

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

**QUESTIONNAIRE FOR DAVID W. OGDEN,
DEPUTY ATTORNEY GENERAL NOMINEE**

PUBLIC

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

David William Ogden

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

Deputy Attorney General

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.

Current Office Address

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

[REDACTED]

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

November 12, 1953; Washington, D.C.

5. **Marital Status:** (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

I am married to Anne Harkavy. She is an attorney and partner at Wilmer Cutler Pickering Hale and Dorr LLP, 1875 Pennsylvania Ave., N.W., Washington, D.C. 20006. She is currently on maternity leave. I have three children, [REDACTED].

6. **Education:** List in reverse chronological order, listing most recent first, 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.

Harvard Law School, September 1978 – May 1981. J.D., *magna cum laude*, May 1981.

Johns Hopkins University, September 1977 – January 1978 (graduate program in English literature). Did not receive a degree; left to attend Harvard Law School.

University of Pennsylvania, September 1974 – May 1976. B.A., *summa cum laude*, May 1976.

Grinnell College, September 1971 – May 1973. Did not receive a degree; transferred to the University of Pennsylvania.

7. **Employment Record**: List in reverse chronological order, listing most recent first, 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 job description where appropriate.

Wilmer Cutler Pickering Hale and Dorr LLP. Partner and Attorney (2001-present).
Address: 1875 Pennsylvania Ave., N.W., Washington, D.C. 20006

Agency Liaison for the U.S. Department of Justice, Presidential Transition Team (2008-2009).
Address: 451 6th Street N.W., Washington, D.C. 20001

Washington Project for the Arts. Member of Advisory Board (2004-2007).
Address: 2023 Massachusetts Ave., N.W., Washington, D.C. 20036

Bruce J. Ennis Foundation. Member of Advisory Board (2002-2009)
Address: c/o Jenner & Block, 1099 New York Avenue, N.W., Suite 900, Washington, D.C. 20001

U.S. Department of Justice. Assistant Attorney General for the Civil Division (2000-2001).
Address: 950 Pennsylvania Ave., N.W., Washington, D.C. 20530

U.S. Department of Justice. Acting Assistant Attorney General for the Civil Division (1999-2000).
Address: 950 Pennsylvania Ave., N.W., Washington, D.C. 20530

U.S. Department of Justice. Chief of Staff to the Attorney General (1998-1999).
Address: 950 Pennsylvania Ave., N.W., Washington, D.C. 20530

U.S. Department of Justice. Counselor to the Attorney General (1997-1998).
Address: 950 Pennsylvania Ave., N.W., Washington, D.C. 20530

U.S. Department of Justice. Associate Deputy Attorney General (1995-1997).
Address: 950 Pennsylvania Ave., N.W., Washington, D.C. 20530

U.S. Department of Defense. Deputy General Counsel and Legal Counsel (1994-95).
Address: The Pentagon, Room 3E980, Washington, D.C. 20301

Georgetown University Law Center. Adjunct Professor (1992-1995).

Address: 600 New Jersey Ave., N.W., Washington, D.C. 20001

Jenner & Block. Partner and Attorney (1988-1994).

Address: 1099 New York Avenue, N.W., Suite 900, Washington, D.C. 20001

Ennis, Friedman & Bersoff. Washington, D.C. Partner and Attorney (1986-1988).

Firm no longer exists.

Ennis, Friedman, Bersoff & Ewing, Washington, D.C. Associate Attorney (1983-1985).

Firm no longer exists.

The Honorable Harry A. Blackmun, Associate Justice, United States Supreme Court. Law Clerk (1982-1983).

Address: United States Supreme Court, One First Street, N.E., Washington, D.C. 20543

The Honorable Abraham D. Sofaer, United States District Court Judge, Southern District of New York. Law Clerk (1981-1982).

Address: United States District Court, Southern District of New York, Foley Square, New York, N.Y. 10007

Maryland Legal Aid Bureau, Salisbury, MD. Summer Law Clerk (1981).

Address: 111 High Street, Salisbury, MD 21801

Harvard University. Research Assistant to President Derek Bok (1980-1981).

Address: Office of the President, Harvard University, Cambridge, MA 02138

Miller, Cassidy, Larroca & Lewin, Washington, D.C. Summer Associate (1980).

Firm no longer exists.

Choate, Hall & Stewart. Summer Associate (1979).

Address: Two International Place, Boston, MA 02110

Steptoe & Johnson. Paralegal (1978).

Address: 1330 Connecticut Ave., N.W., Washington, D.C. 20036

Brief employment as manual laborer through temporary agency in Atlanta, GA (1977).

Name and address of agency unknown.

Centro Americano, Bogota, Colombia. Instructor of English as a Second Language (1977).

Address unknown.

Hospital of the University of Pennsylvania. Ward Secretary (1976).

Address: 3400 Spruce Street, Philadelphia, PA 19104

8. **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.

I have never served in the United States Military.

9. **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.

Recommended as a “litigation star” in Washington, D.C. in the 2nd edition of Benchmark Litigation’s *The Guide to America’s Leading Litigation Firms and Attorneys* (2008).

“Washington, DC Super Lawyer” in 2007 and 2008 by *Super Lawyers* magazine, for outstanding business litigation practice.

One of *Washington Business Journal*’s four “Top Washington Lawyers” for corporate litigation (2006).

Consistently selected for inclusion in *The Best Lawyers in America* for commercial and mass tort litigation and business litigation.

National Law Journal Pro Bono Award (2006).

Fellow, American Bar Foundation (2002-present).

Edmund J. Randolph Award for Outstanding Service, U.S. Department of Justice (2001).

Attorney General’s Medallion, U.S. Department of Justice (1999).

Department of Defense Medal for Distinguished Public Service (1995).

J.D., *magna cum laude*, Harvard Law School (1981); Editor, *Harvard Law Review* (1979-1981).

B.A., *summa cum laude*, University of Pennsylvania (1976); Phi Beta Kappa.

10. **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, member (1983-present); ex officio member and governmental representative, Council of the Section of Litigation (1998-2001).

American Bar Foundation, fellow (2002-present).

District of Columbia Bar, member (1983-present).

Virginia Bar, member (1986-present; since 1998, inactive status)

Advisory Committee on Civil Rules, Judicial Conference of the United States, Ex Officio Member and Representative of the U.S. Department of Justice (1999-2001).

First Amendment Lawyers Association, member (1991-1994); Secretary (1993-1994).

11. 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.

District of Columbia: I was admitted to the bar of the District of Columbia in 1983. My license to practice in the District of Columbia is in good standing, and my current status is active.

Virginia: I was admitted to the bar of the Commonwealth of Virginia in 1986. My license to practice in Virginia is in good standing; my current status (since 1998) is inactive. In 1994, my license to practice in Virginia was suspended briefly and then reinstated under the following circumstances. At that time, Virginia required that lawyers complete 12 hours of continuing legal education annually. After beginning work as Deputy General Counsel for the Department of Defense in 1994, I found it difficult to meet that requirement. I completed the course work prior to the deadline and mailed my form to the Bar prior to the deadline, believing that I had complied in a timely fashion. Nevertheless, in November 1994, the bar notified me that because the forms had *arrived* at the bar offices after the deadline, my license to practice in Virginia had been suspended and would remain so until I paid the reinstatement penalty. I immediately paid the penalty and was reinstated as a routine matter.

- 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.

United States Supreme Court—Admitted January 20, 1987

United States Court of Appeals for the District of Columbia Circuit—Admitted July 26, 1984

United States Court of Appeals for the First Circuit—Admitted September 12, 1989

United States Court of Appeals for the Second Circuit—Admitted November 9, 1993

United States Court of Appeals for the Fourth Circuit—Admitted July 7, 1986

United States Court of Appeals for the Fifth Circuit—Admitted September 6, 2000; inactive since 2006.

United States Court of Appeals for the Ninth Circuit—Admitted December 20, 2000

United States Court of Appeals for the Tenth Circuit—Admitted January 28, 1992

United States Court of Appeals for the Federal Circuit—Admitted August 8, 2006

United States District Court, Eastern District of Virginia—Admitted February 12, 1988

United States District Court, District of Columbia—Admitted August 8, 1984

Supreme Court of the State of Delaware—Admitted March 9, 2006

Supreme Court of Virginia—Admitted June 10, 1986

District of Columbia Court of Appeals—Admitted March 27, 1984

I am not aware that any of these admissions have lapsed. I have also been admitted *pro hac vice* in numerous courts over the years, limited to the handling of specific matters.

12. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, 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.

Washington Project for the Arts (Corcoran) Advisory Board member (2004-2007).

Bruce J. Ennis Foundation, member of an advisory Board of Directors (2001-2009).

Donaldson Run Recreational Association (a swimming pool in Arlington, VA), where my family and I were members for a time in the 1990s.

International Club, Washington, D.C., membership approximately 1989-90.

Phi Beta Kappa Society. I do not believe that I have made any contributions to the Society since 1996, but it is possible that they nevertheless consider me to be a member.

Riverwood Citizen's Association (1997-2003)

- b. Please indicate whether any of these organizations listed in response to 12(a) above currently discriminate or formerly discriminated on the basis of race, sex, or religion – 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.

13. 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. Please supply four (4) copies of all published material to the Committee.

I have done my best to identify published materials through searches of my personal files and publicly available electronic databases. I have located the following:

Co-authors, David W. Ogden, Stephen W. Preston, Karen F. Green, Jonathan E. Paikin, Jennifer M. O'Connor, Jonathan G. Cedarbaum, *Congress Considers Pro-Plaintiff Amendments to False Claims Act*, WilmerHale E-Mail Alert (June 25, 2008), available at <http://www.wilmerhale.com/publications/whPubsDetail.aspx?publication=8364>.

Co-authors, David W. Ogden, Stephen W. Preston, Karen F. Green, Jonathan E. Paikin, Jennifer M. O'Connor, Jonathan G. Cedarbaum, *Supreme Court's Allison Engine Decision Clarifies Intent Requirement Under False Records and Conspiracy Provisions of False Claims Act*, WilmerHale E-Mail Alert (June 9, 2008), available at <http://www.wilmerhale.com/publications/whPubsDetail.aspx?publication=8352>.

Co-authors, Gary Born, Steven P. Finizio, Richard A. Johnston, Mark C. Fleming, John V.H. Pierce, David Bowker, David W. Ogden, Rachael D. Kent, Ethan G. Shenkman, *Supreme Court Rejects Expanded Judicial Review of Arbitral Awards in Hall Street v. Mattel*, WilmerHale E-Mail Alert (April 3, 2008), available at <http://www.wilmerhale.com/publications/whPubsDetail.aspx?publication=8286>.

Co-author, David W. Ogden and Sarah Rapawy, *Discovery in Transnational Litigation*, in John Fellas (Ed.), *Transnational Litigation: A Practitioner's Guide* (March 2008).

Co-authors, WilmerHale PharmaBulletin (February 2007), available at http://www.wilmerhale.com/files/Publication/626c92f7-9180-442a-877b-b660723b675c/Presentation/PublicationAttachment/989018eb-b84c-499f-8f85-b79738a6b3f7/Pharma%20Bulletin_Feb2007.pdf.

Co-authors, Gary Born, Steven P. Finizio, David W. Ogden, Ethan G. Shenkman, Rachel D. Kent, John V.H. Pierce, David Bowker, Matthew Draper, Richard A. Johnston, *Investment Treaty Arbitration: ICSID Amends Investor-State Arbitration Rules* (April 14, 2006), available at <http://www.wilmerhale.com/publications/whPubsDetail.aspx?publication=3165>.

Co-authors, David W. Ogden & Randolph D. Moss, *District of Columbia Prescription Drug Excessive Pricing Act of 2005 Successfully Challenged, Declared Unconstitutional*, WilmerHale

E-Mail Alert (January 5, 2006), *available at*
<http://www.wilmerhale.com/publications/whPubsDetail.aspx?publication=3026>.

Letter to the Editor re: "The Brains Behind Blackmun" By David J. Garrow, *Legal Affairs*, May/June 2005, *available at* http://www.legalaffairs.org/issues/May-June-2005/feature_response_mayjun05.msp.

Co authors, David W. Ogden & Joel A. Nichols, *The Right to Anonymity Under the First Amendment*, 49 Fed. Law. 44 (2002)

The Federal Government's Perspective on Post-Lexecon Multidistrict Litigation, Aviation Lit. Quarterly, Fall/Winter 2000, at 10 (American Bar Association, Section of Litigation).

Carriers, Insurers, and the United States in International Air Carrier Litigation: Nothing in Common?, Lawyer-Pilots Bar Assoc. Journal, Volume XXII, No. 3, at 23 (Fall 2000).

Co-authors, Jerald A. Jacobs & David W. Ogden, *Managing Legal Risks: Key Issues for Association Volunteers*, Leadership (1996).

Co-authors, Jerald A. Jacobs & David W. Ogden, *Legal Risk Management for Associations: A Legal Compliance Guide for Volunteers and Employees of Trade and Professional Associations*, American Psychological Association Press, 1995.

Is There A First Amendment "Right to Remain Silent"?, Federal Bar News & Journal, Volume 40, No. 6, at 368-373 (July 1993).

Co-authors, Donald N. Bersoff and David W. Ogden, *APA Amicus Curiae Briefs: Furthering Lesbian and Gay Male Civil Rights*, American Psychologist, September 1991, at 950-956.

In Appreciation of Justice Blackmun, 1990 Annual Survey of American Law, at xxxiii-xxxix.

Does Sodomy Decision Give History Its Due or Does It Try To Fossilize the Constitution?, Legal Times, Vol. 9, No. 8 (July 21, 1986).

Case Comment, *State-Guaranteed Right to Speak in Privately Owned Shopping Centers*, 94 Harv. L. Rev. 169 (1980) (no formal attribution in law journal).

Case Comment, *Evidentiary Use of a Criminal Defendant's Reading Habits and Political Conversations*, 93 Harv. L. Rev. 419 (1979) (no formal attribution in law journal).

- b. Please 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, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have done my best to identify reports, memoranda, and policy statements through searches of publicly available electronic databases. I have located the following:

Letter from David W. Ogden, Chief of Staff to the Attorney General, to M. Peter Moser, Chair, ABA Ethics Comm. (Sept. 21, 1998), regarding the need for prosecutors to be able to speak with informants or whistle-blowers who want to talk with the prosecutors without knowledge of their lawyers. This letter was cited in Carl A. Pierce, *Variations on a Basic Theme: Revisiting the ABA's Revision of Model Rule 4.2 (Part II)*, 70 Tenn. L. Rev. 321 (Winter 2003) and Carl A. Pierce, *Variations on a Basic Theme: Revisiting the ABA's Revision of Model Rule 4.2 (Part III)*, 70 Tenn. L. Rev. 643 (Spring 2003). The full text of the letter was not published, and I do not have a copy of this letter in my files.

- c. Please 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.

