015, I sent a follow-up letter to Representative John M. Carnevale, Chair of the House Finance Subcommittee on Public Safety, dated May 4, 2015. Copy supplied. In prior years, I sometimes supplied handouts to the Committees to accompany my testimony. Copies of all such handouts I could locate are supplied.

I have served on the Justice Reinvestment Working Group since its formation in July 2015. The working group has held two public meetings as well as several community meetings. I attended both public meetings on July 7, 2015 and September 10, 2015. In addition, on October 14, 2015, the working group met with a community and provider group to discuss mental health issues. I have no notes, transcripts, or recordings, but press coverage for the October 14, 2015 meeting is supplied.

On August 4, 2015, in my capacity as the Rhode Island Public Defender, I appeared before the Rhode Island State Properties Committee and provided brief testimony in support of a lease extension for the property leased by the Public Defender's Office. Minutes supplied.

On March 17, 2014, as the Rhode Island Public Defender, I participated in a roundtable discussion at OpenDoors convened by United States Senator Sheldon Whitehouse to discuss S. 1675, a bill aimed at prison reform. I have no notes, transcript, or recording, but press coverage is supplied.

On January 13, 2014, as an attorney and colleague, I provided testimony before the Rhode Island Judicial Nominating Commission in support of Olin W. Thompson III. I have no notes, transcript or recording, but a copy of the letter of support I submitted, dated October 9, 2013, is supplied.

On December 20, 2013, as president of the Rhode Island Association of Defense Lawyers, I signed onto a letter to FBI director James Comey, urging him to revise FBI policy against recording of custodial interrogations. Copy supplied.

On October 21, 2013, as the Rhode Island Public Defender and as an attorney, I provided a letter to the Rhode Island Supreme Court supporting the readmission to the Rhode Island bar of suspended attorney John M. Cicilline. Copy supplied.

On October 4, 2013 and September 26, 2013, in my capacity as the Rhode Island Public Defender, I attended meetings of the State of Rhode Island Policy Board. Minutes supplied.

On July 9, 2013, in my capacity as the Rhode Island Public Defender, I signed

onto a letter to the governor asking that he consider vetoing legislation which would increase penalties for graffiti offenses. Copy supplied.

On June 25, 2013, as the Rhode Island Public Defender, I provided a letter to United States Attorney General Eric Holder in support of the creation of a White House Commission on the Fair Administration of Justice for the Indigent Accused. Copy supplied.

On May 23, 2013, in my capacity as the Rhode Island Public Defender, I submitted letters to Rhode Island United States Senators Jack Reed and Sheldon Whitehouse opposing an amendment to Senate Bill 954, the Agricultural Reform, Food, and Jobs Act, which would have denied food assistance through the Supplemental Nutrition Assistance Program (SNAP) for life to some former convicts and their families. Copies supplied.

On February 14, 2013, in my capacity as the Rhode Island Public Defender, I provided testimony before the Supreme Court of Rhode Island on proposed changes to the Rhode Island Traffic Tribunal Rules of Procedure. Providence, Rhode Island. Notes supplied.

On June 11, 2012, I provided testimony before the Rhode Island Senate Judiciary Committee during my confirmation hearing. Providence, Rhode Island. Video supplied.

As a member of the United States District Court Local Rules Review Committee from 2010 to 2012 and Chair of the Criminal Rules Subcommittee, I attended committee meetings and presented reports of the subcommittee. Minutes supplied. Prior to my becoming a committee member, I submitted a letter regarding a proposed rule change to the Criminal Rules Subcommittee on January 21, 2010. Copy supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

March 27, 2015: Speaker, "Moving Toward Solutions (Sounding the Alarm on Mass Incarceration – Moving Beyond the Problem and Toward Solutions)," Roger Williams University School of Law, Bristol, Rhode Island. Notes supplied.

