UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Michael Jerome McShane

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

   United States District Judge for the District of Oregon

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.

   Multnomah County Courthouse
   1021 SW Fourth Avenue
   Portland, Oregon 97204

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

   1961; Pittsburgh, Pennsylvania

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.

   1985 – 1988, Northwestern School of Law at Lewis and Clark College; J.D. (with honors), 1988

   1979 – 1983, Gonzaga University; B.A. (*magna cum laude*), 1983

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
   Oregon Judicial Department, Fourth Judicial District
   1021 SW Fourth Avenue

Portland, Oregon 97204
Circuit Court Judge

2003 – present
Northwestern School of Law at Lewis and Clark College
10015 SW Terwilliger Boulevard
Portland, Oregon 97219
Adjunct Professor

1997 – 2001
Oregon Judicial Department, Fourth Judicial District
1021 SW Fourth Avenue
Portland, Oregon 97204
Circuit Court Judge Pro tem

1988 – 1997
Metropolitan Public Defender
630 SW Fifth Avenue, Suite 500
Portland, Oregon 97204
Staff Attorney (1988 – 1990)
Senior Felony Attorney (1990 – 1995)
Misdemeanor Supervisor (1995 – 1997)

1987 – 1988
Hoevet and Snyder
1000 SW Broadway Suite 1500
Portland, Oregon 97205
Law Clerk

1987
Clark County Prosecuting Attorney's Office
1013 Franklin Street, P.O. Box 5000
Vancouver, Washington 98666
Certified Law Student

1986 – 1987
Northwestern School of Law at Lewis and Clark College
Boley Law Library
10015 SW Terwilliger Boulevard
Portland, Oregon 97219
Librarian

1983 – 1984
Jesuit Volunteer Corps Northwest
3928 North Williams Avenue

Portland, Oregon 97208
Resource coordinator for homeless parolees and probationers

Other Affiliation (uncompensated):

2003 – 2009
St. Andrew Nativity School
4925 NE Ninth Avenue
Portland, Oregon 97211
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 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.

   Oregon State Bar President's Award for Public Service (2012)

   Oregon National Guard Youth Challenge Mentor Appreciation (2010)

   Mentor of the Year, Northwestern School of Law at Lewis and Clark College Mentorship Program (2009)

   Career Service Award, Metropolitan Public Defender (1997)

   Best Oral Advocate, Northwestern School of Law at Lewis and Clark (1985)

   Honors Program Graduate, Gonzaga University (1983)

   Fiction Writing Award, Gonzaga University (1983)

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.

   Multnomah Bar Association

   Multnomah County Circuit Court Judicial Outreach Committee

   National Council of Juvenile and Family Court Judges

Oregon Circuit Court Judges Association

Oregon Criminal Defense Lawyers Association

Oregon Gay and Lesbian Law Association

Oregon Judicial Conference, Judicial Education Committee

Oregon Judicial Conference, Criminal Law Committee

Oregon State Bar

Oregon Women Lawyers

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.

Oregon, 1988

There has been no lapse 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.

Oregon State Courts, 1988

There has been no lapse 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.

Governor's Prisoner Re-entry Council (2007 – present)
Steering Committee (2007 – present)

HIV Services Planning Council (2000 – 2004)

Multnomah County Jail Capacity Review Committee (2009 – 2010)

Oregon Rugby Sports Union
Team member, Portland Avalanche (2008)

Saint Andrew Nativity School, Multnomah County
Board member (2003 – 2009)
Volunteer (2003 – present)

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

To the best of my knowledge, none of the organizations listed in response to 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

Voter Pamphlet Statement, May 2008. Copy supplied.

Michael McShane, Letter to the Editor, *Don't Dawg the Deputies*, WILLAMETTE WEEK, Feb. 20, 2008. Copy supplied.

DUII/ DWS Deskbook for Oregon Courts, Revised 2001 edition. I edited and supervised the project. Cover sheet and table of contents provided.

Oregon Judges Criminal Law Benchbook, Chapter Two: Pretrial Motions, 2005. Oregon Judicial Department. Copy supplied.

Oregon Judges Criminal Law Benchbook, Chapter Fifteen: Posttrial Motions, 2005. Oregon Judicial Department. 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.

Signatory to the Multnomah Bar Association Statement of Diversity Principles, 2009. Copy supplied.

Expedited DUII Plea Option – DUII Policy for First Time Offenders (Apr. 2010). Copy supplied.

Orientation video for first time DUII offenders (Apr. 2010). Video available at http://courts.oregon.gov/Multnomah/media/expeditedduiipleaoptionprogramexplanation.wmv.

Multnomah County Circuit Court (Oregon Judicial Department, Fourth Judicial District) Vision Statement (Dec. 10, 2009). Copy supplied.

The decision log of the Governor's Re-entry Council, Steering Committee (Apr. 1, 2009). Copy supplied.

Jury Selection Memorandum for Aggravated Murder Cases – Internal memorandum for Oregon Judicial Department, Fourth Judicial District (2005). 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.

The Governor's Re-entry Council meeting minutes, ranging from November 21, 2007 to November 29, 2011, are available at http://tinyurl.com/REC-Minutes. The Re-entry Council Steering Committee minutes, ranging from December 20, 2007 to February 1, 2012, are available at http://tinyurl.com/RECSC-Minutes.

On February 15, 2007, I testified before the Oregon Senate Committee on the Judiciary as to the need for funding for court reporters in capital cases. The testimony can be found here: http://www.leg.state.or.us/listn/archive/archive.2007s/SJUD-200702151300.ram.

On February 8, 2007, I testified before the Public Defense Services Commission about issues related to the delivery of services for death penalty cases in Multnomah County. Minutes supplied.

On January 23, 2007, I was on a panel presenting an overview to the Oregon Senate and House Judiciary Committees on the criminal justice system. The testimony can be found here:

http://www.leg.state.or.us/listn/archive/archive.2007s/JWMPS-200701230831.ram.

On October 23, 2007, I gave a presentation at the Multnomah County Circuit Court's Legislative Open House regarding mental health issues for defendants. Presentation materials supplied.

On October 25, 2006, I gave a presentation at the Multnomah County Circuit Court's Legislative Open House regarding sentencing issues and community resources. The presentation was at the Multnomah County Courthouse in Portland, Oregon. Presentation materials supplied.

In 2006, I issued an official statement in support of Oregon Circuit Court judicial nominee Trung D. Tu. 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.

June 20, 2012: Evidence for the New Judge, presented in Salem, Oregon, at the Oregon Judicial Department's New Judge's College. I teach this class every year to new judicial officers on both the trial and appellate courts in Oregon. The class focuses on exhibit management and the basic concepts of hearsay, relevance, and scientific evidence. PowerPoint supplied.

