

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

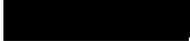
Richard Gus Seeborg

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

United States District Judge for the Northern District of California

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

Office: United States District Court
 280 South First Street
 San Jose, CA 95113

Residence: 

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

1956; Landstuhl, Germany

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

1978-1981, Columbia University School of Law; J.D., May, 1981

1974-1978, Yale College; B.A. (History) May, 1978

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2001 – Present

United States District Court for the Northern District of California
United States Magistrate Judge

1998 – 2001
Morrison & Foerster
755 Page Mill Road
Palo Alto, CA 94304
Equity Partner

1991 – 1998
Office of the United States Attorney
280 South First Street
San Jose, CA 95113
Assistant United States Attorney

1982 – 1991
Morrison & Foerster
425 Market Street
San Francisco, CA 95104
Associate (1982-1987)
Equity Partner (1987-1991)

1981 – 1982
United States District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, DC 20001
Law Clerk to the Honorable John H. Pratt

July – August 1980
McCutchen, Brown, Doyle & Enerson
Three Embarcadero Center
San Francisco, CA 94105
Summer Law Clerk

May – July 1980
Kirkland & Ellis
1001 K Street
Washington, D.C. 20001
Summer Law Clerk

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I did not serve in the military.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

College: Phi Beta Kappa; Summa Cum Laude; Distinction in the History Major

Law School: Harlan Fiske Stone Scholar (2nd and 3rd years)

U.S. Attorney's Office:

- (1) Commendation by the U.S. Customs Service associated with search warrants in a heroin drug smuggling case. (U.S. Attorney's Bulletin, 1/15/93)
- (2) Commendation by the Director of the Office of International Affairs, Department of Justice, in connection with the extradition of Steven Jensen to Canada. (U.S. Attorney's Bulletin, 5/15/93)
- (3) Commendation by the Internal Revenue Service in connection with the conviction of Dr. Frederick Slater on tax evasion charges. (U.S. Attorney's Bulletin, 2/15/93)
- (4) Commendation by the Special Counsel for Financial Institution Fraud, Department of Justice, in connection with U.S. v. Hopkins, et al. (U.S. Attorney's Bulletin, 5/15/94)

Volunteer Service Award 1987, 1988. San Francisco Department of Social Services (Chair of Morrison & Foerster Holiday Toy Drive).

U.S. Speaker and Specialist Grant, U.S. Department of State to participate in an IPR enforcement program in Italy (March 27–April 3, 2004)

Santa Clara County Trial Lawyers' Association - Federal Judge of the Year 2009

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Santa Clara County Bar Association 1991-Present (Chair, Federal Courts Committee 2003-2005)

Lawyer Representative to the Ninth Circuit Judicial Conference 1996-1999

Federal Magistrate Judges Association 2001-present

San Francisco County Bar Association 1982-1991

10. Bar and Court Admission:

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

State of California; January 8, 1982

No lapses in membership until appointed as Magistrate Judge in February 2001. Under the Constitution of California, a person serving as a judge of a court of record is not considered to be a member of the State Bar while in office. See California Constitution Article 6, § 9.

- 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 District Court for the Northern District of California, 1982

United States District Court for the Eastern District of California, 1983

United States Court of Appeals for the Ninth Circuit, 1984

United States Court of Appeals for the Third Circuit, 1984

No lapses in membership until appointed as Magistrate Judge in February 2001. Under the Constitution of California, a person serving as a judge of a court of record is not considered to be a member of the State Bar while in office. See California Constitution Article 6, § 9.

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

I have served as chair of the Northern District of California's Education Committee and also have been a member of the Rules Committee, the Non-Appropriated Funds Committee, the CJA Administration Committee, and as Liaison Judge to the Admiralty Advisory Lawyers' Group appointed by the Chief Judge. I was responsible for the creation and implementation of the assisted settlement program in the San Jose Division which selected and trained a panel of local lawyers prepared to accept appointment on a pro bono basis to assist pro se litigants in judicially supervised settlement conferences.

Beyond my responsibilities within the district, in 2003 I was appointed by the Chief Judge of the Ninth Circuit to the Ninth Circuit Jury Instructions Committee, a group consisting of six district judges and one magistrate judge charged with the task of revising the Ninth Circuit pattern jury instructions for both civil and criminal matters. Also, since 2004 I have served as a member of the Electronic Public Access Working Group, a committee selected by the Administrative Office of the United States Courts to consult on improving public access to electronically filed court documents.

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

I am not now nor have I ever been a member of any organization that discriminates on the basis of race, sex, religion, or national origin.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Co-author, Federal Pretrial Civil Procedure in California, 4 volumes, Matthew Bender & Co., Inc. (2004)

Co-author, Chapter 42, "Trade Libel: California Business Jury Instructions," Matthew Bender & Co., Inc. (1995)

As one of seven federal judicial officers on the Ninth Circuit Jury Instructions Committee, I co-authored the Ninth Circuit Manual of Model Jury Instructions, Civil, published by Thomson & West in 2007.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None

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

Presentation Regarding Intellectual Property Case Management; 11/17/08; Justice Center, Santiago, Chile; (Organized by the U.S. Embassy, Santiago)

Panelist-- *Challenges in Enforcement of IPR*; 3/10/08-3/12/08; High Court Karnataka, Bangalore, India; (Sponsored by the U.S. Department of Justice)

Instructor-- *Judicial Mediation*; 12/3/07-12/6/07; Malaysian Supreme Court, Putrajaya, Malaysia; (Sponsored by The Judicial and Legal Training Institute -- Government of Malaysia)

Opening Remarks, *IPR Enforcement in India & the Creation of an IPR Court*, 8/2/07, Institute for the Study and Development of Legal Systems, San Francisco, CA.

Panelist-- *IPR Seminar for Judges and Public Prosecutors*; 6/6/07-6/8/07; Bangkok, Thailand; (Sponsored by ASEAN and the U.S.P.T.O.)