January 14, 2015: Panelist, "Examining Justice: Ferguson, Staten Island and

Beyond,” Roger Williams University School of Law, Bristol, Rhode Island. The panel discussed the recent “no true bill” finding and the technical and practical aspects of grand juries in the Ferguson, Missouri police shooting of Michael Brown. I have no notes, transcript or recording, but press coverage is supplied. The address for the Roger Williams University School of Law is Ten Metacom Avenue, Bristol, Rhode Island 02809.

April 9, 2014: Speaker, Criminal Law Bench Bar Committee luncheon CLE presentation, Rhode Island Bar Association, Providence, Rhode Island. This presentation involved the issues affecting the administration of justice in Rhode Island. I have no notes, transcript or recording. The address for the Rhode Island Bar Association is 41 Sharpe Drive, Cranston, Rhode Island 02902.

March 25, 2014: Speaker, “There’s Something About Mary: How Women Can Take Charge of the Conversation,” Rhode Island Women’s Bar Association Cultural Diversity Committee, Providence, Rhode Island. Notes supplied.

October 23, 2013: Speaker, “What Can You Do in Law After Brown?”, Brown University Pre Law Society meeting, Providence, Rhode Island. I discussed careers in indigent defense after college. In addition to a general discussion of how to become a public defender attorney, I discussed the types of positions that the RIPD has other than those of attorneys. I have no notes, transcript or recording. The address for Brown University is 91 Waterman Street, Providence, Rhode Island 02912.

June 2013: Panelist, Annual Ethics CLE Presentation, Rhode Island Association of Criminal Defense Lawyers, Providence, Rhode Island. I participated as part of a panel including other members of the bar and the Chief Disciplinary Counsel to address hypothetical ethical scenarios and the possible solutions. I have no notes, transcript or recording. The address for the Rhode Island Association of Criminal Defense Lawyers is P.O. Box 23101, Providence, Rhode Island 02903.

March 28, 2013: Panelist, “*Gideon* at 50: What the Right to Counsel Means Today,” Roger Williams University School of Law, Bristol, Rhode Island. The panel was on the state of indigent defense representation fifty years after the United States Supreme Court decision in *Gideon v. Wainwright*. I have no notes, transcript or recording. The address for Roger Williams University School of Law is Ten Metacom Avenue, Bristol, Rhode Island 02809.

July 16, 2012: Speaker, Swearing In Ceremony, Providence, Rhode Island. Notes supplied. Video excerpts are available at <https://www.youtube.com/watch?v=xkL1fWaZcV0>.

June 2012: Panelist, Annual Ethics CLE Presentation, Rhode Island Association of Criminal Defense Lawyers, Providence, Rhode Island. I participated as part of a panel including other members of the bar and the Chief Disciplinary Counsel to

address hypothetical ethical scenarios and the possible solutions. I have no notes, transcript or recording. The address for the Rhode Island Association of Criminal Defense Lawyers is P.O. Box 23101, Providence, Rhode Island 02903.

June 2005: Panelist, Annual Meeting, Rhode Island Bar Association, Providence, Rhode Island. The panel discussed Supreme Court case law regarding sentencing of minors. I have no notes, transcript or recording. The address for the Rhode Island Bar Association is 41 Sharpe Drive, Cranston, Rhode Island 02920.

- 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.

Pat Murphy, *Probation Tops Defense Bar's Wish List for Governor's Panel*, Rhode Island Lawyers Weekly, July 17, 2015. Copy supplied.

Katie Mulvaney, *Public Defender Recommended for Federal Judgeship; Senators Encourage Obama to Choose Mary McElroy*, Providence Journal, July 10, 2015. Copy supplied.

"Mass Incarceration" Interview for "The Rights of a Free People," ACLU of Rhode Island, April 28, 2015 (broadcast May 2015). Video supplied.

Matt Yas, *Local Lawyers Weigh in on Latest Development in Case of Minnesota Vikings Running Back*, Massachusetts Lawyers Weekly, March 12, 2015. Copy supplied.

