

May 15, 2014

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
437 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

I have reviewed the questionnaire submitted to the Senate Judiciary Committee in connection with my nomination to the United States District Court for the District of Columbia on April 3, 2014. Since the submission of my questionnaire, I discovered that some pages were inadvertently omitted from the copy of one item I provided to the Committee, and I have located additional information that I had inadvertently overlooked in my previous search of my records and the Internet. Incorporating the additional information listed below, I certify that the information contained in these documents is, to the best of my knowledge, true and accurate.

Question 12(b):

In reviewing my materials earlier this week, I discovered that a number of pages of the following document were inadvertently omitted: *Testimony Concerning S. 1668, Whistleblower Protection for Classified Disclosure*, Permanent Select Committee on Intelligence, United States House of Representatives, May 20, 1998. A complete copy of this written statement is supplied herewith.

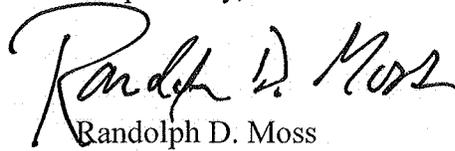
Question 16(e):

I inadvertently omitted a Motion for Leave to Intervene to File a Petition for a Writ of Certiorari and a proposed Petition for a Writ of Certiorari in *National Collegiate Athletic Association v. Keller*, a copy of which is supplied herewith. Unfortunately, because this filing was not reported on Westlaw or Lexis, and because the Supreme Court website only lists counsel of record, I missed this filing when I submitted my questionnaire.

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I sincerely appreciate the Committee's consideration of my nomination and apologize for any inconvenience I may have caused.

Respectfully,

A handwritten signature in black ink that reads "Randolph D. Moss". The signature is written in a cursive style with a large initial "R" and "M".

Randolph D. Moss

Enclosures

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Randolph Daniel Moss
Raymond Daniel Moss (until 1977)

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

United States District Judge for the District of Columbia

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

Office: Wilmer Cutler Pickering Hale and Dorr, LLP
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Residence: Bethesda, Maryland

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

1961; Springfield, Ohio

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1983 – 1986, Yale Law School; J.D., 1986

1979 – 1983, Hamilton College; A.B. (*summa 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, 1989 – 1996

Wilmer Cutler Pickering Hale and Dorr, LLP

(previously Wilmer, Cutler & Pickering)

1875 Pennsylvania Avenue, N.W.

Washington, D.C. 20006

Member of Management Committee (2012 – present)

Partner (2001 – present, 1994 – 1996)

Associate (1989 – 1993)

1996 – 2001

Office of Legal Counsel, United States Department of Justice

950 Pennsylvania Avenue, N.W.

Washington, D.C. 20530

Assistant Attorney General (August 2000 – January 2001)

Acting Assistant Attorney General (1998 – 2000)

Deputy Assistant Attorney General (1996 – 1998)

Special Counsel to the Attorney General (February – March 1996)

1988 – 1989

Associate Justice John Paul Stevens

Supreme Court of the United States

One First Street, N.E.

Washington, D.C. 20002

Law Clerk

1986 – 1987

Judge Pierre N. Leval

United States District Court for the Southern District of New York

40 Centre Street, Foley Square

New York, NY 10007

Law Clerk

Fall 1986

Yale Law School John M. Olin Center for Studies in Law, Economics and Public Policy

127 Wall Street

New Haven, Connecticut 06511

John M. Olin Fellow

1985 – 1986, approximately 1984 – 1985

Yale Law School

127 Wall Street

New Haven, Connecticut 06511

Teaching Fellow for Professor Harold Koh (1985 – 1986)

Research Assistant for Professor Paul Gewirtz (approximately 1984 – 1985)

Summer 1985
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004
Summer Associate

Summer 1985
Arnold & Porter
Suite 4400
3700 17th Street
Denver, Colorado 80202
Summer Associate

Summer 1984
Miller & Chevalier
655 15th Street, N.W.
Washington, D.C. 20005
Summer Associate

Summer 1983
Self-employed
Rockville, Maryland
House Painter

Other affiliations (uncompensated):

2009 – present
Glen Echo Park Partnership for Arts and Culture, Inc.
7300 MacArthur Boulevard
Glen Echo, Maryland 20812
Board Member

2006 – 2009
Yale Law School Association Executive Committee
127 Wall Street
New Haven, Connecticut 06511
Term 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 did timely 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.

Best Lawyers in America for Commercial Litigation (2010 – 2014)

Benchmark Litigation (2010, 2012 – 2014)

Washingtonian Magazine Top Lawyers in Washington, D.C. (National Security, 2013, 2011, 2009), (Constitutional Law, 2004)

Super Lawyers, Washington, D.C. (2007 – 2013)

Benchmark Appellate, Washington, D.C. (2012 – 2013)

Chambers USA: America's Leading Lawyers for Business (2009 – 2012)

Paul P. Brontas Award, WilmerHale (2009)

Edmund J. Randolph Award for Outstanding Service to the Department of Justice (2001)

Yale Law Journal Editor (1985 – 1986)

Coker Fellow in Instruction, Yale Law School (1985 – 1986)

Phi Beta Kappa (1983)

Departmental Honors in Philosophy, Hamilton College (1983)

Patterson Prize for Excellence in Philosophy, Hamilton College (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.

American Bar Association

D.C. Bar Association

Fellows of the American Bar Foundation

Maryland State Bar Association

Montgomery County Bar Association

The Supreme Court Historical Society

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New York, 1987
District of Columbia, 1989
Maryland, 2010

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

State of New York (1987)
District of Columbia (1989)
State of Maryland (2010)
Supreme Court of the United States (1994)
United States Court of Appeals for the District of Columbia (2004)
United States Court of Appeals for the Federal Circuit (2006)
United States Court of Appeals for the Second Circuit (2004)
United States Court of Appeals for the Third Circuit (2012)
United States Court of Appeals for the Fourth Circuit (2011)
United States Court of Appeals for Fifth Circuit (1994)
United States Court of Appeals for Eighth Circuit (2003)
United States Court of Appeals for the Ninth Circuit (1992)
United States Court of Appeals for the Tenth Circuit (1993)
United States Court of Appeals for Eleventh Circuit (2003)
United States District Court for the District of Columbia (1990)
United States District Court for the Southern District of New York (1988)
United States District Court for the District of Maryland (1994)
United States Court of International Trade (2004)

Although it is possible that a gap in time may have occurred in my renewal of membership in a federal court bar, I have not identified any 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.

American Constitution Society (approximately 2002, 2004 – 2008, 2010 – 2011)
Convention Host Committee (approximately 2008 – 2011, 2013)

Brookmont Civic League (approximately 1993 – present)

Glen Echo Park Partnership for the Arts and Culture (2009 – present)
Board Member

Hockey North America, D.C. Moose (approximately 2002 – 2008)

Markel Task Force on National Security in the Information Age (2004 – 2006)
Associate

Mohican Hills Swimming Pool (approximately 1994 – 2012)

Montgomery Youth Hockey (approximately 2005 – 2013)
Coach/Assistant Coach

Yale Law School Association Executive Committee (2006 – 2009)
Term Member

- 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.

Over the last eight years, my name has appeared on numerous “client alerts” that have been distributed by WilmerHale. My level of involvement in particular client alerts has varied. I typically reviewed alerts before they were distributed

and, at times, made edits and revisions. Some of the alerts, however, may have been distributed without my review. Out of an abundance of caution, I have listed all of these alerts below:

“NIST and DHS Release Final Cybersecurity Framework, Roadmap, and Voluntary Program for Cybersecurity Assistance,” (February 13, 2014) (with Jonathan G. Cedarbaum, Benjamin Powell, Jamie Gorelick, Jason Chipman and Leah Schloss). Copy supplied.

“Defense Department and GSA Issue Recommendation for Improving Cybersecurity in Government Contracting,” (January 27, 2014) (with Jonathan G. Cedarbaum, Benjamin A. Powell, Barry J. Hurewitz, Gregory Petkoff, Joe D. Smith and Leah Schloss). Copy supplied.

“False Claims Act: 2013 Year-in-Review,” (January 7, 2014). Copy supplied. Although I am listed as an author on the WilmerHale website, I was not among the actual contributors to this client alert, as noted in the report.

“What You Should Know About DOD’s Cybersecurity Rule,” (November 25, 2013) (with Benjamin A. Powell, Jonathan G. Cedarbaum, Barry J. Hurewitz and Jason C. Chipman). Copy supplied.

“Defense Department Publishes Final Rule Implementing Enhanced Information Protection and Cyber Incident Reporting Requirements,” (November 21, 2013) (with Benjamin A. Powell, Jonathan G. Cedarbaum, Barry J. Hurewitz and Jason C. Chipman). Copy supplied.

“NIST and DoD Issue Cybersecurity Guidance and Rules,” (October 24, 2013) (with Jonathan G. Cedarbaum, Benjamin A. Powell, Jason C. Chipman and Leah Schloss). Copy supplied.

“NIST Issues Discussion Draft of Preliminary Cybersecurity Framework,” (August 30, 2013) (with Jonathan G. Cedarbaum and Leah Schloss). Copy supplied.

“Supreme Court Agrees to Address Scope of Recess Appointments Power,” (June 24, 2013) (with Jonathan G. Cedarbaum, Reginald J. Brown and Eric J. Mogilnicki). Copy supplied.

“GSA-Joint Cybersecurity Working Group Issues Request for Information on Cybersecurity Standards in Government Contracts,” (May 13, 2013) (with Jonathan G. Cedarbaum and Leah Schloss). Copy supplied.

“President Obama Issues Cybersecurity Executive Order,” (February 13, 2013) (with Jamie Gorelick, Jonathan G. Cedarbaum, Benjamin A. Powell

and Erika L. Robinson). Copy supplied.

“DC Circuit Invalidates Obama Recess Appointments,” (January 25, 2013) (with Reginald J. Brown, Eric J. Mogilnicki, Jonathan G. Cedarbaum, Seth P. Waxman and Russell J. Bruemmer). Copy supplied.

“Recent Developments Relating to Patent Term Adjustments,” (January 23, 2013) (with Brian Boynton, Jane M. Love, Ph.D. and Donald R. Steinberg). Copy supplied.

“President Signs New Cybersecurity Provisions in Defense Authorization Act,” (January 3, 2013) (with Jamie Gorelick, Jonathan G. Cedarbaum, Benjamin A. Powell, Jason C. Chipman and Leah Schloss). Copy supplied.