I have done my best to identify testimony before the U.S. Congress through searches of my personal files and publicly available electronic databases. I have located the following:

Committee/Subcommittee	Subject	Date
Senate Judiciary	The Management of the Tobacco Litigation	September 5, 2001
Senate Judiciary	Compensation for Bataan POWs	June 28, 2000
Senate Judiciary	The Nomination of David W. Ogden to be Assistant Attorney General for the Department of Justice	August 4, 1999
Senate Judiciary	Tobacco Legislation: Is It Constitutional?	May 13, 1998
Senate Judiciary	The Civil Liability Portions of the Proposed Tobacco Settlement and the Food and Drug Administration's Advertising Regulations	February 10, 1998
House Judiciary	The Civil Liability Portions of the Proposed Tobacco Settlement	February 5, 1998
House Judiciary (Subcommittee on Immigration and Claims)	H.R. 1428, the Voter Eligibility Verification Act	June 25, 1997

While serving at the Department of Justice, I participated in several press conferences and the Department issued numerous press releases in which I was quoted. In answering this questionnaire, I have relied upon a search of publicly accessible electronic databases to locate

transcripts of these conferences and copies of these press releases. That search revealed those listed below; there are potentially others that I do not recall and for which I do not have copies.

Subject	Date
Settlement of claims with Caribbean Petroleum Corporation, MetLife Capital Corporation and Water Quality Insurance Syndicate related to a 1994 barge grounding that caused an 800,000 gallon oil spill	January 19, 2001
Settlement with Exxon Mobil to resolve claims under the False Claims Act and other administrative claims for underpayment of oil royalties on federal leases	January 8, 2001
Settlement with Quest Diagnostics, Inc. to resolve allegations of health care fraud relating to billing practices at Nichols Institute	January 3, 2001
Settlement with a Michigan osteopathic physician to resolve allegations that he and a corporation he controlled overcharged the Medicare and Medicaid programs	December 27, 2000
Settlement with National Healthcare Corporation to resolve allegations under the False Claims Act that the company submitted falsely inflated reports to Medicare	December 15, 2000
News Conference to Announce Settlement With Health Care Company Involving Government Fraud	December 14, 2000
Settlement with Adventist Health System Sunbelt Healthcare Corporation and three affiliated hospitals to resolve allegations that the hospitals overcharged Medicare	December 8, 2000
Announcement that the Department of Justice has intervened in a lawsuit filed against KPMG Peat Marwick in Tampa, Florida under the False Claims Act for preparing false hospital cost reports that were submitted to Medicare and Medicaid	December 4, 2000
Settlement with O’Gara-Hess & Eisenhardt Armoring Company to resolve allegations that it violated the False Claims Act on a contract to armor Hummer four-wheel drive vehicles for the Army and Air Force	November 21, 2000
Settlement with the Boeing Company and United Space Alliance to resolve allegations relating to false claims submitted to the government under the National Aeronautics and Space Administration’s (NASA) Space Shuttle and Space Station Freedom programs	November 9, 2000
Settlement with Research and Development Laboratories, Inc. to resolve	November 6, 2000

claims that it overbilled the Air Force	
Announcement that the United States collected a record \$1.5 billion in civil fraud recoveries in the 1999-2000 fiscal year	November 2, 2000
Settlement with Gateway, Inc. to resolve allegations that the computer manufacturer failed to give required price reductions to the federal government	October 31, 2000
Settlement with Quorum Health Group, Inc. and its subsidiary QHG of Alabama, Inc. to resolve claims that they defrauded Medicare	October 27, 2000
Settlement with Kerr-McGee Corporation to resolve claims under the False Claims Act and administrative claims that the corporation underpaid royalties due for oil produced on federal and Indian leases	October 24, 2000
Settlement with CSC Accounts Management Inc. to resolve allegations that it made false claims in connection with defaulted student loans under the Federal Family Education Loan Program and the William D. Ford Direct Student Loan Program	October 16, 2000
Settlement with Toshiba Corporation to resolve part of a class action suit in connection with the company's sale of defective laptop computers to government agencies	October 13, 2000
News Conference On The Funding Of The Federal Government's Civil Lawsuit Against The Tobacco Industry	October 5, 2000
Settlement with more than seventy medical centers and billing companies to resolve allegations that they submitted false claims for reimbursement to federally-funded health care insurance programs	September 8, 2000
Settlement with Tender Loving Care (TLC), its affiliate, Home Health Care, Inc., and its predecessor company, Staff Builders, Inc. to resolve allegations that the companies defrauded the Medicare program	September 5, 2000
Settlement with four emergency physician groups to resolve allegations that the groups received overpayments based on false claims submitted by their billing company	September 5, 2000
Settlement with Compaq Computer Corporation to resolve claims a company it had purchased inflated its labor costs on a Defense Department contract to install computer equipment	July 26, 2000
Settlement with GAMBRO Healthcare, Inc. and its subsidiary, GAMBRO Healthcare Laboratory Services, Inc. to resolve allegations of healthcare fraud	July 13, 2000

Announcement of judgment for the United States in the Bluebonnet Savings case	July 7, 2000
Sentencing of dietary supplement manufacturer for improper labeling of product	July 7, 2000
Settlement with North American Pipe Corporation to resolve allegations that the company supplied the government untested polyvinyl chloride pipe	June 15, 2000
Settlement agreement to pay former President Richard Nixon's estate \$18 million for his presidential papers, tape recordings and other materials	June 12, 2000
Settlement with oil companies to resolve claims that they underpaid royalties due for oil produced on Federal and Indian leases	June 6, 2000
Settlement with a Newark, New Jersey medical partnership of cardiac surgeons to resolve claims that the practice submitted false claims to Medicare for the services of additional surgeons	April 25, 2000
Settlement with BP Amoco to resolve claims under the False Claims Act and administrative claims that the corporation underpaid royalties due for oil produced on federal and Indian leases	April 11, 2000
Announcement that the Department of Justice intervened in several lawsuits against Exxon-Mobil, Shell Oil Company and Burlington Resources Inc.	March 31, 2000
Settlement with Conoco to resolve claims under the False Claims Act and administrative claims that the company underpaid royalties due for oil produced on federal and Indian leases since 1988	March 27, 2000
Announcement that the United States filed suit in Yokohama, Japan, against the owner and operator of a waste disposal incinerator adjacent to the Atsugi U.S. Naval Air Facility	March 27, 2000
Settlement with Northrop Grumman Corporation to resolve claims arising from its failure to properly manufacture more than 5,000 replacement parts it made for use on military aircraft	March 13, 2000
Announcement that Sharon Y. Eubanks was named Director of the Tobacco Litigation Team	March 10, 2000
Settlement with Maxwell-Sierra and five of its present and former employees to resolve allegations that the company sold improperly tested electronic parts to the U.S. Department of Defense and the National Aeronautics and Space Administration for a number of military and	March 7, 2000

aerospace programs	
Announcement that more than \$3 billion has been recovered in civil fraud cases brought under the whistleblower provisions of the False Claims Act, since the law was amended in 1986	February 24, 2000
Settlement with Page Avjet to resolve civil allegations it improperly used U.S. government funds to pay for foreign goods and services	February 18, 2000
Announcement that the United States intervened in a lawsuit filed against Columbia/HCA Healthcare Corporation in Miami under the False Claims Act for submitting false hospital cost reports to Medicare	February 15, 2000
Announcement of Criminal Pleas and Civil Settlements with National Medical Care	January 19, 2000
Settlement with Chevron Corporation to resolve claims under the False Claims Act and administrative claims that the corporation and certain affiliated companies underpaid royalties due for oil produced on federal and Indian leases since 1988	January 13, 2000
Announcement that the Department of Justice filed a civil lawsuit against Boeing North American, Inc., United Space Alliance and Rockwell International Inc. for concealing fraud by a subcontractor on contracts for the National Aeronautics and Space Administration Space Shuttle Program and Space Station Freedom Program	January 12, 2000
Immigration Litigation Bulletin	November 30, 1999
Settlement with Peabody Holding Company, Inc., one of its subsidiaries, and two former affiliates to resolve claims under both the False Claims Act and administrative claims that it underpaid coal royalties due the government	October 18, 1999
Settlement with an Oklahoma-based emergency physician billing company and its physician founder to resolve allegations of false billings to the Medicare, Medicaid, and TRICARE programs, as well as the Federal Employees Health Benefits Program	October 13, 1999
Decision in one of the savings and loan goodwill cases	October 1, 1999
Announcement that the Department of Justice filed a civil lawsuit against a Japanese electronics company, Kyowa Exeo, alleging that the company participated in a conspiracy that resulted in rigged bids on all contracts for operations and maintenance of United States military telecommunications systems in Japan	September 29, 1999

News Conference On The Federal Government's Civil Lawsuit Against The Tobacco Industry	September 22, 1999
Announcement that the Department of Justice filed a civil lawsuit against the largest cigarette companies to recover the billions of dollars the federal government spends each year on smoking-related health care costs	September 22, 1999
Settlement with Walgreen Co. to resolve allegations of falsely submitting prescription claims to state Medicaid programs, TRICARE Management Activity, and the Federal Employee Health Benefits Program	September 15, 1999
Arbitration panel's decision regarding how much the government will pay for the film of President John F. Kennedy's assassination	August 3, 1999
Announcement that Rocky Mountain Hospital and Medical Service and New Mexico Blue Cross and Blue Shield, Inc. pleaded guilty to two felony counts of obstruction of a federal audit and conspiracy to obstruct a federal audit after admitting they concealed evidence of poor performance from federal auditors	July 28, 1999
Settlement with Olsten Corporation and a subsidiary, Kimberly Home Health Care, Inc. to resolve allegations that both companies defrauded the Medicare program.	July 19, 1999
Settlement with Gottlieb's Financial Services, Inc. and its owner, Medaphis Physician Services Corporation, to resolve allegations that Gottlieb's submitted false claims to various federal health care programs	July 12, 1999
Settlement between the U.S. Consumer Product Safety Commission (CPSC) and McDonald's Corp. to resolve a dispute arising from enforcement of a 1995 Playground Equipment Reporting Agreement between McDonald's and the government	June 29, 1999
Settlement with Baker & Taylor, Inc. to resolve allegations that the federal government was overcharged in its own purchases as well as through purchases by local schools and libraries using federal funds.	June 28, 1999
Settlement with Allied Signal Technical Services Corporation to resolve claims that it misallocated labor charges on a contract to install electronic security systems at the Cape Canaveral Air Force Station	June 22, 1999
Announcement that the Department of Justice intervened in a lawsuit filed against Columbia/HCA Healthcare Corporation under the False Claims Act	May 25, 1999

Announcement of a district court decision agreeing with the position of the government in savings and loan goodwill case	April 16, 1999
Announcement of sentencing of Dan Dee International Inc., after it pleaded guilty to four counts of selling banned children's toys	April 9, 1999
Announcement that the Department of Justice entered into an agreement with the Minneapolis law firm Robins, Kaplan, Miller & Ciresi L.L.P., to retain the firm's services as consultants on tobacco litigation	April 6, 1999
Settlement with Novartis Pharmaceuticals Inc. to resolve claims that a New Jersey-based predecessor company overcharged the Department of Veterans Affairs	March 11, 1999
Settlement with Hunt Building Corporation to resolve housing construction fraud claims	March 5, 1999
Announcement that the Department of Justice filed suit against United Technologies Corporation, Pratt & Whitney Division, to recover approximately \$75 million that it overcharged the Air Force for jet engines	March 3, 1999
Announcement that the Department of Justice intervened in a lawsuit against two oil companies	February 12, 1999

- d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please 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 tape recording of your remarks, please 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, please furnish a copy of any outline or notes from which you spoke.¹

I have done my best to identify speeches through searches of my personal files and publicly available electronic databases. I have located the following:

WilmerHale Webinar on "Deciphering the New FDA Reform Legislation—What the FDA Amendments Act of 2007 Means for Research-Based Pharmaceutical Companies" posted on October 31, 2007. An audio recording of this Webinar is available at:
<http://www.wilmerhale.com/events/whEventsDetail.aspx?firmEvent=2189>

¹ On October 31, 2008, *FDA Weekly* incorrectly reported that I gave a speech at the ninth annual Pharmaceutical Regulatory and Compliance Congress. I was originally scheduled to speak at this conference but was unable to do so, and my law partner, Scott Lassman, appeared in my place. *FDA Weekly* indicated it would issue a correction but to my knowledge has not yet done so.

Panel remarks on "State Litigation Over Innovative State Laws" at a Pharmaceuticals Conference held at Columbia Law School (435 West 116th Street, New York, N.Y. 10027) on May 10, 2007. I spoke about certain state legislative initiatives to regulate the pharmaceutical industry and constitutional issues related thereto. I do not have any text or notes of my remarks.

Speech on "Discovery in Transnational Litigation" at the American Bar Association Business Law Section's Spring Meeting. The speech was held on March 16, 2007 in Washington, D.C. I have attached an outline of the speech and accompanying PowerPoint presentation. The published version of this speech is included with my writings in response to Question 13(a).

Remarks at a WilmerHale half-day seminar on "Global Business Means Global Risks: Protecting Your Company from Foreign Litigation." The seminar was held on November 9, 2006. I do not have a transcript or notes from my remarks, but I have included the PowerPoint presentation that accompanied my remarks.

Remarks at a panel event of the District of Columbia Bar entitled "The Long Arm of Judicial Corruption: Problems with Rule of Law in Latin America and the Emergence of a New Threat to Corporate Assets in the United States." The panel was held in Washington, D.C. on May 10, 2006. I have attached talking points that I prepared for my remarks.

Speech on the role of the government lawyer at Northwestern Law School's Minor Moot Court Competition in Chicago, Illinois in 2001.

Speech on "Immigration Litigation At The Crossroads" at the Immigration Litigation Conference on May 24, 2000.

Speech on the Department of Justice's efforts to combat white collar crime, with a particular focus on the work of the Civil Division. The speech was given at the American Bar Association's White Collar Crime Committee meeting in Miami, Florida on March 2, 2000.

Speech on False Claims Act and Qui Tam enforcement at the Second Annual National Institution on the Civil False Claims Act and Qui Tam Enforcement on January 13, 2000.

Speech on the role of the Civil Division of the Department of Justice in First Amendment issues given while I was Assistant Attorney General for the Civil Division or Acting Assistant Attorney General for the Civil Division. I have enclosed a copy of the speech, but do not recall the date or to whom it was given.

Remarks as moderator of a panel on "The Good Lawyer?: Redefining Success in the Legal Profession" at a Department of Justice symposium entitled "Race, Ethnicity, and the Law: Challenges Facing the Legal Profession." The symposium was held at the Georgetown University Law Center in Washington, D.C. on June 8, 1999. My files contain incomplete notes from these remarks, which I have attached.

Remarks at a State Department consultation with American Indian tribes. The speech was given in 1997 or 1998 when I was serving as Counselor or Chief of Staff to the Attorney General.

Speech on the Justice Department's work in Indian Country at a meeting of the National League of Cities in Washington, D.C. on March 10, 1997.

Remarks at a seminar for judges and court officials from the Russian Federation on key issues in judicial administration, held in Washington, D.C. on September 3, 1996.