Matt Yas, *Local Attorneys Weigh In on Defending NFL Star against Child Abuse Charges*, Massachusetts Lawyers Weekly, October 23, 2014. Copy supplied.

Pat Murphy, *Defense Bar Fires Back at 'Judge Shopping' Claims*, Rhode Island Lawyers Weekly, September 4, 2014. Copy supplied.

Katie Mulvaney, *Bitter Rhode Island Court Battle Ends in Jail for One Lawyer, Freedom for Another*, Providence Journal, November 24, 2013. Copy supplied.

Paul E. Kandarian, *There's Something About Mary*, Rhode Island Monthly, June 2013. Copy supplied.

Ellen Liberman, *Reporter – Collateral Consequences*, Rhode Island Monthly, June 2013. Copy supplied.

Rhode Island Power Player: Mary McElroy, GoLocalProv.com, June 11, 2013. Copy supplied.

June 5, 2013: Press Conference, Rhode Island ACLU, Providence, Rhode Island. The press conference involved the release of a report on the school to prison pipeline. I have no notes, transcript or recording, but press coverage is supplied. The address for the ACLU of Rhode Island is 128 Dorrance Street, Suite 220, Providence, Rhode Island 02903.

“*Criminal Justice*” Interview for “The Rights of a Free People,” ACLU of Rhode Island, April 23, 2013 (broadcast June 2013). Video supplied.

Tracy Breton, *Government: Criminal Record Bill Before House*, Providence Journal, April 17, 2013. Copy supplied.

Tracy Breton, *Courts: Ruling Ruffles Defense Lawyers*, Providence Journal, January 15, 2013. Copy supplied.

McElroy '87: *First Rhode Island Female Public Defender*, Providence College Magazine, Fall 2012. Copy supplied.

Mark Reynolds, *Courts – McElroy Takes Oath as Chief Public Defender*, Providence Journal, July 17, 2012. Copy supplied.

David Klepper, *Rhode Island Public Defender Focuses on ‘Holistic’ Defense*, The Associated Press, March 18, 2012. Copy supplied (reprinted in multiple outlets).

Katie Mulvaney, *McElroy: New Chief Public Defender*, Providence Journal, March 15, 2012. Copy supplied.

March 14, 2012: Press Conference, Announcement of Nomination as Rhode Island Public Defender, Providence, Rhode Island. This brief speech was in response to the announcement that Governor Lincoln Chafee had nominated me to serve as Rhode Island Public Defender. I have no notes, transcript or recording, but press coverage is supplied.

W. Zachary Malinowski, *Man Spared Prison in Laser Incident*, Providence Journal, September 13, 2011. Copy supplied.

Michael Smith, *Bail Set for Woman Charged with Boyfriend’s Murder*, Providence Journal, August 11, 2001. Copy supplied.

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

I have not held judicial office.

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

or judgment? _____

i. Of these, approximately what percent were:

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

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general

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

I have not held judicial office.

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

15. Public Office, Political Activities and Affiliations:

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

I have served as the Public Defender for the State of Rhode Island since July 2012. I was appointed to that position by Governor Lincoln Chafee on March 14, 2012 and confirmed by the state senate. I have never run for elective office, and I have not been unsuccessful in any 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.

In 1982, as a high school student, I handed out flyers for Julius V. Michaelson's campaign for United States Senate. In 1984, while in college, I acted as a page for the Rhode Island delegation to the Democratic National Convention. In 1986, also while in college, I handed out flyers at events and occasionally answered phones in campaign headquarters as a volunteer for James E. O'Neil's campaign for Rhode Island Attorney General. Finally, from approximately 1984 until 1986, I was a member of the Rhode Island Young Democrats. Although I was not very actively involved in the organization, to the best of my recollection, I participated

in efforts to encourage young people to register to vote and to become involved in the political process and support the electoral efforts of Democratic candidates.

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 clerked for Associate Justice Donald F. Shea of the Rhode Island Supreme Court from 1992 to 1993.

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

I have never practiced alone.

