

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Robert James Shelby

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

United States District Judge for the District of Utah

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.

Snow, Christensen & Martineau
10 Exchange Place, 11th Floor
Salt Lake City, Utah 84111

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

1970; Fort Atkinson, Wisconsin

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.

1995 – 1998; University of Virginia School of Law; J.D., 1998

1989 – 1993; Utah State University; B.A., 1994

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.

2011 – Present
Snow, Christensen & Martineau
10 Exchange Place, 11th Floor
Salt Lake City, Utah 84111
Shareholder

2005 – 2011
Burbidge Mitchell & Gross
215 South State Street, Suite 920
Salt Lake City, Utah 84111
Partner

2000 – 2004
University of Utah
Division of Continuing Education
1901 East South Campus Drive
Salt Lake City, Utah 84112
Instructor

2000 – 2005
Snow, Christensen & Martineau
10 Exchange Place, 11th Floor
P.O. Box 45000
Salt Lake City, Utah 84111
Associate Attorney

1999 – 2000
The Honorable J. Thomas Greene
United States District Judge, District of Utah
350 South Main, #421
Salt Lake City, Utah 84101
Law Clerk

1997 – 1998
Virginia Commonwealth Attorney's Office, Fluvanna County
P.O. Box 116
Palmyra, Virginia 22963
Student Prosecutor, University of Virginia Prosecution Clinic

Summer 1997
United States Attorney's Office, District of Montana
2929 Third Avenue North
Billings, Montana 59102
Summer Clerk

1988 – 1996
Utah Army National Guard
12953 South Minuteman Drive
Draper, Utah 84020
Specialist

Summer 1996
The Honorable Jay T. Swett
Chief Judge, Charlottesville Circuit Court
606 East Market Street
P.O. Box 2677
Charlottesville, Virginia 22902
Summer Law Clerk

Summer 1995
Holiday Inn Reservation Center
1275 West 2240 South
West Valley City, Utah 84119
Reservations Sales Agent

1994 – 1995
Snappy Car Rental
651 South West Main Street
Salt Lake City, Utah 84101
Assistant Office Manager

1994
Agency Rent-A-Car
307 West 200 South, Suite 1001
Salt Lake City, Utah 84101
Office Manager

1993 – 1994
Utah State University
Department of Languages and Philosophy
0720 Old Main Hill
Logan, Utah 84322
Lecturer

1993 – 1994
Macey's
981 South Main Street
Logan, Utah 84321
Night Manager

Other Affiliations (uncompensated):

2009 – Present

Salt Lake County Bar Association

No physical address

Vice President (2011 – Present)

Secretary (2010 – 2011)

Treasurer (2009 – 2010)

2008 – 2011

American Inns of Court, David K. Watkiss-Sutherland II Inn

No physical address

President (2010 – 2011)

Vice President (2009 – 2010)

Treasurer (2008 – 2009)

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.

March 1988 – March 1996

Utah Army National Guard

19th Special Forces Group

1457th Combat Engineer Battalion

Activated for Operation Desert Storm, 1991

Honorable Discharge

Registered for Selective Service

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

Professional

Martindale-Hubbell; Rated AV Preeminent

Chambers and Partners: Litigation: General Commercial (2011)

Super Lawyers Business Edition, Litigation (2011)

Elected a Fellow, *American Bar Foundation* (2010)

Chambers and Partners: Litigation: Up and Coming (2009, 2010)

Mountain States Super Lawyers: Litigation (2008 – Present)

Utah Business Magazine: Utah's Legal Elite, Business Litigation (2007 – Present)

Military

United States Army Achievement Medal, Desert Storm (1991)

Education

Elected to International Legal Fraternity of Phi Delta Phi, Minor Inn at the University of Virginia School of Law (1996)

Twice Elected Student-Body Vice President, Utah State University

Student Leader of the Year, Utah State University (1992)

Bill Robbins Memorial Award Finalist (for outstanding achievement as a student), Utah State University (1993)

Man of the Year Finalist, Utah State University (1993)

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

American Bar Association (2000 – Present)

American Inns of Court, David K. Watkiss-Sutherland II Inn (1999 – Present)

President (2010 – 2011)

Vice President (2009 – 2010)

Treasurer (2008 – 2009)

Salt Lake County Bar Association, Executive Committee (2002 – Present)

Vice President (2011 – Present)

Secretary (2010 – 2011)

Treasurer (2009 – 2010)

Bar & Bench Subcommittee (dates unknown)

CLE Subcommittee (dates unknown)

Socials Subcommittee (dates unknown)

Utah Bar Association (1998 – Present)

Utah Supreme Court's Advisory Committee, Rules of Civil Procedure (2010 – Present)

Utah Supreme Court's Ethics and Discipline Committee (2006 – Present)

Utah Supreme Court's New Lawyer Training Program, Mentor (2009 – Present)

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.