Presentation of a paper on "The Familiar and the Unknown in Arts Censorship: The First Amendment, the Police Power, and Manipulation of Public Subsidies" for the Illinois Arts Alliance Foundation and at a symposium at the University of Illinois School of Law, Champaign, Illinois in Spring 1991.

- e. Please 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.

I have tried to recall and search for all the times that I have been interviewed. In answering this questionnaire, I have relied upon a search of publicly accessible electronic databases to locate interview transcripts. That search revealed the interviews listed below; there are potentially other interviews that I do not recall and for which I do not have transcripts.

Program/Publication	Subject	Date
Inside Counsel	Federal Circuit decision in <i>Biotechnology Industry Organization v. District of Columbia</i>	November 2007
www.mytechnologylawyer.com Radio Program	Supreme Court Amicus Brief in <i>Panetti v. Quarterman</i>	September 26, 2007
Washington Post	Supreme Court Signing Bonuses	May 15, 2006
Good Morning America	Shooting of Dean of Appalachian School of Law, Anthony Sutin, a Former Justice Department Official	January 17, 2002
South Florida Business Journal	Settlement of Health Care Fraud Case	September 29, 2000
C-SPAN	Reminiscences about Justice Harry A. Blackmun	March 6, 1999
Legal Times	Potential Settlement in the Meese Commission suit	November 3, 1986
Washington Times	Judicial ruling that the Library of Congress violated the First Amendment by stopping production of Braille editions of Playboy magazine	August 29, 1986
Washington Post	Judicial ruling that the Library	August 29, 1986

	of Congress violated the First Amendment by stopping production of Braille editions of Playboy magazine	
ABC World News Tonight	Federal Court Decision Ruling Against the Meese Commission	July 3, 1986
ABC World News Tonight	Supreme Court Decision in <i>Bowers v. Hardwick</i>	June 30, 1986

14. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, 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.

1981 – 1982 Law Clerk to the Honorable Abraham D. Sofaer, United States District Court Judge, Southern District of New York (appointed by judge)

1982 – 1983 Law Clerk to the Honorable Harry A. Blackmun, Associate Justice, United States Supreme Court (appointed by Justice)

1994 – 1995 Deputy General Counsel and Legal Counsel, United States Department of Defense (appointed by Secretary of Defense)

1994 – 1995 Governmental Representative
Federal Advisory Committee on the Investigative Capacity of the Department of Defense (appointed by the Acting General Counsel, U.S. Department of Defense)

1995 – 1997 Associate Deputy Attorney General, United States Department of Justice (appointed by Attorney General)

1997 – 1998 Counselor to the Attorney General, United States Department of Justice (appointed by Attorney General)

1998 – 1999 Chief of Staff to the Attorney General, United States Department of Justice (appointed by Attorney General)

1999 – 2000 Acting Assistant Attorney General and Deputy Assistant Attorney General, Civil Division, United States Department of Justice (appointed Acting Assistant Attorney General by President Clinton; Deputy Assistant Attorney General by the Attorney General)

2000 – 2001 Assistant Attorney General, Civil Division, United States Department of Justice
(nominated by President Clinton)

I have never run for elective office nor unsuccessfully been nominated for appointive 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, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Member of national voter protection legal advisory group for John Kerry's Presidential Campaign, May – November 2004.

Voter protection legal advisor to Democratic Congressional Campaign Committee, October – November 2006.

Member of senior legal coordinating committee for Barack Obama's Presidential Campaign, April 2007 – November 2008.

15. Legal Career: Please answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a law clerk to the Honorable Abraham D. Sofaer, United States District Court Judge for the Southern District of New York, from August 1981 – June or July 1982. I then served as a law clerk to the Honorable Harry A. Blackmun, Associate Justice, Supreme Court of the United States, from July 1982 – July 1983.

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

I have never practiced law alone.

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

In the summer of 1981, after graduating from law school, I served as a law clerk at the Legal Aid Bureau of Maryland, 111 High Street, Salisbury, MD 21801.

After my clerkships, I began my legal career as an associate attorney in October 1983 with a small Washington law firm called Ennis, Friedman, Bersoff & Ewing. I became a partner in that firm on January 1, 1986, and on the same date it changed its name to Ennis Friedman & Bersoff, due to the

departure of another partner. I continued as a partner in Ennis Friedman until July 1988. Ennis Friedman & Bersoff no longer exists.

In July 1988, I joined the Washington office of Jenner & Block as a partner. I was a partner in Jenner & Block from July 1988 through March 1994. Jenner & Block's current address is 1099 New York Avenue, N.W., Suite 900, Washington, D.C. 20001.

From April 1994 – July 1995, I served as Deputy General Counsel and Legal Counsel at the Department of Defense. The address is Office of General Counsel, Office of the Secretary of Defense, The Pentagon, Washington, D.C. 20301.

From July 1995 – July 1997, I served as Associate Deputy Attorney General at the Department of Justice, first under Deputy Attorney General Jamie S. Gorelick, and then under Acting Deputy Attorney General Seth P. Waxman. The address of the Department of Justice is 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

From July 1997 – May 1998, I served as Counselor to Attorney General Janet Reno.

From May 1998 – January 1999, I served as Chief of Staff to Attorney General Janet Reno.

From February 1999 – August 2000, I served as Acting Assistant Attorney General, Civil Division, United States Department of Justice.

From August 2000 – January 2001, I served as Assistant Attorney General, Civil Division, United States Department of Justice. I was recess appointed on August 3, 2000 and confirmed by the full Senate on December 15, 2000.

From June 2001 – present, I have been a partner at Wilmer, Cutler & Pickering, which following a merger became Wilmer Cutler Pickering Hale and Dorr (WilmerHale). The firm's current Washington address is 1875 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.
- ii. your typical clients and the areas, if any, in which you have specialized.

For more than a decade, from 1984 – 1994, my private practice included complex civil litigation, Supreme Court and appellate advocacy, First Amendment law, law and psychology, antitrust and other business law, and the law of trade and professional associations. A significant portion of this litigation involved the federal government as an opposing party or an allied party. In addition to litigation, I provided counseling to clients on the above subjects. My clients included professional associations (*e.g.*, the American Psychological Association, American Library Association), trade associations, particularly involving media interests (*e.g.*, the National Association of Broadcasters, American Booksellers Association), media and telecommunications companies (*e.g.*, MCI,

Playboy Enterprises, Inc.), individuals with personal injury or property rights claims, and local Washington, D.C. area businesses, nonprofit organizations, and associations.

As Deputy General Counsel and Legal Counsel at the Department of Defense in 1994 and 1995, I had overall responsibility for coordinating and supervising litigation activities for the Department, including the Office of the Secretary of Defense, the Military Departments, and the Defense Agencies. I worked closely with the Justice Department in connection with a wide variety of the most significant litigation handled by the Justice Department for the Department of Defense. In addition to these responsibilities, I handled a variety of special projects for the General Counsel, was the governmental representative to a federal advisory committee studying the investigative capacity of the Department of Defense, was chiefly responsible for developing policy on Alternative Dispute Resolution for the Department of Defense, and provided legal advice on subjects ranging from constitutional law to personnel security. I supervised a staff of three lawyers in my immediate office, four lawyers plus staff in the Department of Defense Standards of Conduct Office, and the seventy employees (including administrative judges and litigators) of the Defense Office of Hearings and Appeals.

As an Associate Deputy Attorney General from 1995 – 1997, I was senior deputy to the chief operating officer of the Department of Justice, with particular responsibility for oversight of the civil litigating divisions (Antitrust Division, Civil Division, Civil Rights Division, Environment and Natural Resources Division, and Tax Division) and the Department's Office of Tribal Justice, and served as the Deputy Attorney General's primary liaison with the Office of Legal Counsel and Office of the Solicitor General on civil issues.

As Counselor and then Chief of Staff to the Attorney General from 1997 – 1999, I was one of the senior advisors to the Attorney General. I counseled her on civil issues and special issues in other areas, including law enforcement and national security. As Chief of Staff I also supervised the Office of the Attorney General and her staff, and assisted the Attorney General with the management of the Department of Justice and all of its components.

As Assistant Attorney General and (before that) as Acting Assistant Attorney General, Civil Division, from February 1999 – January 2001, I supervised the Civil Division of the U.S. Department of Justice, which comprised more than 700 lawyers and more than 1,000 employees. As it does today, the Civil Division bore primary responsibility for the defense and advancement of the interests of the United States in many substantive areas of the law, including federal programs, government contracts, the False Claims Act, immigration, torts, environmental defense, and consumer protection. I supervised civil and criminal matters, and defense and enforcement matters. I supervised the initiation of the U.S. Government's lawsuit against the major manufacturers of cigarettes. And I argued cases in the U.S. Courts of Appeals.

As a partner at WilmerHale since 2001, I serve as co-chair of the Government and Regulatory Litigation Group, and have developed a complex litigation and crisis management practice focused on high-stakes civil litigation, constitutional and administrative law issues, and legal-business problems having policy or regulatory dimensions. Typical matters have included international legal issues and disputes, criminal and civil investigations, class actions and government litigation, cartel cases, and appellate and Supreme Court litigation. I also have had an active *pro bono*

practice, which has included representing inmates on death row. Representative clients include the American Legacy Foundation, the American Psychological Association, National Railroad Passenger Corp. (Amtrak), BP America, Citigroup, The Walt Disney Company and Walt Disney World Company, Fireman's Fund Insurance Companies, Lufthansa AG and Swiss International Airlines, Merck & Co., Inc., the Pharmaceutical Research and Manufacturers of America, Shell Oil Company, and a death row inmate in Virginia named Darick Walker.

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

i. Indicate the percentage of your practice in:

- 1. federal courts;**
- 2. state courts of record;**
- 3. other courts.**

ii. Indicate the percentage of your practice in:

- 1. civil proceedings;**
- 2. criminal proceedings.**

In private practice, a high percentage of my practice—66% to 95% at any given time—has been in litigation, and I have appeared in court several times per year. A substantial majority of my practice has involved litigation in federal courts, a much smaller percentage in state courts, and rare litigation in arbitral forums. The substantial majority of such matters have been civil in nature, although a significant proportion have involved parallel criminal proceedings or the potential for such proceedings.

My government service involved a lower percentage of litigation and a far higher percentage of management (including management of litigators) and policy work. Much but by no means all of the litigation in which I was involved in the government was civil, and the balance was criminal. Almost all of the litigation was in federal court.

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

While in private practice, I have participated in many cases that have gone to judgment either on motions to dismiss, summary judgment, or appellate decision. My best estimate of the number of such matters is 100-125, but I have no way to validate that estimate. They include matters in which I represented a party to the litigation and matters in which I represented an amicus curiae. Of these, my best estimate is that at least half (and far more than half my time) involved proceedings at the trial court level. In approximately 50% of these I have served as lead counsel and in approximately 50% as second chair or associate counsel. While many of these matters have involved taking and defending depositions and arguing motions or appeals, I was trial counsel in only two of those matters. At WilmerHale in the past seven years, I have been involved in

approximately 30 matters that went to judgment, and served as lead counsel in almost all of those, including one trial proceeding.

In the government, I played a role in literally thousands of cases at all levels of the federal system. At the Department of Defense, I was the senior lawyer with regular responsibility for overseeing litigation for the entire Department. In that capacity, I tried to ensure that the Department's interests were well represented in court and that its resources were appropriately deployed to support the Justice Department lawyers in conducting discovery and providing factual support and needed expertise. At the Justice Department, for four years my responsibilities included oversight of the litigating divisions, including involvement in much of the more significant litigation they were handling. As Assistant Attorney General for the Civil Division, I was actively involved in many cases, including approving civil investigative demands, the filing of affirmative civil enforcement suits and initiating criminal matters, the settlement of cases, and the presentation of defenses in major litigation. As Assistant Attorney General, I argued two cases in United States Courts of Appeals.

- i. **What percentage of these trials were:**
 - 1. **jury;**
 - 2. **non-jury.**

All of the matters in which I participated in private practice were resolved by judges, rather than juries (although I have had some involvement in appeals of jury verdicts). The majority of the cases in which I participated in government were also non-jury matters, although there were a significant number of jury cases.

- e. **Describe your practice, if any, before the Supreme Court of the United States. Please 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 argued one case in the Supreme Court, *Carey v. Saffold*, 536 U.S. 214 (2002), on February 27, 2002. A transcript of that argument is attached. Apart from cases during my government service, my name appears as counsel in seven cases under plenary consideration by the Supreme Court. While in private practice, I have also submitted a significant number of amicus briefs, petitions for certiorari, and oppositions to certiorari. During my tenure as Assistant Attorney General, my name appeared on a significant number of Supreme Court party briefs, amicus briefs, petitions for certiorari, and oppositions. Lists of all such matters in private practice and government service appear below.

In answering this questionnaire and seeking to collect all briefs filed in the Supreme Court in connection with my private and government practice, I relied upon searches of the Westlaw "Petitions" database (generally containing briefs filed in the Supreme Court in the petition for certiorari phase), the Westlaw "Briefs" database (generally containing briefs filed in the Supreme Court in the merits phase), and the Lexis-Nexis "U.S. Supreme Court Briefs" database (generally containing briefs filed in the Supreme Court in the merits phase), supplemented by a review of my incomplete personal files. This process generated the briefs listed below. Copies have been submitted together with this questionnaire. There may be other briefs for which I do not have and

have not found copies. The Westlaw “Petitions” database does not contain petitions for writ of certiorari or briefs in opposition filed prior to 1999, and my own personal files from that period are certainly not complete.