“False Claims Act: 2012 Year-in-Review,” (January 2, 2013). Copy supplied. Although I am listed as an author on the WilmerHale website, I was not among the actual contributors to this client alert, as noted in the report.

“Affordable Care Act Litigation: The Next Round,” (October 18, 2012) (with Jonathan G. Cedarbaum, Thomas L. Strickland, Karen F. Green and David W. Ogden) (also reported in Bloomberg BNA, Health Insurance Report in substantially similar form, October 31, 2012). Copies supplied.

“Senate to Consider Compromise Cybersecurity Legislation,” (July 23, 2012) (with Jonathan G. Cedarbaum, Jamie Gorelick, Benjamin A. Powell and Jason C. Chipman). Copy supplied.

“*U.S. v. Nosal* – Implications for CFAA Cases,” (April 12, 2012) (with Jonathan G. Cedarbaum, Benjamin A. Powell, Patrick J. Carome, Steven P. Lehotsky and Jason C. Chipman). Copy supplied.

“En Banc Ninth Circuit’s *Nosal* Decision Restricts Computer Fraud and Abuse Act’s Reach,” (April 11, 2012) (with Jonathan G. Cedarbaum, Benjamin A. Powell, Patrick J. Carome and Jason C. Chipman). Copy supplied.

“Senate Omnibus Cybersecurity Bill Emphasizes Critical Infrastructure Protection, Information-Sharing,” (February 14, 2012) (with Jonathan G. Cedarbaum, Benjamin A. Powell, David W. Ogden, David J. Ross and Jason C. Chipman). Copy supplied.

“Cybersecurity and the Law: What to Expect in 2012,” (January 17, 2012) (with Jonathan G. Cedarbaum, Benjamin A. Powell and Jason C. Chipman). Copy supplied.

“Considering The Scope Of CFAA,” (November 18, 2011) (with Jonathan G. Cedarbaum, Benjamin A. Powell, Patrick J. Carome, Steven P. Lehotsky and Jason C. Chipman). Copy supplied.

“En Banc Ninth Circuit to Consider Scope of Computer Fraud and Abuse Act,” (November 9, 2011), (with Jonathan G. Cedarbaum, Benjamin A. Powell, Patrick J. Carome and Jason C. Chipman). Copy supplied.

“Ninth Circuit Rules on Corporate Liability for International Human Rights Violations,” (October 28, 2011) (with Jonathan G. Cedarbaum, Paul R.Q. Wolfson, David W. Ogden, Gary Born and Suzanne A. Spears). Copy supplied.

“Supreme Court to Rule on Corporate Liability for International Human Rights Violations,” (October 21, 2011) (with Paul R.Q. Wolfson, Jonathan G. Cedarbaum, David W. Ogden, Gary Born and Suzanne A. Spears). Copy supplied.

“Obama Administration Proposes Cybersecurity Legislation,” (May 17, 2011) (with Benjamin A. Powell). Copy supplied.

“Supreme Court Agrees to Hear Constitutional Challenge to PCAOB,” (May 19, 2009) (with Howard M. Shapiro and William R. McLucas). Copy supplied.

“Congress to Establish Financial Crisis Inquiry Commission,” (May 7, 2009) (with Reginald J. Brown, Jamie Gorelick, William R. McLucas, Howard M. Shapiro and Matthew A. Chambers). Copy supplied.

“Attorney General Issues FOIA Guidance,” (March 31, 2009) (with Patrick J. Carome). Copy supplied.

“President Orders Presumption of Disclosure in FOIA Matters,” (January 28, 2009) (with Patrick J. Carome). Copy supplied.

“Statute Attempts to Fix Perceived Constitutional Problem in the Law Governing the Appointment of Administrative Patent and Administrative Trademark Judges,” (August 19, 2008) (with Donald R. Steinberg). Copy supplied.

“Proposed Legislation Seeks to Restrict State Secrets Privilege,” (February 4, 2008) (with Jamie Gorelick). Copy supplied.

“District of Columbia Prescription Drug Excessive Pricing Act of 2005 Successfully Challenged, Declared Unconstitutional,” (January 5, 2006)

(with David W. Ogden). Copy supplied.

The Least Vulnerable Branch: Ensuring the Continuity of the Supreme Court, 53 Catholic U. L. Rev. 1015 (Summer 2004) (with Edward Siskel). Copy supplied.

Case Alert, *Analysis of Supreme Court Decision Upholding Constitutionality of New Campaign Finance Law* (prepared by WilmerHale) (approximately December 2003). Copy supplied.

Case Alert, *Analysis of Supreme Court Decision Upholding Constitutionality of New Campaign Finance Law* (with Seth Waxman, Frank Wertheimer, and Roger Witten) (May 5, 2003). Copy supplied.

Executive Branch Legal Interpretation: A Perspective From the Office of Legal Counsel, 52 Admin. L. Rev. 1303 (2000). Copy supplied.

Note, *Participation and Department of Justice School Desegregation Decrees*, 95 Yale L. J. 1811 (1986). Copy supplied.

Letter to the Editor, New York Times, November 2, 1986. Copy supplied.

Why the United States Has Failed to Evolve: An Analysis of Current Western Interest Intermediation Systems, 6 Hamilton Social Science Rev. 24 (1983). Copy supplied.

Although I have not been able to locate a copy, I believe that I wrote an article in my college newspaper regarding asbestos found in a dormitory in approximately 1980.

- 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 Amicus Brief by Former Senior Justice Department Officials and Former Counsels to the President on Jurisdiction in *United States v. Windsor*, No. 12-307 (2013), 2013 WL 840016.

I served as an associate member of the Markel Task Force on National Security in the Information Age from 2004 to 2006. During this time, the Task Force issued the following report: *Implementing a Trusted Information Sharing Environment: Using Immutable Audit Logs to Increase Security, Trust, and Accountability*, Markel Task Force on National Security in the Information Age (2006). Copy supplied.

Joint Statement of Principles to Guide the Office of Legal Counsel, December 21, 2004, reprinted in 81 Ind. L. J. 1348 (2006).

Preserving Our Institutions: The Continuity of Congress, Continuity in Government Commission, American Enterprise Institute and Brookings Institution, October 16, 2002. Copy supplied. Although not a member of the Commission, I did consult in the creation of this report. I also served as an advisor to the Continuity in Government Commission and those involved in the project on the continuity of Congress, the Presidency, and/or the Supreme Court, including in briefing Congressional staffers. I have been unable to locate any notes, transcripts, or recordings relating to this advice.

- 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.

Congressional Testimony:

Confirmation Hearing to Serve as the Assistant Attorney General for the Office of Legal Counsel, United States Department of Justice, Committee on the Judiciary, United States Senate, February 22, 2000. Transcript and questions for the record supplied.

Testimony Concerning S. 1214, The Federalism Accountability Act of 1999, Committee on Governmental Affairs, United States Senate, July 14, 1999. Transcript and written statement supplied.

Testimony Concerning S.J. Res. 14, A Proposed Flag Desecration Constitutional Amendment, Committee on the Judiciary, United States Senate, April 28, 1999. Transcript and written statement supplied.

Testimony Concerning "Clinton-Gore v. State and Local Governments, Subcommittee on National and Economic Growth, Natural Resources, and Regulatory Affairs, Committee on Government Reform and Oversight, United States House of Representatives, July 28, 1998. Transcript supplied.

Testimony Concerning H.R. 856, To Provide a Process Leading to Full Self-Government for Puerto Rico, and S. 472, To Provide for Referenda in Which the Residents of Puerto Rico May Express Democratically Their Preferences Regarding the Political Status of the Territory, and for Other Purposes, Committee on Energy and Natural Resources, United States Senate, July 14, 1998. Transcript supplied.

Testimony Concerning S. 1668, Whistleblower Protections for Classified

Disclosures, Permanent Select Committee on Intelligence, United States House of Representatives, May 20, 1998. Written statement supplied.

Testimony Concerning the Constitutionality of Proposed Limitations on Tobacco Industry, Committee on the Judiciary, United States Senate (with David W. Ogden, Counselor to the Attorney General), May 13, 1998. Written statement and transcript supplied.

Testimony Concerning Whistleblower Protections for Classified Disclosures, Select Committee on Intelligence, United States Senate, February 11, 1998. Transcript and written statement supplied.

Other Statements:

January 2005; February 3, 2004: "Civil Litigation Update," National Vaccine Advisory Committee, Washington, D.C. I addressed vaccine liability issues. Notes supplied.

March 16, 2004, September 4, 2002, June 6, 2002: Presenter, "Update on Thimerosal Lawsuits," Meetings of the Advisory Commission on Childhood Vaccines, Rockville, Maryland. Minutes supplied where available.

National Commission on Terrorist Attacks Upon the United States, The 9/11 Commission Report. On February 6, 2004, I provided information to the 9/11 Commission. Copy of relevant excerpts of the report supplied.

It is possible that I made additional presentations to the Advisory Commission on Childhood Vaccines and/or the National Vaccine Advisory Commission and may have made other presentations relating to the National Vaccine Injury Compensation Program.

Published Opinions of the Office of Legal Counsel:

Effect of Alienage Restriction in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on the Provision of Stafford Act Assistance in the Federated States of Micronesia and the Republic of the Marshall Islands, Mem. Op. for the General Counsel, Federal Emergency Management Agency, Jan. 19, 2001. Copy supplied.

Authority to Solicit Gifts, Mem. Op. for the Director, Office of Government Ethics, Jan. 19, 2001. Copy supplied.

Applicability of the Antideficiency Act to a Violation of a Condition or Internal Cap Within An Appropriation, Mem. Op. for the Ass't Attorney General for Administration, Jan. 19, 2001. Copy supplied.

Reimbursing Transition-Related Expenses Incurred Before the Administrator of General Services Ascertained Who Were the Apparent Successful Candidates for the Offices of President and Vice President, Mem. Op. for the General Counsel, General Services Administration, Jan. 17, 2001. Copy supplied.

Whether the President May Have Access to Grand Jury Materials in the Course of Exercising his Discretion to Grant Pardons, Mem. Op. for the Pardon Attorney, Dec. 22, 2000. Copy supplied.

Authorization for Continuing Hostilities in Kosovo, Mem. for the Attorney General, Dec. 19, 2000. Copy supplied.

Authority of the General Services Administration to Provide Assistance to Transition Teams of Two Presidential Candidates, Mem. Op. for the Counsel to the President, Nov. 28, 2000. Copy supplied.

Payment of Attorney's Fees in Litigation Involving Successful Challenges to Federal Agency Action Arising Under the Administrative Procedure Act and the Citizen-Suit Provisions of the Endangered Species Act, Mem. Op. for the Ass't Attorney General, Environment and Natural Resources Division, Nov. 27, 2000. Copy supplied.