June 14, 2012: The Appellate Zone: Stop in the Name of *Rodgers/Kirkeby*, presented in Bend, Oregon, at the Oregon Criminal Defense Lawyer's 2012 Annual Conference. This presentation consists of a series of skits and commentary that I authored to illustrate recent cases on search and seizure out of our appellate courts. PowerPoint and outline supplied.

May 11, 2012: Shreds of Evidence, the Oregon Evidence Code in Administrative Proceedings, presented at the Worker's Compensation Section Annual Meeting in Salishan, Oregon. The presentation focused on the applicability and use of the Oregon Evidence code in administrative proceedings. PowerPoint handouts supplied.

April 7, 2012: During the Spring Awards Reception for the Lewis and Clark Law School Mentoring Program, hosted in Portland, OR, I made brief remarks about my mentee, Michal Hsu, who had been awarded the "Mentee of the Year Award."

I have no notes, transcript, or recording, but press coverage is supplied. The address of Lewis and Clark Law School is 10015 SW Terwilliger Boulevard, Portland, OR 97219.

February 11, 2012: Cross Examination for the New Lawyer, presented in Portland, Oregon, at the Oregon Criminal Defense Lawyers Association's New Lawyer Seminar. Outline supplied.

October 19, 2011: Judicial Settlement in Criminal Cases, presented in Salem, Oregon, at the 2011 Judicial Conference. I was part of a panel of judges discussing best practices during settlement. The conference was chaired by the Chief Justice of the Oregon Supreme Court. I have no notes, transcript, or recording. The address of the Oregon Supreme Court is 1163 State Street, Salem, OR 97301.

June 22, 2011: Evidence for the New Judge, presented in Salem, Oregon, at the Oregon Judicial Department's New Judge's College. I used the PowerPoint supplied for the June 20, 2012 event.

April 1, 2011: The Appellate Zone, Stop in the Name of *Rodgers/ Kirkeby*, presented in Tigard, Oregon, at the offices of the Criminal Law Section of the Oregon State Bar. I used the outline and skits supplied for the June 14, 2012 event.

January 29, 2011: Cross Examination for the New Lawyer, presented in Portland, Oregon, at the Oregon Criminal Defense Lawyers Association's New Lawyer Seminar. I used the outline supplied for the February 11, 2012 event.

October 20, 2010: The Appellate Zone, Stop in the Name of *Rodgers/Kirkeby*, presented in Salem, Oregon, at the 2010 Judicial Conference. I used the outline and skits supplied for the June 14, 2012 event.

June 23, 2010: Evidence for the New Judge, presented in Salem, Oregon, at the Oregon Judicial Department's New Judge's College. I used the PowerPoint supplied for the June 20, 2012 event.

June 23, 2010: The Basics of Search and Seizure, presented in Salem, Oregon, at the Oregon Judicial Department's New Judge's College. I created the curriculum for this course and presented it at the New Judge's College with the Hon. Eric Bergstrom. Handouts supplied.

June 19, 2010: Blink: Judicial Decision Making, presented in Sun River, Oregon, at the Oregon Association of Defense Counsel's 2010 annual conference. This panel presentation explored intuitive and deductive thinking and how attorneys can influence judicial decision-making in civil trial and motion practice. I have no

notes, transcript, or recording. The address of the Oregon Association of Defense Counsel is 147 SE 102nd, Portland, OR 97216.

June 18, 2010: Cross Examination: A Funny Thing Happened on the Way to Closing Argument, presented in Sun River, Oregon, at the Oregon Association of Defense Counsel's 2010 annual conference. Outline supplied.

March 2010: Cross Examination, A Funny Thing Happened on the Way to Closing Argument, presented at the Multnomah County Courthouse in Portland, Oregon, to the Oregon Association of Defense Counsel's Trial Academy. I used the presentation and outline supplied for the June 18, 2010 event.

January 30, 2010: Cross Examination for the New Lawyer, presented in Portland, Oregon, at the Oregon Criminal Defense Lawyer Association's New Lawyer Seminar. I used the outline supplied for the February 11, 2012 event.

October 20, 2009: A Dog's Breakfast, Death Penalty Litigation in Oregon, presented at the 2009 Judicial Conference in Salem, Oregon. This lecture was an overview of the history of the death penalty in Oregon and an analysis of the death penalty under both federal and state law. PowerPoint and outline supplied.

June 2009: Evidence for the New Judge, presented in Salem, Oregon, at the Oregon Judicial Department's New Judge's College. I used the PowerPoint supplied for the June 20, 2012 event.

June 2009: Sentencing in Oregon, presented in Salem, Oregon. This is a course curriculum that I created for the Oregon Judicial Department's New Judge's College in 2009. I have trained other judges to teach the course using my materials. PowerPoint supplied.

May 28, 2009: Multnomah County Judges Trial Practice Seminar – Picking Your Battles, a Stress Free Guide to Litigation, presented at the World Trade Center in Portland, Oregon, through the Multnomah Bar Association. I led a panel of judges that discussed litigation practice and professionalism through a series of scenarios that I created. Materials supplied.

April 17, 2009: Evidence for the Administrative Law Judge, presented in Tigard, Oregon, to the judges of the Worker's Compensation Board. PowerPoint supplied.

January 24, 2009: Cross Examination for the New Lawyer, presented in Portland, Oregon, at the Oregon Criminal Defense Lawyer Association's New Lawyer Seminar. I used the outline supplied for the February 11, 2012 event.

September 28, 2008: Cross Examination, A Funny Thing Happened on the Way to Closing Argument, presented at the Multnomah County Courthouse in Portland

Oregon to the OADC Trial Academy. I used the presentation and outline supplied for the June 18, 2010 event.

June 27, 2008: Evidence for the New Judge, presented in Salem, Oregon. I used the PowerPoint supplied for the June 20, 2012 event.

November 30, 2007: Special Issues Related to the Cross Examination of Experts in Criminal Cases, presented at the Oregon Convention Center in Portland, Oregon, to the Oregon Law Institute. Outline supplied.

November 10, 2007: Cross Examination – A Funny Thing Happened on the Way to Closing Argument, presented in Puerto Vallarta, Mexico, at the Oregon Criminal Defense Lawyers Association's Sunny Climate Conference. Using transcripts from real trials, I examine the common mistakes lawyers make during cross-examination. I used presentation and outline supplied for the June 18, 2010 event.

April 17, 2006: Professionalism in Everyday Practice, presented at the Standard Insurance Center in Portland, Oregon. A CLE presented to new members of the bar regarding professionalism from a judge's perspective. This presentation was sponsored by the Multnomah Bar Association and I presented with the Hon. Jean Kerr Maurer. I have no notes, transcript, or recording. The address of the Multnomah Bar Association is 620 SW Fifth Avenue, Portland, OR 97204.