Speaker-- *The Art of Mediation*; 2/27/07; High Court Karnataka, Bangalore, India (Sponsored by the U.S. Department of Justice)

Panelist-- *Perspectives on Patent Law and Innovation*; 2/16/07; Federal Circuit Bar Association, Berkeley, CA

Panelist-- *Case Management and ADR*; 8/21/06-8/30/06; Various presentations in the High Courts of Delhi and Bangalore, India; (sponsored by the U.S. Department of Justice)

Panelist-- *Perspectives on Patent Law and Innovation*; 2/18/05; Federal Circuit Bar Association, Berkeley, CA;

Panelist-- *Best Practices in Federal Court*; 11/2/04; Santa Clara County Bar Association, San Jose, CA

Panelist-- IPR Judicial Workshop; 3/31/04-4/2/04; Montecatini, Italy; (sponsored by the U.S. Embassy, Italy)

Panelist-- *A View from the Trenches: Nuts and Bolts of Settlement Conferences with Magistrate Judges*; 4/20/04; Northern District of California Practice Program, San Francisco, CA

Panelist-- Various programs with the Indian Judiciary and Bar regarding case management; 1/22/03-1/31/03; Mumbai, Ahmenabad, and Delhi, India; (sponsored by the Institute for the Development of Legal Systems)

Panelist-- *Ethical Issues in Judicial Mediation*; 10/15/02; Santa Clara County Bar Association, San Jose, CA;

Panelist-- *Ethics in the Valley: an Ethics Roundtable*; 2/18/02; Santa Clara County Bar Association and Stanford Law School; Palo Alto, CA

Panelist-- *Standards of Professionalism: What's Expected in Federal Court*; 12/06/01; Santa Clara County Bar Association, San Jose, CA

Panelist-- *Investigating Business Fraud--the Perspective of Counsel*; 2/25/00; Institute of Internal Auditors, Oakland, CA

Panelist-- Shareholder Litigation Panel; 5/18/99; Financial Executives Institute, Santa Clara Valley Chapter, Palo Alto, CA

Panelist-- Securities Litigation Presentation; 3/24/99; Bar Association of San Francisco, San Francisco, CA

Panelist-- *An Update on Insider Trading Issues*; 2/23/99; The SEC Institute, San Francisco, CA; and 4/24/98, The SEC Institute, San Diego, CA

Panelist-- *When Do Corporations and Their Officers and Directors Become Targets of Criminal Enforcement of the Securities Laws?*; 6/4/98; Securities Litigation and Arbitration National Institute, San Francisco, CA

Panelist-- *Corporate Guidelines*; 5/1/97; Federal Bar Association and The U.S. Sentencing Commission; San Francisco, CA

Panelist-- *Expert Witnesses in the Criminal Case*; 7/26/96; Continuing Education of the Bar, San Jose, CA

Panelist-- *What Civil Lawyers Need to Know When the FBI Knocks on Your Client's Door*; 12/1/95; California State Bar, Criminal Law Section, San Diego, CA

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

In addition to the articles listed below, there may have been other occasions during the time I served as an Assistant United States Attorney when I responded to media inquiries or commented on a criminal case.

Contra Costa Times, March 28, 2005, "Jane Seeborg Quietly Gave Strength to the Symphony"

Los Angeles Daily Journal, May 16, 2004, "Magistrate Judge Is Patience Personified"

San Francisco Daily Journal, April 19, 2004, "Seeborg Is Following His True Calling"

The Recorder, March 27, 2001, "Richard Seeborg: To the Magistrate Judgeship Born"

The San Francisco Chronicle, November 16, 1999, "Hollow Words: Federal Prosecutors Say White-Collar Crime Is a Priority, but They Have Filed Only a Few Charges Against Silicon Valley Executives"

Business Journal-San Jose, May 14, 1999, "Tech Firms Watching Trade Secret Trials"

Recorder, January 27, 1998, "High Tech Prosecutor Decides to Move On"

San Jose Mercury News, August 15, 1997, "Man Held in Power Strip Scam"

San Jose Mercury News, June 28, 1997, "Clinton Names Black S.J. Judge to Appeals Court: Democratic Convert Faces GOP Scrutiny"

The San Francisco Chronicle, December 5, 1996, "S.J. Banks Absolved In Loan Scam: Plaintiffs Lose Ruling in \$60 Million Swindle"

San Jose Mercury News, November 1, 1996, "Former Loan Broker Pleads Guilty to \$26 Million Ponzi Scheme"

The San Francisco Chronicle, November 1, 1996, "Leader of Ponzi Scheme Pleads Guilty in San Jose"

San Jose Mercury News, October 18, 1996, "Chip Maker Exec Pleads Guilty in Secrets Theft"

San Jose Mercury News, October 1, 1996, "Son Plans to Testify Against Father as Part of Plea Bargain in Fraud Case"

San Jose Mercury News, August 14, 1996, "U.S. Charges Silicon Valley Men with Stock Fraud"

San Jose Mercury News, August 14, 1996, "Fraud Alleged in Los Gatos Scorpion: Mortgage Execs Face New Charges"

San Jose Mercury News, February 29, 1996, "Judge Acquits Principals of the Failed Bank of Los Gatos"

San Jose Mercury News, February 29, 1996, "Federal Judge Acquits Principals of the Failed Bank of Los Gatos: Fraud Case Tossed"

San Jose Mercury News, January 18, 1996, "Ex-Owner Indicted in High-Tech Case: Technology Allegedly Stolen from Firms"

San Jose Mercury News, August 5, 1995, "Bail Denied for Businessman in S.J. Investment Fraud Case"

San Jose Mercury News, August 3, 1995, "S.J. Man Indicted in Alleged Investment Scam Conspiracy: Fraud Charges Filed in Century Loan Case"

San Jose Mercury News, June 23, 1995, "Two More Indicted in Wire Fraud"

San Jose Mercury News, June 22, 1995, "Two Men Indicted for Wire Fraud"

The San Francisco Chronicle, June 6, 1995, "Father and Son Deported, Held in Mortgage Scam"

The San Francisco Chronicle, May 25, 1995, "Jury Indicts 2 Suspects In High-Tech Spy Ring: Case Involves Lam Research Drawings"

San Jose Mercury News, May 25, 1995, "2 Indicted in Technology Theft: Stolen Designs Were Allegedly Sold to Semiconductor Spares"

United Press International, May 25, 1995, "Feds Uncover Silicon Valley Spy Ring"

Business Journal-San Jose, April 17, 1995, "Foursome Found Guilty of Fraud Win Shot at New Trial"

San Jose Mercury News, April 4, 1995, "Alleged High-Tech Spy Ring Surfaces in Silicon Valley"

The Filipino Express, March 12, 1995, "Fil-Am Charged with Fraud and Money Laundering: Rodolfo Suaco is Charged with Cheating Investors Out of \$7 Million"

San Jose Mercury News, March 1, 1995, "Missing Man Accused of Investment Fraud"

The San Francisco Chronicle, February 28, 1995, "Peninsula Man Sought In Big Scam: Currency-Exchange Deal Cost Investors \$7 million"

San Jose Mercury News, January 19, 1995, "S.J. 'Con Artist' is Sentenced to Federal Prison, Bilked Elderly of \$700,000, Authorities Say"

San Jose Mercury News, September 2, 1994, "Chip Firm Employee Charged with Forgery, Money Laundering"

American Banker, May 13, 1994, "Judge Orders Retrial of Pebble Beach Exec and Four Others Convicted of Bank Fraud"

San Jose Mercury News, May 13, 1994, "Convictions Set Aside"

The San Francisco Chronicle, May 13, 1994, "New Trials Ordered in Bank Fraud Case"

National Mortgage News, May 9, 1994, "Former President of Ginnie Mae Faces California Trial"

The San Francisco Chronicle, April 29, 1994, "Redwood City Executive Accused of Bid Fraud"

San Jose Mercury News, February 26, 1994, "Trial to Begin for 5 Accused in Bank of Los Gatos Fraud"

The San Francisco Chronicle, November 4, 1993, "Broker Indicted In Insurance Scam"

The San Francisco Chronicle, May 4, 1993, "FBI Agents Seize Grenades In Search of Salinas Home"

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

I was appointed United States Magistrate Judge, United States District Court for the Northern District of California, and have served since February 2001.