My name appeared on the following briefs filed in the Supreme Court in the merits phase:

1. *Panetti v. Quarterman*, No. 06-6407, Brief for Amici Curiae American Psychological Association, American Psychiatric Association, and National Alliance on Mental Illness in Support of Petitioner (February 21, 2007)
2. *Parents Involved in Community Schools v. Seattle School District No. 1*, Nos. 05-908, 05-915, Brief for Amici Curiae The American Psychological Association and the Washington State Psychological Association in Support of Respondents (October 10, 2006)
3. *Hill v. McDonough*, No. 05-8794, Brief for Amicus Curiae Darick Demorris Walker Supporting Petitioner (March 6, 2006)
4. *Clark v. Arizona*, No. 05-5966, Brief Amici Curiae for the American Psychiatric Association, American Psychological Association, and American Academy of Psychiatry and the Law Supporting Petitioner (January 30, 2006)
5. *League of United Latin American Citizens v. Perry*, Nos. 05-204, 05-254, 05-276, Brief for Amici Curiae League of Women Voters of the United States and League of Women Voters of Texas in Support of Reversal (January 10, 2006)
6. *Gonzales v. Oregon*, No. 04-623, Brief for Professors of Law Richard Briffault, William N. Eskridge, Jr., Philip P. Frickey, Elizabeth Garrett, Jerry L. Mashaw, Edward Rubin, David L. Shapiro, Peter L. Strauss, and Ernest A. Young as Amici Curiae Supporting Respondents (July 18, 2005)
7. *Mayle v. Felix*, No. 04-563, Brief of Amici Curiae Habeas Law Scholars Albert Alschuler, John H. Blume, Erwin Chemerinsky, Eric M. Freedman, Randy Hertz, James S. Liebman, and Ira P. Robbins in Support of Respondent (March 22, 2005)
8. *Bates v. Dow AgroSciences LLC*, No. 03-388, Brief for Respondent (November 24, 2004)
9. *Miller-El v. Dretke*, No. 03-9659, Reply Brief for Petitioner (November 23, 2004)
10. *Miller-El v. Dretke*, No. 03-9659, Brief for Petitioner (September 2, 2004)
11. *Roper v. Simmons*, No. 03-633, Brief for Respondent (July 19, 2004)

12. *United States v. American Library Ass'n, Inc.*, No. 02-361, Brief for Amici Curiae The Cleveland Public Library, The Rhode Island Library Association, and Thirteen Deans and Directors of University Schools of Library Science in Support of Respondents (February 10, 2003)
13. *Lawrence v. Texas*, No. 02-102, Brief for Amici Curiae American Psychological Association, American Psychiatric Association, National Association of Social Workers, and Texas Chapter of the National Association of Social Workers in Support of Petitioners (January 16, 2003)
14. *Sell v. U.S.*, No. 02-5664, Motion for Leave to file Brief for Amicus Curiae American Psychological Association and Brief for Amicus Curiae American Psychological Association (December 19, 2002)
15. *Scheidler v. National Organization for Women, Inc.*, Nos. 01-1118, 01-1119, Brief of Respondents (September 17, 2002)
16. *Miller-El v. Cockrell*, No. 01-7662, Reply Brief for Petitioner (August 30, 2002)
17. *State Farm Mut. Auto. Ins. Co. v. Campbell*, No. 01-1289, Brief of Dekalb Genetics Corporation as Amicus Curiae Supporting Petitioner (August 19, 2002)
18. *Miller-El v. Cockrell*, No. 01-7662, Brief for Petitioner (May 28, 2002)
19. *Republican Party of Minnesota v. Kelly*, No. 01-521, Brief of National Association of Criminal Defense Lawyers as Amicus Curiae in Support of Respondents (February 19, 2002)
20. *Newland v. Saffold*, No. 01-301, Respondent's Brief on the Merits (January 10, 2002)
21. *Booth v. Churner*, No. 99-1964, Brief for the United States as Amicus Curiae Supporting Respondents (January 19, 2001)
22. *United States v. Oakland Cannabis Buyers' Co-op*, No. 00-151, Brief for the Petitioner (January 11, 2001)
23. *Saucier v. Katz*, No. 99-1977, Brief for the Petitioner (January 8, 2001)
24. *Zadvydas v. Underdown*, No. 99-7791, Brief for the Respondents (January 5, 2001)
25. *Nguyen v. Immigration and Naturalization Service.*, No. 99-2071, Brief for the Respondent (December 13, 2000)

26. *Murphy v. Beck*, No. 00-46, Brief for the United States and the Federal Deposit Insurance Corporation as Amici Curiae Supporting Respondent (December 13, 2000)
27. *Lujan v. G & G Fire Sprinklers, Inc.*, No. 00-152, Brief for the United States as Amicus Curiae Supporting Petitioners (December 4, 2000)
28. *United States v. Hatter*, No. 99-1978, Brief for the United States (November 30, 2000)
29. *Reno v. Ma*, No. 00-38, Brief for the Petitioners (November 24, 2000)
30. *Shaw v. Murphy*, No. 99-1613, Brief for the United States as Amicus Curiae Supporting Reversal (November 13, 2000)
31. *United States Dept. of the Interior v. Klamath Water Users Protective Ass'n*, No. 99-1871, Brief for the Petitioners (November 9, 2000)
32. *Buckman Co. v. Plaintiffs' Legal Committee*, No. 98-1768, Brief for the United States as Amicus Curiae Supporting Petitioner (September 13, 2000)
33. *Bartnicki v. Vopper*, Nos. 99-1687, 99-1728, Brief for the United States (September 6, 2000)
34. *Traffix Devices, Inc. v. Marketing Displays, Inc.*, No. 99-1571, Brief for the United States as Amicus Curiae Supporting Petitioner (August 24, 2000)
35. *Cook v. Gralike*, No. 99-929, Brief for the United States as Amicus Curiae Supporting Respondents (August 14, 2000)
36. *Egelhoff v. Egelhoff*, No. 99-1529, Brief for the United States as Amicus Curiae Supporting Petitioner (August 11, 2000)
37. *United States v. Mead Corp.*, No. 99-1434, Brief for the United States (July 14, 2000)
38. *Eastern Associated Coal Corp. v. United Mine Workers of America, Dist. 17*, No. 99-1038, Brief for the United States as Amicus Curiae Supporting Affirmance, (July 11, 2000)
39. *Legal Services Corp. v. Velazquez*, Nos. 99-603, 99-960, Brief for the United States (June 13, 2000)
40. *Sims v. Apfel*, No. 98-9537, Brief for the Respondent (February 28, 2000)

41. *Natsios v. National Foreign Trade Council*, No. 99-474, Brief for the United States as Amicus Curiae Supporting Affirmance (February 14, 2000)
42. *Mobil Oil Exploration and Producing Southeast, Inc. v. United States*, Nos. 99-244, 99-253, Brief for the United States (January 28, 2000)
43. *Norfolk Southern Ry. Co. v. Shanklin*, No. 99-312, Brief for the United States as Amicus Curiae Supporting Respondent (January 28, 2000)
44. *Village of Willowbrook v. Olech*, No. 98-1288, Brief for the United States as Amicus Curiae Supporting the Judgment (December 13, 1999)
45. *Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, No. 99-150, Brief for the United States as Amicus Curiae Supporting Petitioner (November 18, 1999)
46. *United States v. Morrison*, Nos. 99-5, 99-29, Brief for the United States (November 12, 1999)
47. *Geier v. American Honda Motor Co., Inc.*, No. 98-1811, Brief for the United States as Amicus Curiae Supporting Affirmance (November 8, 1999)
48. *United States v. Locke*, No. 98-1701, 98-1706, Brief for The United States (October 22, 1999)
49. *United States v. Weatherhead*, No. 98-1904, Brief for the Petitioners (October 22, 1999)
50. *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, No. 98-1828, Brief for the United States (October 22, 1999)
51. *Mitchell v. Helms*, No. 98-1648, Brief for the Secretary of Education (August 19, 1999)
52. *Reno v. Condon*, No. 98-1464, Brief for the Petitioners (July 15, 1999)
53. *Food and Drug Administration v. Brown and Williamson Tobacco Corp.*, No. 98-1152, Brief for the Petitioners (July 12, 1999)
54. *Shalala v. Illinois Council on Long Term Care, Inc.*, No. 98-1109, Brief for the Petitioners (July 2, 1999)
55. *Los Angeles Police Dept. v. United Reporting Publishing Corp.*, No. 98-678, Brief for the United States as Amicus Curiae Supporting Petitioner (April 30, 1999)

56. *Nixon v. Shrink Missouri Government PAC*, No. 98-963, Brief for the United States as Amicus Curiae Supporting Petitioners (April 12, 1999)
57. *Greater New Orleans Broadcasting Ass'n, Inc. v. United States*, No. 98-387, Brief for the Respondents (March 24, 1999)
58. *Florida Prepaid Postsecondary Educ. Expense Bd. v. College Sav. Bank*, No. 98-531, Brief for the United States (March 24, 1999)
59. *Snyder v. Trepagnier*, No. 98-507, Brief for the United States as Amicus Curiae Supporting Respondent (March 24, 1999)
60. *West v. Gibson*, No. 98-238, Brief for the Petitioner (February 25, 1999)
61. *College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, No. 98-149, Brief for the United States (February 22, 1999)
62. *Grupo Mexicano De Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, No. 98-231, Brief for the United States as Amicus Curiae Supporting Respondents (February 16, 1999)
63. *Turner Broadcasting System, Inc. v. F.C.C.*, No. 93-44, Brief of Appellee National Association of Broadcasters (December 7, 1993)
64. *Knox vs. United States*, No. 92-1183, Brief of American Booksellers Foundation for Free Expression, Council for Periodical Distributors Associations, National Association of Artists' Organizations, Periodical and Book Association of America, Inc., Aperture Foundation, Inc., Freedom to Read Foundation, Magazine Publishers of America, American Civil Liberties Union and Law & Humanities Institute as Amici Curiae in Support of Petitioner (August 4, 1993)
65. *Burlington Northern Railroad Company v. Ford*, No. 91-779, Brief Amicus Curiae of the Associations of American Railroads in Support of Petitioner (March 12, 1992)
66. *Alexander v. United States*, No. 91-1526, Brief of Amici Curiae American Library Association, Freedom to Read Foundation, and Association of American Publishers, Inc. in Support of Petitioner (September 2, 1992)
67. *Planned Parenthood Of Southeastern Pennsylvania v. Casey*, Nos. 91-744, 91-902, Brief for Amicus Curiae American Psychological Association in Support of Petitioners (March 6, 1992)
68. *Quill Corporation v. North Dakota*, No. 91-194, Brief Amici Curiae of the National

Association of Manufacturers, The National Association of Broadcasters, The American Advertising Federation, The American Association of Advertising Agencies, Inc., The Industry Council on Tangible Assets, and Printing Industries of America, Inc. in Support of Petitioner (November 21, 1991)

69. *Rust v. Sullivan*, Nos. 89-1391, 89-1392, Brief for Amici Curiae American Library Association, Freedom to Read Foundation, People for the American Way, National Education Association, the Newspaper Guild, National Writers' Union, and Fresno Free College Foundation Supporting Petitioners (October Term 1990)
70. *Maryland v. Craig*, No. 89-478, Brief for Amicus Curiae American Psychological Association in Support of Neither Party (March 2, 1990)
71. *Fort Wayne Books, Inc. v. Indiana*, No. 87-470, Motion for Leave to File Brief Amicus Curiae and Brief Amicus Curiae of PHE, Inc. in Support of Petitioner (May 12, 1988)
72. *Patrick v. Burget*, No. 86-1145, Brief for Amicus Curiae American Psychological Association in Support of Petitioner (November 25, 1987)
73. *Virginia v. American Booksellers Association*, No. 86-1034, Brief for Amicus Curiae Freedom to Read Foundation in Support of Appellees (July 2, 1987)
74. *Hartigan v. Zbaraz*, No. 85-673, Brief for Amicus Curiae American Psychological Association in Support of Appellees (February 12, 1987)
75. *Pope v. Illinois*, No. 85-1973, Brief of Amici Curiae American Civil Liberties Union, ACLU of Illinois and PHE, Inc. in Support of Petitioners (November 20, 1986)
76. *Meese v. Keene*, No. 85-1180, Brief of Amici Curiae Playboy Enterprises, Inc. and American Booksellers Association in Support of Appellee (September 15, 1986)
77. *Bowers v. Hardwick*, No. 85-140, Brief of Amici Curiae American Psychological Association and American Public Health Association in Support of Respondents (January 31, 1986)
78. *Lockhart v. McCree*, No. 84-1865, Brief for Amicus Curiae American Psychological Association in Support of Respondent (December 23, 1985)
79. *Smith v. Sielaff*, No. 85-5487, Brief for Amicus Curiae American Psychological Association in Support of Petitioner (December 4, 1985)
80. *Bureau of Alcohol, Tobacco and Firearms v. Galinto*, No. 84-1904, Brief of Amicus Curiae American Psychological Association in Support of Appellee (October Term

1985)

I appeared on the following briefs in the petition for certiorari stage:

1. *Price v. Philip Morris Inc.*, No. 06-465, Brief for the American Legacy Foundation, Action on Smoking and Health, Campaign for Tobacco-Free Kids, Citizens' Commission to Protect the Truth, Consumer Federation of American, Lung Cancer Alliance, National African American Tobacco Prevention Network, National Association of Consumer Advocates, Public Citizen, Tobacco Control Legal Consortium, Tobacco Control Resource Center, and U.S. Public Interest Research Group in Support of Petitioners (November 1, 2006)
2. *Miller-El v. Dretke*, No. 03-9659, Petition for a Writ of Certiorari (April 1, 2004)
3. *Dekalb Genetics Corporation v. Bayer Cropscience, S.A.*, No. 03-916, Petition for a Writ of Certiorari (December 23, 2003)
4. *United States v. American Library Association, Inc.*, No. 02-361, Brief for Amici Curiae the Cleveland Public Library, the Rhode Island Library Association, and Thirteen Deans and Directors of University Schools of Library Science in Support of Respondents (February 2003)
5. *Dekalb Genetics Corporation v. Bayer Cropscience, S.A.*, No. 02-130, Reply to Brief in Opposition (September 4, 2002)
6. *Dekalb Genetics Corporation v. Bayer Cropscience, S.A.*, No. 02-130, Petition for a Writ of Certiorari (July 24, 2002)
7. *Reno v. Free Speech Coalition*, No. 00-795, Petition for a Writ of Certiorari (January 22, 2001)
8. *International Aircraft Recovery, L.L.C. v. United States*, No. 00-617, Brief for the United States in Opposition (January 19, 2001)
9. *Time Warner Entertainment Company, L.P. v. Federal Communications Commission*, No. 00-623, Brief for the Respondents in Opposition (January 19, 2001)
10. *J.E.M. AG Supply, Inc. v. Pioneer Hi-Bred International, Inc.*, Brief for the United States as Amicus Curiae, No. 99-1996 (January 17, 2001)
11. *Belcher v. Gober; Smith v. Gober*, Nos. 00-739 and 00-754, Brief for the Respondent in Opposition (January 8, 2001)

12. *Tawfik v. Reno*, No. 00-526, Brief for the Respondents in Opposition (January 5, 2001)
13. *Humanitarian Law Project v. Reno*, No. 00-0910, Brief for the Respondents in Opposition (January 3, 2001)
14. *B&G Enterprises, LTD. v. United States*, No. 00-709, Brief for the United States in Opposition (January 2001)
15. *Atlantic Richfield Company v. Union Oil Company of California*, No. 00-249, Brief for the United States as Amicus Curiae (January 2001)
16. *Harris v. Garner*, No. 00-484, Brief for the United States (December 29, 2000)
17. *McDaniel v. United States Department Of The Interior*, No. 00-760, Brief for the Respondent in Opposition (December 28, 2000)
18. *Dionne v. Shalala*, No. 00-468, Brief for the Respondent in Opposition (December 27, 2000)
19. *Calcano-Martinez v. Immigration And Naturalization Service*, Brief for the Respondent, No. 00-1011 (December 22, 2000)
20. *WFAA-TV, Inc. v. Peavy*, No. 00-691, Brief for the United States (December 21, 2000)
21. *Rodriguez v. Immigration And Naturalization Service*, No. 00-753, Brief for the Respondent (December 13, 2000)
22. *Del Valle v. Reno*, No. 00-362, Brief for the Respondents in Opposition (December 11, 2000)
23. *International Business Machines Corp. v. United States*, No. 00-482, Brief for the United States in Opposition (December 2000)
24. *Fried v. United States*, No. 00-537, Brief for the United States in Opposition (December 2000)
25. *Reno v. Free Speech Coalition*, No. 00-795, Petition for a Writ of Certiorari (November 16, 2000)
26. *United States Postal Service v. Gregory*, No. 00-758, Petition for a Writ of Certiorari (November 13, 2000)