May 31, 2005: Direct and Cross Examination, Keeping it Simple and Getting it Right, presented at the World Trade Center in Portland, Oregon. The discussion focused on the methods of direct and cross-examination through the eyes of judges and practitioners. I believe I used the presentation and outline supplied for the June 18, 2010 event.

April 28, 2004: Panelist, "Brown v. Board of Education Continuing Impact, Changing Lives," Multnomah Bar Association's Young Lawyers Section, Portland, Oregon. I spoke on the importance of retaining minority attorneys in Oregon and the importance of a diverse bench. I have no notes, transcript, or recording. The address for the Multnomah Bar Association is 620 SW Fifth Avenue, Suite 1220, Portland, Oregon 97204.

September 2000 (est.): Traffic School, presented in Salem, Oregon, at the Oregon Judicial Department's New Judge's College. This course was focused on traffic laws, procedure and sentencing. Outline supplied.

September 2000 (est.): DUII for the New Judge, presented in Salem, Oregon, at the Oregon Judicial Department's New Judge's College. This class focused on the basics of DUII litigation. Outline supplied.

September 1999: Traffic School, presented in Salem, Oregon. I used the outline supplied for the September 2000 event.

September 1999: DUII for the New Judge, presented in Salem, Oregon. I used the outline supplied for the September 2000 event.

1999: Everything I Needed to Know About Jury Selection I Learned on a Blind Date, presented at the office of The Metropolitan Public Defender in Portland, Oregon. This CLE presentation was part of a panel discussion. I cannot recall the exact month of this presentation. Notes supplied.

September 1998: Traffic School, presented in Salem, Oregon. I used the outline supplied for the September 2000 event.

September 1998: DUII for the New Judge, presented in Salem, Oregon. I used the outline supplied for the September 2000 event.

1995: Cross Examination of Police and Forensic Experts, presented in Sun River, Oregon, at the Oregon Criminal Defense Lawyers Association's Annual Conference. My co-presenter was Ms. Susan Russel who now works for the Federal Defender's Office in Portland. I have no notes, transcript, or recording. The address of OCDLA is 96 East Broadway, Suite 5, Eugene, Oregon 97401.

From 2005 to 2011, I taught a weekly class called "Friday Focus" for the Metropolitan Learning Center. Groups of approximately 12 students sat in my jury box and observed hearings, and we discussed the hearings and the justice system during breaks. I have no notes, transcripts or recordings. The address of the Metropolitan Learning Center is 2033 NW Glisan Street, Portland, Oregon 97209.

In addition, I have spoken to hundreds of student groups that tour our courtroom and I frequently speak at local schools. These are informal events and I do not recall and cannot determine the dates. I have no notes, transcripts or recordings.

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.

The list that follows represents my best efforts, through searches of my records and Internet databases, to identify interviews that I have given. There may be, however, other interviews that I have been unable to recall or identify.

Aimee Green, *Prominent Portland Defense Attorney Gary Bertoni Fights Accusations of Misconduct, Again*, THE OREGONIAN, Sept. 6, 2012. Copy supplied.

Aimee Green, *Bill Would 'Commit' Heroin Addicts*, THE OREGONIAN, Feb. 7, 2012. Copy supplied.

Hannah Hoffman, *Jail Birds*, WILLAMETTE WEEK, Jan. 18, 2012. Copy supplied.

Steve Duin, *The Shock Is Who Isn't in Custody*, THE OREGONIAN, Oct. 16, 2011. Copy supplied.

Mara Stine, *DNA Evidence in Cold Case Leads to Prison Sentence*, THE GRESHAM OUTLOOK, Oct. 11, 2011. Copy supplied.

Janine Robben, *Coloring Outside the [Guide]Lines*, OREGON STATE BAR BULLETIN, July 2011. Copy supplied.

Aimee Green, *2 Students Who Set Fire at Reed Avoid Trial*, THE OREGONIAN, Sept. 21, 2010. Copy supplied.

James Pitkin, *Saving Ryan*, WILLAMETTE WEEK, Sep. 15, 2010. Copy supplied.

Susan Nielsen, *Drunken Driving in Oregon: Because All Else Fails, Judges Try Tough Love*, THE OREGONIAN, June 6, 2010. Copy supplied.

Aimee Green, *Gridlock Inside Courthouse Slows Justice System*, THE OREGONIAN, July 9, 2009. Copy supplied.

Matt Davis, *Judge Rules Sit/Lie Law Unconstitutional*, PORTLAND MERCURY, Feb. 19, 2009. Copy supplied.

Aimee Green, *Trading Chicken for a Plea*, THE OREGONIAN, July 26, 2008 (quotes reprinted in multiple outlets). Copy supplied.

James Pitkin, *Killing Time*, WILLAMETTE WEEK, Jan. 23, 2008. Copy supplied.

Edward Walsh, *The Truth, The Whole Truth, about Lying in Court*, THE OREGONIAN, Sept. 10, 2007. Copy supplied.

Steve Duin, *The No-Name vs. Oregon's First Family*, THE OREGONIAN, Oct. 24, 2006. Copy supplied.

Steve Duin, *Judgment May Not Be Her Strong Suit*, THE OREGONIAN, Sept. 12, 2006. Copy supplied.

Anne Saker, *Bench Battle Pits Neighbor against Judge*, THE OREGONIAN, Sept. 6, 2006 (reprinted in multiple outlets). Copy supplied.

Dan Reed, Chuck Carroll, and Andrea Chang, *How Cops Closed in on Child Molester*, SAN JOSE MERCURY NEWS, June 18, 2005 (reprinted in multiple outlets). Copy supplied.

Michael Rose, *Area Farmers Settle*, STATESMAN JOURNAL, June 21, 2003. Copy supplied.

Mike Bloom, *Judge Michael McShane, Multnomah County Circuit Court*, MULTNOMAH LAWYER, Mar. 2001. Copy supplied.

Scott Hewitt, *Residents Denounce Drug-Free Zone*, PORTLAND SKANNER, Apr. 30, 1997. Copy supplied.

Rick Bella, *Jury Finds Hinkhouse Used HIV as Weapon*, THE OREGONIAN, Mar. 16, 1994. Copy supplied.

Rick Bella, *Jury Fails to Convict Evers of Attempted Murder*, THE OREGONIAN, Aug. 18, 1992. 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 began my career with the Oregon Judicial Branch in 1997 as a Multnomah County Circuit Court Judge Pro Tem. I was appointed by Wallace Carson, Chief Justice of the Oregon Supreme Court. The Multnomah County Circuit Court is a state court of general jurisdiction and serves the Fourth Judicial District of the Oregon Judicial Branch. In my capacity of a pro tem judge, I presided over misdemeanor trials, criminal arraignments, traffic matters, stalking protective orders, probation hearings, small claims, and forcible entry and detainer matters.