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

1993 – 1994
Tate and Elias LLC
321 South Main Street, Suite 300
Providence, Rhode Island 02903
Associate Attorney

1994 – 2006; 2012 – present
Rhode Island Public Defender
160 Pine Street
Providence, Rhode Island 02903
Assistant Rhode Island Public Defender (1994 – 2006)
Rhode Island Public Defender (2012 – present)

2006 – 2012
Federal Defender for the Districts of Massachusetts, New Hampshire and Rhode Island
Ten Weybosset Street, Suite 300
Providence, Rhode Island 02903
Assistant Federal Defender

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

I have never served as a mediator or arbitrator.

b. Describe:

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

In 1993, I joined the law firm of Tate and Elias in Providence, Rhode Island as an associate attorney. Tate and Elias is an insurance defense firm focused on representation of doctors and hospitals against medical malpractice claims. As the only associate attorney, I handled depositions and the motion calendar, and I assisted partner attorneys during trials. I also prepared discovery responses and was responsible for researching and writing motions.

From 1994 to 2006, I served as an Assistant Public Defender for the State of Rhode Island. I began representing indigent defendants accused of misdemeanors. Thereafter I represented people charged with probation violations and, for the majority of those years, I primarily represented individuals charged with felonies ranging from simple drug possession to murder.

From 2006 through July 2012, I served as an Assistant Federal Defender in Rhode Island. During those years I was engaged exclusively in the defense of indigents charged with crimes in federal court.

Since 2012, I have served as the Public Defender for the State of Rhode Island. While I still handle a few individual criminal cases, my primary responsibilities are to run the agency. I am the chief financial officer responsible for budgeting and spending. I also act as general counsel for the agency.

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

While at Tate and Elias, I represented doctors, medical professionals and hospitals engaged in malpractice lawsuits. In addition, I handled a few clients in other matters, including educational advocacy. In both the state and federal public defender offices, I represented indigent criminal defendants in trial courts. I represented people charged with crimes ranging from misdemeanors to murder. I served as either lead or sole counsel on a range of criminal cases. In addition, in federal court I handled a few appeals.

As the Public Defender for the State of Rhode Island, I handle fewer criminal cases now, and instead represent the agency generally. As the

chief administrative officer, I am responsible for developing and implementing policy, ensuring ethical and high-quality representation, and overseeing training and personnel decisions with respect to approximately 100 employees, of whom 93 are full-time. I have also represented the agency in an unemployment case by a former employee and represented individual attorneys at post-conviction hearings.

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

For the majority of my career I have been engaged exclusively in litigation. For the first year of my career I was a litigation associate in an insurance defense firm. I was in court regularly during that time. During the 12 years that I spent as an Assistant State Public Defender for Rhode Island, I appeared in court on most days. As an Assistant Federal Defender from 2006 to 2012, I appeared in court several days per week. For the past three years, as the head of a statewide public defender agency, I am in court less frequently. I appear in court on occasion to handle some criminal matters as well as matters related to the business of the Rhode Island Public Defender's Office.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 25% |
| 2. state courts of record: | 75% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 0% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 15% |
| 2. criminal proceedings: | 85% |

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

I have litigated approximately 35 cases before juries in both state and federal court. In most of these, about 25, I was chief counsel. In the remaining cases I acted as co-counsel or as supervising counsel for a junior attorney. I also have tried approximately 75 to 100 non-jury cases, including district court trials, violations of probation and bail, and post-conviction relief matters.

- i. What percentage of these trials were:

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

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

In my capacity as an Assistant Federal Defender I wrote petitions for certiorari in two cases. Neither of those petitions was granted.

Hatch v. United States, 132 S. Ct. 1970 (2012). Copy of cert. petition supplied.

Paneto v. United States, 132 S. Ct. 2411 (2012). Copy of cert. petition supplied.

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. *State v. Campbell*, Case No. P1-1993-3483A (R.I. Super. Ct.), *aff'd*, 691 A.2d 564 (R.I. 1997).