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

Excluding cases in which I have entered judgment upon a stipulation, a motion to dismiss, or a motion for summary judgment, I have presided over approximately 14 cases that have gone to verdict or judgment.

- i. Of these, approximately what percent were:

jury trials? 75%; bench trials 25% [total 100%]

civil proceedings? 98%; criminal proceedings? 2% [total 100%]

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

See attached

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

- (1) *Technology Licensing Corporation v. Gennum Corporation*
No. C 01-04204 RS

This patent case involved conflicting claims of infringement and invalidity arising out of two patents held by Technology Licensing Corporation ("TLC") that described an invention which detected and synchronized video signals for broadcast on receiving equipment such as televisions. Gennum, a Canadian corporation, produced various chips that TLC claimed infringed its patents.

Shortly before the case was set for jury trial, I granted Gennum's motion excluding TLC's reasonable royalty methodology under a *Daubert* analysis that had the effect of reducing recoverable damages from approximately \$80 million to \$6 million. 2004 WL 1274391 (3/26/04). TLC thereupon withdrew its prayer for monetary damages and sought solely injunctive relief. I then granted Gennum's motion for a finding that TLC no longer maintained a right to a jury trial, but granted TLC's request to stay the action to afford it the opportunity to seek a writ of mandamus from the U.S. Court of Appeals for the Federal Circuit.

That Court granted the writ and subsequently issued an opinion affirming my decision that TLC had given up its right to a jury trial. *In re Technology Licensing Corporation*, 423 F.3d 1286 (Fed.Cir.2005).

I then presided over a several week bench trial resulting in an opinion and order in favor of Gennum finding non-infringement of TLC's patents. 2007 WL 1319528 (May 4, 2007). On October 10, 2008 the U.S. Court of Appeals for the Federal Circuit issued a published opinion affirming my decision in all respects. 2008 WL 4529095 (Fed. Cir. October 10, 2008)

Counsel for Gennum: J. Donald McCarthy
Duane Morris LLP
633 West Fifth Street, #4600
Los Angeles, CA 90071
213/689-7413

Todd R. Miller
Jones Day
555 South Flower Street, 50th Floor
Los Angeles, CA 90071
213/489-3939

Counsel for TLC: Timothy J. Vezeau
Michael A. Dorfman
Katten Muchin Rosenman LLP
525 West Monroe Street
Chicago, IL 60661
312/902-5200

(2) *Gregory Neal Grimes v. United Parcel Service*
No. C 05-01824 RS

Plaintiff, a mid-level manager with defendant United Parcel Service, brought an employment discrimination suit alleging that his employer failed to engage in the interactive process or to accommodate his mental disability. After a three-week jury trial, the jury rendered a verdict for the defendant. The remaining equitable claims under California Business and Professions Code § 17200 for unfair competition premised on Grime's argument that UPS had implemented an impermissible "100% healed" policy were tried to the Court. In ruling in favor of defendant, I found that plaintiff had not carried his burden of demonstrating the existence of such a policy at UPS. 2008 WL 2544777 (6/23/08). The case is currently on appeal to the United States Court of Appeals for the Ninth Circuit.

Counsel for Plaintiff: Kathryn Burkett Dickson
Dickson Ross
1970 Broadway, Suite 1045

Oakland, CA 94612
510/268-1999

Claudia B. Center
Legal Aid Society
600 Harrison Street, Suite 120
San Francisco, CA 94107
415/864-8848

Leslie Levy
Boxer & Gerson
300 Frank H. Ogawa Plaza, Suite 120
Oakland, CA 94612
510/835-8870

Counsel for Defendant: E. Jeffrey Grube
Kerri Harper
Paul Hastings Janofsky & Walker LLP
55 Second Street, 24th Floor
San Francisco, CA 94105
415/856-7000

(3) *Estate of Bojcic v. City of San Jose*
No. C 05-03877 RS

The mother and estate of Ziam Bojcic brought suit against police officer Donald Guess and the City of San Jose arising out of an altercation outside a Starbucks coffee shop which led to the officer shooting and killing Mr. Bojcic. The action, brought under Section 1983, alleged that the officer used excessive force against Mr. Bojcic in violation of his constitutional rights. After I granted summary judgment in favor of the City of San Jose on plaintiff's *Monnell* claim and denied summary judgment as to the officer, (2007 WL 2825656, 9/26/07), the case proceeded to jury trial. After a three-week trial, the jury returned a verdict in favor of the defendant officer. The case is currently on appeal to the United States Court of Appeals for the Ninth Circuit.

Counsel for Plaintiff: Randall H. Scarlett
Scarlett Law Group
536 Pacific Avenue
Barbary Coast Building
San Francisco, CA 94133
415/352-6264

Cal J. Potter III
1125 Shadow Lane

Las Vegas, NV 89102
702/385-1954

Counsel for Defendants: Clifford S. Greenberg
Steven B. Dippell
Office of the City Attorney
200 East Santa Clara St
San Jose, CA 95113
408/535-1900

- (4) *Facebook, Inc. v. ConnectU LLC*
No. C 07-01389 RS

Plaintiff Facebook brought suit claiming that defendant ConnectU engaged in common law misappropriation and violated various federal and state computer statutes by collecting e-mail addresses of Facebook's registered users and then soliciting those customers for its competing business. The case was actively litigated and presented first impression issues regarding personal jurisdiction on claims of internet hacking and the reach of state and federal computer statutes. *See*, Order Denying Defendants' Motion to Dismiss for Lack of Personal Jurisdiction (2007 WL 2326090, 8/13/07), and Order Granting Motion to Dismiss Claims (2007 WL 4249926, 11/30/07). The case ultimately settled prior to trial.

Counsel for Plaintiff: Neel Chatterjee
Orrick Herrington & Sutcliffe LLP
1000 Marsh Road
Menlo Park, CA 94025
650/614-7400

Counsel for Defendant: Scott R. Mosko
Finnegan Henderson Farabow Garrett & Dunner
Stanford Research Park
3300 Hillview Avenue
Palo Alto, CA 94304
650/849-6600

- (5) *Digital Envoy, Inc. v. Google, Inc.*
No. C 04-01497 RS

This action arose out of a dispute between the parties as to the scope of a license obtained by Google from Digital Envoy covering technology used to identify the geographic location of visitors to a website. Digital Envoy contended that its license did not permit Google to use the technology on its highly successful AdSense program whereby Google displayed advertisements on third party websites. Through a series of motions and orders, the case was progressively narrowed, culminating in an order I issued finding that the License Agreement

between the parties precluded the recovery of contract damages by Digital Envoy. 2005 WL 2999364 (11/8/05). *See also*, 2005 WL 2174958 (9/8/05) and 370 F. Supp 2d 1025 (ND Cal. 2005). The case ultimately settled prior to the entry of judgment.