In March 2001, I was appointed to the Multnomah County Circuit Court by Governor John A. Kitzhaber. I was elected to the position in May 2002 and was re-elected in May 2008. I serve as a trial judge on a court of general jurisdiction and preside over both criminal and civil matters. For the year 2012 I have been assigned to the family law bench.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? 1600

i. Of these, approximately what percent were:

jury trials:	25%
bench trials:	75%
civil proceedings:	35%
criminal proceedings:	65%

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

State v. Guzman, No. 08-04-31996 (Multnomah County Cir. Ct. Oct. 1, 2012).

Oregon v. Sierra-Sanchez, et al., No. 03-09-34433 (Multnomah County Cir. Ct. June 12, 2009).

Alexander v. Thompson, No. 03-07-07798 (Multnomah County Cir. Ct. 2003).

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) *State v. Elwood*, No. 010634396 (Multnomah County Cir. Ct. 2001).

Elwood was acquitted by a jury after being indicted on 36 counts of child sex abuse. There were significant suppression issues in the case regarding the interview techniques of the police and whether Elwood was in custody for purposes of *Miranda* when he was detained at his work place.

Defense Counsel:
Janet Hoffman
Janet Hoffman & Associates
1000 SW Broadway, Suite 1500
Portland, OR 97205
(503) 222-1125

Prosecutor:
Kate Lieber
2133 NE 21st Avenue
Portland, OR 97212
(503) 701-7008

(2) *In Re Bailey et al.*, No. 030201446 (Multnomah County Cir. Ct. 2003).

This case involved the consolidation of the cases of ten firefighters involved in the roll over crash of a fifteen-passenger Ford E350 van. The crash occurred in the State of Idaho. Seven of the firefighters died and three were injured. While the case settled before trial, there were a host of complex legal issues regarding choice of laws, venue and punitive damages.

Defense Counsel:
Nancy Erfle
Schwabe Williamson & Wyatt PC
1211 SW Fifth Avenue, Suite 1900
Portland, OR 97204
(503) 222-9981

Plaintiffs' Counsel:
Gene Hallman
Hallman Law Office
104 SE Fifth Street
P.O. Box 308
Pendleton, OR 97801
(541) 276-3857

Plaintiffs' Counsel:
Bill Gaylord
Gaylord Eyerman Bradley PC
1400 SW Montgomery Street
Portland, OR 97201
(503) 222-3526

(3) *State v. Holdner*, No. 101078 (Columbia County Cir. Ct. 2010).

This was a rare criminal prosecution under Oregon's Clean Water Act. I was assigned to Columbia County to hear this case. Holdner was alleged to be operating a concentrated animal feeding operation without a permit and with polluting the waters of the State. There were a number of motions that challenged the State's ability to prosecute in light of federal restrictions under the federal Clean Water Act. Holdner was convicted following a bench trial.

Prosecutor:
Patrick A. Flanagan
Oregon Department of Justice
1515 SW Fifth Avenue, Suite 410
Portland, OR 97201
(971) 673-1880

Defense Counsel:
Whitney Patrick Boise
Hoevet Boise & Olson PC
1000 SW Broadway, Suite 1500
Portland, OR 97205
(503) 228-0497

(4) *Blueline Farms v. Pro-Vac*, No. 010909617 (Multnomah County Cir. Ct. 2001).

This class action case involved a class of over 250 farmers operating in the Willamette Valley. There was significant litigation in certifying the class of farmers and the type of notice that would be provided to them. The case was stayed twice by the Federal District Court and settled the day before trial.

Plaintiff's Counsel:
Michael L. Williams
Williams Love O'Leary & Powers
9755 SW Barnes Road, Suite 450
Portland, OR 97225
(503) 295-2924

Plaintiffs' Co-counsel:
Hon. Kathleen M. Dailey
Multnomah County Circuit Court
Multnomah County Courthouse
1021 SW Fourth Avenue
Portland, OR 97204
(503) 988-3062

Defense Counsel:
Thomas V. Dulcich
Schwabe Williamson & Wyatt PC
1211 SW Fifth Avenue, Suite 1900
Portland, OR 97204
(503) 222-9981

(5) *State v. Davis*, No. 020633788 (Multnomah County Cir. Ct. 2002).

This was a capital case in which the jury imposed the death penalty. It was a cold case in which an arrest was not made until almost ten years after the homicide. There were significant evidentiary issues presented during the guilt and penalty phase of the trial. My decisions made during the course of trial were affirmed on direct appeal to the Oregon Supreme Court, *see* 201 P.3d 185 (Or. 2008).

Prosecutors:
Rodney Underhill and Jeff Howes
Multnomah County District Attorney's Office
1021 SW Fourth Avenue
Portland, OR 97204
(503) 988-3162

Defense Counsel:
Hon. Katherine E. Weber
Clackamas County Courthouse
807 Main Street, Room 103
Oregon City, OR 97045
(503) 655-8233

(6) *State v. Vasquez-Villagomez, et al.*, No. 060733947 (Multnomah County Cir. Ct. 2006).

This was a murder for hire capital case that involved three co-defendants, eight attorneys and a team of interpreters. The case involved the killing of two individuals who were alleged to be involved in a drug cartel with the defendants. Two of the defendants had their cases severed due to interlocutory appeals that resulted in the reversal of a decision I made to suppress certain evidence. These two defendants eventually accepted a plea bargain. Vasquez-Villagomez went to trial before a jury and was given a life sentence without the possibility of parole.

Prosecutors:
Don Rees and Jeff Howes
Multnomah County District Attorney's Office
1021 SW Fourth Avenue
Portland, OR 97204
(503) 988-3162

Defense Counsel:
Laurie Bender
Laurie Bender PC
735 SW First Avenue, 2nd Floor
Portland, OR 97204
(503) 241-7075

Jim Halley
735 SW First Avenue, 2nd Floor
Portland, OR 97204
(503) 295-0301

Kenneth C. Hadley
Ken Hadley PC
1950 Third Street
P.O. Box 965
Baker City, OR 97814
(541) 523-4442

Steven L. Krasik
341 State Street

Salem, OR 97301
(503) 362-4442

Deborah Burdzik
1906 SW Madison Street
Portland, OR 97205
(503) 221-0520

Michael D. Curtis
Michael Curtis Attorney at Law
4300 NE Fremont Street, Suite 230
Portland, OR 97213
(503) 284-0763

(7) *State v. Wilcher, et al.*, No. 100331055 (Multnomah County Cir. Ct. 2010).