27. *Immigration And Naturalization Service v. St. Cyr*, No. 00-767, Petition for a Writ of Certiorari (November 13, 2000)
28. *Patterson v. United States*, No. 00-376, Brief for the United States in Opposition (November 13, 2000)
29. *Kansas v. United States*, No. 00-329, Brief for the Respondents in Opposition (November 1, 2000)
30. *Caguas Central Federal Savings Bank v. United States*, No. 00-448, Brief for the United States in Opposition (November 2000)
31. *Borneman v. United States*, No. 00-449, Brief for the Respondents in Opposition (November 2000)
32. *Reno v. Free Speech Coalition*, No. 00-795, Petition for a Writ of Certiorari (November 2000)
33. *Nextwave Personal Communications Inc. v. Federal Communications Commission*, No. 00-447, Brief for the Federal Communications Commission in Opposition (October 30, 2000)
34. *Rodriguez v. Reno*, No. 99-2085, Brief for the Respondents (October 27, 2000)
35. *Moore v. Valder*, No. 00-216, Brief for the Respondent in Opposition (October 6, 2000)
36. *Century Importers v. United States*, No. 00-196, Brief for the United States in Opposition (October 2000)
37. *Mariani v. United States*, No. 00-256, Brief for the Respondents in Opposition (October 2000)
38. *Shalala v. OHA: The Association For Hospitals and Health Systems*, No. 00-558, Petition for a Writ of Certiorari (October 2000)
39. *United States v. Swisher International, Inc.*, No. 00-415, Petition for a Writ of Certiorari (September 15, 2000)
40. *Marcum v. Apfel*, No. 00-29, Brief for the Respondent in Opposition (September 5, 2000)
41. *Nextwave Personal Communications, Inc. v. Federal Communications Commission*, No. 99-1980, Brief for the Federal Communications Commission in Opposition (September

- 2000)
42. *Molnar v. United States*, No. 99-2032, Brief for the United States in Opposition (September 2000)
 43. *Alfarache v. Cravener*, No. 99-1789, Brief for the Respondent in Opposition (August 23, 2000)
 44. *United States v. United Foods, Inc.*, No. 00-276, Petition for a Writ of Certiorari (August 18, 2000)
 45. *O'`v. Shalala; Terran v. Shalala*, Nos. 99-1747 and 99-1749, Brief for the Respondent in Opposition (August 2, 2000)
 46. *Federal Labor Relations Authority v. Luke Air Force Base, Arizon.*, No. 99-1939, Brief for the Respondent in Opposition (August 1, 2000)
 47. *Massey v. Helman*, No. 99-1918, Brief for the Respondents in Opposition (July 31, 2000)
 48. *United States v. Oakland Cannabis Buyers' Cooperative*, No. 00-151, Petition for a Writ of Certiorari (July 28, 2000)
 49. *J.D. Behles & Associates v. Angel Project I, Ltd.*, No. 99-1907, Brief for the United States Trustee in Opposition (July 28, 2000)
 50. *Kempker-Cloyd v. Reno*, No. 99-1900, Brief for the Respondent in Opposition (July 26, 2000)
 51. *Navegar, Inc. v. United States*, No. 99-1874, Brief for the United States in Opposition (July 21, 2000)
 52. *Campbell v. Clinton*, No. 99-1843 Brief for the Respondent in Opposition (July 19, 2000)
 53. *Munoz v. Peters*, No. 99-1750, Brief for the Respondents in Opposition (July 2000)
 54. *Westover v. Reno*, No. 99-1777, Brief for the Respondent in Opposition (July 2000)
 55. *Botezatu v. Immigration And Naturalization Service*, No. 99-1627, Brief for the Respondents in Opposition (June 9, 2000)

56. *United States v. Hatter*, No. 99-1978, Petition for a Writ of Certiorari (June 8, 2000)
57. *Saucier v. Katz*, No. 99-1977, Petition for a Writ of Certiorari (June 8, 2000)
58. *Carnival Cruise Lines, Inc. v. United States; Princess Cruises, Inc. v. United States*, Nos. 99-1596, 99-1600, Brief for the United States in Opposition (June 2, 2000)
59. *Brewer v. United States*, No. 99-1671, Brief for the United States in Opposition (June 2000)
60. *Universal Management Services, Inc., v. United States*, No. 99-1517, Brief for the United States in Opposition (June 2000)
61. *Greenbrier v. United States*, No. 99-1577, Brief for the United States in Opposition (May 30, 2000)
62. *Brown v. United States*, No. 99-1416, Brief for the Respondents in Opposition (May 26, 2000)
63. *Alcoa Inc. v. Bonneville Power Administration*, No. 99-1556, Brief for the Respondent in Opposition (May 24, 2000)
64. *United States Department of the Interior v. Klamath Water Users Protective Association*, No. 99-1871, Petition for a Writ of Certiorari (May 22, 2000)
65. *S & M Enterprises v. United States*, No. 99-1563, Brief for the United States in Opposition (May 19, 2000)
66. *Sac & Fox Nation Of Oklahoma v. Cuomo*, No. 99-1486, Brief for the Federal Respondents in Opposition (May 8, 2000)
67. *Tefel v. Reno*, No. 99-1314, Brief for the Respondents in Opposition (May 8, 2000)
68. *Cal-Almond, Inc. v. United States Department of Agriculture*, No. 99-1347, Brief for the Respondent in Opposition (May 2000)
69. *Oglala Sioux Tribal Public Safety Department v. Babbitt*, Nos. 99-1239 and 99-1261, Brief for the Respondent in Opposition (April 26, 2000)
70. *Hanlon v. Shalala*, No. 99-1223, Brief for the Respondent in Opposition (April 24, 2000)
71. *Novato Fire Protection District v. United States*, No. 99-1209, Brief for the Respondents

in Opposition (April 19, 2000)

72. *Glover v. West*, No. 99-1191, Brief for the Respondent in Opposition (April 11, 2000)
73. *Ramos v. District Director, Executive Office for Immigration Review, Office of Immigration Judge*, No. 99-1259, Brief for the Respondent in Opposition (April 3, 2000)
74. *County of Los Angeles v. Shalala*, No. 99-1421, Brief for the Respondent in Opposition (April 2000)
75. *Abdullah v. Immigration And Naturalization Service*, No. 99-1162, Brief for the Respondent in Opposition (March 13, 2000)
76. *Ferrel v. Cuomo*, No. 99-1163, Brief for the Respondents in Opposition (March 13, 2000)
77. *Mafrige v. United States*, No. 99-1110, Brief for the United States in Opposition (March 3, 2000)
78. *Melka Marine, Inc., Petitioner, v. United States of America*, No. 99-1134, Brief for the United States in Opposition (March 3, 2000)
79. *Dole Food Company, Inc. v. United States*, No. 99-1246, Brief for the Federal Respondents in Opposition (March 2000)
80. *Forte v. Department of Veterans Affairs*, No. 99-941, Brief for the Respondent in Opposition (March 2000)
81. *New Prime Db a Prime, Inc. v. Owner-Operator Independent Drivers Association, Inc.*, No. 99-1169, Brief for the Federal Respondents in Opposition (March 2000)
82. *People's Mojahedin Organization of Iran v. Department of State*, No. 99-1070, Brief for the Respondents in Opposition (March 2000)
83. *United States v. Texas Southern University*, No. 99-1544, Petition for a Writ of Certiorari (March 2000)
84. *United States v. Mead Corporation*, No. 99-1434, Petition for a Writ of Certiorari (February 29, 2000)
85. *Dew v. United States*, No. 99-1089, Brief for the United States in Opposition (February 28, 2000)

86. *Richardson v. Reno*, No. 99-887, Brief for the Respondents in Opposition (February 25, 2000)
87. *Moghadam v. United States*, No. 99-879, Brief for the United States in Opposition (February 23, 2000)
88. *Datalect Computer Services, Ltd. v. United States*, No. 99-1049, Brief for the United States in Opposition (February 22, 2000)
89. *Central Green Co. v. United States*, No. 99-859, Brief for the United States in Opposition (February 18, 2000)
90. *Century Clinic, Inc. v. United States of America*, No. 99-1034, Brief for the United States in Opposition (February 18, 2000)
91. *Byrd v. Environmental Protection Agency*, No. 99-986, Brief for the Respondent in Opposition (February 9, 2000)
92. *American Federation Of Government Employees v. Clinton*, No. 99-959, Brief for the Respondents in Opposition (February 8, 2000)
93. *Mapoy v. Carroll*, No. 99-961, Brief for the Respondent in Opposition (February 7, 2000)
94. *Sebastian v. United States*, No. 99-977, Brief for the United States in Opposition (February 7, 2000)
95. *Public Citizen v. Carlin*, No. 99-782, Brief for the Respondents in Opposition (February 4, 2000)
96. *Primeaux v. United States*, No. 99-841, Brief for the United States in Opposition (January 18, 2000)
97. *White v. Lachance*, No. 99-629, Brief for the Respondent in Opposition (January 12, 2000)
98. *Laguerre v. Reno*, No. 99-418, Brief for the Respondents in Opposition (January 11, 2000)
99. *Lechuga, v. Perryman.*, No. 99-2082, Brief for the Respondent in Opposition (2000)
100. *Velazquez v. Legal Services Corporation*, No. 99-604, Brief for the United States in Opposition (December 8, 1999)

101. *Thomas v. Network Solutions, Inc.*, No. 99-605, Brief for the Federal Respondent in Opposition (December 8, 1999)
102. *Bartels v. Riley*, No. 99-540, Brief for the Federal Respondents in Opposition (December 6, 1999)
103. *Collins v. Montgomery County Board Of Prison Inspectors*, No. 99-270, Brief for the United States in Opposition (December 6, 1999)
104. *Armstrong v. Accrediting Council For Continuing Education And Training, Inc.*, No. 99-395, Brief for the Federal Respondent in Opposition (December 6, 1999)
105. *Richards v. United States*, No. 99-731, Brief for the United States in Opposition (December 1999)
106. *Witter v. Immigration And Naturalization Service*, No. 99-560, Brief for the Respondent in Opposition (December 1, 1999)
107. *Virginia v. Collins*, No. 99-380, Brief for the United States in Opposition (December 1999)
108. *City Of Los Angeles v. Department Of Transportation; Airports Council International-North America v. Department of Transportation*, Nos. 99-466, 99-500, Brief for the Federal Respondents in Opposition (November 22, 1999)
109. *Nature's Dairy v. Glickman*, No. 99-439, Brief for the Respondents in Opposition (November 17, 1999)
110. *Paulk v. United States*, No. 99-390, Brief for the United States in Opposition (November 03, 1999)
111. *United States v. Texas*, No. 99-774, Petition for a Writ of Certiorari (November 02, 1999)
112. *Hossain v. Immigration And Naturalization Service*, No. 99-340, Brief for the Respondent in Opposition (October 25, 1999)
113. *City Of New York v. United States*, No. 99-328, Brief for the Respondents in Opposition (October 22, 1999)
114. *Colon v. Department Of State*, No. 99-259, Brief for the Respondents in Opposition (October 13, 1999)

115. *Anker Energy Corporation v. United Mine Workers of America Combined Benefit Fund*, No. 99-262, Brief for the Commissioner of Social Security in Opposition (October 13, 1999)
116. *Nakamura v. Babbitt*, No. 99-265, Brief for the Respondent in Opposition (October 13, 1999)
117. *Mobil Oil Exploration And Producing Southeast, Inc. v. United States; Marathon Oil Company v. United States*, Nos. 99-244, 99-253, Brief for the United States in Opposition (October 12, 1999)
118. *Franklin Savings Corporation v. United States*, No. 99-208, Brief for the Respondents in Opposition (October 1999)
119. *Unity Real Estate Company v. Hudson*, No. 99-12, Brief for the United States in Opposition (September 27, 1999)
120. *Belli v. Immigration And Naturalization Service*, No. 98-2056, Brief for the Respondent in Opposition (September 22, 1999)
121. *McDaniel v. United States*, No. 99-2, Brief for the United States in Opposition (September 21, 1999)
122. *Hyundai Merchant Marine Company, Ltd. v. United States*, No. 99-142, Brief for the United States in Opposition (September 20, 1999)
123. *Bronco Wine Company v. Bureau of Alcohol, Tobacco and Firearms*, No. 99-119, Brief for the Respondents in Opposition (September 15, 1999)
124. *Kostmayer v. Department of the Treasury*, No. 99-71, Brief for the Respondents in Opposition (September 8, 1999)
125. *Fraternal Order of Police v. United States*, No. 99-106, Brief for the United States in Opposition (September 2, 1999)
126. *Yankton Sioux Tribe v. United States*, No. 99-34, Memorandum for the United States in Opposition (August 30, 1999)
127. *Paradissiotis v. Summers*, No. 99-44, Brief for the Respondents in Opposition (August 30, 1999)
128. *United States v. Texas Tech University*, No. 99-365, Petition for a Writ of Certiorari

(August 27, 1999)

129. *Benjamin v. Kerik*, No. 98-2042, Brief for the United States in Opposition (August 23, 1999)
130. *Dass v. Caplinger*, No. 99-176, Brief for the United States as Amicus Curiae Supporting Denial of the Petition (August 23, 1999)
131. *Commercial Energies, Inc. v. Danzig*, No. 98-1970, Brief for the Respondent in Opposition (August 23, 1999)
132. *Pfau v. Reed*, No. 98-1846, Brief for the Respondent in Opposition (August 11, 1999)
133. *Small v. United States*, No. 98-1979, Brief for the United States in Opposition (August 10, 1999)
134. *Sherman Park Apartments v. United States*, No. 98-1966, Brief for the United States in Opposition (August 9, 1999)
135. *Gresham v. Henderson*, No. 98-1968, Brief for the Respondent in Opposition (August 9, 1999)
136. *Foroglou v. Immigration and Naturalization Service*, No. 98-1951, Brief for the Respondent in Opposition (August 6, 1999)
137. *Boggs v. Summers*, No. 98-1785, Brief for the Respondents in Opposition (August 5, 1999)
138. *United States, v. SCS Business & Technical Institute, Inc.*, No. 99-213, Petition for a Writ of Certiorari (August 2, 1999)
139. *Bestfoods v. United States*, No. 98-1735, Brief for the United States in Opposition (July 29, 1999)
140. *Irving v. United States*, No. 98-1805, Brief for the United States in Opposition (July 23, 1999)
141. *Porter v. United States*, No. 98-1689, Brief for the United States in Opposition (July 21, 1999)
142. *Bianchi v. Walker*, No. 98-1860, Brief for the Federal Respondents in Opposition (July 19, 1999)