Utah, 1998

There has been no lapse in membership.

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

United States Court of Appeals for the Tenth Circuit, 2001

United States District Court for the District of Utah, 1998

Utah Supreme Court, 1998

Federal Trade Commission, 2005

I have not renewed my admission to practice before the Federal Trade Commission, as we have no cases presently pending before the Commission. There have been no other lapses in membership.

11. Memberships:

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

DRI (formerly the Defense Research Institute) (Approx. 2000 – 2005)

National Association of Criminal Defense Lawyers (Approx. 2000 – 2006)

Utah Association for Justice (Approx. 2006 – 2010)

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

implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To my knowledge, none of these organizations currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin.

12. Published Writings and Public Statements:

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

None.

- 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.

As a member of the Utah Supreme Court's Advisory Committee on Rules of Civil Procedure since 2010, I have occasionally made comments during meetings. Meeting minutes supplied.

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

November 18, 2011: Presenter during Nuts & Bolts seminar, Application of the New Rules of Civil Procedure: Part III, Expert Discovery, Utah State Bar Association. PowerPoint presentation supplied.

September 27, 2011: Panelist for “Careers in Litigation,” S.J. Quinney College of Law at the University of Utah. I have no notes, transcript or recording. The address of the College of Law is 332 South 1400 East, Salt Lake City, Utah 84112.

2010: As president of the David K. Watkiss – Sutherland II Inn of Court, I gave opening and closing remarks during each meeting. I have no notes, transcripts or recordings. The Inn of Court does not have a physical address.

From about 1999 through 2009, before becoming an officer of the Inn, I participated once annually in pupilage group presentations in the David K. Watkiss – Sutherland II Inn of Court. These presentations, approximately 45 minutes in duration, focused on various aspects of trial practice, professional development, and ethical considerations for trial lawyers. The presentations were designed to further the objectives of the American Inns of Court to assist in the training and development of ethical trial attorneys. The specific subject matter of each presentation varied, and was largely driven by the program theme for each particular year. I have no notes, transcripts or recordings. The Inn of Court does not have a physical address.

- 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.

Mike Gorrell, *Fraud Victims to Get \$4.1M*, Salt Lake Tribune, May 29, 2008. Copy supplied.

Paul Rolly, *Should the Rich Be On the Hook?*, Salt Lake Tribune, Jan. 22, 2007. Copy supplied.

To the best of my recollection, I spoke briefly to the media following our successful defense of the so-called Olympic Bribery trial relating to Salt Lake City’s bid to host the 2002 Winter Olympic Games. I also spoke briefly to a local television news crew concerning parking policies in Salt Lake City. Neither clips nor transcripts of these interviews are available.

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

I have not held a judicial office.

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

i. Of these, approximately what percent were:

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

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have

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

I have not held a judicial office.

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

15. Public Office, Political Activities and Affiliations:

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

I have not held any public offices. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

I have not held office in or rendered services to any political party or election committee. I have not held a position or played a role in a political campaign.

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 from 1999 to 2000 as law clerk to the Honorable J. Thomas Greene, United States District Judge for the District of Utah.

- 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.

2000 – 2005
Snow, Christensen & Martineau
10 Exchange Place, 11th Floor
P.O. Box 45000
Salt Lake City, Utah 84111
Associate Attorney

2005 – 2011
Burbidge Mitchell & Gross
215 South State Street, Suite 920
Salt Lake City, Utah 84111
Partner

2011 – Present
Snow, Christensen & Martineau
10 Exchange Place, 11th Floor
P.O. Box 4500
Salt Lake City, Utah 84111
Shareholder

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

I have never served as a mediator or arbitrator.

- b. Describe:

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

Following completion of my federal clerkship, I began working at Snow, Christensen & Martineau. My early practice focused largely on defense of both white-collar and so-called street crime matters. This work included cases ranging from complex securities fraud, tax fraud, and mail and wire

fraud, to rape of a child, embezzlement, theft and other offenses. My work included a high profile jury trial in defense of the so-called Olympic Bribery case, relating to Salt Lake City's bid to host the 2002 Winter Olympic Games. I also argued before the Tenth Circuit Court of Appeals concerning the adequacy of the government's service of process on a criminal defendant in foreign custody. As is my practice today, I also handled a number of pro bono cases, including several criminal defense matters.