This case involved four co-defendants charged with murder and felony murder. The homicide occurred during a robbery within a residence where the defendants expected to find drugs. There were significant evidentiary issues presented. Because of evidentiary issues specific to each co-defendant, the case was severed into three separate trials spanning a time period of close to three months. Numerous experts disagreed over the cause of death. The defense experts maintained that the injuries sustained by the victim did not cause his death in the hospital some three weeks after the incident. All but defendant Butcher received life sentences with minimums ranging from 24 to 30 years. Butcher testified in all three trials and received a sixty-month sentence.

Prosecutor:
Chuck Sparks
Multnomah County District Attorney's Office
1021 SW Fourth Avenue
Portland, OR 97204
(503) 988-3162

Defense Counsel:
Ryan Scott
1549 SE Ladd Avenue
Portland, OR 97214
(503) 546-0618

Patrick John Sweeney
Patrick John Sweeney PC
1549 SE Ladd Avenue
Portland, OR 97214
(503) 244-2080

Duane J. McCabe
27 SW Bond
Bend, OR 97702
(541) 419-7433

Geoffrey J. Gokey
1011 SW 17th Street
Redmond, OR 97756
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(8) *Neitling v. Potter, et al.*, No. 030909494 (Multnomah County Cir. Ct. 2003).

This medical negligence case involved a surgical procedure that caused damage to the dura of the spine. It involved extensive pre-trial motions and multiple experts in the medical field testifying to the standard of care. The jury found that the defense was not liable for the damages.

Plaintiff's Counsel:
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Heiling Dwyer & Associates
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(503) 274-0404

Defense Counsel:
John E. Hart
Hart Wagner LLP
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(9) *State v. Dasa*, No. 031236658 (Multnomah County Cir. Ct. 2003).

Dasa was accused of entering the home of a friend and stabbing the friend to death during a brutal struggle. His friend had conducted an affair with Dasa's

wife. Upon learning that the friend's wife was hiding in the bedroom of the home, Dasa attempted to murder her. A five-year-old child was hiding underneath the bed during the latter struggle. At issue was whether the State could aggravate the homicide (thereby making it a capital case) by alleging that the murder occurred in furtherance of a burglary. At the same time, the State alleged that the burglary was committed with the intent to commit the murder. I allowed the case to go to verdict on a theory of aggravated murder. However, upon reviewing the case law of other states since this was an issue of first impression in Oregon, I set aside the jury verdict and entered a conviction for murder. This decision was ultimately reversed by our Court of Appeals, *see* 227 P.3d 228 (Or. Ct. App. 2010).

Prosecutors:
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(503) 988-3162

Susan Howard
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Matthew M. Rubenstein
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(10) *State v. Golovan*, No. 061236928 (Multnomah County Cir. Ct. 2006).

Golovan was charged with and convicted of forgery, identity theft, and attempted aggravated theft in a case that arose out of Golovan's fundraising efforts under Portland's "voter owned" election financing system. He assisted three local politicians in obtaining public funds to conduct their campaigns through a

fraudulent scheme that he ran through a local church. He was convicted and was sentenced to a nine-month prison term.

Special Prosecutor:
Erik Wasmann
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(503) 581-1387

Defense Counsel:
C. David Hall
P.O. Box 14546
Portland, OR 97293
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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.

As a state court trial judge, I have no published opinions and have written just three opinions. Given the time constraints we are under and the size of our dockets, it is my experience that the parties prefer state judges to make prompt oral decisions rather than to take matters under advisement in order to produce a written opinion.

1. *State v. Guzman*, No. 08-04-31996 (Multnomah County Cir. Ct. Oct. 1, 2012). Opinion supplied.

Prosecutor:
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Defense Counsel:
Patrick Sweeney
1549 SE Ladd Avenue
Portland, OR 97214
(503) 244-2080

2. *Oregon v. Sierra-Sanchez, et al.*, No. 03-09-34433 (Multnomah County Cir. Ct. June 12, 2009). Opinion supplied.

Prosecutors:
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Deputy District Attorney Greg Moawad (former)
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Hillsboro, OR 97124
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Christopher Burris
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3. *Alexander v. Thompson*, No. 03-07-07798 (Multnomah County Cir. Ct. 2003). Opinion supplied.

Plaintiff's Counsel:
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(503) 223-0783

Defense Counsel:
Assistant Attorney General Lester Huntsinger (former)
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Salem, OR 97304
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e. Provide a list of all cases in which certiorari was requested or granted.

None.

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.

State v. Wilcox, 274 P.3d 893 (Or. Ct. App. 2012). The Court of Appeals reversed the imposition of consecutive sentences.

State v. McLaughlin, 258 P.3d 1241 (Or. Ct. App. 2011), *on reconsideration*, 260 P.3d 814 (Or. Ct. App. 2011), *reconsideration withdrawn*, 269 P.3d 104 (Or. Ct. App. 2011). This case was reversed in part based on the issue of the timeliness of the State's request for restitution in a supplemental money judgment. The conviction was otherwise affirmed.

Gunther v. Robinson, 248 P.3d 20 (Or. Ct. App. 2011). The Court of Appeals reversed, holding that an incident where respondent threw garbage into petitioner's driveway and yelled "heil Hitler," did not amount to conduct that would cause petitioner to feel alarmed or coerced for purposes of obtaining a permanent stalking protective order.

State v. Evans, 236 P.3d 848 (Or. Ct. App. 2010), *on reconsideration*, 242 P.3d 718 (Or. Ct. App. 2010). The Court of Appeals reversed in part, determining that I erred in failing to hold a hearing to determine the admissibility of a diagnosis of sexual abuse.

State v. Dasa, 227 P.3d 228 (Or. Ct. App. 2010). The Court of Appeals reversed my order vacating the jury's determination that Dasa committed aggravated murder and instructed that the defendant's three convictions for attempted aggravated murder be merged into a single conviction reflecting defendant's conviction on all three theories presented.

State v. Zamora-Camacho, et al., 203 P.3d 193 (Or. 2009). The Oregon Supreme Court reversed my finding that the defendants had been arrested without sufficient probable cause.

Shogun's Gallery Inc. v. Merrill, et al., 210 P.3d 920 (Or. Ct. App. 2009). The defendant in this case leased a building to plaintiff, an antique gallery, below the market rate because it required major improvements. Plaintiff also undertook and bore the expense of substantial renovations and improvements. Under the contract, the rent was tied to the value of the property, which unexpectedly increased by 42% in one year. I found there was an antecedent agreement reforming the contract. The Court of Appeals reversed, concluding that the lease was unambiguous and that the parties did not have an antecedent agreement to which the lease could be reformed.

State v. Matheson, 186 P.3d 309 (Or. Cr. App. 2008). The Court of Appeals affirmed on the evidentiary issues, but reversed one count of many on grounds of insufficient evidence.