State Taxation of Income of Certain Native American Armed Forces Members, Mem. Op. for the General Counsel, Department of Defense, Nov. 22, 2000. Copy supplied.

Use of Agency Resources to Support Presidential Transition, Mem. Op. for the General Counsel, General Services Administration, Nov. 22, 2000. Copy supplied.

Definition of Candidate Under 18 U.S.C. § 207(j), Mem. for the Director, Office of Government Ethics, Nov. 6, 2000. Copy supplied.

Section 235A of the Immigration and Nationality Act, Mem. for the General Counsel, Immigration and Naturalization Service, Oct. 23, 2000. Copy supplied.

Sharing Title III Electronic Surveillance Material With the Intelligence Community, Mem. for the Counsel, Office of Intelligence Policy and Review, Oct. 17, 2000. Copy supplied.

A Sitting President's Amenability to Indictment and Criminal Prosecution, Mem. for the Attorney General, Oct. 16, 2000. Copy supplied.

Applicability of Government Corporation Control Act to Gain Sharing Benefit Agreement, Mem. Op. for the General Counsel, National Aeronautics and Space Administration and the General Counsel, Office of Management and Budget, Sept. 18, 2000. Copy supplied.

Administration of Coral Reef Resources in the Northwest Hawaiian Islands, Mem. Op. for the Solicitor, Department of the Interior; the General Counsel, National Oceanic and Atmospheric Administration; and the General Counsel, Council on Environmental Quality, Sept. 15, 2000. Copy supplied.

Application of 18 U.S.C. § 209 to Employee-Inventors Who Receive Outside Royalty Payments, Mem. Op. for the Director of Government Ethics, Sept. 7, 2000. Copy supplied.

Constitutionality of 18 U.S.C. § 1120, Mem. Op. for the Ass't Attorney General, Criminal Division, Aug. 31, 2000. Copy supplied.

Whether a Former President May Be Indicted and Tried for the Same Offense for Which He Was Impeached by the House and Acquitted by the Senate, Mem. for the Attorney General, Aug. 18, 2000. Copy supplied.

Division of Power and Responsibilities Between the Chairperson of the Chemical Safety and Hazard Investigation Board and the Board as a Whole, Mem. Op. for the General Counsel, Chemical Safety and Hazard Investigation Board, June 26, 2000. Copy supplied.

EPA Assessment of Penalties Against Federal Agencies for Violation of the Underground Storage Tank Requirements of the Resource Conservation and Recovery Act, Mem. Op. for the General Counsel, Department of Defense and the General Counsel, Environmental Protection Agency, June 14, 2000. Copy supplied.

Continuation of Federal Prisoner Detention Efforts in the Face of a USMS Appropriations Deficiency, Mem. for the General Counsel, United States Marshals Service, April 5, 2000. Copy supplied.

Date of Appointment for Purpose of Calculating the Term of an Interim United States Attorney, Mem. for the Deputy Attorney General, March 16, 2000. Copy supplied.

Enforcement of INA Employer Sanctions Provisions Against Federal Government Entities, Mem. Op. for the General Counsel, Immigration and Naturalization Service, March 15, 2000. Copy supplied.

Starting Date for Calculating the Term of an Interim United States Attorney, Mem. for the Deputy Attorney General, March 10, 2000. Copy supplied.

Legal Effectiveness of a Presidential Directive, as Compared to an Executive Order, Mem. for the Counsel to the President, Jan. 29, 2000. Copy supplied.

Participation by Processor-Owned Catcher Vessels in Inshore Cooperatives Under the American Fisheries Act of 1998, Mem. Op. for the General Counsel, Department of Commerce, Dec. 10, 1999. Copy supplied.

Tribal Restrictions on Sharing of Indigenous Knowledge on Uses of Biological Resources, Mem. for the Ass't Attorney General, Environment & Natural Resources Division, Oct 12, 1999. Copy supplied.

Office of Personnel Management Petitions for Reconsideration of Non-Precedential Merit Systems Protection Board Decisions, Mem. for the General Counsel, Federal Retirement Thrift Investment Board, Sept. 13, 1999. Copy supplied.

Restrictions on Travel by Voice of America Correspondents, Mem. for the Deputy Legal Adviser, Department of State, Sept. 10, 1999. Copy supplied.

Internal Revenue Service Request for Documents in Defense Department Possession, Mem. for the Acting General Counsel, Department of the Treasury and the General Counsel, Department of Defense, Sept. 1, 1999. Copy supplied.

Authority of the United States to Enter Settlements Limiting the Future Exercise of Executive Branch Discretion, Mem. for Raymond C. Fisher, Assoc. Attorney General, June 15, 1999. Copy supplied.

Accessibility Guidelines and Federal Lease Renewals, Mem. for the Deputy General Counsel U.S. Architectural and Transportation Barrier Compliance Board, May 26, 1999. Copy supplied.

Relationship Between Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and Statutory Requirement for Confidentiality of Census Information, Mem. for the General Counsel, Department of Commerce, May 18, 1999. Copy supplied.

Whether and Under What Circumstances Government Reproduction of Copyrighted Materials is a Noninfringing "Fair Use" Under Section 107 of the Copyright Act of 1976, Mem. for the General Counsel, Department of Commerce, Apr. 30, 1999. Copy supplied.

Proposed Settlement of Diamond v. Department of Health & Human Services, Mem. for Harriet S. Raab, General Counsel, Department of Health & Human Services, Dec. 4, 1998. Copy supplied.

Presidential Determination Allowing Financial Assistance to Tibet, Mem. Op. for the General Counsel, Export-Import Bank, Nov. 6, 1998. Copy supplied.

Lack of Authority of the Office of the United States Trade Representative to Represent Private Industry in Proceedings Before the United States International Trade Commission, Letter to the Deputy General Counsel, Office of the U.S. Trade Representative, Sept. 24, 1998. Copy supplied.

Whether the Fifth Amendment Prohibits Disclosure of the Results of a Court-Ordered Mental Examination to the Government During the Guilt Phase of a

Trial, Mem. for the Ass't Attorney General, Criminal Division, Sept. 21, 1998. Copy supplied.

Construction of State Reporting Requirements in Section 404 of the Personal Responsibility and Work Opportunity Reconciliation Act, Mem. for the General Counsel, Immigration and Naturalization Service, Aug. 18, 1998. Copy supplied.

Appropriate Source for Payment of Judgments and Settlements in United States v. Winstar Corp. and Related Cases, Mem. for Neal S. Wolin, Deputy General Counsel, Department of the Treasury, July 22, 1998. Copy supplied.

Access to Criminal History Records by Non-Governmental Entities Performing Authorized Criminal Justice Functions, Letter Op. for the Deputy Director of the Federal Bureau of Investigation, June 12, 1998. Copy supplied.

Funds Available for Payment of Natural Resource Damages Under the Oil Pollution Act of 1990, Mem. for Ass't Attorney General, Civil Division, Sept. 25, 1997. Copy supplied.

Immunity of Smithsonian Institution from State Insurance Laws, Mem. Op. for the Ass't General Counsel, Smithsonian Institution, April 25, 1997. Copy supplied.

Delegation of the President's Power to Appoint Members of the National Ocean Research Leadership Council, Mem. Op. for the General Counsel, Department of the Navy, Jan. 29, 1997. Copy supplied.

Proposed Agency Interpretation of "Federal Means-Tested Public Benefits" Under Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Mem. Op. for the General Counsel, Department of Health and Human Services, Jan. 14, 1997. Copy supplied.

Authority to Exempt Programs Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Mem. Op. for the Ass't Attorney General, Office of Policy Development, Nov. 25, 1996. Copy supplied.

Letters:

Joint Letter to the Senate Judiciary Committee in Support of the Nomination of Cornelia Pillard to be a United States Judge on the United States Court of Appeals for the District of Columbia (July 17, 2013). Copy supplied.

Joint Letter to the Senate Intelligence Committee in Support of the Nomination of Caroline Krass to be General Counsel for the Central Intelligence Agency (December 6, 2013). Copy supplied.

Joint Letter to the Senate Judiciary Committee in Support of the Nomination of Stuart Delery to be the Assistant Attorney General, Civil Division, United States Department of Justice (May 13, 2013). Copy supplied.

Joint Letter to the Senate Judiciary Committee in Support of the Nomination of Michael Horowitz to be the Inspector General of the Department of Justice (October 17, 2011). Copy supplied.

Joint Letter to the Senate Judiciary Committee in Support of the Nomination of Virginia Seitz to be Assistant Attorney General, Office of Legal Counsel (March 15, 2011). Copy supplied.

Joint Letter to the Senate Judiciary Committee in Support of the Nomination of Donald Verrilli, Jr. to be the Solicitor General of the United States (February 10, 2011). Copy supplied.

Joint Letter from Former Supreme Court Law Clerks to the Senate Judiciary Committee in Support of the Nomination of Elena Kagan to be an Associate Justice, United States Supreme Court (June 23, 2010). Copy supplied.

Joint Letter to the Senate Judiciary Committee in Support of the Nomination of Sonia Sotomayor to be an Associate Justice, United States Supreme Court (August 5, 2009). Copy supplied.

Joint Letter to the Senate Judiciary Committee in Support of the Nomination of Christopher Schroeder to be the Assistant Attorney General for the Office of Legal Policy (June 23, 2009). Copy supplied.

Letter to the Senate Foreign Relations Committee in Support of Nomination of Harold Koh to be Legal Adviser to the Department of State (April 29, 2009). Copy supplied.

Letter to the Senate Judiciary Committee in Support of the Nomination of Dawn Johnsen to be Assistant Attorney General for the Office of Legal Counsel (February 23, 2009). Copy supplied.

Letter to the Senate Judiciary Committee in Support of the Nomination of David Kris to be Assistant Attorney General for the National Security Division (February 5, 2009). Copy supplied.

Letter to the Senate Intelligence Committee in Support of the Nomination of David Kris to be Assistant Attorney General for the National Security Division (February 5, 2009). Copy supplied.

Letter to the Senate Judiciary Committee in Support of the Nomination of Paul Clement to be the Solicitor General of the United States (April 15, 2005). Copy supplied.

Joint Letter to the Senate Judiciary Committee in Support of the Nomination of Peter Keisler to be Assistant Attorney General for the Civil Division (2003). Copy of Chairman Hatch's statement supplied. I believe that I may have also joined a letter in support of Mr. Keisler's nomination to be a United States Judge

on the United States Court of Appeals for the District of Columbia, but I am unsure about this and have not been able to locate copies of the letters sent in support of his nomination.