Counsel for Plaintiff: Timothy Kratz
McGuire Woods LLP
1170 Peachtree Street, N.E., Ste 2100
Atlanta, GA 30309
404/443-5500

Counsel for Defendant: David H. Kramer
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304
650/493-9300

(6) *Roger S. Cripe, et al. v. City of San Jose*
No. C 96-20060 RS

A group of San Jose police officers who had sustained neck and back injuries brought an action against the City of San Jose. They claimed that the City's policy restricting to certain limited positions those officers who were disabled from serving on patrol assignments violated their rights under the Americans with Disabilities Act (ADA).

The case was initially assigned when filed in 1996 to the late U.S. District Judge William A. Ingram, who granted summary judgment in favor of the defendants. After the Ninth Circuit reversed that decision in 2001, on remand the parties all consented to have the case assigned to me for all purposes. I thereafter presided over a six week jury trial that resulted in a hung jury on the issue of the business necessity defense. The parties subsequently settled the case by way of a consent decree relative to positions available to disabled officers as well as a payment to the plaintiffs in the amount of \$750,000.

Counsel for Plaintiff John C. Stein
The Boccardo Law Firm LLP
111 W. St. John St., 11th Floor
San Jose, CA 95113
408/298-5678

Frank A. Jelinch
Law Offices of Frank A. Jelinch
20045 Stevens Creek Blvd., #2-G
Cupertino, CA 95014
408/366-6300

Counsel for Defendant: Clifford S. Greenberg
Office of the City Attorney
200 East Santa Clara Street
San Jose, CA 95113
408/535-1900

David M. Rollo
County Counsel's Office
70 West Hedding St.
East Wing, 9th Floor
San Jose, CA 95110
408/299-5904

7. *National Railroad Passenger Corp. v. Valley Pallet Recyclers, Inc.*
No. C 00-21123 RS (and Related Cases)

This action arose out of a collision which occurred on November 4, 1999 between a train and a semi-tractor and trailer at an intersection of the Union Pacific Railroad mainline in Salinas, California. Numerous actions and cross-actions were filed by property owners on which the crossing was located. The case was initially assigned to U.S. District Judge James Ware and I acted as the settlement judge, conducting several day-long sessions with all parties. That process resulted in a settlement with all parties with the exception of the property owner, Valley Pallet Recyclers. At that point, all remaining parties requested and consented to my acting as presiding judge for trial. A one-week jury trial ensued with the jury finding that the actions of Union Pacific and the truck driver were the "substantial factors" leading to the accident, apportioned liability at 30% (driver) and 70% (railroad) and declined to find that Valley Pallet Recyclers' conduct constituted a substantial factor for which damages should be assessed.

Counsel for Plaintiffs: B. Clyde Hutchinson
1999 Harrison St., #2600
Oakland, CA 94612
510/433-2600

John C. Stein
The Boccardo Law Firm LLP
111 W. St. John St., 11th Floor
San Jose, CA 95113
408/298-5678

Counsel for Defendant: Andrew B. Kreeft
Low Ball & Lynch
2 Lower Ragsdale Dr, #110
Monterey, CA 93940
831/655-8822

8. *Comcast of Cal. II v. City of San Jose*
No. C 03-02532 RS

Comcast instituted this action to challenge the constitutionality of the formal cable franchise renewal procedures established by the City of San Jose under the Federal Cable Act. I conducted a hearing on Comcast's motion for a preliminary injunction on September 17, 2003 and twelve days later issued an order denying the motion on the grounds of lack of ripeness under the Federal Cable Act and failure to demonstrate likelihood of success on the merits of Comcast's free speech and due process claims. 286 F.Supp. 2d 1241 (N.D. Cal. 2003). Subsequently, I granted the City of San Jose's motion to dismiss for lack of subject matter jurisdiction on ripeness grounds. 2004 WL 3080347 (N.D. Cal., August 23, 2004). The matter settled pending appeal.

Counsel for Plaintiff: John L. Carlton
Arnold & Porter
777 South Figueroa Street, 44th Floor
Los Angeles, CA 90017
213/243-4000

Counsel for Defendant: Michael R. Groves
Office of the City Attorney
200 East Santa Clara Street
San Jose, CA 95113
408/535-1912

9. *Ann Minshew d/b/a The Blue Lagoon v. City of Santa Cruz & Patricia Sapone*
No. C 00-20846 RS

Plaintiff, the owner of the "Blue Lagoon" Bar in Santa Cruz, brought a Section 1983 action against the City of Santa Cruz and Deputy Chief of Police Sapone alleging that the Police Department had engaged in a campaign of harassment toward the Bar, including frequent bar checks, the shining of police car lights into the establishment and various other conduct that amounted to a violation of plaintiff's Fourth Amendment rights. I presided over a two-week jury trial in January 2004. The jury returned a verdict in favor of plaintiff awarding her \$112,621.90, exclusive of attorneys' fees which the defendants did not appeal.

Counsel for Plaintiff: Terri Keyser-Cooper
100 N. Arlington Avenue #10F
Reno, NV 89501
775/329-0497

Diane K. Vaillancourt
849 Almar Avenue, Suite C403
Santa Cruz, CA 95060
831/454-0112

Kate Wells
2600 Fresno St.
Santa Cruz, CA 95062
831/479-4475

Counsel for Defendants: Vincent P. Hurley
Law Offices of Vincent P. Hurley
38 Seascape Village
Aptos, CA 95003
831/661-4800

10. *ASAT Holdings Ltd. v. Motorola, Inc.*
No. C 03-01514 RS

This declaratory judgment action centered around a dispute regarding whether or not plaintiff ASAT Holdings was obliged to make millions of dollars in royalty payments to defendant Motorola under a patent license/immunity agreement entered into between Motorola and ASAT's predecessor covering the manufacture of ball grid array packages. The case was very actively litigated, involving numerous motions to dismiss, stay and transfer, and ultimately motions for partial summary judgment against Motorola, which I granted. 2004 WL 2646657 (N.D. Cal. November 17, 2004). The case subsequently settled and was dismissed by stipulated order in June, 2005.