In this first-degree murder case, I acted as co-counsel for the defendant, Mr. Campbell, who was 17 years old at the time of the crime. The case involved pre-trial motions on the procedure the police used in interrogating a minor as well as the reliability of DNA evidence. After a three week jury trial, Mr. Campbell was convicted and received a life sentence. The conviction was affirmed on appeal, although I did not work on the appeal. This was the first reported case in Rhode Island where the National Research Council DNA report was litigated at both the trial and appellate levels.

Dates of Representation: 1994 – 1995

Judge: The Hon. Domenic Cresto

Co-counsel: Michael A. DiLauro
Rhode Island Public Defender
160 Pine Street
Providence, RI 02903

(401) 222-3492

Opposing Counsel: Susan Bello
(formerly at Rhode Island Department of Attorney General)
Current contact information unavailable

2. *State v. Dearmas*, Case No. P1-2001-2621A (R.I. Super. Ct), *rev'd*, 841 A.2d 659 (R.I. 2004).

I represented Mr. Dearmas, who was charged with two counts of first degree child molestation. The State moved to seize a blood sample from the defendant in order to test the DNA to see if it matched the evidence in the case. I objected on behalf of Mr. Dearmas, challenging, among other things, the power of the court to issue such an order. After a hearing, the trial court granted the motion and issued a blood seizure order, but stayed the execution of the warrant to allow an interlocutory appeal. The Rhode Island Supreme Court reversed, quashing the order of the superior court, although I did not handle the appeal. This case ultimately caused a change in Rhode Island law as it relates to the authority of the superior court to issue warrants.

Dates of Representation: 2001 – 2004

Judge: The Hon. Edwin Gale

Opposing Counsel: Scott Erickson
Rhode Island Department of Attorney General
150 South Main Street
Providence, RI 02903
(401) 274-4400

3. *State v. Garcia*, Case No. P1-1999-2635AG (R.I. Super. Ct.), *aff'd*, 883 A.2d 1131 (R.I. 2005).

I acted as lead counsel for the defendant in this case involving a first degree murder charge. Ms. Garcia was accused of shooting Ms. Smith in the back and shoulder. Ms. Garcia admitted that she had shot and killed Ms. Smith, and claimed self-defense. At trial, the defense challenged the admissibility of ballistic evidence and presented evidence that the decedent was in fact the aggressor. The trial court refused to admit character evidence to support the self-defense argument, and Ms. Garcia was ultimately convicted and sentenced to life in prison consecutive to a 74-year sentence she was already serving in Virginia. This conviction was affirmed on appeal, although I did not handle the appeal.

Dates of Representation: February 1999 – July 2002

Judge: The Hon. Robert D. Krause

Co-counsel: John J. Hardiman (deceased)

Opposing Counsel: William Ferland
U.S. Attorney's Office for the District of Rhode Island
Fleet Center
50 Kennedy Plaza, Eighth Floor
Providence, RI 02903
(401) 709-5000

4. *State v. Tabor*, Case No. P1-1998-3839A (R.I. Super. Ct.).

I represented Mr. Tabor, who was the night manager of a U-Haul rental agency in Providence. During a store closing one evening, a co-worker put a gun that he had bought for protection on the counter. At some point, Mr. Tabor picked up the gun and it discharged, killing another employee. The State charged Mr. Tabor with manslaughter, on the theory that he had acted negligently in handling the firearm. At trial, the defense showed that the firearm in question had an extremely light trigger pull, and the jury acquitted Mr. Tabor. I acted as lead counsel for Mr. Tabor and handled jury voir dire and selection, opening statement and closing argument, the cross examination of most of the State's witnesses, and the presentation of defense witnesses.

Dates of Representation: December 1998 – October 2000

Judge: The Hon. Robert D. Krause

Co-counsel: Sean F. Farley
(formerly at Rhode Island Public Defender)
Current contact information unavailable

Opposing Counsel: Susan Bello
(formerly at Rhode Island Department of Attorney General)
Current contact information unavailable

5. *United States v. Arias*, Case No. 08-CR-002T (D.R.I.).