Letter to the Senate Judiciary Committee in Support of the Nomination of Miguel Estrada to be a United States Judge on the Court of Appeals for the District of Columbia Circuit (2002). Copy supplied.

Letter to Senator Paul Sarbanes and Senator Barbara Mikulski in Support of the Potential Nomination of Peter Keisler to be a United States Judge on the United States Court of Appeals for the Fourth Circuit (April 12, 2001). 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.

The following list reflects my best effort to identify the public speeches, talks and remarks that I have delivered. To compile the list, I consulted my own files and Internet sources. There may, however have been speeches, talks or remarks that I have been unable to recall or identify, and I have occasionally spoken at informal events for which I did not retain any record.

October 30, 2013, October 17, 2011, October 20, 2010, October 28, 2009 and October 23, 2007: Guest Lecturer, First Amendment Class, American University, Washington College of Law, Washington, D.C. Representative notes supplied.

October 8, 2013: Presenter, Constitution Day Event, "The Current State of Campaign Finance Law," Robert J. Dole Institute of Politics, Lawrence, Kansas. Video available at <http://www.youtube.com/watch?v=qO2xjfm5tBY>.

May 31, 2013: Co-facilitator, Constitution Project Discussion on the Recess Appointments Clause, Washington, D.C. I discussed the recess appointments clause and *NLRB v. Noel Canning*. I have been unable to locate any notes, record or transcript. The address of the sponsoring organization is the Constitution Project, 1200 18th Street, N.W., Suite 1000, Washington, D.C. 20036.

March 13, 2013: Panelist, Panel on Public Release of Office of Legal Counsel Opinions, sponsored by Citizens for Responsibility and Ethics in Washington and George Washington University Law School Professor Alan Morrison, Washington, D.C. Video supplied.

March 11, 2013: Panelist, Teleconference on the Cybersecurity Executive Order and Presidential Directive: Implications for Federal Agencies and Contractors. I discussed a recent Executive Order and Presidential Directive dealing with cybersecurity for critical infrastructure and government contractors. I have been unable to locate any notes, transcript or recording. The sponsoring organization is the American Bar Association Cybersecurity, Privacy and Data Protection Committee, 321 North Clark Street, Chicago, IL 60654.

November 11, 2012: Speaker, Memorial Service for Herman Marcuse, United States Department of Justice, Office of Legal Counsel, Washington, D.C. I discussed the career of a long-serving Office of Legal Counsel attorney, at his memorial service. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is Office of Legal Counsel, United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

January 23, 2012: Panelist, "The Supreme Court Cases Challenging the Constitutionality of the Affordable Care Act," O'Neill Institute for National and Global Health Law, Georgetown University Law Center, Washington, D.C. Video available at <https://apps.law.georgetown.edu/webcasts/eventDetail.cfm?eventID=1629>.

November 19, 2009: Panelist, "Patentable Subject Matter of the Bilski Oral Argument," Washington College of Law, Washington, D.C. Video available at <http://media.wcl.american.edu/Mediasite/Play/ac95d68a5a734ae98122e856efcdbc75>.

October 7, 2009: Panelist, "The 2009-2010 U.S. Supreme Court Term," Brookings Institution, Washington, D.C. Transcript supplied and audio available is available at <http://www.brookings.edu/events/2009/10/07-supreme-court>.

October 1, 2009: Panelist, American Bar Association Task Force on Federal Preemption of State Tort Laws. Notes supplied.

September 30, 2009: Guest Lecturer, Seminar on National Security and the Constitution, Harvard Law School, Cambridge, Massachusetts. I discussed the Constitution and separation of powers as applied to national security law. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is Harvard University, Institute of Politics, 79 John F. Kennedy Street, Cambridge, MA 02138.

November 20, 2008: Panelist, "International and National Security Law: International Law and the Separation of Powers," Federalist Society Annual Convention, Washington, D.C. Audio available at <http://www.fed->

soc.org/publications/detail/international-law-the-separation-of-powers-event-audiovideo.

November 19, 2008: Panelist, “Concurrent Vaccine Program/Vaccine Compensation Under the Act: A Mix of Science and Policy?” Judicial Conference of the United States Court of Federal Claims, Washington, D.C. Transcript supplied.

November 6, 2008: Guest Lecturer, Seminar on Office of Legal Counsel Lawyering, Georgetown University Law Center, Washington, D.C. I addressed the role of government lawyers. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is Georgetown University Law Center, 600 New Jersey Avenue, N.W., Washington, D.C. 20001.

June 27, 2008: Panelist, “Briefing on U.S. Supreme Court Rulings,” Brookings Institution, Washington, D.C. Transcript supplied and videos available at <http://www.brookings.edu/events/2008/06/27-supreme-court>, <http://c-spanvideo.org/program/20072008SupremeCourtTerm>.

May 8, 2008: Presenter, “Conference on Dynamics of Interagency Reform: Constitutional, Statutory, and Civil Liberties Implications,” Project on National Security Reform and the Reserve Officers Association, Washington, D.C. Notes supplied.

March 13, 2008: Guest Lecturer, First Amendment Class, Stanford Law School. I believe that I addressed compelled speech and/or the Supreme Court’s consideration of *Davis v. FEC*. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is Stanford Law School, 559 Nathan Abbott Way, Stanford, CA 94305.

March 12, 2008: Presenter, “Constitutional Conversation,” Stanford Law School Chapter of the American Constitution Society. Although I do not recall precisely what I addressed, I believe my remarks involved the Constitution and/or national security. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is Stanford Law School Chapter of the American Constitution Society, 559 Nathan Abbott Way, Stanford, CA 94305.

November 19, 2007: Panelist, “Congress, the President and the Struggle Over Information,” the Wilson Center, Washington, D.C. I have been unable to locate any notes, transcript or recording, but press coverage is supplied. The address of the sponsoring organization is the Wilson Center, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

October 9, 2007: Panelist, Discussion Following Preview of “Rendition,” Brookings Institution, Washington, D.C. I addressed legal issues raised by the movie. I have been unable to locate any notes, transcript or recording. The

address of the sponsoring organization is the Brookings Institution, 1775 Massachusetts Avenue, N.W., Washington, D.C. 20036.

March 7, 2007: Study Group on National Security Law, Harvard University, Institute of Politics, Cambridge, Massachusetts. Along with Professor Goldsmith, I helped lead a discussion on national security law and the Constitution. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is Harvard University, Institute of Politics, 1563 Massachusetts Avenue, Cambridge, MA 02138.

February 27, 2006: Panelist, "Lessons Learned from NAFTA (North American Free Trade Agreement) and the Softwood Dispute," American University Washington College of Law, Washington, D.C. Video available at <http://media.wcl.american.edu/mediasite/play/c01b4a0b-2d62-4e10-9077-a45fea37157c>.

December 20, 2005: Presenter, Immunization Policy, American College of Obstetricians and Gynecologists, Washington, D.C. Notes and presentation supplied.

November 17, 2005: Panelist, "Structure of Statutory Interpretation Within Executive Branch," American Bar Association, Washington, D.C. Notes supplied.

April 14, 2005: Panelist, "Government Compelled Speech," The Federalist Society's Free Speech and Election Practice Group, Washington, D.C. Notes supplied.

March 16, 2005: Introduction of the Honorable James Robertson, United States District Judge, D.C. Lawyers Chapter of the American Constitution Society, Washington, D.C. I introduced Judge Robertson at a luncheon. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is the American Constitution Society, 1333 H Street, N.W., Washington, D.C. 20005.

January 24, 2005: Panelist, "Liability Issues, Second NVAC Workshop on Strengthening the Supply of Vaccines in the U.S." Notes supplied.

December 6, 2004: Presenter, Federalist Papers Book Group, D.C. Lawyers Chapter of the American Constitution Society, Washington, D.C. I spoke about the Federalist Papers and Presidential Powers. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is the American Constitution Society, 1333 H Street, N.W., Washington, D.C. 20005.

September 17, 2004: Panelist, "The Role of Lawyers in the War of Terrorism," Sixth Annual Conference of the Duke Program in Public Law, Duke Law School,

Durham, North Carolina. Video available at <http://law.duke.edu/video/role-lawyers-war-terrorism/>.

June 17, 2004: Presenter, Luncheon Program, "Executive Privilege in the Age of Terrorism," District of Columbia Bar Association, Washington, D.C. Notes supplied.

January 28, 2004: Presenter, "Ensuring the Continuity of Government in Times of Crisis," Catholic University, Washington, D.C. Transcript supplied.

December 18, 2003: Panelist, "*McConnell v. FEC* and the Future of American Campaign Finance," American Constitution Society, Washington, D.C. I discussed *McConnell v. FEC*. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is The American Constitution Society, 1333 H Street, N.W., 11th Floor, Washington, D.C. 20005.

November 3, 2003: Presenter, "The First Amendment and Commercial Speech on the Internet," Institute for Law and Technology, Center for American and International Law, Plano, Texas. Notes supplied.

June 23 or 24, 2003: Presenter, "National Forum on Corporate Compliance with the Bipartisan Campaign Reform Act of 2002," American Conference Institute, Washington, D.C. Notes supplied.

May 12, 2003: Panelist, "Future of Campaign Finance," Cato Institution and Federalist Society, Washington, D.C. Video available at <http://c-spanvideo.org/program/CampaignFinanceReform130>.

February 2003: Panelist, Federal Bar Council Annual Meeting, Maui, Hawaii. I spoke on two panels, one addressing federalism and the other addressing campaign finance and the Constitution. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is the Federal Bar Council, 123 Main Street, Suite L100, White Plains, NY 10601.

January 15, 2003: Discussion, Eighth Grade Class, Georgetown Day School. I met at my office with eighth grade students to discuss Fourth Amendment rights relating to searches and wire taps during a time of national crisis. I have been unable to locate any notes, record or transcript. The event was sponsored by the Georgetown Day School, 4530 MacArthur Boulevard, Washington, D.C. 20007.

November 16, 2002: Panelist, "Whither Federalism? The Impact of Globalization and the War on Terror," Federalist Society Annual Convention, Washington, D.C. I addressed federalism and national security. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is Federalist Society, 1015 18th Street, N.W., Suite 425, Washington, D.C. 20036.

October 24, 2002: Panelist, “*Eldred v. Ashcroft*: The Constitutionality of the Copyright Term Extension Act, New York Chapter of the Copyright Society, New York, NY. Notes supplied.