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Counsel for Defendant: Morgan W. Tovey
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- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

(1) *Tech. Licensing Corp. v. Gennum Corp.*, No. C 01-04204 RS

2004 WL 1274391 (N.D. Cal. Mar. 26, 2004)

2007 WL 1319528 (N.D. Cal. May 4, 2007)

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Timothy J. Vezeau
Michael A. Dorfman
Katten Muchin Rosenman LLP
525 West Monroe Street
Chicago, IL 60661
312/902-5200

(2) *Capcom Co., Ltd. v. MKR Group, Inc.*, No. C 08-00904 RS

2008 WL 4661479 (N.D. Cal. Oct. 20, 2008)

Rodger Cole
Fenwick & West
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333 W. San Carlos Street, Suite 600
San Jose, CA 95110
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(3) *Estate of Bojcic v. City of San Jose*, No. C 05-03877 RS

2007 WL 2825656 (N.D. Cal. Sept. 26, 2007)

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Las Vegas, NV 89102
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San Jose, CA 95113
408/535-1900

(4) *Facebook, Inc. v. ConnectU LLC*, No. C 07-01389 RS

2007 WL 2326090 (N.D. Cal. Aug. 13, 2007)
2007 WL 4249926 (N.D. Cal. Nov. 30, 2007)

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(5) *Digital Envoy, Inc. v. Google, Inc.*, No. C 04-01497 RS

370 F. Supp. 2d 1025 (N.D. Cal. 2005)

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(6) *Comcast of Cal. II v. City of San Jose*, No. C 03-02532 RS

286 F. Supp. 2d 1241 (N.D. Cal. 2006)

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(7) *ASAT Holdings Ltd. v. Motorola, Inc.*, No. C 03-01514 RS

2004 WL 2646657 (N.D. Cal. Nov. 17, 2004)

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(8) *In re PMC-Sierra Inc. Derivative Litig.*, No. C 06-05330 RS

2008 WL 2024888 (N.D. Cal. May 8, 2008)

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(9) *Marquez Bros. Int'l, Inc. v. Arletico Morelia S.A.*, No. C 05-01889 RS
2005 WL 1869501 (N.D. Cal. Aug. 5, 2005)

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(10) *In re Legato, Inc., Securities Litig.*
204 F.R.D. 167 (N.D. Cal. 2001)

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- e. Provide a list of all cases in which certiorari was requested or granted.

Tech. Licensing Corp. v. Gennum Corp., No. C 01-04204 RS, 2004 U.S. Dist. LEXIS 10604 (Mar. 26, 2004), *aff'd per curiam sub nom. In re Tech. Licensing Corp.*, 423 F.3d 1286 (Fed. Cir. 2005); *cert. denied sub nom. Tech. Licensing Corp. v. U.S. Dist. Court for N. Dist. of Cal.*, 547 U.S. 1178 (2006).

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

Suever v. Connell, 439 F.3d 1142 (9th Cir. 2006)

The Ninth Circuit Court of Appeals vacated and remanded my decision which had held that a class of individuals whose assets had been seized by the state controller as “unclaimed property” were barred from seeking recovery by the Eleventh Amendment to the U.S. Constitution. The Circuit's decision was based on its earlier holding in *Taylor v. Westly*, 402 F.3d 924 (9th Cir. 2005), which had been issued after I had already dismissed the *Suever* case without leave to amend. The Ninth Circuit remanded the case for a determination of which claims could properly be characterized as either seeking a return of property or prospective relief, and that therefore would not be subject to an Eleventh Amendment bar.

Niva v. U.S. Bureau of Land Mgmt., 245 F. App'x 621 (9th Cir. 2007)

The Ninth Circuit Court of Appeals reversed my decision after a bench trial that the BLM was entitled to recreational use immunity under California law in connection with a vehicle accident occurring on an area of public land. The Court of appeals remanded the case to me for further proceedings.

Vick v. Astrue, 231 F. App'x 590 (9th Cir. 2007)

The Ninth Circuit Court of Appeals reversed my decision which had upheld the determination of an administrative law judge that a social security claimant had failed to establish disability, and remanded with directions for entry of judgment in the claimant's favor.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

I have never designated any of my decisions for publication in any reporter system. I am aware that several of my decisions were selected for publication in the Federal Reporter of Decisions or the Federal Supplement Second Series. Virtually all of my substantive decisions dating to around 2005 are available online through Westlaw and LexisNexis, and a lesser percentage of earlier decisions are also available there. I retain copies of all my decisions from my tenure as a Magistrate Judge in binders in my chambers; the originals of those decisions appear in the Court files.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

Comcast of Cal. II, L.L.C. v. City of San Jose, 286 F. Supp. 2d 1241 (N.D. Cal. 2003) (free speech and due process claims in the context of regulation of cable television services)

Facebook, Inc. v. ConnectU LLC, No. C 07-01389 RS, 2007 WL 2326090 (N.D. Cal. Aug. 13, 2007) (Constitutional "minimum contacts" jurisdiction in internet context)

Estate of Bojcic v. City of San Jose, No. C 05-03877 RS, 2007 WL 2825656 (N.D. Cal. Sept. 26, 2007) (claims of excessive force in violation of the Fourth Amendment)

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself *sua sponte*. Identify each such case, and for each provide the following information:

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

In all instances listed below, the decision to recuse was made *sua sponte*. I have not been requested by any litigant to recuse myself from any matter. The Northern District of California employs an "automatic" triggering system that alerts the judge where a case involves an entity listed on the judge's financial disclosure form.

| <i>Case Name</i> | <i>Reason for recusal</i> | <i>Procedure</i> |
|---|---|---|
| Mendez v. Intel Corp. | Stock ownership | Automatic |
| Morse v. JetBlue Airways Corp. | Stock ownership | Automatic |
| Knopf v. Semel, et al. | Party represented by former law firm colleagues | Review of pleadings |
| Mangindin v. Washington Mutual | Stock ownership | Automatic |
| Mirana v. Battery Tai-Shing Corp. | Party represented by former law firm colleagues | Review of pleadings |
| Mendoza v. Bank of America, et al. | Stock ownership | Automatic |
| Sheppard v. Intel Corp. | Stock ownership | Automatic |
| Jones v. Merck | Stock ownership | Automatic |
| Intel v. Intelsys | Stock ownership | Automatic |
| Facebook, Inc. v. ConnectU, LLC | Motion to enforce settlement brought after conclusion of case and counsel for a party had made reference to settlement negotiations | Recusal upon filing of motion to enforce settlement |
| Morgan Stanley v. Horath | Stock ownership | Automatic |
| Watson, et al. v. Albin, et al. | Party represented by former law firm colleagues | Review of pleadings |
| Michael Scott Properties, et al. v. Washington Mutual, et al. | Stock ownership | Automatic |
| Intel Corp. v. Intelagents, LLC | Stock ownership | Automatic |
| Dossett v. Merck and Co. | Stock ownership | Automatic |
| Camino v. Merck and Co. | Stock ownership | Automatic |
| Williams Sonoma v. Target Corp. | Stock ownership | Automatic |
| Moore v. Merck and Co. | Stock ownership | Automatic |
| Pioneer v. Samsung SDI Co. Ltd. | Party represented by former law firm colleagues | Review of pleadings |
| Schrimpf v. Intel Corp. | Stock ownership | Automatic |
| In re Nextcard Securities Litigation | Party represented by former law firm colleagues | Review of pleadings |
| Medina v. UPS | Stock ownership | Automatic |
| National Semiconductor, et al. v. NCH Corp. | Stock ownership | Automatic |
| Zoltar Satellite Systems v. LG Electronic Mobile Communications | Party represented by former law firm colleagues | Review of pleadings |
| Arikat, et al. v. J.P. Morgan | Party represented by former | Review of pleadings |