I represented Mr. Arias, whose car was pulled over by a Providence police officer for a faulty tail light. The officer ordered all occupants out of the vehicle and searched it, uncovering a handgun and ammunition. I acted as sole counsel for Mr. Arias and filed a pre-trial motion to suppress the evidence that had been seized as a result of the stop, arguing that the seizure violated Mr. Arias' rights under the Fourth Amendment. At a contested hearing, the defense showed that the testimony about the reason the police had stopped the car was not accurate. The court held that the search had been conducted without probable cause, and the case was subsequently dismissed.

Dates of Representation: November 2007 – November 2008

Judge: The Hon. Ernest C. Torres

Opposing Counsel: Zechariah Chafee
U.S. Attorney's Office for the District of Rhode Island
Fleet Center
50 Kennedy Plaza, Eighth Floor
Providence, RI 02903
(401) 709-5000

6. *United States v. Cruz*, Case No. 06-CR-105ML (D.R.I.).

I acted as sole counsel for Mr. Cruz, who was charged with distribution of heroin and with being a felon in possession of a firearm. The government sought to have Mr. Cruz sentenced as an armed career criminal because of his prior record of convictions. On behalf of Mr. Cruz, I objected and argued that a Rhode Island kidnapping conviction did not constitute a crime of violence under the residual clause of the Armed Career Criminal Act. The court agreed and sentenced Mr. Cruz as a felon in possession of a firearm without the significant enhancement under the ACCA.

Dates of Representation: October 2006 – November 2008

Judge: The Hon. Mary M. Lisi

Opposing Counsel: Zechariah Chafee
U.S. Attorney's Office for the District of Rhode Island
Fleet Center
50 Kennedy Plaza, Eighth Floor
Providence, RI 02903
(401) 709-5000

7. *United States v. Figueroa*, Case No. 08-CR-0141S (D.R.I.), *aff'd*, 501 F. App'x 5 (1st Cir. 2013).

I served as lead counsel for Mr. Figueroa, who was accused of participating in an international heroin smuggling ring. Much of the evidence consisted of extensive wiretap recordings of phone calls that were primarily in Spanish. Pre-trial motions involved challenging the wiretap applications and seeking such documents as interim reports. As lead counsel for Mr. Figueroa during the eight-day trial, I handled voir dire and jury selection, delivered opening statement and closing argument, and cross examined most of the government witnesses. Mr. Figueroa was convicted of conspiring to distribute heroin and sentenced to 121 months' imprisonment. The conviction was affirmed on appeal, but I did not handle the appeal.

Dates of Representation: September 2008 – June 2011

Judge: The Hon. William E. Smith

Co-counsel:

Olin W. Thompson, III
Federal Public Defender's Office
Ten Weybosett Street, Suite 300
Providence, RI 02903
(401) 528-4281

Counsel for Co-defendants: Robert Watt (for defendant E. Figueroa)
Solo Practitioner
84 Ship Street
Providence, RI 02903
(401) 861-8810

John Calcagni III (for defendant C. Rodas)
Law Office of John L. Calcagni III
One Custom House Street, Suite 300
Providence, RI 02903
(401) 351-5100

Charles Tamuleviz (for defendant J. Lazala)
Nixon Peabody
One Citizens Plaza #5
Providence, RI 02903
(401) 454-1000

Steven DiLibero (for defendant E. Pena)
DiLibero & Associates
1920 Mineral Spring Avenue, #12
North Providence, RI 02904
(401) 353-9020

Thomas Desimone (for defendant J. Carrasquillo)
Desimone & Desimone
20 Springdale Avenue
North Providence, RI 02904
(401) 353-5987

Opposing Counsel:

Sandra Hebert
William Ferland
U.S. Attorney's Office for the District of Rhode Island
Fleet Center
50 Kennedy Plaza, Eighth Floor
Providence RI 02903
(401) 709-5000

8. *United States v. Hatch*, Case No. 05-98T (D.R.I.), *aff'd*, No. 11-1278 (1st Cir. 2011),

cert. denied, 132 S. Ct. 1970 (2012).