July 29, 2002: Panelist, “Campaign Finance and the Constitution: Reacting to Reform: Law and Politics After McCain-Feingold-Shays-Meehan” Roll Call and Perkins Coie Political Law Group, Washington, D.C. Video available at <http://c-spanvideo.org/program/Financeandt>.

March 1, 2002: Panelist, “Campaign Finance Legislation, Politics and the Constitution,” American Enterprise Institute/Brookings Institution, Washington, D.C. Video available at <http://c-spanvideo.org/program/CampaignFinanceReform121>.

February 2002: Guest Lecturer, “The Law of Counterterrorism,” University of Maryland School of Law, Baltimore, Maryland. I discussed national security law and the role of government lawyers in counterterrorism. I have been unable to locate any notes, transcript or recording. The address of the sponsoring organization is the University of Maryland School of Law, 500 West Baltimore Street, Baltimore, MD 21201.

November 18, 2000: Panelist, “Federalism and Separation of Powers Group: Federalism After the Election: Opportunities and Challenges,” Federalist Society Annual Convention, Washington, D.C. Notes supplied.

July 30, 1999: Panelist, Panel Discussion on the 1998 Supreme Court Term, Senate Judiciary Staff, Washington, D.C. Notes supplied.

I also recall participating in a webinar sometime in the last five years, but I cannot recall the details and have been unable to locate any notes, transcript or recording.

- 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.

Through on-line database searches and a review of my own files, I have located the following instances in which I was apparently quoted from an interview in a publication. In some instances, the same article also appeared in affiliated publications. Also listed below is any instance that I have been able to locate in which I have been quoted, or in which my voice or image appeared, on a radio or television broadcast.

“Jonathan Yarowsky Joins WilmerHale’s Washington D.C. Office,” WilmerHale Press Release, July 10, 2013. Copy supplied.

“Experienced Life Sciences Regulatory Attorney Bruce Manheim Joins WilmerHale,” WilmerHale Press Release, March 18, 2013. Copy supplied.

“Former Government Policy Advisors Strengthens WilmerHale Financial Institutions Practice: Katrina Carroll, Jeremy Newell Bring Federal Experience to Financial Team,” WilmerHale Press Release, March 13, 2013. Copy supplied.

Lisa Keen, “Hospital Memo Will Take Months To Implement,” Windy City Times, April 28, 2010. Copy supplied.

Seth Stern, “Executive Counsel: Meet the President’s New Lawyers—and Their New Lawyers,” Harvard Law Today, July 1, 2009. Copy supplied.

“Federal Court Declares Vaccines Do Not Cause Autism,” PR Newswire, February 12, 2009. Copy supplied.

Every Child By Two, Vaccine Court Ruling Briefing, February 12, 2009. Transcript supplied.

Joe Palazzolo, “Obama Names Choices For Key DOJ Posts,” The National Law Journal, January 5, 2009. Copy supplied.

Joe Palazzolo, “DOJ Notebook: Ogden Tops List For No. 2 Slot,” The National Law Journal, December 22, 2008. Copy supplied.

Press Conference, Every Child By Two, National Vaccine Injury Compensation Program and Autism Cases, May 7, 2008. I have no notes, transcript or recording.

Erin Daly, “Autism Case Sparks Debate Over Vaccine Program,” Law360, June 12, 2007. Copy supplied.

Tony Mauro, “A Shot Of Redemption,” Legal Times, June 4, 2007. Copy supplied.

Press Conference, Every Child By Two and the Sabin Vaccine Institute, Briefing on the Autism Omnibus Proceedings, June 4, 2007. Transcript supplied.

Nina Totenberg, “High Court Takes Up Campaign-Ad Issue,” National Public Radio, Morning Edition, April 25, 2007. Copy supplied.

Peter Overby, “Court Rejects Vermont’s Campaign-Finance Law,” NPR (June 27, 2006). Audio available at <http://www.npr.org/templates/story/story.php?storyId=5514385>.

Peter Overby, "Vermont Campaign Finance Law Rejected by Supreme Court," National Public Radio, Morning Edition, June 27, 2006. Copy supplied.

"High Court Says Beef is What's for Dinner," May 24, 2005. Copy supplied.

Tony Mauro, "Supreme Court Rules Beef Ads Are Government Speech," The National Law Journal, May 23, 2005. Copy supplied.

"California Farmers Applaud Supreme Court Ruling on Beef," PR Newswire, May 23, 2005. Copy supplied.

Jess Bravin, "Interrogation Policy Proves Elusive – Justice Department Effort To Give Guidance On Handling Terrorism Detainees Is Delayed," The Wall Street Journal, December 13, 2004. Copy supplied.

Vanessa Blum, "Culture Of Yes: Signing Off On A Strategy; From Torture To Detention, Lawyers For Bush Haven't Objected to Much," The National Law Journal, June 14, 2004. Copy supplied.

I believe that I may have been interviewed by Nina Totenberg in approximately 2003 regarding campaign finance litigation, but I have been unable to locate any record of the interview.

Jonathan Groner, "How Past Scandals Propelled Reforms," Legal Times, December 15, 2003. Copy supplied.

Susan Crabtree, "Hard Ban On Soft \$," Daily Variety, December 11, 2003. Copy supplied.

Fred Barbash, "Supreme Court Upholds Political Money Law: 'Soft Money' Ban, Ad Limits Maintained," Washington Post, December 10, 2003. Copy supplied.

Jan Crawford Greenberg, "Embattled Judicial Nominee Withdraws," Chicago Tribune, September 5, 2003. Copy supplied.

Tony Mauro, "Judging Reform: Eight Lawyers; Four Hours And A Lunch Break," Legal Times, September 1, 2003. Copy supplied.

Viveca Novak, "Justice Rehnquist, Secret Feminist?" Time Magazine, June 1, 2003. Copy supplied.

Stephen Dinan and Frank Murray, "NRA Asks High Court to Block Ruling on Interest Group Ads," The Washington Times, May 13, 2003. Copy supplied.

Tony Mauro, "Something For Everyone To Hate," Legal Times, May 12, 2003. Copy supplied.

Vanessa Blum, "For OLC; A Contrarian In Step With Bush," Legal Times, May 5, 2003. Copy supplied.

"A Thunderclap, at 1,600 Pages," The National Law Journal, May 5, 2003. Copy supplied.

David Montgomery, "A Man on Hold: While the Senate Debates, Judicial Nominee Miguel Estrada Waits. And Waits," The Washington Post, March 14, 2003. Copy supplied.

Jan Crawford Greenberg, "From Humble Beginnings To Senate Storm; Nominee Miguel Estrada Is Seen As Conservative, Driven And An Impressive Lawyer. His Mother Says He's Not 'The Kind Of Person That Stirs Controversy,'" Chicago Tribune, March 2, 2003. Copy supplied.

Deirdre Davidson, "McConnell Case: Lawyers Jockey For Edge," The National Law Journal, November 11, 2002. Copy supplied.

John Woods, "Constitutional Scholar Takes Over As Fordham Law Dean," Law.com, July 29, 2002. Copy supplied.

Frank J. Murray, "Counsel Approached Justice Aide For Advice To Get Clinton To Plead; Indictment Of Former, But Not Current, President Was Possible," The Washington Times, July 28, 2002. Copy supplied.

Jonathan Groner, "Privilege Fight Looms Over Estrada," Legal Times, June 3, 2002. Copy supplied.

David G. Savage, "At 82, Justice Stevens Is Still A Lively Force," Los Angeles Times, April 20, 2002. Copy supplied.

Inadmissible, The Legal Times, March 11, 2002. I was quoted regarding the Independent Counsel investigation of President Clinton, but have been unable to locate a copy of the article. The article may have addressed whether someone who has been acquitted in an impeachment is subject to subsequent prosecution.

Peter Slevin, "Ashcroft Blocks FBI Access To Gun Records; Critics Calls Attorney General's Decision Contradictory In Light of Terror Probe Tactics," The Washington Post, December 7, 2001. Copy supplied.

Jim Oliphant, "Justice During Wartime," Legal Times, November 19, 2001. Copy supplied.

Jonathan Groner, "When Labels Don't Fit," Legal Times, June 25, 2001. Copy supplied.

Robert Pear, "The New Administration: The Regulations; As President Bush Settles In, Rules About To Be Published Might Perish," The New York Times, January 23, 2001. Copy supplied.

Mark Tushnet, "Non-Judicial Review," 40 Harvard Journal on Legislation 453, Telephone Interview, January 21, 2001. This article attributes the information to a series of interviews with different former members of the Office of Legal Counsel, and I do not recall the details of my interview with the author. Copy supplied.

I believe I participated in a television debate in approximately 1995 regarding the Tenth Amendment and the Brady Handgun Control Act. I have been unable to locate any record of the debate.

"Why Watson Quit As Project Head," Science, April 17, 1992. Copy supplied.

"Students Hit Campaign Trail," Clinton Courier, March 9, 1983. Copy supplied.

While in College, I believe I did a radio interview regarding Gary Hart's presidential campaign, but I have been unable to locate any record of the interview. It is possible I did other interviews, as well, in college or law school regarding that campaign.

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 served as a judge.

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

1. 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 served as a judge.

- 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.

2000 – 2001

Assistant Attorney General, Office of Legal Counsel, United States Department of Justice. I was appointed by President Clinton.

1998 – 2000

Acting Assistant Attorney General, Office of Legal Counsel, United States Department of Justice. I was designated by the Attorney General.

I have had no unsuccessful candidacies for public 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.

In 2012 and 2008, I did volunteer work on the Obama-Biden presidential campaigns on election law issues. I did similar volunteer work for the Democratic Congressional Campaign Committee in 2006, and did volunteer and paid work (through my law firm) on similar issues for the Kerry-Edwards campaign in 2004. In this capacity, I was a co-chair of the Research, Analysis and Writing teams for these campaigns in 2004, 2006, and 2008 (although the exact name of the teams may have varied). In 2012, I played a similar role and was a member of the Senior Legal Counsel team. I also briefly helped research candidate positions for the Obama-Biden campaign in 2008, and was a member of a vice-presidential public records vetting team for the Kerry campaign in 2004.

In 2007 or 2008, I did volunteer work as part of an informal group advising the Clinton presidential campaign on legal policy issues.

In 2002, I did volunteer work at a polling place for the Chris Van Hollen for Congress campaign.

I also served as a volunteer on Senator Gary Hart's presidential campaign in 1983 to 1984. I did volunteer work at the campaign's Washington D.C. headquarters, was the coordinator for Hamilton College, and was the coordinator for the Fourth Congressional District of Connecticut and Yale University.