State v. Clark, 185 P.3d 516 (Or. Ct. App. 2008). The Court of Appeals vacated my imposition of departure sentences and a compensatory fine, holding that the defendant was not aware of the right to have a jury determine sentencing facts and thus did not validly waive the right.

State v. Evans, 171 P.3d 403 (Or. Ct. App. 2007). The Court of Appeals reversed the imposition of consecutive sentences.

State v. Wilson, 173 P.3d 150 (Or. Ct. App. 2007). My imposition of consecutive sentences initially was reversed by the Court of Appeals, but upon the State's motion to reconsider following the United States Supreme Court's ruling in *Oregon v. Ice*, 555 U.S. 160 (2009), my sentencing decision was affirmed, 208 P.3d 523 (Or. Ct. App. 2009).

Johnson v. Swaim, 147 P.3d 374 (Or. Ct. App. 2006), *aff'd*, 172 P.3d 645 (Or. 2007). My award of attorney fees was reversed; I was otherwise affirmed. The Court of Appeals held that a letter seeking settlement did not meet the statutory requirements of a written demand that would allow for attorney fees.

Huntley v. Tri-County Transportation District of Oregon, P.3d 1268 (Or. Ct. App 2006). My award of attorney fees was reversed; my decisions were otherwise affirmed.

State v. Rambert, 171 P.3d 398 (Or. Ct. App. 2007). The Court of Appeals reversed, ruling that I erred in giving an accomplice-witness jury instruction over the defendant's objection when the accomplice testimony was also exculpatory.

State v. Miles, 145 P.3d 242 (Or. Ct. App. 2006). The Court of Appeals reversed, holding that following the United States Supreme Court's ruling in *Crawford v. Washington*, 541 U.S. 36 (2004), a domestic abuse victim's statements to police were testimonial and therefore did not qualify as an excited utterance exception to the hearsay rules.

State v. Dahlen, 146 P.3d 359 (Or. Ct. App. 2006). The Court of Appeals reversed, determining that defendant's question, "When can I call my attorney," constituted an unequivocal request for an attorney prior to the interrogation. I had concluded that the police properly halted the interrogation and appropriately attempted to clarify the defendant's request.

Pro Car Care, Inc. v. Johnson, 118 P.3d 815 (Or. Ct. App. 2005). The Court of Appeals affirmed in part and reversed in part, disagreeing with my conclusion that

one of the counterclaims in the case was subject to the Unlawful Debt Collections Practices Act.

Alexander v. Gower, 113 P.3d 917 (Or. Ct. App. 2005). The Court of Appeals reversed my granting of a habeas petition, finding that petitioner had not made a timely objection to action by the Parole Board.

Caba v. Barker, 93 P.3d 74 (Or. Ct. App. 2004), *rev'd*, 145 P.3d 174 (Or. 2006). The Oregon Supreme Court reversed the Court of Appeals and affirmed my opinion in this probate case. At issue was whether a residual beneficiary to a will could bring a contract action against the attorney who drafted the will on a theory of implied promise. I held that plaintiffs' allegation of an implied promise to make the will invulnerable to a will contest did not constitute a legally sufficient source of duty and breach to enable plaintiffs to bring their breach of contract and negligence claims.

State v. Chaddock, 91 P.3d 834 (Or. Ct. App. 2004). The Court of Appeals reversed on the issue of whether the pre-trial delay violated defendant's right to a speedy trial.

State v. O'Dell, 82 P.3d 183 (Or. Ct. App. 2003). The Court of Appeals held that I erred in failing to merge two of the defendant's convictions.

Griffin v. Sanders, 78 P.3d 113, 114 (Or. Ct. App. 2003). I dismissed an action to enforce an attorney lien against a client based on the decision of our Court of Appeals in *Potter v. Schlesser*, 17 P.3d 529 (Or. Ct. App. 2000). The decision that I relied on was then reversed by our Supreme Court in February 2003. As a result, this case was reversed per curiam without opinion.

Brennan v. La Tourelle Apartments, 56 P.3d 423 (Or. Ct. App. 2002). The Oregon Court of Appeals determined that my decision dismissing the case prevented the parties from determining the "prevailing party." While no substantive controversy existed at trial, the court held that I should have heard evidence on which party had in fact prevailed for purposes of attorney fees.

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.

I have written three opinions, all of which are unpublished. They are filed and stored in the files of the individual cases.

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 do not have any significant opinions on federal or state constitutional issues.

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 court of appeals.

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.

Our court system has two methods by which a judge can be removed from a case. The first method allows a party to file a motion for a change of judge with the court and with the judge within 24 hours of assignment. The motion has to be accompanied by an affidavit alleging prejudice. The process is commonly referred to as "affidaviting a judge." It is automatic and a party is allowed two opportunities under this method. I can recall only two times in my career in which I have been removed by affidavit. One case was a family law matter and the attorney wished to appear before a family law judge. The other case was a misdemeanor gun case and the attorney later told me that they thought I would have imposed a jail sanction against their client. I do not recall the case names and have no way to identify them.

The second method is recusal. The matter can be raised by motion or *sua sponte* by the court. If a party or an attorney is a close personal friend, I will recuse myself from the case. I have done so on a number of occasions. If I have had any social connection with a party or attorney, but feel that I can be fair, I feel that it is important that this be disclosed to the parties so that they can assess whether they wish to have me recuse. While I have made such disclosures many times, I do not recall an instance when a party has requested recusal under those circumstances. I do not recall the case names and have no way of identifying them.

It is not unusual for criminal defendants to request a recusal during proceedings. I do not recuse myself because a party is unhappy with my rulings. I can think of at least one case in which I granted a defendant's request to recuse myself because I had been his probation judge in the past and he did poorly on probation. While I believe I could have given him a fair trial, I thought it appropriate to assign his case to a judge who did not have a history with the defendant. I cannot remember the case name.

I have never had to consider recusal because of a concern of personal gain, financial or otherwise, in the outcome of the case.

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 held no public office other than my current position as a circuit judge. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations 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.

Upon request, I have occasionally endorsed candidates for elected judicial office. Although there may be others, those that I recall or have been able to identify include Oregon Supreme Court judicial candidates Justice Rives Kistler, Gene Hallman, and Judge Dick Baldwin, and Circuit Court judicial candidates Jim McIntyre, Charles Henderson, and Trung Tu. Otherwise, I have never held office in or rendered services to any political party or election (other than my own election committee).

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 have never served as a clerk to a judge.

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.