I represented Mr. Hatch through hearing, sentencing, appeal and a petition for certiorari to the United States Supreme Court. Mr. Hatch had been previously convicted of tax evasion and filing a false tax return in 2006. I acted as sole counsel for Mr. Hatch when he was summoned to answer a charge that he had violated the conditions of his supervised release arising from that conviction, by failing to file amended income tax returns and pay all taxes that were due. At a contested violation hearing, the defense presented the testimony of a tax expert and argued that the fact that Mr. Hatch's tax court case was still pending and the final amount of tax liability had not yet been determined precluded him from filing an amended tax return. Further, Mr. Hatch had no ability to pay any taxes. The court found Mr. Hatch to be in violation of the conditions of his supervised release and sentenced him to nine months' imprisonment. The First Circuit Court of Appeals affirmed, and Mr. Hatch's petition for certiorari to the Supreme Court was denied.

Dates of Representation: December 2010 – January 2012

Judge (District Court): The Hon. William E. Smith

Judges (First Circuit) The Hon. Sandra Lynch
The Hon. Jeffrey R. Howard
The Hon. Ojetta Rogerie Thompson

Opposing Counsel: Andrew J. Reich (formerly at U.S. Attorney's Office for the District of Rhode Island)
Current contact information unavailable

9. *United States v. Keosouvanh*, Case No. 07-CR-138S (D.R.I.), *aff'd*, No. 09-2479 (1st Cir. 2009).

Mr. Keosouvanh was arrested as part of a reverse sting operation in which he had agreed to provide a crew of men to rob a drug house. He was charged with conspiracy to commit robbery and conspiracy to possess cocaine with the intent to deliver. I served as lead counsel for Mr. Keosouvanh from his arraignment in 2007 through his sentencing in 2009. As lead counsel, I handled pre-trial motions, voir dire and jury selection, delivered opening statement and closing argument, and cross examined most of the government witnesses. Mr. Keosouvanh was convicted and, because he was charged with two counts of violating 18 U.S.C. 924(c), he was subject to consecutive sentences of 60 months and 300 months. In pre-trial memoranda and post-trial motions, the defense challenged the ability of the court to sentence Mr. Keosouvanh to consecutive terms under the conditions that existed in his case. After trial, the government agreed to dismiss one count, and Mr. Keosouvanh was sentenced to a total of 220 months. The First Circuit affirmed the sentence, although I did not handle the appeal.

Dates of Representation: April 2007 – October 2009

Judge: The Hon. William E. Smith

Co-counsel: Olin W. Thompson, III
Federal Defender's Office
Ten Weybosett Street
Providence, RI 02903
(401) 528-4281

Opposing Counsel: Peter F. Neronha
Kenneth Madden
U.S. Attorney's Office for the District of Rhode Island
Fleet Center
50 Kennedy Plaza, Eighth Floor
Providence, RI 02903
(401) 709-5000

10. *United States v. Paneto*, Case No. 09-CR-134S (D.R.I.), *aff'd*, 661 F.3d 709 (1st Cir. 2011), *cert. denied*, 132 S. Ct. 2411 (2012).

I began representing Mr. Paneto upon his arrest in October 2009 and served as lead counsel through his trial, sentencing and appeal. Mr. Paneto was accused of possession of crack cocaine with the intent to distribute and of being a felon in possession of a firearm. The charges stemmed from a "knock and talk" that undercover Providence police officers had conducted after purchasing crack from someone who identified Mr. Paneto as his supplier. At a three-day suppression hearing in April 2010, the defense challenged the consent to search that police had obtained from Mr. Paneto prior to searching his apartment. At trial, Mr. Paneto was convicted of being a felon in possession of a firearm but was acquitted of possession of cocaine base with the intent to distribute. The case was appealed to the First Circuit Court of Appeals. I handled the appeal, including the oral argument. The appeal was denied and I filed a petition for certiorari, which was also denied.