I have also co-hosted fundraisers for various candidates: John Hickenlooper for Governor of Colorado (January 15, 2014); Anthony Brown for Governor of Maryland (December 9, 2013); Juliette Kayyem for Governor of Massachusetts (September 25, 2013 and October 29, 2013); and Chris Van Hollen for Congress (2002 and other events since then, including his annual event at Glen Echo Park).

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;

From 1988 to 1989, I served as a law clerk to Justice John Paul Stevens for the United States Supreme Court.

From 1986 to 1987, I served as a law clerk for then-District Court Judge Pierre N. Leval for the United States District Court for the Southern District of New York.

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

I have not 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.

1996 – 2001

Office of Legal Counsel, United States Department of Justice
950 Pennsylvania Avenue, N.W.

Washington, D.C. 20530

Assistant Attorney General (2000 – 2001)

Acting Assistant Attorney General (1998 – 2000)

Deputy Assistant Attorney General (1996 – 1998)

Special Counsel to the Attorney General (1996)

1989 – 1996, 2001 – present
Wilmer Cutler Pickering Hale and Dorr, LLP
(previously Wilmer, Cutler & Pickering)
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Partner (1994 – 1996, 2001 – present)
Associate (1989 – 1993)

- 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 in such a position.

b. Describe:

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

After completing my clerkships, I began private practice in 1989 at Wilmer, Cutler & Pickering (now known as Wilmer Cutler Pickering Hale and Dorr, LLP). I worked as an associate with the firm from late 1989 through 1993 and became a partner in 1994. During this period of time, I was a member of the firm's litigation department, and my practice focused on civil litigation before federal and state courts. I also worked on a trial before an administrative agency and a binding arbitration and represented pro bono clients in various matters. My substantive areas of practice involved administrative law, complex civil litigation, antitrust, and constitutional law.

In February 1996, I left Wilmer, Cutler & Pickering to join the Office of Legal Counsel at the United States Department of Justice. From February to March 1996, I served as a Special Assistant to the Attorney General in the Office of Legal Counsel. In March 1996, I became a Deputy Assistant Attorney General in the Office of Legal Counsel; in July 1998, I became the Acting Assistant Attorney General for the Office of Legal Counsel; and in 2000, I became the Assistant Attorney General for the Office of Legal Counsel. I provided advice, and supervised others in providing advice, within the Executive Branch on a broad range of statutory and constitutional questions. My principal areas of practice while at the Office of Legal Counsel included constitutional law, administrative law, national security and immigration.

In 2001, I returned to Wilmer Cutler & Pickering (now known as Wilmer Cutler Pickering Hale and Dorr, LLP) as a partner. Since returning to the firm from government service, my practice has focused on complex civil

litigation, appellate litigation, constitutional law, administrative law, and national security. For a period of time, I served as co-chair of the firm's Government and Regulatory Litigation Group, and, more recently, have served as chair of the firm's Regulatory and Government Affairs Department. I have also served as a member of the firm's management committee. I have represented clients in litigation before federal and state trial level and appellate courts on a broad range of matters.

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

During my time as an associate and a partner at Wilmer, Cutler & Pickering, I have represented numerous corporate clients and, on occasion, private individuals. I also have represented state and federal governmental entities and trade associations. My clients have included, for example, Boeing, the California Table Grape Commission, Disney, the FDIC, Google, Growth Energy, the Trans-Alaska Pipeline Liability Fund, and Verizon.

From 1996 to 2001, I served in the Office of Legal Counsel at the United States Department of Justice. While at the Office of Legal Counsel, I provided advice, and supervised others in providing advice, within the Executive Branch on a broad range of statutory and constitutional questions. Our clients included the Attorney General and various Department of Justice components, the Counsel to the President, and the General Counsels of the Executive Branch departments and agencies.

- 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 estimate that over the course of my career, approximately 75% of my practice has been in litigation. I estimate that from 1989 to 1996 and from 2001 to the present, approximately 90% of my practice has been in litigation. From 1996 to 2001, I served in the Office of Legal Counsel at the U.S. Department of Justice. In that capacity, I was not counsel for the United States in any litigation, but I was at times asked to advise on matters in litigation. From 1989 to 1996, I appeared in court occasionally. Since returning to private practice in 2001, I have appeared in court on many occasions.

The percentages listed below are estimates of the allocation of my time.

- i. Indicate the percentage of your practice in:
 - 1. federal courts: 90%
 - 2. state courts of record: 5%

- 3. other courts: 2%
- 4. administrative agencies: 3%

ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 98%
- 2. criminal proceedings: 2%

- 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 served as lead counsel in one bench trial that went to judgment in the District Court for the Eastern District of California. In a similar case, I served as associate counsel in a jury trial, but that case settled after the jury was empaneled but before the opening arguments were completed. I also have served as associate counsel in a binding arbitration that was tried to decision, as well as in an administrative hearing that was tried to decision.

i. What percentage of these trials were:

- 1. jury: 0%
- 2. non-jury: 100%

- 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 appeared as counsel on the following briefs filed in the Supreme Court, all of which are supplied:

Pom Wonderful LLC v. The Coca-Cola Company, Reply Brief for Petitioner, April 11, 2014. Copy supplied.

Google Inc. v. Joffe, et al., Petition for a Writ of Certiorari, 2014 WL 1285848.

Pom Wonderful LLC v. The Coca-Cola Company, Brief for Petitioner, 2014 WL 768307.

Paula Petrella v. Metro-Goldwyn-Mayer, Inc., et al., Brief for the Motion Picture Association of America, Inc., the Association of American Publishers, Inc., the National Cable & Telecommunications Association, and the Software & Information Industry Association as Amici Curiae in Support of Respondents, 2013 WL 6827756.

Pom Wonderful LLC v. The Coca-Cola Company, Supplemental Brief for Petitioner, 2013 WL 6493507.

Shaun McCutcheon, et al. v. Federal Election Commission, Brief of Amici Curiae Representatives Chris Van Hollen and David Price in Support of Appellee, 2013 WL 3874430.

Grocery Manufacturers Association, et al., v. U.S. EPA and Growth Energy, et al.; Alliance of Automobile Manufacturers, et al. v. U.S. EPA and Growth Energy, et al.; American Fuel & Petrochemical Manufacturers, et al. v. U.S. EPA and Growth Energy, et al., Brief in Opposition of Growth Energy, 2013 WL 2316708.

Pom Wonderful LLC v. The Coca-Cola Company, Reply Brief in Support of Petition for a Writ of Certiorari, 2013 WL 859988.

Madison County and Oneida County, New York v. Oneida Indian Nation of New York, Brief in Opposition, 2013 WL 205941.

Pom Wonderful LLC v. The Coca-Cola Company, Petition for a Writ of Certiorari, 2012 WL 10159199.

The California Table Grape Commission v. Delano Farms Company, et al., Reply Brief for Petitioner, 2012 WL 5353866.

Andrew P. Sidamon-Eristoff, as Treasurer of the State of New Jersey, et al. v. New Jersey Food Council, et al., Brief for Respondent American Express Prepaid Card Management Corporation in Opposition, 2012 WL 4467621.

Supap Kirtsaeng, d/b/a Bluechristine99 v. John Wiley & Sons, Inc., Brief for the Motion Picture Association of America, Inc. and the Recording Industry Association of America as Amici Curiae in Support of Respondent, 2012 WL 3945857.

Tash Hepting, et al. v. AT&T Corp., et al., Brief in Opposition for Carrier Respondents, 2012 WL 3838169.

American Express Travel Related Services Company, Inc. v. Andrew P. Sidamon-Eristoff, Reply Brief in Support of Petition for a Writ of Certiorari, 2012 WL 3838171.

The California Table Grape Commission v. Delano Farms Company, et al., Reply Brief for Petitioner, 2012 WL 3756870.

American Express Travel Related Services Company, Inc. v. Andrew P. Sidamon-Eristoff, Petition for a Writ of Certiorari, 2012 WL 3041167.

American Tradition Partnership, Inc., et al. v. Steve Bullock, Attorney General of Montana, et al., Brief of Amici Curiae Former Federal Election Commission Officials and Former State and Local Election and Campaign Finance Officials in Opposition to Petition for a Writ of Certiorari, 2012 WL 1853625.

The California Table Grape Commission v. Delano Farms Company, et al., Petition for a Writ of Certiorari, 2012 WL 1708822.

Lawrence Golan, et al. v. Eric H. Holder, Jr., et al., Brief for the Motion Picture Association of America as Amicus Curiae Supporting Respondents, 2011 WL 3561888.

Oneida Indian Nation of New York, et al. v. County of Oneida, County of Madison, State of New York, Reply Brief in Support of Petition for a Writ of Certiorari, 2011 WL 3316105.

Oneida Indian Nation of New York, et al. v. County of Oneida, County of Madison, State of New York, Petition for a Writ of Certiorari, 2011 WL 1979646.

Green Party of Connecticut, et al. v. Alfred P. Lenge, et al., Brief in Opposition for Respondents Audrey Blondin, Common Cause of Connecticut, Connecticut Citizen Action Group, and Tom Sevigny, 2011 WL 670162.

Costco Wholesale Corporation v. Omega, S.A., Brief for the Motion Picture Association of America, Inc. and the Recording Industry Association of America as Amici Curiae in Support of Respondent, 2010 WL 3518659.

Delano Farms Company, The Susan Neill Company, and Lucas Bros. Partnership v. California Table Grape Commission, Brief in Opposition to Petition for a Writ of Certiorari, 2010 WL 3161883.

Republican National Committee, et al. v. Federal Election Commission, et al., Motion to Affirm for Intervenor-Defendant Representative Christopher Van Hollen, Jr., 2010 WL 2132036.

Bernard L. Bilski and Rand A. Warsaw v. David J. Kappos, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, Brief for Bank of America Corporation, Barclays Capital Inc., The Clearing House Association L.L.C., The Financial Services Roundtable, Google Inc., MetLife, Inc., and Morgan Stanley as Amici Curiae in Support of Respondent, 2009 WL 3199628.

Citizens United v. Federal Election Commission, Supplemental Brief of Amici Curiae Senator John McCain, Senator Russell Feingold, Former Representative Christopher Shays, and Former Representative Martin Meehan in Support of Appellee, 2009 WL 2365214.

Citizens United v. Federal Election Commission, Brief of Amici Curiae Senator John McCain, Senator Russell Feingold, Former Representative Christopher Shays, and Former Representative Martin Meehan in Support of Appellee, 2009 WL 507015.