| | | |
|--|--|---------------------|
| Chase & Co. | law firm colleagues | |
| Blackwell v. Apple Computer | Party represented by former law firm colleagues | Review of pleadings |
| Nakhimovsky v. Berlan, et al. | Party represented by former law firm colleagues | Review of pleadings |
| Amtel Corporation v. LM Ericson Telefon A.B. | Stock ownership | Automatic |
| Sternberg v. The Walt Disney Co., et al. | Stock ownership | Automatic |
| Muschella, et al. v. Apple Computer, Inc. | Party represented by former law firm colleagues | Review of pleadings |
| Wimmer v. Apple Computer, Inc. | Party represented by former law firm colleagues | Review of pleadings |
| Lam Research Corp. v. Deshmukh | Party represented by former law firm colleagues | Review of pleadings |
| Walls v. Merck and Co. | Stock ownership | Automatic |
| National Semiconductor, et al. v. NCH Corp. | Stock ownership | Automatic |
| Nitgen Co., Ltd. v. Secugen Corp., et al. | Party represented by former law firm colleagues | Review of pleadings |
| Miller, et al. v. Leapfrog Enterprises | Party represented by former law firm colleagues | Review of pleadings |
| Laffin v. Cerus Corp. | Party represented by former law firm colleagues | Review of pleadings |
| Workshare Technology, Inc. v. Litera Corp. | Party represented by former law firm colleagues | Review of pleadings |
| Premier Technical Sales, Inc. v. AMI Semiconductor, Inc., et al. | Party represented by former law firm colleagues | Review of pleadings |
| ECast, Inc. v. Touchtunes Music Corp. | Party represented by former law firm colleagues | Review of pleadings |
| Watson v. Singh, et al. | Former colleague from U.S. Attorney's Office party to action | Review of pleadings |
| Pascual v. Novellus Systems, Inc. | Party represented by former law firm colleagues | Review of pleadings |
| Crabtree v. Eli Lilly and Co. | Stock ownership | Automatic |
| Nokia, Inc. v. Enstar Networking Corp. | Stock ownership | Automatic |
| In re Intershop Communications, A.G. Securities Litigation | Party represented by former law firm colleagues | Review of pleadings |
| Storage Technology Corp. v. Cisco Systems | Stock ownership | Automatic |
| Wright v. Strauss, et al. | Party represented by former law firm colleagues | Review of pleadings |

| | | |
|---|---|---------------------|
| Cisco Systems, Inc. v. Bennett | Stock ownership | Automatic |
| Cisco Systems, Inc. v. Gordon | Stock ownership | Automatic |
| Allen v. Ramp Networks, et al. | Party represented by former law firm colleagues | Review of pleadings |
| Cisco Systems, Inc. v. Akamai Technologies, Inc. | Stock ownership | Automatic |
| Hampton v. Intel Corp. | Stock ownership | Automatic |
| Westerschulte v. Nokia, Inc. | Stock ownership | Automatic |
| Intel Corp. v. Intelistat, Inc. | Stock ownership | Automatic |
| Intel Corp. v. Intel Video, Inc. | Stock ownership | Automatic |
| Hall, et al. v. Cisco Systems (and related cases) | Stock ownership | Automatic |
| Land v. The Boeing Corp. | Stock ownership | Automatic |
| IP Learn, LLC v. Saba Software, Inc. | Party represented by former law firm colleagues | Review of pleadings |
| Virgil v. The Walt Disney Co. | Stock ownership | Automatic |
| Koski v. Santa Clara University | Serving as adjunct professor for party | Review of pleadings |

15. Public Office, Political Activities and Affiliations:

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

I have held no public office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

None

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a law clerk to United States District Court Judge John H. Pratt (D.D.C.) 1981-1982.

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

I have not practiced alone.

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

Morrison & Foerster
425 California Street
San Francisco, CA 95104
Associate (1982-1987)
Equity Partner (1987-1991)

Morrison & Foerster
755 Page Mill Road
Palo Alto, CA 94304
Equity Partner (1998-2001)

Office of the United States Attorney
280 South First Street
San Jose, CA 95113
Assistant United States Attorney (1991-1998)

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

In my capacity as a Magistrate Judge in the Northern District of California I am called upon regularly to conduct settlement conferences on cases assigned to the other judicial officers in this District. Since my appointment in February, 2001 I have conducted literally hundreds of settlement conferences. These have ranged from very complex intellectual property matters to claims brought by *pro se* litigants in relatively straightforward but emotionally charged disputes. Resolution of these

cases has involved everything from the payment of money and letters of apology to patent licenses and corporate acquisitions. Also, because of my experience handling federal criminal matters as a prosecutor, I am one of the Magistrate Judges in this District that conduct settlement conferences in criminal cases. Below are a small sample of the matters on which I have acted as settlement judge:

- (1) *3M Co. v. Maurice Kanbar*
No. C 06-01225 JW
Plaintiff 3M sued defendants for trademark infringement concerning a rolling sticky note product called Rollit. The settlement involved both monetary and non-monetary terms.
- (2) *Ecological Rights Found. v. Sierra Pac. Indus.*
No. C 01-00520 MEJ
In this case, a non-profit environmental organization brought action against a company that owned and operated a lumber milling facility adjacent to Humboldt Bay seeking monetary and injunctive relief as a result of soil and water contamination. After several sessions a settlement was achieved that entailed the entry of a detailed Consent Decree.
- (3) *Cypress Semiconductor Corp. v. Sipex Corp.*
No. C 07-05778 JF
This case involved claims of trade secret misappropriation connected with the departure of a senior executive from one company to its competitor. Plaintiff sued both the departing executive and the company which he subsequently joined. The case was successfully settled.
- (4) *Beinin v. Center for the Study of Popular Culture*
No. C 06-02298 JW
The plaintiff, a professor of Middle East Studies at Stanford University, brought a copyright action against a non-profit organization pertaining to the defendant's use of the professor's picture on a pamphlet entitled "Campus Support for Terrorism." The case settled at the conclusion of the second settlement session I conducted.
- (5) *Broadlogic Network Techs. v. Gilat Satellite Networks*
No. C 01-20663 JW
Plaintiff brought action for payment for customized satellite receiver boards that defendant, an Israeli company, claimed did not perform to specifications. The case settled.
- (6) *Avago Techs. v. PixArt Imaging*
No. C 03-04871 JW

This patent action involved optical mouse sensor technology for use with personal computers. The parties instituted a host of claims for

infringement and counterclaims for invalidity covering numerous patents. After lengthy negotiations the case settled.