Dates of Representation: September 2009 – January 2012

Judge (District Court): The Hon. William E. Smith

Judges (First Circuit): The Hon. Kermit V. Lipez
The Hon. Bruce M. Selya
The Hon. Jeffrey R. Howard

Co-counsel: Kevin Fitzgerald
Federal Defender's Office
Ten Weybosset Street, Suite 300
Providence, RI 02903
(401) 528-4281

Opposing Counsel: Richard Rose (trial counsel)
Donald C. Lockhart (appellate counsel)
U.S. Attorney's Office for the District of Rhode Island
Fleet Center
50 Kennedy Plaza, Eighth Floor
Providence, RI 02903
(401) 709-5000

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

Throughout my career I have been part of efforts to improve the effectiveness and efficiency of the criminal justice system in Rhode Island. As the Rhode Island Public Defender, I have convened a working group to address the issue of incarceration without representation in Rhode Island's municipal courts, which do not provide counsel for all indigent defendants facing incarceration. I have negotiated with the cities of Providence and Cranston to address this issue in their municipal courts, and am working with other members of the working group to compile a list of all municipalities and their practices for the provision of representation. In addition, I serve on the Justice Reinvestment Working Group, a panel formed by Rhode Island Governor Gina Raimondo on July 7, 2015, to study and recommend criminal justice reforms with the goals of protecting public safety, reducing recidivism, analyzing racial disparities, and reducing costs. The group is currently working on reform of the state's probation system. As part of my responsibilities as Public Defender, I have advised legislative officials on funding issues for indigent defense in the state.

While I have approved our legislative liaison's proposals to support or oppose pending legislation as part of the Rhode Island Public Defender's legislative package over the past three years, I have never performed lobbying or registered as a lobbyist.

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 any courses.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business

relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I am a beneficiary of the State of Rhode Island's employee defined benefit pension plan. As such I am entitled to a pension at age 67. That pension would be based on a percentage of the highest three years of my income.

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

I have no plans, commitments, or agreements to pursue outside employment if I am confirmed.

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 do not anticipate any conflicts of interest. The most likely potential conflicts would arise with respect to cases in which the Federal Defender is involved and that date back to my employment there, and I would recuse myself from any matter about which I gained knowledge through my past employment relationship with the Federal Defender. The Rhode Island Public Defender does not litigate in federal court except in rare instances. I would recuse myself from matters involving the Rhode Island Public Defender for an appropriate period of time.

- 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 carefully review and address any real or potential conflicts by reference to the Code of Conduct for United States Judges and all laws, rules and practices addressing such circumstances. I will also seek the advice of colleagues and of the Judicial Conference as needed.

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.

Since 1994, I have been precluded from practicing law outside of my responsibilities as a public defender. During my 21 years as a public defender, 100% of my practice has been devoted to serving the disadvantaged. All clients of the public defender are indigent.

From 1993 to 1994, I volunteered for the Rhode Island Bar Association's Homeless Legal Clinic.

In approximately 2010, I mentored a high school trial team that competed in the Rhode Island Legal Educational Partnership mock trial tournament. I acted as a judge at the culminating event for the mock trial tournament in 2013 and 2014.

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.

On February 6, 2015, Judge Mary M. Lisi announced that she would retire and assume senior status on October 1, 2015. Thereafter, United States Senators Jack Reed and Sheldon Whitehouse announced that they would be accepting statements of interest for the upcoming vacancy. In March 2015, I submitted my resume to Senator Reed for consideration. On June 5, 2015, I was interviewed by Senators Reed and Whitehouse in Cranston, Rhode Island. On June 26, 2015, Senator Reed called to inform me that he intended to recommend me to the White House for the nomination. Since June 27, 2015, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 27, 2015, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On September 8, 2015, 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.