143. *Alexander v. Merit Systems Protection Board*, No. 98-1662, Brief for the Respondent in Opposition (July 14, 1999)
144. *Renteria-Prado v. Pasquarell*, No. 98-1698 Brief for the Respondents in Opposition (June 23, 1999)
145. *Bonneville Associates v. Barram*, No. 98-1688, Brief for the Respondent in Opposition (June 15, 1999)
146. *Wisconsin Department Of Transportation, Division Of Motor Vehicles v. Reno*, No. 98-1818, Brief for the Respondents (June 10, 1999)
147. *Mackey v. Milam*, No. 98-1564, Brief for the Respondents in Opposition (May 27, 1999)
148. *Sefick v. Gardner*, No. 98-1570, Brief for the Respondents in Opposition (May 27, 1999)
149. *State Of Vermont Agency of Natural Resources v. United States ex rel. Stevens, et al.*, No. 98-1828, Brief for the United States (May 26, 1999)
150. *Trafalgar Capital Associates, Inc., v. Cuomo*, No. 98-1568, Brief for the Federal Respondent in Opposition (May 26, 1999)
151. *Fitzgerald, v. Apfel*, No. 98-1595, Brief for the Respondent in Opposition (May 26, 1999)
152. *Mitchell v. Helms*, Nos. 98-1648 and 98-1671, Brief for the Secretary of Education (May 3, 1999)
153. *Patriot Portfolio, LLC v. Weinstein*, No. 98-1618, Brief for the United States (May 1999)
154. *United States v. Locke*, No. 98-1701, Petition for a Writ of Certiorari (April 23, 1999)
155. *Blankenship v. McDonald*, No. 99-672, Brief for the Respondents in Opposition (January 10, 1999)
156. *City of Chicago v. Shalala*, No. 99-898, Brief for the Respondents in Opposition (1999)
157. *City of Los Angeles v. Department of Transportation; Airports Council International-North America v. Department of Transportation*, Nos. 99-466, 99-500, Brief for the Federal Respondents in Opposition (1999)

158. *Gillespie v. City of Indianapolis*, No. 99-626, Brief for the United States in Opposition (1999)

159. *Sauvage v. Immigration And Naturalization Service*, No. 99-1932, Brief for the Respondent in Opposition (1999)

160. *Cruz v. Playboy Enterprises, Inc.*, No. 90-491, Brief in Opposition (October 16, 1990)

161. *Whitburn v. Addis*, No. 98-1041, Brief for the United States as Amicus Curiae

162. *Southern Pacific Transportation Co. v. Hernandez*, No. 91-293, Motion for Leave to File Brief Amicus Curiae and Brief Amicus Curiae of the Association of American Railroads in Support of Petitioner (September 18, 1991)

163. *Alden v. Maine*, No. 98-436, Reply Brief for the United States

16. Litigation: Describe the ten (10) most significant litigated matters which you personally handled. 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. *Lorillard Tobacco Company v. American Legacy Foundation*, 903 A.2d 728 (Del. 2006); *American Legacy Foundation v. Lorillard Tobacco Company*, 886 A.2d 1 (Del. Ch. 2005). In a case against Lorillard Tobacco Company, I represented the American Legacy Foundation, a non-profit organization created by and funded under the 1998 Master Settlement Agreement (“MSA”) between 46 states and the major cigarette manufacturers with the public health mission of reducing youth smoking. Lorillard charged that certain of the Foundation’s public education advertisements violated the MSA because they constituted impermissible “vilification” or “personal attack,” or because they targeted marketing activities of the tobacco industry and not the addictiveness, health effects, or social costs of tobacco products. When Lorillard advised the Foundation in January 2002 of its intent to sue, the Foundation preemptively filed suit against Lorillard in Delaware Chancery Court seeking a declaratory judgment that none of its ads violated the MSA; Lorillard in turn filed counterclaims. I was the lead counsel (or co-lead) for the Foundation throughout this litigation. In the Chancery Court, the case was heard by Vice Chancellor Stephen P. Lamb. I supervised the extensive fact and expert discovery process and argued two summary judgment motions. In August 2005, the Chancery Court ruled substantially in favor of the Foundation on the construction of provisions of the MSA and held that none of the Foundation’s ads had violated the MSA. Lorillard appealed to the Delaware Supreme Court, which heard the case en banc. I

supervised the briefing and argued the appeal. In July 2006, the Delaware Supreme Court affirmed the Chancery Court's favorable ruling in its entirety.

My co-counsel at WilmerHale included then-partner John Payton, who is now the President and Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc., 99 Hudson Street, Suite 1600, New York, N.Y. 10013, 212-965-2200. Other co-counsel at WilmerHale included Paul R.Q. Wolfson, Stuart F. Delery, and Carey Bollinger, 1875 Pennsylvania Avenue, NW, Washington, DC 20006, 202-663-6000. Other co-counsel included David C. McBride, Young, Conaway, Stargatt & Taylor, LLP, 1000 West Street, 17th Floor, Wilmington, DE 19801, (302) 571-6639; and Ellen Vargyas, General Counsel, American Legacy Foundation, 1724 Massachusetts Ave, NW, Washington, DC 20036, (202) 454-5555. Lorillard was represented by a number of lawyers, but its principal counsel was Jim W. Phillips, Jr., Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, 2000 Renaissance Plaza, P.O. Box 26000, Greensboro, NC 27420, (336) 271-3131.

2. *Shell Oil Co. v. Franco, et al.*, 2005 WL 6184247 (C.D. Cal. Nov. 10, 2005), and related cases. I was lead counsel for Shell Oil Company in litigation arising out of tort judgments entered against U.S. companies by courts in Nicaragua. On December 4, 2004, on Shell Oil's behalf, I filed a complaint for declaratory relief against 466 Nicaraguan individuals, seeking a declaration concerning the unenforceability of an approximately \$489 million Nicaraguan court judgment entered against Shell Oil and other defendants for injuries allegedly related to the use of a pesticide in Nicaragua. On November 10, 2005, U.S. District Judge Nora M. Manella granted our summary judgment motion, holding that the Nicaraguan judgment was unenforceable against Shell Oil because the Nicaraguan court had lacked personal jurisdiction over it, consistent with principles of U.S. due process. The case involved extensive discovery and summary judgment briefing, supported by multiple expert reports. As lead counsel, I supervised a team of attorneys, developed legal arguments, provided strategic advice, conducted and supervised extensive discovery, revised motions and briefs, and argued the summary judgment motion. Among the many co-counsel who assisted me at WilmerHale were Ethan G. Shenkman, Jennifer M. O'Connor, and Thomas F. Connell, WilmerHale, 1875 Pennsylvania Ave., NW, Washington, DC 20006, (202) 663-6000. Lead U.S. counsel for the Nicaraguan defendants were Walter J. Lack, Engstrom, Lipscomb & Lack, 10100 Santa Monica Blvd., 16th Floor, Los Angeles, CA 90067, (310) 552-3800; and Thomas V. Girardi, Girardi & Keese, 1126 Wilshire Boulevard, Los Angeles, CA 90017, (213) 977-0211.

I also represented Shell Oil in several related litigated matters. Most recently, on August 13, 2007, a different group of approximately 200 Nicaraguan individuals brought suit against Shell Oil and other defendants in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, seeking to enforce an approximately \$98 million Nicaraguan court judgment. On Shell Oil's behalf, we removed the case to federal court in the Southern District of Florida. On January 5, 2009, Judge Paul C. Huck issued an order granting summary judgment in favor of my client and another company, finding the Nicaraguan judgment unenforceable against those entities because the Nicaraguan court had lacked jurisdiction over them. *See Osorio, et. al., v. Dole Food Company, et al.*, Case No. 07-22693 (S.D. Fla., Jan. 5, 2009). Litigation is ongoing in this case with respect to other defendants. I was lead counsel in this case on behalf of Shell Oil, and I supervised a team of attorneys, developed legal arguments, provided strategic advice, and revised

motions and briefs. Other WilmerHale attorneys who represented Shell Oil included Ethan G. Shenkman, whose contact information is listed above. Many lawyers participated on behalf of the three other co-defendants. The following were the most active: Michael P. Foradas, counsel for the Dow Chemical Company, Kirkland & Ellis, 200 East Randolph Drive, Chicago, Illinois 60601, (312)-861-2308; Guy S. Lipe, Counsel for Occidental Chemical Corporation, Vinson & Elkins, First City Tower, 1001 Fannin Street, Suite 2500, Houston, TX 77002, (713) 758-1109; and Theodore J. Boutrous, Counsel for Dole Food Company, Inc., Gibson, Dunn & Crutcher, 333 South Grand Avenue, Los Angeles, CA 90071, (213) 229-7804. Lead counsel for the plaintiffs was Steven C. Marks, Podhurst Orseck, 25 West Flagler Street, Suite 800, Miami, Florida 33130, (305) 358-2800.

3. *Biotechnology Industry Organization v. District of Columbia*, 505 F.3d 1343 (Fed. Cir. 2007); *Pharmaceutical Research and Manufacturers of America v. District of Columbia*, 406 F. Supp. 2d 56 (D.D.C. 2005). In these cases, my client, the Pharmaceutical Research and Manufacturers of America (“PhRMA”) filed a complaint in the United States District for the District of Columbia on October 12, 2005, challenging a District of Columbia law that had the effect of imposing price caps—set by reference to prices in benchmark foreign countries—on patented prescription drugs. The Biotechnology Industry Association, represented by other counsel, later filed a similar action seeking similar relief. After briefing and argument, Judge Richard J. Leon entered final judgment in favor of PhRMA and BIO and enjoined enforcement of the D.C. law on the grounds that it was preempted by federal patent and prescription drug exclusivity laws and that the D.C. law’s application to transactions outside of the District of Columbia violated the Interstate Commerce Clause of the U.S. Constitution. A Federal Circuit panel comprised of Judges William C. Bryson, Arthur J. Gajarsa, and S. Jay Plager later affirmed the district court’s judgment on the ground that the D.C. law was preempted by federal patent law. I served as lead counsel for PhRMA in this case. In that role, I oversaw all of my firm’s work on this matter, was primarily responsible for developing PhRMA’s legal strategy, coordinated with counsel for BIO, was extensively involved in briefing the case in the District Court and Federal Circuit, and argued the case for both entities before the District Court and the Federal Circuit.

PhRMA was represented exclusively by my firm with respect to this matter. Randolph D. Moss, Anne K. Small, Catherine M.A. Carroll, and Thomas G. Saunders were the other lawyers from WilmerHale principally involved with this case. The address and telephone number for Mr. Moss, Ms. Carroll, and Mr. Saunders is: Wilmer Cutler Pickering Hale and Dorr LLP, 1875 Pennsylvania Avenue, N.W., Washington, D.C. 20006, (202) 663-6000. Ms. Small’s address and telephone number are: Anne K. Small, Wilmer Cutler Pickering Hale and Dorr LLP, 399 Park Avenue, New York, N.Y. 10022, (212) 230-8869. The Biotechnology Industry Association (plaintiff in the consolidated case) was principally represented by Daniel E. Troy, then of Sidley Austin LLP, and Eric A. Shumsky of Sidley Austin LLP. Mr. Troy’s current address and telephone number are: Daniel E. Troy, Senior Vice President and General Counsel, GlaxoSmithKline, One Franklin Plaza, P.O. Box 7929, Philadelphia, PA 19101, (215) 751-6107. Mr. Shumsky’s address and telephone number are: Eric A. Shumsky, Sidley Austin LLP, 1501 K Street, N.W., Washington, D.C. 20005, (202) 736-8496. Principal counsel for the District of Columbia in the Court of Appeals was William J. Earl. Mr. Earl’s address and telephone number are: William J. Earl, Senior Assistant Attorney General, 441 4th Street, N.W., Washington, D.C. 20001, (202) 724-6152. Principal counsel for the District of Columbia in the district court were Andrew J. Saindon

and Ellen A. Efros. Their address and telephone number are Office of the Attorney General of Washington, D.C., One Judiciary Square, 441 4th Street N.W., Suite 1060N, Washington, D.C. 20001, (202) 727-3400.

4. *Lebanese American University v. National Evangelical Synod of Syria and Lebanon*, No. 04-5434 (RJH), 2005 WL 39917 (S.D.N.Y. Jan. 6, 2005); Preliminary Injunction Order, *Lebanese American University v. National Evangelical Synod of Syria and Lebanon*, 04 Civ. 5434 (RJH) (July 30, 2004). In this case, I was lead counsel for the United States-based and New York-state chartered Board of Trustees of the Lebanese American University, a leading institution of higher learning originally founded by the U.S. Presbyterian Church in Lebanon, which viewed its mission as “build[ing] a bridge of understanding between East and West in the Middle East,” and which offered a U.S.-style college education “without regard to gender, race, nationality, faith or religious sect.” As a result of an internal dispute, a sect based in Syria and Lebanon sought to use Lebanese courts to seize control of the University and its Beirut campus from the U.S.-based board, and obtained an injunctive order from that Lebanese court declaring that sect to be the rightful directors of the institution. In that posture, I filed this action in federal court in New York, and obtained an emergency injunction requiring that the sect cease and desist from pursuing its Lebanese suit, so that control of the institution could be determined conclusively by the courts of the United States, where the University was chartered. The court’s finding of my client’s probable success on the merits, coupled with its denial of the sect’s motion to dismiss the complaint, essentially ended the dispute and facilitated a resolution that preserved control by the U.S.-based board.

My co-counsel at WilmerHale included Randy Goodman, Peter Vigeland, and Tonya Robinson, among others. The current address and telephone number for Mr. Goodman, and Ms. Robinson is 1875 Pennsylvania Avenue, NW, Washington, DC 20006, 202-663-6000. The current address and telephone number for Mr. Vigeland is 399 Park Avenue, New York, NY 10022, (212) 230-8807. Counsel for Lebanese American University was Cedar J. Mansour, 475 Riverside Drive, Suite 1846, New York, N.Y. 10115, (212) 870-2592. National Evangelical Synod of Syria and Lebanon was represented by the law firm of Dewey & LeBoeuf, 1301 Avenue of the Americas New York, N.Y. 10019, (212) 259-8000. The current address and telephone number for their lead attorney, A. Grant McCrea, are unknown.

5. *Miller-El v. Dretke*, 545 U.S. 231 (2005); *Miller-El v. Cockrell*, 537 U.S. 322 (2003). In this pro bono case, I represented Thomas Joe Miller-El, a death-row inmate who had been convicted of murder and sentenced by a jury from which the prosecutors had struck 10 of 11 eligible African-American jurors without giving plausible non-racial justifications. The Supreme Court twice ruled for my client, and in so doing, reaffirmed and strengthened the constitutional prohibition against race discrimination in jury selection through improper use of peremptory challenges. In both cases, I played a substantial role in the development of the arguments made on behalf of our client, in the briefing, and in preparation for oral argument. In both cases, my partner Seth P. Waxman served as lead counsel and argued in the Supreme Court.