- (7) *In re: Beer Distribution Antitrust Litig.*
No. C 97-20644 JF
This case pitted a group of regional “craft” beer brewing companies against defendant Anheuser Busch, Inc. Four class action complaints, ultimately consolidated, claimed that defendant had violated the antitrust laws through the operation of “exclusivity” provisions in its agreements with distributors. The case settled after settlement conference sessions and follow-up telephone negotiations.
- (8) *San Jose Charter of the Hells Angels Motorcycle Club v. City of San Jose*
No. C 99-20022 JF
As a result of searches and seizures undertaken by city police officers and county sheriff officials against members of the Hells Angels Motorcycle club in which property was destroyed and pet dogs were killed, a group of Hells Angels members sued the City of San Jose, the County of Santa Clara, and various law enforcement officers for constitutional civil rights violations. After protracted settlement conferences, the defendants agreed to pay plaintiffs collectively a seven figure settlement.
- (9) *Stanford Hosp. v. Serv. Workers, Local 715*
No. C 06-04929 RMW
Plaintiff hospital brought an action to restrict a local union’s organizing activities within the hospital facility. The case settled with an agreed protocol governing defendants’ access to the hospital property.
- (10) *Quedillas Walker v. County of Santa Clara*
No. C 04-02211 RMW
The case concerned a constitutional claim by plaintiff who was ultimately determined to have been innocent of the crime of murder for which he had been imprisoned for twelve years. After several settlement sessions, the County of Santa Clara agreed to enter into a seven figure settlement with the plaintiff.

b. Describe:

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

Since February 2001, I have served as a United States Magistrate Judge for the Northern District of California, San Jose Division. From 1982 to 1987, and then again from 1998 to 2001, I was first an associate and then a partner with the law firm of Morrison & Foerster in San Francisco and Palo Alto where my practice focused on general commercial, intellectual

property, securities and antitrust litigation for corporations and individuals. From 1991 to 1998, I served as an Assistant United States Attorney in the criminal division. My practice in that office involved white collar criminal prosecution, including wire, mail, and bank fraud, high technology crime, tax evasion, money laundering and export violations. In addition, I prosecuted numerous gun and bank robbery cases as well as foreign extradition matters.

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

My clients in private practice were corporations and individuals. As a United States Attorney, I represented the United States of America.

- 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.

While in private practice from 1982 to 1991 and again from 1998 to 2001, my work was exclusively in litigation and on average I would make several court appearances per month. From 1991 to 1998 as an Assistant United States Attorney, I appeared in court regularly each week, sometimes with several appearances per day.

- i. Indicate the percentage of your practice in:

- 1. federal courts: 70%
- 2. state courts of record; 30%
- 3. other courts;
- 4. administrative agencies

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 60%;
- 2. criminal proceedings. 40%

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

Excluding cases decided by virtue of dispositive motions before the court, I tried to verdict nine cases, four as sole counsel, three as lead counsel, and two as associate counsel.

- i. What percentage of these trials were:

- 1. jury: 89%
- 2. non-jury. 11%

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

I have not practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

- (1) *United States v. Herpick*, No. CR 95-20077 RMW (N.D. Cal. 1996-1997); U.S. District Judge Ronald Whyte (San Jose);

Case Description: This matter involved charges of conspiracy, wire and mail fraud associated with the collapse of Century Loan in San Jose. The three defendants were alleged to have swindled over 200 investors out of more than \$40 million in a second mortgage scheme. I served as co-lead counsel on the case. Two defendants pled guilty and were sentenced to terms of imprisonment of several years each and ordered to pay full restitution to their victims. The remaining defendant was acquitted after a several week jury trial.

Opposing Counsel:

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Co-counsel:

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408/358-1878

- (2) *United States v. Hopkins*, No. CR 92-20106 JW (N.D. Cal. 1994-1996); U.S. District Judge James Ware (San Jose)

Case Description: In this case five defendants were charged with bank fraud and one with additional charges of misapplication of the funds of a Savings & Loan in connection with the acquisition and operation of the now defunct Bank of Los Gatos. I served as co-lead counsel on the case. In the initial trial of the case in 1993, all five defendants were convicted by jury. The District Court set aside the verdicts and ordered a retrial. At the close of the government's case upon retrial, the Court ruled for the defendants.

Opposing Counsel:

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Co-counsel:

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408/358-1878

- (3) *United States v. Biehl*, No. CR 95-20082 RMW (N.D. Cal. 1995-1996); U.S. District Judge Ronald Whyte (San Jose)

Case Description: This matter involved three related indictments in which various insiders at a number of large Silicon Valley semiconductor companies stole proprietary parts drawings and diverted them to another company which then manufactured parts to be sold in competition with the original equipment manufacturers. I was the sole prosecutor on the case. All six defendants pled guilty to the charges and received sentences ranging from 3 years in prison to probation.

Opposing Counsel:

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Nolan, Armstrong & Barton
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Jeane DeKolver
CJA Administrator
U.S. District Court
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San Francisco, CA 94102
415/522-2822

Vicky H. Young
706 Cowper Street, Suite 202
Palo Alto, CA 94301
415/421-4347

- (4) *United States v. Amidi Group* (Case Number Unknown) (N.D. Cal. 1993); U.S. District Judge James Ware (San Jose)

Case Description: Defendant, a plastics exporting company which participated in a program sponsored by the U.S. Agency for International Development, made unauthorized kickbacks to Egyptian importers to purchase its products. I was the sole prosecutor on the case. The company pled guilty to eleven felony counts and was fined \$140,000.

Opposing Counsel:

Honorable Charles R. Breyer
United States District Judge
450 Golden Gate Avenue
San Francisco, CA 94102
415/522-3660

- (5) *United States v. Ashtech, Inc.* (Case Number Unknown) (N.D. Cal. 1992-1994); U.S. District Judge William Ingram (San Jose)

Case Description: The defendant, a manufacturer of global positioning systems, was charged with violating the Export Control Act by transshipping various units from the UAE to Iran without a valid customs license. *See In re Grand Jury*, 31 F.3d 826 (9th Cir. 1994). I was the sole prosecutor on the case. The defendant corporation pled guilty and was sentenced to pay a \$150,000 fine.

Opposing Counsel:

Lawrence A. Callaghan
Tucker, Ellis & West LLP
135 Main Street, Suite 700
San Francisco, CA 94105

- (6) *United States v. Walterbach*, No. CR 93-20117 RMW (N.D. Cal. 1993); U.S. District Judge Ronald Whyte (San Jose)

The defendant was charged with wire and securities fraud in connection with a scheme to sell senior citizen investors fraudulent international certificates of deposit in a mail drop offshore bank. The defendant pled guilty to the wire and securities fraud counts in the indictment and was sentenced to 18 months imprisonment and ordered to make full restitution to the victims of the scheme. I was the sole prosecutor on the case.