1988 – 1997
Metropolitan Public Defender
630 SW Fifth Avenue, Suite 500
Portland, Oregon 97204
Staff Attorney (1988 – 1990)
Senior Felony Attorney (1990 – 1995)
Misdemeanor Supervisor (1995 – 1997)

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

I have not served as a private mediator or as an arbitrator.

b. Describe:

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

In my practice as a public defender, I represented indigent clients facing criminal prosecution. My first six months were spent representing clients charged with misdemeanor crimes. The remainder of my career was spent representing clients accused of felonies. During much of my practice as a public defender, I also held managerial positions within the office. These positions included Senior Felony Attorney and Misdemeanor Supervisor. As the Senior Felony Attorney, I had the opportunity to work on the more complex criminal cases while training less experienced attorneys. I also reviewed all written submissions to the court by the felony attorneys. As the supervisor of the misdemeanor section, I trained new attorneys in the preparation, investigation and presentation of criminal cases.

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

I represented a wide variety of clients charged with a wide variety of crimes. All of them had to meet certain guidelines for indigency.

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.

i. Indicate the percentage of your practice in:

1. federal courts: 0%
2. state courts of record: 99.9%
3. other courts: 0%
4. administrative agencies: .1%

ii. Indicate the percentage of your practice in:

1. civil proceedings: 0%
2. criminal proceedings: 100%

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.

Over a period of nearly a decade as a state public defender, I conservatively estimate that I tried over 500 trials to verdict. I estimate that I served as sole counsel in 99% of these cases, and chief counsel in the remaining 1%.

i. What percentage of these trials were:

1. jury: 30%
2. non-jury: 70%

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.

I worked in the office of the Metropolitan Public Defender from 1988 until I took the bench in 1997. Because these cases were tried some years ago in a pre-electronic age, I cannot remember all of the names, dates, and complete facts associated with the cases. I have provided information with respect to the cases below to the best of my ability.

(1) *State v. Hinkhouse*, No. 930936386 (Multnomah County Cir. Ct. 1993, Hon. William Snouffer).

This case was one of the first in the nation in which an individual was charged with using HIV as a dangerous weapon in an assault/attempted murder prosecution. Hinkhouse was charged with the attempted murder of several women after having unprotected sex with them. Many experts testified both about the AIDS virus and Hinkhouse's state of mind. I was lead counsel in charge of the investigation and litigation of the case. I conducted all of the motion and trial litigation with the exception of some of the cross examination of witnesses and closing argument. Hinkhouse was convicted of many of the counts against him.

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Co-Counsel:
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(2) *State v. Dixon*, No. 941238650 (Multnomah County Cir. Ct. 1994, Hon. Linda Bergman).

Dixon was accused of shooting a woman on a bus during a robbery. Several days later, he was alleged to have shot and seriously injured a police officer who had entered a home looking for Dixon. The trial was lengthy and bifurcated. Both trials relied heavily on forensic investigation. We were able to re-create the actual bedroom where the shooting took place inside the courtroom. I was lead counsel and conducted the investigation, motion practice, and all trial components with the exception of the examination of some of the witnesses. The trial lasted for over one month. Despite the volatile nature of the case, the jury acquitted Dixon of attempted

murder and intentional assault. He was convicted of charges involving only reckless conduct.

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Co-counsel:
Steven Sherlag
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(3) *State v. Crichton*, No 960231208 (Multnomah County Cir. Ct. 1996, Hon. William Keys).

Crichton was a fifteen-year-old foreign exchange student from New Zealand who had sexual contact with a small child in the home of his host family. He was one of the first juveniles tried as an adult under a voter passed initiative known in Oregon as Measure 11. Crichton was being tried in the United States as an adult and was facing a mandatory 100 month prison sentence. I was sole counsel for Crichton and prepared an extensive motion to suppress. I negotiated with the local DA and representatives of the New Zealand government, and I prepared the investigation of his case. Crichton's family hired its own attorney at my request who assisted in the negotiations in New Zealand. Ultimately, the government of New Zealand passed an Act of Parliament allowing Crichton to be prosecuted in New Zealand for an act that occurred in Portland. This allowed our local prosecutor to take a plea in Oregon, and Crichton was released to New Zealand to serve a probationary sentence.

Prosecution:
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(503) 546-0699

Critchton family's counsel:
Stephen Houze
1211 SW Fifth Avenue, #1240
Portland, OR 97204
(503) 299-6426

(4) *State v. Meyers*, No. 910733364 (Multnomah County Cir. Ct. 1991, Hon. Nelly Johnson).

Meyers was charged with the attempted murder of his wife with a hammer. Following the incident he drove himself into a telephone pole. Meyers was taking large amounts of the sleeping pill, Halcion, at the time and multiple experts testified to the drug's effect on the brain. I was sole counsel for Meyers and handled all aspects of his case. Although the jury convicted him of some of the charges, the judge considered the mitigation testimony of the experts in reducing his sentence.

Prosecution:
Rod Underhill
Multnomah County District Attorney's Office
1021 SW Fourth Avenue
Portland, OR 97204
(503) 988-3162

(5) *State v. Allen*, No. 910532497 (Multnomah County Cir. Ct. 1991, Hon. Robert Jones).

Allen was accused of the rape and assault of his girlfriend. Several witnesses testified that Allen's girlfriend had previously accused each of them of rape. At issue was the admissibility of the prior accusations made by the alleged victim. Allen was convicted. Shortly after, the victim recanted to several people. I filed and successfully argued a post-judgment motion that resulted in the dismissal of his case. I was sole counsel for Allen and handled all aspects of his case.

Prosecution:
Rod Underhill
Multnomah County District Attorney's Office
1021 SW Fourth Avenue
Portland, OR 97204
(503) 988-3162

(6) *State v. Smith*, No. 940130492 (Multnomah County Cir. Ct. 1994, Hon. Donald Londer).

Smith was the getaway driver in the famous attack on figure skater Nancy Kerrigan during the American Figure Skating Finals in Detroit in 1994. The case was prosecuted in Oregon because Tonya Harding and her co-conspirators were thought to have planned the assault in Oregon. Smith pled guilty and was sentenced to 18 months in prison. I handled the negotiations for Smith and conducted the investigation into the case. I attempted to shield him from the media, but ultimately Smith chose to accept a large sum of money to appear on a national television broadcast. Our presiding judge found that Smith's financial gain made him ineligible for further services of a public defender.

Prosecution:
Norm Frink, Chief Deputy
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(503) 988-3162

Hon. Jean Kerr Maurer
Multnomah County Courthouse
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(7) *State v. Millage* (Multnomah County Cir. Ct. early 1990s, Hon. William Keys).

This was a multiple co-defendant gang shooting case very early on in the days of Portland gang violence. It was an early example of challenging the credibility of eyewitness identification. I was also able to successfully argue that the police used suggestive tactics in presenting suspects to witnesses for identification. I was sole counsel on the case and handled all aspects of the litigation. I believe my client was the only defendant to be acquitted.

Prosecution:
Eric Bergstrom (now Circuit Judge)
1021 SW Fourth Avenue
Portland, OR 97204
(503) 988-5029

(8) *State v. Marshall High School Student* (Multnomah County Cir. Ct. early 1990s, Hon. William Keys).