Jack Davis v. Federal Election Commission, Brief for Democracy 21, the Campaign Legal Center, Brennan Center for Justice at NYU School of Law, and Public Citizen, Inc. as Amici Curiae in Support of Appellee, 2008 WL 859387.

Fred O. Dickinson, III, et al., v. Mary Ann Collier, et al., Brief for Amicus Curiae Imagitas, Inc. in Support of Petitioners, 2007 WL 3307509.

Senator John McCain, Representative Tammy Baldwin, Representative Christopher Shays, and Representative Martin Meehan v. Wisconsin Right To Life, Inc., Reply Brief for Appellants, 2007 WL 1156122.

Senator John McCain, Representative Tammy Baldwin, Representative Christopher Shays, and Representative Martin Meehan v. Wisconsin Right To Life, Inc., Brief for Appellants, 2007 WL 579240.

Federal Election Commission v. Wisconsin Right To Life, Inc., Jurisdictional Statement, 2007 WL 128362.

Douglas B. Moylan, Attorney General of Guam v. Felix P. Camacho, Governor of Guam, Reply Brief for Petitioner, 2006 WL 3845903.

The Christian Civic League of Maine, Inc. v. Federal Election Commission, Motion to Affirm of Intervenor-Appellees Senator John McCain, Senator Russell Feingold, Representative Christopher Shays, Representative Martin Meehan, and Representative Tom Allen, 2006 WL 3862423.

Douglas B. Moylan, Attorney General of Guam v. Felix P. Camacho, Governor of Guam, Brief for Petitioner, 2006 WL 3350573.

Douglas B. Moylan, Attorney General of Guam v. Felix P. Camacho, Governor of Guam, Reply Brief in Support of Petition for a Writ of Certiorari, 2006 WL 2581848.

The Christian Civic League of Maine, Inc. v. Federal Election Commission, Motion to Dismiss or Affirm of Intervenor-Appellees Senator John McCain, Senator Russ Feingold, Representative Christopher Shays, Representative Martin Meehan, and Representative Tom Allen, 2006 WL 2365705.

Douglas B. Moylan, Attorney General of Guam v. Felix P. Camacho, Governor of Guam, Petition for a Writ of Certiorari, 2006 WL 2085272.

Neil Randall, et al. v. William H. Sorrell, et al., Brief for Senator John McCain, Senator Russell Feingold, Representative Christopher Shays, and Representative Martin Meehan as Amici Curiae in Support of Respondents, 2006 WL 325180.

Wisconsin Right To Life, Inc. v. Federal Election Commission, Brief of Amici Curiae Senator John McCain, Representative Christopher Shays, and Representative Martin Meehan in Support of Appellee, 2005 WL 3543096.

Donald Rumsfeld, et al. v. Forum for Academic and Institutional Rights, et al., Brief for Columbia University, Cornell University, Harvard University, New York University, the University of Chicago, the University of Pennsylvania, and Yale University as Amici Curiae in Support of Respondents, 2005 WL 2347168.

State Farm Mutual Automobile Insurance Company v. Inez Preece Campbell and Matthew C. Barneck, Special Administrator and Persona Representative of the Estate of Curtis B. Campbell, Brief for National Association of Mutual Insurance Companies and Property Casualty Insurers Association of America as Amici Curiae in Support of Petitioner, 2004 WL 1904368.

Ann M. Veneman, Secretary of Agriculture, et al. v. Livestock Marketing Association, et al.; Nebraska Cattlemen, Inc., et al. v. Livestock Marketing Association, et al., Brief for Amicus Curiae the California Agricultural Issues Forum Supporting Petitioners, 2004 WL 1900500.

Wyeth Holdings Corporation v. The University of Colorado Foundation, Inc., The University of Colorado, The Board of Regents of The University of Colorado, Robert H. Allen, and Paul A. Seligman, Reply Brief for Petitioner, 2004 WL 715865.

Wyeth Holdings Corporation v. The University of Colorado Foundation, Inc., The University of Colorado, The Board of Regents of The University of Colorado, Robert H. Allen, and Paul A. Seligman, Petition for a Writ of Certiorari, 2004 WL 304288.

Mitch McConnell, United States Senator, et al. v. Federal Election Commission, et al., Brief for Intervenor-Defendants Senator John McCain, Senator Russell Feingold, Representative Christopher Shays, Representative Martin Meehan, Senator Olympia Snowe, and Senator James Jeffords, 2003 WL 21999280.

American Civil Liberties Union v. Federal Election Commission, et al., Intervenor-Appellees' Response to Jurisdictional Statements, 2003 WL 22428139.

Republican National Committee, et al. v. Federal Election Commission, et al.; National Right To Life Committee, Inc., et al. v. Federal Election Commission, et al., Intervenor-Appellees' Response to Jurisdictional Statements, 2003 WL 23696126.

Senator Mitch McConnell, et al. v. Federal Election Commission, et al.; National Rifle Association, et al. v. Federal Election Commission, et al., Intervenor-Appellees' Response to Jurisdictional Statements, 2003 WL 23689573.

Senator John McCain, Senator Russell Feingold, Representative Christopher Shays, Representative Martin Meehan, Senator Olympia Snowe, and Senator James Jeffords v. Senator Mitch McConnell, et al., Jurisdictional Statement, 2003 WL 23689580.

National Rifle Association, et al. v. Federal Election Commission, et al., Intervenor-Defendants' Response to Application of the National Rifle Association for a Stay of Judgment of the District Court (May 13, 2003). Copy supplied.

Eric Eldred, et al., v. John D. Ashcroft, Brief For Amicus Curiae Motion Picture Association of America, Inc. in Support of Respondent, 2002 WL 1836658.

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. *Delano Farms Company v. California Table Grape Commission*, No. 07-cv-1610 (E.D. Cal.). The trial court's findings of fact and conclusions of law are not reported. Earlier decisions are reported at 940 F. Supp. 2d 1229 (E.D. Cal. 2013); 655 F.3d 1337 (Fed. Cir. 2011); 2010 WL 2952358 (E.D. Cal. 2010); 2009 WL 3586056 (E.D. Cal. 2009); 623 F. Supp. 2d 1144 (E.D. Cal. 2009).

This case involved a challenge to the validity of patents on certain varieties of table grapes developed by the United States Department of Agriculture and exclusively licensed to the California Table Grape Commission. The case was filed in 2007 and was tried to judgment before the Honorable Sam E. Haddon in 2013. The judgment was in favor of the United States and the California Table Grape Commission, and the case is currently on appeal. Before trial, the case was assigned to the Honorable Lawrence O'Neill, and before that it was assigned to the Honorable Oliver Wanger. At an earlier stage of the litigation, the case was appealed to the Court of Appeals for the Federal Circuit (Judges Bryson, Schall, Prost). I was lead counsel for the California Table Grape Commission both at trial and on appeal.

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2. *Grocery Manufacturers Association, et al. v. Environmental Protection Agency*, 693 F.3d 169 (D.C. Cir. 2012), *rehearing denied*, 704 F.3d 1005, *cert. denied*, 133 S. Ct. 2880 (2013).

In 2010 and 2011, various trade associations brought petitions challenging two Environmental Protection Agency decisions approving the introduction of E15—a blend of gasoline and up to 15 percent ethanol—for use in certain motor vehicles and engines. The challengers argued that the EPA had exceeded its statutory authority by granting a partial waiver and permitting the use of E15 in some, but not all, cars and light duty trucks, and also argued that the EPA’s decision was arbitrary and capricious. Growth Energy intervened in support of the decisions approving the introduction of E15. The Court of Appeals for the District of Columbia Circuit (then-Chief Judge Sentelle and Judge Tatel; Judge Kavanaugh, dissenting) held that the challengers lacked standing and, on that basis, dismissed the petitions. The United States Supreme Court subsequently denied petitions for writs of certiorari filed by the challengers. I was lead counsel for Growth Energy.

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3. *Celador International, Ltd. v. American Broadcasting Companies, Inc., et al.*, 499 Fed. Appx. 721 (9th Cir. 2012).

This was a contract dispute involving Celador's sale of rights to the game show "Who Wants to be a Millionaire?" The plaintiff argued, among other things, that it was entitled to half of ABC's profits from the program. The jury awarded Celador International \$269 million in damages. Following post-trial motions, the district court declined to set aside the jury award, and the Court of Appeals for the Ninth

Circuit (Judges Trott, Kleinfeld and McKeown) affirmed. We represented the defendants in the case following the trial. I argued the motions for judgment as a matter of law and for a new trial on the liability issues, and I served as associate counsel on appeal.

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4. *The Boeing Company v. Raphael*, No. 10-cv-4839 (C.D. Cal.). 2011 WL 1748312 (C.D. Cal. 2011).

This is a challenge to a California statute that prescribed cleanup rules applicable to only one site in the state. Boeing challenged the law on multiple grounds, including that the state law was preempted by the Atomic Energy Act and that it violated the intergovernmental immunity doctrine. The district court (the Honorable John Walter) agreed and held the law invalid. The case is currently pending on appeal. At the invitation of the Court of Appeals, the United States filed a brief in the Ninth Circuit.

I have served as lead counsel for the Boeing Company at the trial court level and on appeal.

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5. *Delano Farms Company et al. v. California Table Grape Commission*, 546 F. Supp. 2d 859 (E.D. Cal. 2008), *affirmed*, 586 F.3d 1219 (9th Cir. 2009), *cert. denied*, 131 S. Ct. 159 (2010).

This was a constitutional challenge to a state program that requires table grape growers to pay assessments that are used to promote the interests of the table grape industry and the state through, among other things, advertising. The plaintiffs argued, in particular, that the requirement that they pay assessments that were used, in part, to pay for advertising and other efforts to promote the industry violated their First Amendment rights. The Table Grape Commission defended the constitutionality of the state law. The district court (the Honorable Oliver Wanger) granted summary judgment in favor of the Table Grape Commission and upheld the law. The Court of Appeals for the Ninth Circuit (Judges McKeown, Noonan, and Reinhardt) affirmed, and the United States Supreme Court denied a petition for a writ of certiorari. I was co-counsel for the Table Grape Commission at the trial-court level and on appeal, and I argued on behalf of the Table Grape Commission in the Ninth Circuit.

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6. *Universal City Studios LLLP v. Peters*, 308 F. Supp. 2d 1 (D.D.C. 2004), *affirmed*, 402 F.3d 1238 (D.C. Cir. 2005).