In addition to Mr. Waxman, my co-counsel from Wilmer Cutler Pickering and then WilmerHale who joined in representing Miller-El were Robin Lenhardt, Trevor Morrison, Shirley Woodward, Jonathan Cedarbaum, Nicole Herron, and Bruce Gottlieb. Mr. Waxman, Ms. Woodward, and Mr.

Cedarbaum are at WilmerHale, 1875 Pennsylvania Ave., N.W., Washington, D.C., 20006, (202) 663-6000. Ms. Lenhardt is now a professor at Fordham Law School, 140 W. 62nd Street, New York, N.Y., 10023, (212) 636-7608. Mr. Morrison is now a professor at Columbia Law School, 435 W. 116th Street, New York, N.Y., 10027, (212) 854-1997. Ms. Herron is now an attorney at the Alternate Defender Office, 627 Ferry Street, Martinez, CA, 94553, (925) 646-1740. Mr. Gottlieb is now Legal Advisor for Wireless and International Issues to Federal Communications Commissioner Michael Copps, 445 12th Street, S.W., Washington, D.C., 20554, (202) 418-2000. We were co-counsel with Jim Marcus, Elizabeth Detweiler, and Andrew Hammel of the Texas Defender Service. Mr. Marcus is now the co-director of the Capital Punishment Clinic at the University of Texas Law School, 727 E. Dean Keeton Street, Austin, TX, 78705, (512) 232-1475. Ms. Detweiler is now a staff attorney in the Chambers of U.S. District Judge Nancy F. Atlas, U.S. District Court for the Southern District of Texas, Houston Division, 515 Rusk Ave., Houston, TX, 77002, (713) 250-5407. Mr. Hammel is now Lecturer in Anglo-American Law, Heinrich-Heine-Universität Düsseldorf, Universitätsstrasse 1, 40225, Düsseldorf, +49 (0211) 81 10 621. Gena Bunn, of the Texas Attorney General's Office, argued the case both times for State. Her current address and telephone number are State of Texas Attorney General's Office, Law Enforcement Defense Division, 209 W. 14th Street, Austin, TX, 78701, (512) 463-2080.

6. *Roper v. Simmons*, 543 U.S. 551 (2005). In this case, after the Supreme Court granted a writ of certiorari, my colleagues at WilmerHale and I represented the respondent, Christopher Simmons, a death-row prisoner who had been convicted of a murder that occurred when he was 17 years old. I played a substantial role in the development of the arguments made on behalf of our client, in the briefing, and in preparation for oral argument. My partner Seth P. Waxman served as lead counsel for Mr. Simmons and argued the matter in the Supreme Court. The Court ultimately held that the Eighth Amendment forbids imposition of the death penalty on juvenile offenders. The Court endorsed our arguments that there was sufficient evidence of a national consensus against the death penalty for juvenile offenders, and that juvenile offenders' immaturity, vulnerability, and malleability created an unacceptable risk of wrongful imposition of the death penalty. In addition to Mr. Waxman, my co-counsel at WilmerHale was Danielle Spinelli. Their current address and telephone number are 1875 Pennsylvania Avenue, N.W., Washington, D.C. 20006, (202) 663-6000. Jennifer Herndon was also co-counsel for respondent. Her current address and telephone number are 224 Highway 67 North #122, Florissant, MO 63031, (314) 831-5531. Lead counsel for the petitioner was Missouri State Solicitor James R. Layton. His current address and telephone number are Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102, (573) 751-3321.

7. *Riley v. St. Luke's Episcopal Hospital*, 252 F.3d 749 (5th Cir. 2001) (en banc). I list this case because of its significance and also as representative of the major litigation in a wide range of areas I handled and supervised while serving as Assistant Attorney General for the Civil Division of the United States Department of Justice. In this case, the en banc United States Court of Appeals for the Fifth Circuit considered whether the qui tam provisions of the False Claims Act ("FCA"), which permit private citizens to pursue actions for fraudulent claims in the name of the federal government, violate the Constitution. After a panel of the Fifth Circuit found those provisions of the FCA to be unconstitutional, the United States intervened to defend the constitutionality of the qui tam mechanism before the en banc court of appeals. As Assistant

Attorney General, I led the government's intervention effort and argued the case on behalf of the United States at the en banc court. After argument, as we requested, the en banc court reversed the panel decision and upheld the constitutionality of the qui tam provisions. Specifically, the en banc court held that the qui tam provisions do not violate the constitutional doctrine of separation of powers because the FCA itself ensures that the Executive Branch retains significant control over any litigation brought by a qui tam relator. Likewise, the en banc court of appeals held that the FCA's qui tam provisions do not violate the Appointments Clause of the Constitution because qui tam relators do not qualify as "officers" under that Clause.

Among my co-counsel at the Department of Justice was Douglas Letter, 950 Pennsylvania Ave., N.W., Washington, D.C. 20530, (202) 514-2000. Jim M. Purdue, Sr. argued for the plaintiff at the en banc court of appeals. His current address and telephone number are Purdue & Kidd LLP, 2727 Allen Pkwy, Houston, TX 77019, (713) 520-2500. William Joseph Boyce argued for the defendant Baylor College of Medicine at the en banc court of appeals. He is now a Justice on Fourteenth Court of Appeals of Texas. His current address and telephone number are 1307 San Jacinto, 11th Fl, Houston 77002, (713) 655-2800. Numerous other counsel represented amici curiae.

8. *Turner Broadcasting Systems, Inc. v. United States*, 512 U.S. 622 (1994); *Turner Broadcasting System, Inc. v. Federal Communications Commission*, 819 F. Supp. 32 (D.D.C. 1993); 810 F. Supp. 1308 (D.D.C. 1992). In this case, the cable television industry challenged the "Must Carry" provisions of the Cable Television Consumer Protection and Competition Act of 1992 (generally known as the "Cable Act") under the First Amendment. Those provisions require cable operators to carry local broadcast signals and to give them certain priority. I represented the National Association of Broadcasters ("NAB"), which intervened as a defendant to support the constitutionality of the provisions, from shortly before the Act was signed into law until I left Jenner & Block in 1994. The case was originally litigated before a three-judge district court in the District of Columbia, comprised of Judge Stephen Williams of the Court of Appeals for the District of Columbia Circuit, and District Judges Thomas Penfield Jackson and Stanley Sporkin. Because the United States initially declined to defend the constitutionality of these provisions, NAB became the lead defendant in these proceedings, where we prevailed based upon the legal theories advanced in NAB's briefs. The plaintiffs appealed this ruling to the United States Supreme Court, where NAB's legal theories again were vindicated and the matter was remanded to the District Court for further proceedings. Eventually, after motions for summary judgment in the district court and another appeal to the Supreme Court, the "Must Carry" provisions were upheld. I was second chair throughout the first round of proceedings—in the first district court proceedings and the first appeal to the Supreme Court. My primary responsibilities included development of our legal arguments and the briefing of those arguments. NAB's approach was largely adopted by both courts. I had left Jenner & Block to join the Defense Department by the time the first Supreme Court decision was handed down, and thus played no role in the proceedings on remand or the second round of Supreme Court litigation (although I played a major role in briefing the first Supreme Court case).

Lead co-counsel in the matter for NAB was Bruce J. Ennis, Jr. of Jenner & Block. Mr. Ennis passed away in 2000. Donald B. Verrilli, Jr. of Jenner & Block, 1099 New York Avenue, N.W., Suite 900, Washington, D.C. 20001, (202) 639-6095, also played a significant role as co-counsel.

Kathleen M. Sullivan, Stanley Morrison Professor of Law, Stanford Law School, Crown Quadrangle, 559 Nathan Abbott Way, Stanford, CA 94305, (650) 725-9875, was of counsel for NAB in the Supreme Court. Many lawyers participated in this matter for many parties. Among the most active were the following: for the United States at the trial court level, Theodore C. Hirt and John R. Tyler, Civil Division, U.S. Department of Justice, 601 E. St., N.W., Washington, D.C. 20530; for the Association of America's Public Television Stations, Mark H. Lynch, Covington & Burling, 1201 Pennsylvania Ave., N.W., Washington, D.C. 20044 (202) 662-5544; for the Association of Independent Television Stations, the Honorable Rex E. Lee, deceased, and Carter G. Phillips, Sidley & Austin, 1501 K Street, N.W., Washington, D.C. 20005, (202) 736-8000; for Turner Broadcasting Systems, Inc., Bruce D. Sokler, Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C., 701 Pennsylvania Avenue N.W., Washington, D.C. 20004, (202) 434-7303; for Time Warner, Robert D. Joffe, Cravath, Swaine & Moore, Worldwide Plaza, 825 Eighth Avenue, New York, N.Y. 10019, (212) 474-1000; for the National Cable Television Association, Joel I. Klein, now New York City Schools Chancellor, 52 Chambers Street, New York, N.Y. 10007, (212) 374-5141, and H. Bartow Farr, Farr & Taranto, 1150 18th Street, N.W., Washington, D.C. 20036, (202) 775-0184.

9. *Maryland v. Craig*, 497 U.S. 836 (1990). In this case, the United States Supreme Court upheld a Maryland statutory procedure in which children who are the victims of sexual abuse need not testify in open court and directly face their accusers, but may instead appear through live, one-way, closed circuit television. To invoke the procedure, the trial judge must "first determin[e] that testimony by the child victim in the courtroom will result in the child suffering serious emotional distress such that the child cannot reasonably communicate." The State Court of Appeals had voided a conviction based on such testimony, on the grounds that it violated the convicted defendant's rights under the Confrontation Clause of the Sixth Amendment. It also ruled that before the procedure may be invoked, the child must first take the stand and exhibit the emotional distress and inability to communicate required by the statute. In late 1989 and 1990, I was sole counsel in the case for the American Psychological Association ("APA"), which appeared as an amicus curiae, and argued that "the State has a compelling interest in protecting a vulnerable child victim-witness, . . . and that it is not necessary in every case to subject a young child victim-witness to the ordeal of attempting testimony face-to-face with the defendant before allowing the child to testify by means of one-way or two-way closed-circuit television." My brief presented a body of scientific literature that supported the contention that face-to-face testimony could be particularly psychologically damaging to a child witness who has suffered sexual abuse, and can be less valuable to the truth-seeking process than if the victim did not have to face the defendant in person. It also argued that experts can evaluate in advance the likely effect on a particular child witness of a face-to-face confrontation with his or her accused abuser. In an opinion by Justice Sandra Day O'Connor, the Supreme Court upheld the statute and reinstated the conviction. In the course of her opinion, at two critical junctures, Justice O'Connor relied explicitly on the APA's brief, as well as the authorities it presented and its reasoning. *See* 497 U.S. at 855, 857. I had no co-counsel on the brief. Counsel for other parties, as listed in the Supreme Court opinion, included J. Joseph Curran, the then-Attorney General of Maryland (current address and telephone number unknown), William H. Murphy, Jr., counsel for the defendant, 1 South Street, 23rd Floor, Baltimore, Maryland 21202, (410) 539-6500, and numerous other attorneys on behalf of other amici curiae.

10. *MacHovec v. Council for the National Register of Health Service Providers in Psychology*, 616 F. Supp. 258 (E.D. Va. 1985). In this antitrust action, several providers of mental health services sued the American Psychological Association (“APA”) and another non-profit organization, which published a register of health service providers in psychology. The plaintiffs alleged that APA and the other organization had conspired to set anticompetitive standards for listing, which excluded plaintiffs in alleged violation of the antitrust laws. In 1984-1985, I represented APA, and after the conclusion of extensive discovery, I drafted and argued the APA’s successful motion for summary judgment disposing of all allegations. Among the significant holdings in the case, Judge Cacheris concluded that the provision of accurate information about the credentials of health service providers likely enhanced competition, and in any event could not be judged under a per se rule of invalidity. *Id.* at 270-71. Co-counsel for APA included Donald N. Bersoff, now Professor of Law Emeritus at Villanova Law School, 299 North Spring Mill Road, Villanova, PA 19085, (610) 519-7000. Lead counsel for co-defendant National Register of Health Service Providers in Psychology was Clifford Stomberg of Hogan & Hartson, 555 Thirteenth Street, N.W., Washington, D.C. 20004, (202) 637-5600. Lead counsel for the plaintiffs was David Barmak, then of Sherman, Meehan, Curtin & Ain (current address and telephone number unknown).

17. **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. Please 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.)

Since November 2008, I have been on a sabbatical from my law firm pursuant to its established policies allowing lawyers who have worked at the firm for at least seven years to take up to a three month sabbatical at full compensation. During that period, I have served without remuneration as Agency Liaison to the U.S. Department of Justice for President-Elect Obama’s transition team. In that capacity, I led a team of volunteers whose mission was to identify the major issues faced by the Department at this juncture and options for dealing with them. The team has met with Congressional staff, representatives of the public, the business community, non-profit organizations, and politically-appointed and career employees of the Department itself.

At WilmerHale since 2001, I have been a partner in the Litigation Department, and for much of that time have served as co-chair of the Government and Regulatory Litigation Practice Group or predecessors of that practice group. My practice has focused on high-stakes disputes with complex legal and policy dimensions and serious financial implications. Representative matters include national and international class actions and government enforcement actions under regulatory regimes such as the antitrust or competition laws, the False Claims Act, anti-discrimination laws, and export control laws; cases raising issues of public or private international law, such as enforcement of foreign judgments, anti-suit injunctions, and investor-state disputes; and litigation concerning the enforcement of federal or state statutes, including federal commerce clause, preemption, equal protection, due process, expropriation issues and the First Amendment.

During this period, I handled a significant number of litigation matters that either were resolved short of a judgment or did not involve litigation. For example, I represented Deutsche Lufthansa Airlines and subsidiaries in two antitrust suits, one of which was resolved by settlement and the second of which continues, though significant portions have been amicably resolved. In the first, Lufthansa and other carriers were sued by a class of U.S. travel agents who contended that the air carriers had conspired to eliminate certain agent commissions on air fares. After extensive litigation, Lufthansa reached a class settlement, which was upheld by the United States District Court for the Eastern District of North Carolina. In the ongoing matter, pending in the Eastern District of New York, a purported class of purchasers of air cargo services alleges that various air carriers, including my clients, conspired to fix the price of international air cargo in various ways. My client brought the underlying facts to the attention of U.S. and foreign competition authorities, including the U.S. Department of Justice, and has continued to cooperate with those authorities. Accordingly it is the "leniency applicant" in the U.S. antitrust action. I negotiated a settlement of all claims relating to commerce to, from, or within the United States, which is pending approval in the federal court. Pursuant to the proposed agreement, my client agreed to pay a substantial sum and to cooperate fully with the class as the litigation progresses. Aspects of this matter are also pending in other courts around the world, including Canada, the United Kingdom and Australia.