Opposing Counsel:

Vicki H. Young
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415/421-4347

- (7) *United States v. Seaton*, No. CR 94-20024 RMW (N.D. Cal. 1992-1993); U.S. District Judge Ronald Whyte (San Jose)

This matter involved kickbacks paid by a vendor to Lockheed employees associated with government contracts. The three defendants pled guilty and received various sentences

ranging from six months half-way house detention to probation. I was the sole prosecutor on the case.

Opposing Counsel:

Thomas J. Nolan
Nolan, Armstrong & Barton
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Palo Alto, CA 94301
650/326-2980

Steven R. Manchester
Manchester, Williams & Seibert
125 S. Market St., #1100
San Jose, CA 95113
408/287-6193

- (8) *Coca-Cola Co. v. Omni Pacific Co., Inc.*, No. CV 98-0784 SI (N.D. Cal. 1998-2000); U.S. District Judge Susan Illston (San Francisco)

This case involved claims of trademark infringement and antitrust counterclaims arising out of the transshipment of Coca-Cola products to the Far East. I was one of three partners representing Coca-Cola from Morrison & Foerster. The case settled shortly before trial.

Opposing Counsel:

William A. Wineberg
Tomio Narita
Wineberg, Simmonds & Narita
44 Montgomery Street, #3880
San Francisco, CA 94104
415/352-2200

- (9) *United States v. Slater*, No. CR 92-20015 JW (N.D. Cal. 1992); U.S. District Judge James Ware (San Jose)

The defendant, an optometrist who operated several eye care offices, was indicted for tax evasion for failing to report cash payments received from patients. The defendant was convicted on all counts by a jury and was sentenced to four months incarceration. I was the sole prosecutor on the case.

Opposing Counsel:

Martin A. Schainbaum
351 California Street
San Francisco, CA 94104
415/777-1040

- (10) *United States v. Webster*, No. CR 91-20047 JW (N.D. Cal. 1991); U.S. District Judge James Ware (San Jose)

The defendant, an individual with an extensive criminal record, was indicted for having possessed with intent to distribute five pounds of methamphetamine. The defendant was convicted after jury trial and received a sentence of 30 years imprisonment. I was the sole prosecutor on the case.

Opposing Counsel:

Berndt I. Brauer
111 West St. John Street
San Jose, CA 95113
408/275-1290

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

While engaged in private practice from 1982 to 1991 and again from 1998 to 2000, I handled a large number of matters that either resolved by way of settlement or through dispositive motion practice. Major pieces of litigation included: the defense of a group of television stations in an antitrust action brought by a competing television group, representation of the state of Alaska in a dispute with several large oil companies regarding transfer pricing policies and resource taxes, representation of a national delivery company in an action against its health care insurer for fraud, and counseling regarding product liability issues for a California wine industry trade group. I have not performed any lobbying activities on behalf of any client or organizations.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

From 1996 through 1999 and then again from 2001 through 2004, I served as an adjunct faculty member at the Santa Clara University School of Law. In that capacity I was the co-instructor for a regularly scheduled course entitled "Federal Criminal Litigation" which focused on the development of, and defense to, federal criminal cases from investigation through trial and sentence. In addition to my formal teaching assignment, I have regularly participated in moot court programs at various law schools and in the San Jose City-wide competition for high school students.

At the invitation of other law professors, I am regularly called upon to guest lecture and am a frequent panelist on continuing legal education programs presented by bar associations and non-profit organizations. In addition, I have taught on many occasions overseas on programs sponsored by the U.S. State and Justice Departments, as well as the U.S. Patent and Trademark Office. In particular, I have worked extensively in India on alternative dispute resolution and intellectual property rights programs and have participated in conferences focused on intellectual property rights enforcement in Italy and Thailand. In 2007, at the invitation of the Malaysian government, I conducted a three-day training program for their high court judges on judicial mediation.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None

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

None

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See Attached Financial Disclosure Report

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

See attached Net Worth Statement

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

As a Magistrate Judge, I maintain the system described in section (b) below to address conflicts of interests and I do not anticipate any additional issues should I be appointed a United States District Judge.

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

As required by the Code of Judicial Conduct, I maintain a recusal list reflecting entities in which I hold a financial interest as well as individuals with a sufficiently close connection, social or business-related, that would preclude any participation in cases involving them. In addition, I review personally the counsel, parties, and potential witnesses in all cases assigned to me to make sure my involvement in the case would not violate conflict of interest rules or raise any appearance of impropriety.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Prior to entering government service in 1991 and then again when I returned to private practice from 1998 to 2001, I handled numerous *pro bono* matters as an attorney with Morrison & Foerster. These included participation in cases brought in through the staffing of the Bar Associations' legal clinic, as well as matters such as a libel action against a community Spanish language newspaper. As a partner in the firm, I regularly served as the supervisor on *pro bono* matters principally handled by associates in Morrison & Foerster's San Francisco and Palo Alto offices. As a Magistrate Judge, I developed the program in the San Jose federal courthouse to provide *pro bono* counsel to indigent litigants in connection with judicial settlement conferences. I also participate each year in the Court's Law Day activities in which students from schools in the community come to the Court for tours, lectures, and moot court activities.

Prior to joining the court, I served from 1998 to 2001 as a member of the Board of Directors of the Volunteer Exchange of Santa Clara County, a non-profit organization dedicated to connecting individuals and groups to volunteer opportunities in the community. While practicing with Morrison & Foerster, I served on the committee of the Morrison & Foerster Foundation which reviewed and awarded educational grants. In addition, during the late 1980s I was in charge of the extensive holiday toy drive undertaken by the San Francisco office of the law firm.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and

the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On January 13, 2009, I submitted an application for the position of United States District Judge for the Northern District of California to David S. Casey, Jr., statewide chair of Senator Dianne Feinstein's Judicial Advisory Process. On February 20, 2009, I was interviewed by the five members of Senator Feinstein's Northern California Selection Committee in San Francisco. On March 4, 2009, I was interviewed by Mr. Casey at his office in San Diego, California. Subsequently, I had a number of conversations with Department of Justice officials regarding the preparation of pre-nomination paperwork. On June 19, 2009, I had an interview in Washington, DC, with Associate Attorney General Thomas Perrelli and staff members from the Department of Justice and the White House Counsel's Office. My nomination was submitted to the Senate on August 6, 2009.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No

AFFIDAVIT

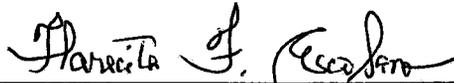
I, Richard G. Seeborg, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

August 24, 2009

(DATE)



(NAME)



(NOTARY)