This was a challenge brought by Universal City Studios under the Administrative Procedure Act to the denial of claims for cable and satellite royalties. Metro-Goldwyn-Mayer Studios brought a similar challenge. The district court (the Honorable Rosemary Collyer) rejected the challenges. On appeal, in an opinion by then-Judge Roberts, the Court of Appeals for the District of Columbia Circuit (joined by Judges Sentelle and Williams) affirmed the district court's decision. As counsel for Universal City Studios, I had the lead day-to-day role before the district court, and I argued the case before the D.C. Circuit.

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7. *Paramount Land Company v. California Pistachio Commission*, 491 F.3d 1003 (9th Cir. 2007); No. 05-07156 (C.D. Cal.).

This was a challenge under the First Amendment and Equal Protection Clause of the U.S. Constitution to a California state law that created the California Pistachio Commission, established rules for electing members of the Commission, and imposed assessments on pistachio growers that were used to promote the California pistachio industry. The district court (the Honorable Margaret Morrow) granted a preliminary injunction in favor of some plaintiffs. 115 individual pistachio growers then moved to intervene and sought to extend the preliminary injunction to them. The district court extended the injunction to apply to two of the intervenors, but denied the motion as to the remaining 113 intervenors. It also subsequently granted our motion for judgment on the pleadings with respect to certain voting rights claims. On appeal of the grant of the preliminary injunction, the Court of Appeals for the Ninth Circuit (Judges Hall, McKeown, and Wardlaw) reversed and vacated the injunction. We represented the California Pistachio Commission, and I had the day-to-day lead in the district court after the court entered the initial preliminary injunction and was associate counsel before that and on appeal.

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8. *In re National Security Agency Telecommunications Records Litigation*. 633 F. Supp. 2d 949 (N.D. Cal. 2009), *reconsideration denied*, 2009 WL 2171061, *affirmed*, 671 F.3d 881 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 421 (2012).

These consolidated actions alleged that various telecommunications companies provided assistance to the government relating to national security activities. After the litigation was brought, Congress enacted legislation providing that, where the Attorney General certifies to one or more of five conditions, no civil action could be maintained for allegedly providing assistance “to an element of the intelligence community.” The Attorney General filed the required certification, and the United States moved to dismiss the actions. The plaintiffs then challenged the legislation. The district court (the Honorable Vaughn Walker) rejected the challenge and dismissed the actions against the private defendants in 2009. The Court of Appeals (Judges McKeown, Pregerson and Hawkins) affirmed in 2011, and the Supreme Court denied certiorari in 2012. I was co-counsel for Verizon in the litigation and argued in the district court, along with others, in support of Verizon’s motion to dismiss and in opposition to the plaintiffs’ challenge to the legislation.

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Dozens of lawyers appeared in the consolidated litigation on behalf of the plaintiffs and intervenors. The following counsel appeared as “interim class counsel” against the AT&T, Verizon, BellSouth, Sprint Nextel and T-Mobile and other defendants:

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9. *McConnell v. Federal Election Commission*. 251 F.Supp.2d 176 (D.D.C 2003),
affirmed in part and reversed in part, 540 U.S. 93 (2003).

These were twelve consolidated cases challenging the constitutionality of the Bipartisan Campaign Reform Act on numerous grounds. The opinion of the three-judge district court (Judges Henderson, Kollar-Kotelly and Leon) upheld the law in part and struck it down in part. The Supreme Court affirmed in part and reversed in part and upheld most of the provisions of the law. Along with co-counsel and others at my firm, I represented Senators McCain, Feingold, Snowe and Jeffords and Representatives Shays and Meehan in defending the law. I argued a portion of the case before the three-judge district court and was associate counsel in the Supreme Court.

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10. *In the Matter of the Complaint of American Trading Transportation Co., Inc.*, No. 90-2619 (C.D. Cal.); *Slaven v. BP America, Inc.*, No. 90-0722 (C.D. Cal.); *State Fish Company, Inc. v. BP America, Inc.*, No. 91-0344 (C.D. Cal.); *United States v. The Steam Tanker American Trader*, No. 91-3363 (C.D. Cal.); *California ex rel. Department of Fish and Game v. Trans-Alaska Pipeline Liability Fund*, No. 92-0836 (C.D. Cal.). Reported decisions include 973 F.2d 1468 (9th Cir. 1992); 786 F. Supp.

840 (C.D. Cal. 1991); 146 F.3d 1006 (9th Cir. 1998); 958 F. Supp. 1472 (C.D. Cal. 1997) and 786 F. Supp. 853).

These consolidated cases arose from an oil spill from the S/T AMERICAN TRADER off the coast of Huntington Beach, California in 1990. Along with others at my firm, I represented the Trans-Alaska Pipeline Liability Fund (the "Fund"), a non-profit entity established by an act of Congress to pay up to \$100 million in claims for damages resulting from defined oil spills. The litigation involved various claims, cross-claims and counterclaims. I worked on the matter from 1991 until I left the firm to join the Justice Department in 1996. I appeared before the Honorable Robert J. Kelleher in the district court and Judges Tang, Schroeder and Beezer in the Court of Appeals for the Ninth Circuit. The Fund subsequently settled all claims against it and all claims it had against others.

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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 joined the Office of Legal Counsel at the United States Department of Justice in 1996 and was there until early 2001. While at the Office of Legal Counsel, I provided legal

advice to the Attorney General, the Counsel to the President, and the Executive Branch agencies and departments, rendered formal legal opinions, resolved interagency legal disputes, and reviewed Executive Orders and Attorney General Orders for form and legality, and I supervised others performing similar duties. In that capacity, I provided legal advice on a broad range of issues. I provided advice on questions of constitutional law, involving the appointments clause, the President's foreign affairs and national security powers, the constitutional allocation of power between State and Federal governments, the First Amendment, Article III, the recommendations clause, the bankruptcy and tax uniformity clauses, the emoluments clause and other constitutional provisions. In addition, I devoted substantial attention to issues of national security law. I also addressed numerous questions of statutory interpretation, such as questions under the Administrative Procedure Act and the Immigration and Nationality Act. These matters ranged from technical questions of appropriations law to questions of law enforcement authority. My publicly available opinions are listed in response to question 12(b), above.

The bulk of my work in private practice has involved litigation, including numerous matters that have not progressed to trial. Those matters have included litigation involving, among other areas, environmental law, contract law, antitrust, intellectual property, constitutional law, and administrative law. I have also assisted clients with investigations and have advised clients on a broad range of issues, including national security, cyber security, and constitutional and administrative law. Among other matters, I worked on proceedings relating to the impeachment of the Governor of Connecticut, advised clients and others on national security issues and continuity in government, worked on a range of issues relating to vaccine injury liability under the National Vaccine Injury Compensation Program, and worked on a legislative, litigation, and administrative matter involving the timeliness requirement for obtaining a patent term extension.

I engaged in lobbying activities on behalf of Iron Mountain (relating to privacy and data security protection) in 2005 and 2006; the National Association for Information Destruction (relating to proper disposal of sensitive information and to the security, confidentiality, integrity and destruction of sensitive information) in 2005 and 2006; PRISM International (relating to the National Archives and Records Administration's facility standards regulation) from 2003 to 2005; Wyeth (formerly American Home Products) (relating to the National Vaccine Injury Compensation Program and vaccines liability) from 2001 to 2007; and Qwest International (relating to critical infrastructure protection) in 2001 and 2002. In addition, I have on one or two occasions had a single lobbying contact, including attending a meeting hosted by the Office of Information and Regulatory Affairs on behalf of Growth Energy relating to the renewable fuel standards. I also registered in the State of Vermont to lobby on behalf of the Pharmaceutical Research and Manufacturers of America. I believe that this was on a question of federal law.

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.

While in law school, I taught a Street Law class at a high school in New Haven, Connecticut. I do not have a syllabus or a clear recollection of the class, but I recall helping the students conduct a mock trial.

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.

After withdrawing from my law firm, I would receive a return of capital and payment of my remaining share of partnership proceeds. In addition, I would be entitled to rollover my interest in the firm's defined benefits plan to a personal retirement account. The timing of these payments would be based on firm policy and the relevant ethics rules.

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 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.

The main conflicts of interest I would likely confront would involve my law firm. In addition, my wife is a lawyer in the Appellate Section of the Criminal Division

in the United States Department of Justice. Further, my wife and I have financial interests listed in my Net Worth Statement. I would handle all matters concerning recusal by consulting the rules and decisions that address what constitutes a conflict of interest, including 28 U.S.C. § 455 and the Code of Conduct for United States Judges. In close cases, I would consult other judges and any person designated by the court or judicial organizations to provide advice on such questions as they arise. Among other steps, I would permanently recuse myself from any litigation I was involved in while at my law firm and would recuse myself from cases in which my law firm represents a party until all financial ties are severed and a proper cooling off period has passed. I would also recuse myself from cases involving former clients for an appropriate cooling off period.

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

In order to avoid any potential conflict of interest, I would consult the rules and decisions that address what constitutes a conflict of interest, including 28 U.S.C. § 455 and the Code of Conduct for United States Judges. Based on these sources, I would compile a comprehensive list of matters, clients or other person so that I could readily identify potential conflicts of interest, and, in close cases, I would also consult other judges and any person designated by the court or judicial organization to provide advice on such questions as they arise.

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.

Over the years, I have devoted hundreds of hours to pro bono matters, including assisting the disadvantaged. Prior to joining the Office of Legal Counsel, I represented an indigent death row inmate in Virginia and provided legal advice to the D.C. Bar Foundation. While in the government I served as the representative from the Office of Legal Counsel for the Combined Federal Campaign. Since returning to private practice, I have continued to devote substantial time to pro bono matters. I have worked on a number of pro bono matters defending the constitutionality of campaign finance laws. I have also represented an indigent defendant charged with various felonies, assisted public defenders with matters before the United States Supreme Court, and represented a person of limited means in a civil rights matter.

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 December 11, 2013, I submitted an application to the District of Columbia Federal Law Enforcement Nominating Commission for a position on the United States District Court for the District of Columbia. I interviewed with the Commission on December 17, 2013. On January 10, 2014, I interviewed with Congresswoman Eleanor Holmes Norton. On January 13, 2014, I was informed by the White House Counsel's Office that I was under consideration for nomination. Since then, I have been in contact with officials from the White House Counsel's Office and the Department of Justice. On March 28, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On April 3, 2014, 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, Randolph Daniel Moss, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

4/11/14
(DATE)

Randolph D. Moss
(NAME)

Marlaine D. Williams
(NOTARY)

MARLAINE D. WILLIAMS
NOTARY PUBLIC, DISTRICT OF COLUMBIA
My Commission Expires May 14, 2014