Other major matters have included:

- Joint criminal and civil investigations under the False Claims Act for financial services companies; the precise details and identities of the clients are subject to privilege, and the matters are ongoing.
- An investor-state arbitration on behalf of Shell Oil subsidiaries against Nicaragua, concerning the Nicaraguan courts' seizure of Shell Oil's intellectual property, including its trademarks, to pay enormous judgments entered by the courts there; following the filing of the arbitration, Nicaragua effectively confessed error and the appellate courts overturned the seizure.
- Representation of Merck and Co. with respect to a \$200 million dispute pending in the courts of Ecuador.
- Defense of a putative class action brought against Fannie Mae in September 2002 alleging that its automated underwriting program had the effect of discriminating against African Americans; following initial discovery and a motion to dismiss, in November 2004 the named plaintiff voluntarily dismissed her suit.
- Advice to PhRMA about a range of federal law issues.
- Advice to Amtrak about a range of confidential legal matters and filing an as-yet unresolved arbitration on Amtrak's behalf against the Union Pacific Railroad for alleged breach of contractual commitments.
- Representation of Darick Walker, an inmate on death row in Virginia, in ongoing habeas litigation challenging the lawfulness of his sentence and related issues.

During this period, with co-authors I have written on various issues involving international law, including international discovery and investor-state arbitration.

Lobbying Activities: I was registered as a lobbyist in the State of Vermont from March 2007 to January 2008 on behalf of the Pharmaceutical Research & Manufacturers of America (PhRMA), because this was required under state law for me to contact the Attorney General's office about a pending legislative proposal similar to a D.C. statute I had successfully challenged as litigation counsel for PhRMA. See Item 3 in my response to Question 16.

At the Department of Justice from 1995-2001, I had the opportunity to pursue significant legal activities in several contexts. As Assistant Attorney General for the Civil Division and Acting Assistant Attorney General between February 1, 1999 and January 20, 2001, I directed the component that represents the United States Government, its departments and agencies, members of Congress, cabinet officers, and other federal employees in major litigation. The portfolio of the Division reflects the diversity of government activities, including the defense of challenges to federal statutes and executive action, national security issues, benefit programs, energy policies, commercial issues, fraud on the government, employment discrimination, accident and liability claims, and violations of immigration and consumer protection laws. The litigation I supervised primarily was conducted in federal district courts and courts of appeal throughout the United States. Among my duties were handling personnel issues, managing some of the more significant litigation handled by the division, determining whether settlements of claims of and against the government are in the best interests of the United States, deciding whether to recommend the appeal of adverse decisions in the federal courts, attempting to ensure that the Division is as responsive as possible to Congress when it seeks information about its activities, and arguing certain major appeals. I supervised the initiation of the U.S. Government's lawsuit against the major manufacturers of cigarettes in September 1999. As the Assistant Attorney General, I adopted a practice of regular meetings with the Relator and Defense Bars in False Claims Act matters, in order to improve communication concerning the operation of this vital statute. In addition, I served as the governmental representative on the Council of the Section of Litigation of the American Bar Association and on the Advisory Committee on the Civil Rules of the United States Judicial Conference.

As Chief of Staff to the Attorney General from 1998-99, I managed the Attorney General's office and assisted her in her management of the Department of Justice as a whole, including the criminal, law enforcement, civil and grant making components. In addition, as Chief of Staff and as Counselor to the Attorney General (from 1997-98), I advised the Attorney General on a range of legal and management issues. As Associate Deputy Attorney General from 1995-97, I played a similar role for Deputy Attorney General Jamie S. Gorelick and then-Acting Deputy Attorney General Seth P. Waxman. In these roles, I had primary responsibility for directing cross-component (and in some cases cross-agency) working groups that produced policy recommendations with respect to the Department's Indian Country Law Enforcement Initiative and Hate Crime Initiative, among other topics. I monitored significant matters in the civil litigating divisions, the Solicitor General's office and Office of Legal Counsel, and advised the Attorney General and Deputy Attorney General concerning those matters, as well as certain criminal and national security issues and matters. I also coordinated the Department's participation with respect to the proposed tobacco legislation in the first few months of 1998, and testified about the Administration's position in both the Senate and House Judiciary Committees.

Throughout my years at the Department of Justice, I had a leading role in working with the Bar and the Conference of State Chief Justices on issues of mutual concern, including the issues of contacts with represented parties and the rules of ethics that should apply in federal courts and to federal attorneys. For a discussion of my efforts, see *Who Can Lawyers Talk To?*, 84-Aug. A.B.A. J. 101 (1998); *Center Update*, 9 No. 3 Prof. Law 15,22 (1998); *Conference Draws Record Attendance*, 7 No. 4 Prof. Law 20, 23 (1996). I represented the Department in efforts to find common ground that would accommodate the special requirements and obligations of federal prosecutors while upholding the highest ethical standards of the profession.

As Deputy General Counsel and Legal Counsel at the Department of Defense, I coordinated and supervised litigation activities of the Office of the Secretary of Defense, the military departments, and the defense agencies. I participated in litigation as varied as the activities of the Department of Defense—including the defense of major personnel policies, cases involving national security and highly classified technology, environmental cases, Freedom of Information and Privacy Act cases; major procurement cases, and other issues. I had primary responsibility for advising the Secretary and Deputy Secretary of Defense, through the General Counsel, concerning legal issues related to personnel security, information and privacy policy, constitutional issues, ethics, the homosexual conduct policy and other areas. I was the Department's senior official responsible for policy related to Alternative Dispute Resolution, and put in place a policy and mechanism to support the more efficient and equitable resolution of disputes throughout DOD. I supervised the Defense Office of Hearings and Appeals, an agency with more than 70 employees, including administrative judges and attorneys, which adjudicates challenges concerning security clearances for contractor personnel. I also supervised the Department's Standards of Conduct Office. In addition, I handled special projects for the General Counsel, including personnel issues involving senior officials, oversight of the Federal Advisory Committee on the Investigative Capacity of the Department of Defense, and a congressional investigation into alleged intelligence agency abuses in Central America. In most of these pursuits, I worked closely with the Judge Advocates General of the Military Departments, as well as their General Counsels.

Prior to my government service, as a younger lawyer in private practice, I handled or assisted in handling a substantial number of matters that were resolved through negotiation. I represented both plaintiffs and defendants in personal injury cases. On the plaintiff side, I represented the survivors and estates of a New Jersey grandmother and her grandson who were killed when an engineer under the influence of marijuana caused a collision between the Amtrak train on which they were riding and the Conrail engines he was driving just northeast of Baltimore in January 1987. I achieved a multi-million dollar recovery for my clients. On the defense side, I handled the defense of a Washington, D.C. psychologist accused of malpractice. I took the deposition of the plaintiff, after which the case was resolved through a settlement my client viewed as favorable.

I had an active appellate and trial-level constitutional practice. In the Supreme Court, I frequently drafted amicus briefs on behalf of my client, the American Psychological Association, which presented "Brandeis brief" information reflecting the state of academic and professional knowledge in the field of psychology in an effort to shed light on the issues before the Court. Typically, I worked together with a panel of experts selected by the client to develop and present this information, together with legal authorities suggesting its significance to the issues before the Court. As noted above, some of these briefs appeared to be of assistance to members of the Court.

I also filed amicus briefs on behalf of media and pro-free-speech organizations such as the American Booksellers Association, the American Library Association, and the Freedom to Read Foundation, as well as for other organizations and corporations.

My litigation and appellate practice during 1983-1994 also involved First Amendment and other constitutional issues. Like most of the amicus briefs, these were fee-for-service matters, not pro bono representations. Examples included a successful suit on behalf of the American Council of the Blind, the American Library Association and Playboy Enterprises against the Librarian of Congress to enjoin defunding of the Braille edition of Playboy, *American Council of the Blind v. Boorstin*, 644 F. Supp. 811 (D.D.C. 1986); a largely successful suit on behalf of the American Booksellers Association and Playboy Enterprises against members of the Attorney General's Commission on Pornography to enjoin publication of a "blacklist" of retail businesses that sold Playboy Magazine, *Playboy Enterprises, Inc. v. Meese*, 746 F. Supp. 154 (D.D.C. 1990); 639 F. Supp. 581 (D.D.C. 1986); a successful lawsuit on behalf of PHE, Inc. challenging a Justice Department strategy of multiple simultaneous obscenity prosecutions, *PHE, Inc. v. United States Department of Justice*, 743 F. Supp. 15 (D.D.C. 1990); *United States v. PHE, Inc.*, 965 F.2d 848 (10th Cir. 1992); and lawsuits, with mixed success, on behalf of such clients as the American Library Association, the American Booksellers Association, the National Association of Artists' Organizations, and Penthouse International Ltd. challenging on First Amendment grounds federal recordkeeping requirements imposed on producers of sexually explicit images, *American Library Association v. Barr*, 713 F. Supp. 469 (D.D.C. 1989); 956 F.2d 1178 (D.C. Cir. 1992).

In the area of property rights, as a young lawyer I represented landowners who had helped develop an early commercial and entertainment complex known as "Underground Atlanta." That venture had failed and the City sought to condemn their property and turn it over to other developers for a new commercial project in the same location. We developed a challenge to this transfer of property from one private landowner to another, *Atlanta Peachtree Associates Ltd v. City of Atlanta*, Civil Action File No. D-21598, Superior Court of Fulton Co, Georgia, as well as to the financing arrangements that the City had developed for the new project. Eventually, we were able to negotiate a settlement with the City, under which our clients obtained an equity position in the new development.

I also handled a number of cases involving education, professional credentialing, accreditation and ethics. For example, in *Budwin v. American Psychological Association*, 24 Cal. App. 4th 875, 29 Cal. Rptr. 453 (Third Dist. 1994), I was lead counsel for the American Psychological Association in a suit brought by a member contesting an adverse ethics action based on false and misleading expert testimony in a child custody proceeding. The state court of appeals ruled that California law permits a private association to discipline its member for making misrepresentations in the course of an official proceeding and recognized the broad authority under California law of private membership organizations to adopt regulation as its membership sees fit.

In addition to litigation, I provided legal counseling and advice to many of my clients. For the American Psychological Association, for example, I advised the chief operating officer, general counsel, and Board of Directors of the Association on a variety of legal issues. I was principal counsel to the APA's accreditation and ethics offices, advising both on the operation of their administrative adjudicatory processes. I helped design new procedures for APA's ethics process.

I also presided as legal counsel at numerous disciplinary hearings conducted by the Ethics Committee of the Association to resolve complaints submitted against its members by patients, other psychologists, and members of the public, and advised the panelists on relevant legal principles. For the Accreditation Committee, I similarly advised on the handling of particular matters and assisted the Chair at accreditation hearings.

I was general counsel (at a reduced billing rate) to the Chesapeake Institute, a non-profit organization in Wheaton, Maryland, that provided therapy and counseling to the victims of child sexual abuse. In addition to advising the director concerning the gamut of legal issues faced by the Institute, I served pro bono as legal advisor to the Institute's "Sponsor-a-Child" program to develop a fund to support the provision of such services to child victims unable otherwise to afford them. This work was related by subject matter to the amicus brief I wrote for the American Psychological Association in *Maryland v. Craig*, discussed in answer to Question 16.

Finally, I co-wrote a book on the laws affecting trade and professional associations that was published in 1995, *Legal Risk Management for Associations* and a handful of articles on a variety of subjects, set forth above in response to Question 13.

18. 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, please provide four (4) copies to the committee.

Between 1992 and 1995, I co-taught a seminar at Georgetown University Law Center called "Theories of Free Speech." We addressed major themes in First Amendment jurisprudence from the perspective of legal theory. I do not have a syllabus.

19. 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

If I am confirmed, I will resign as a partner of Wilmer Cutler Pickering Hale and Dorr LLP. Under the WilmerHale partnership agreement, I will be entitled to be fully compensated according to my shares in the Firm for whatever period of time I remain a partner. In April 2009, I will receive from the Firm a final distribution of my share of 2008 Firm profits (\$358,247). In addition, the Firm will pay me a fixed amount of Firm income for 2009, calculated on the basis of the Firm's budgeted share value for 2009, and prorated for the number of days in 2009 that I am a partner in the Firm. The Firm will pay this 2009 income to me by April 15, 2009, but it will reserve \$26,200 to cover taxes that may be due in Germany and other jurisdictions based on certain routine reconciliations performed by the Firm and foreign tax authorities over the next three years. At the end of the three-year period, if the Firm has paid less than \$26,200 for taxes on my behalf, it will refund to me the difference between \$26,200 and the taxes it has paid. Conversely, if the Firm pays more than \$26,200 for taxes on my behalf, I will reimburse the Firm for the excess. The Firm

will also repay all of my paid-in capital to me in April 2009 (\$413,408.35). In addition, upon my separation from the firm, the balance of my WilmerHale defined benefit plan investment (approximately \$381,360) will be withdrawn from the plan and rolled over into a newly established Individual Retirement Account (IRA).

20. Outside Commitments During Service: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No.

21. 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, patents, 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.)

Please see attached copy of financial disclosure report.

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

23. Potential Conflicts of Interest:

- a. Identify any affiliations, pending litigation, financial arrangements, or other factors that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.
- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics officials to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

24. 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. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

Since joining WilmerHale in 2001, I have devoted nearly 1,400 hours to pro bono work (averaging more than 150 hours per year), including more than 60 hours of pro bono work in every year except for two. Selected pro bono matters include:

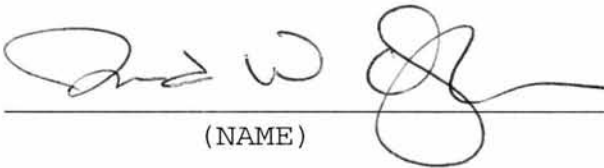
- Representing Christopher Simmons, a death-row inmate who had been convicted of a murder that occurred when he was 17 years old, in a successful Supreme Court challenge to the imposition of the death penalty on juvenile offenders. My representation of Mr. Simmons is described more fully in my answer to Question 16.
- Representing Thomas Joe Miller-El, a prisoner who had been convicted of murder and sentence to death by a jury from which the prosecutors had struck 10 of 11 eligible African-American jurors without giving plausible non-racial justifications, in the United States Supreme Court and the Texas state courts. My representation of Mr. Miller-El is described more fully in my answer to Question 16.
- Representing Tony Saffold, a prisoner in California, in a successful United States Supreme Court challenge to the district court's dismissal of his federal habeas petition, in which I presented argument to the Supreme Court.
- Representing Darick Walker, a death-row inmate in Virginia, in federal district court, the United States Court of Appeals for the Fourth Circuit, and the United States Supreme Court.

Prior to my government service and while at Jenner & Block, I also performed a significant amount of pro bono work. Representative pro bono matters included providing legal services at a reduced fee to the Chesapeake Institute, a non-profit organization located in Wheaton, Maryland, that provided therapy to the victims of child sexual abuse. In addition to this paid work, I served pro bono as legal counsel to the Institute's "Sponsor-a-Child" program, which sought to raise money to pay for therapy for sexually abused children not otherwise able to afford treatment.

AFFIDAVIT

I, David W. Ogden, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

14 January 2009
(DATE)


(NAME)



Mary S. Booth
(NOTARY)

My commission expires Feb 28, 2011