This was the first shooting in a high school in Oregon that I am aware of. The defendant was alleged to have been involved in gangs and he injured two students in the Marshall High School cafeteria. The case settled after I presented psychological evaluations showing that the defendant was intellectually challenged and easily influenced by gang associates who had given him the gun. I was sole counsel and handled all aspects of the litigation and negotiations.

Prosecution:
Eric Bergstrom (now Circuit Judge)
1021 SW Fourth Avenue
Portland, OR 97204
(503) 988-5029

(9) *State v. Red Lion Hotel Shooter* (Multnomah County Cir. Ct. mid 1990s, Hon. Stephen Walker).

The defendant in this case entered a crowded hotel nightclub with an automatic weapon and fired into the ceiling and threatened to shoot the patrons. He was bipolar and was not on medication at the time of the incident. Through the use of experts, I successfully argued a diminished capacity defense and the defendant was acquitted. I was sole counsel and handled all aspects of the litigation.

Prosecution:
Alex Gordan (retired)
Multhomah County District Attorney's Office
1021 SW Fourth Avenue
Portland, OR 97204

(10) *State v. Tillis*, No. 930835961 (Multnomah County Cir. Ct. 1993, Hon. Nelly Johnson).

Tillis was involved in a protracted standoff with police while he held hostages inside a home. He was acquitted of an attempted murder charge based on a mental health defense. I was sole counsel and handled all aspects of the litigation and investigation of the case.

Prosecution:
Rod Underhill
Multnomah County District Attorney's Office
1021 SW Fourth Avenue
Portland, OR 97204
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18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I am very proud to have been involved in work centering on treatment courts and evidence based sentencing models. The STOP ("Sanctions/Treatment/Opportunities/ Progress") program was one of the first drug treatment courts in the United States. I represented the public defender's office and assisted the court in developing policy and implementation of this program. As a judge I created a proof-based sentencing model for DUII offenders that is now the standard in Multnomah County. Proof-based sentencing is a model that measures an offender's ability to perform on probation by requiring specific benchmarks to occur within a set timeline. It saves resources by focusing jail

and treatment beds on those offenders who are unable to meet the performance benchmarks. Finally, as a member of the Governor's Council on Prisoner Re-entry, I have assisted in creating policies and programs that remove barriers facing prisoners as they transition from the institution into the community.

I have an abiding commitment to the education of judges, lawyers and law students. I am an adjunct professor at Northwestern School of Law at Lewis and Clark College, teaching courses in civil trial advocacy and criminal practice. I am on the faculty of the New Judge's College, training newly appointed and elected Oregon judges on evidence, search and seizure, and sentencing. I present regularly at the Oregon Judicial Conference on death penalty litigation, search and seizure law, and mediation. I speak to a wide range of civil and criminal law associations on professionalism, trial practice and advocacy. I have been involved in a wide range of mentoring activities.

I have never performed lobbying activities.

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.

Criminal Law Practice Seminar
Northwestern School of Law at Lewis and Clark College
(2003 – present)
The Criminal Law Practice Seminar is a course I have taught Fall term for six terms since 2003. Students work from case studies and prepare for all aspects of criminal litigation and motion practice from the issuance of a case through sentencing. Fall 2011 syllabus supplied.

Trial Advocacy
Northwestern School of Law at Lewis and Clark College
(2009 – present)
I teach the Trial Advocacy class during Spring term. The class focuses on the art of persuasion and advocacy in civil litigation. The students work through a civil negligence claim and present their case to a jury during mock trials at the end of the term. Spring 2012 syllabus provided.

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.

    I have no such plans.

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 am not aware of any family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest if I am confirmed.

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

       I would follow the Code of Conduct for United States Judges, as well as any other applicable ethical rules or statutes.

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.

    I moved to Portland in 1983 through a placement with the Jesuit Volunteer Corps working with the homeless. Since that time I have continued to be an active member of the Portland community serving the disadvantaged. Much of the work that I perform focuses on direct service to at-risk youth, the homeless, and those living with HIV.

I work with several schools that serve at-risk youth. I was on the school board of the St. Andrew Nativity School for six years. The Nativity School is Oregon's only tuition-free middle school serving at-risk youth. Upon graduating from Nativity School, the students are prepared for and placed tuition-free into college prep high schools in our area.

I bring students from the Metropolitan Learning Center into my courtroom for "Friday Focus," a class that teaches the kids about the justice system and the courts. I volunteer my time with the Classroom Law Project, a program that exposes students to the law through court tours, mock trials, and a national competition called "We the People." This summer I participated in the Classroom Law Project summer camp for inner city kids.

I have partnered with several schools to provide internship opportunities for at-risk youth who need work experience. I currently have an intern working for me who attends Job Corps and I have had several students complete internships through LEP High School. I have been part of the mentor program at the Oregon National Guard Youth Challenge Program, a military-style public high school in Bend, Oregon, that works with kids who have dropped out of school.

I sat on the HIV Services Planning Council for several years. The Council assisted local governments in prioritizing how federal Ryan White Care Act funds should be spent in the local communities. I also organize a group of judges to walk in the AidsWalk sponsored by Cascade Aids Project.

As a judge, I work very hard at providing services to those I supervise on probation. One of my recent projects is the Department 19 Homework Club. Probationers who are struggling to get their GED (typically young men with drug problems) come to my jury room on Monday mornings and meet with tutors to assist them in the preparation for their GED test. The tutors are educated probationers who are meeting their community service requirements. The Londer Learning Center provides the work sheets for the club.

I am involved in mentoring many students. Every year I participate in the law school's mentoring program and it is my practice to mentor minority students whenever possible. In 2009, I received the Mentor of the Year award from Northwestern School of Law.

I have not participated in any lobbying activities.

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 October 17, 2011, I mailed a letter of interest to Senator Ron Wyden along with my resume, to be considered for the District Judge position that became open in Eugene with the retirement of Judge Michael Hogan. On February 25, 2012, I attended an interview conducted by the members of Senator Wyden's judicial selection committee. On March 3, 2012, I was interviewed by Senator Wyden at his office in Portland. I was informed a few days later that I would be one of five candidates whose names would be forwarded to the White House for consideration.

Since May 14, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 11, 2012, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On September 19, 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, Michael McShane, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

9-20-12
(DATE)

(NAME)

(NOTARY)
Lucy Rose Josie Mihajlich
9/20/12

State of OREGON
County of Multnomah

OFFICIAL SEAL
LUCY ROSE JOSIE MIHAJLICH
NOTARY PUBLIC-OREGON
COMMISSION NO. 471101
MY COMMISSION EXPIRES AUGUST 26, 2016