I worked on white-collar criminal defense cases more or less continuously throughout my time at Snow, Christensen & Martineau, but my practice quickly expanded into other areas, including general commercial litigation, pharmaceutical product liability, medical malpractice defense, legal malpractice defense, premises liability, constitutional claims, municipal defense and mass torts. Throughout my time at Snow, Christensen and Martineau, my practice focused exclusively on litigation and the appeals that naturally arose out of those cases. That work caused me to make regular appearances before federal, state and appellate courts.

After moving to Burbidge Mitchell & Gross in 2005, my practice focused on complex commercial litigation and catastrophic personal injury cases. I performed that work on behalf of both plaintiffs and defendants in state, federal and administrative courts throughout the country. My commercial litigation practice included cases involving civil fraud, class action lawsuits, patent and trademark litigation, contracts, advertising claims, shareholder disputes, complex insurance coverage issues, injunctive relief, administrative proceedings before federal and state agencies, franchise disputes and general business litigation. Additionally, I worked in defense of legal liability claims asserted against other Utah firms.

Plaintiff-related work at Burbidge Mitchell & Gross varied from wrongful death and catastrophic personal injury – including brain injury and permanent disability cases – to commercial plaintiff cases for intellectual property theft, breach of contract, shareholder disputes, civil fraud and other actions. All of my work at Burbidge Mitchell & Gross focused exclusively on litigation and trial practice, together with appeals that arose from those cases.

Since returning to Snow, Christensen & Martineau earlier this year, my practice has largely mirrored the work I performed at Burbidge Mitchell & Gross. At present, I am managing the defense of a national class action case, preparing for filing a commercial matter seeking hundreds of millions in damages, have been retained to prosecute a plaintiffs' national class action matter, and continue to work on several matters that moved with me from Burbidge Mitchell & Gross.

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

I have represented over the course of my career an enormously broad range of clients, from indigent defendants in criminal proceedings to multi-national, billion dollar corporations in civil disputes.

During my first period of employment with Snow, Christensen & Martineau, areas of specialization included white-collar criminal defense, medical malpractice defense and mass tort work. Typical clients included business leaders; health care providers, including the University of Utah Hospitals and Clinics, and Mountain Star facilities (including, for example, St. Mark's Hospital, Ogden Regional Medical Center, Pioneer Valley Hospital, Jordan Valley Medical Center and Mountainview Hospital); and multi-national pharmaceutical companies, including Pfizer and some of its subsidiaries, and American Home Products (now Wyeth).

From about 2005, when I joined Burbidge Mitchell & Gross, and continuing since my return to Snow, Christensen & Martineau earlier this year, I have focused my practice on complex commercial litigation and catastrophic personal injury litigation. Typical clients in our plaintiff practices included family members and estates of deceased, as well as seriously injured individuals and their dependents.

We also prosecuted and defended cases on behalf of businesses, business owners, investors and inventors. Typical clients in commercial cases included: Trend Micro Devices (a Taiwanese computer security company), Vantage Controls, Utah Medical Products, Net Japan (a Japanese software company), ClearOne Communications, U.S. Synthetic Corporation, Legacy Resources, Energy Claims Limited (a Bahamian company) and Basic Research.

- 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.

Virtually all of my practice has focused on litigation and trial practice in federal and state courts. I also work on appeals that arise from our cases. By virtue of the nature of my practice, I have made regular appearances in court throughout my career. Variance in the regularity of those appearances is a function of the nature and procedural posture of the cases on which I was working at any given time. For example, the frequency of appearances has gradually decreased as my practice has shifted from criminal matters to civil matters. The frequency of court appearances has also decreased as the complexity of the cases on which I work has increased. This is primarily a function of handling fewer, more complex cases at any given time.

- i. Indicate the percentage of your practice in:
 - 1. federal courts: 30%
 - 2. state courts of record: 65%
 - 3. other courts: 0%
 - 4. administrative agencies: 5%
- ii. Indicate the percentage of your practice in:
 - 1. civil proceedings: 85%
 - 2. criminal proceedings: 15%
- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I estimate I have tried approximately 35 cases to verdict, judgment or final decision. The great majority of those were criminal cases I tried as sole or chief counsel. I have also served as associate counsel in several trials, including a six week jury trial in federal court.

- i. What percentage of these trials were:
 - 1. jury: 10%
 - 2. non-jury: 90%
- 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. Welch*, Case No. 2:00-CR-0324 DS, United States District Court for the District of Utah

I served as associate counsel in this case, representing one of two former Salt Lake City bid officials in a federal prosecution alleging criminal conduct in connection with Salt Lake City's bid for the 2002 Winter Olympic Games. The government alleged violations of Utah's commercial bribery statute, the Travel Act, and federal mail and wire fraud statutes. We successfully moved the trial court for dismissal of the case in its entirety. The trial court's decision was reversed on appeal to the Tenth Circuit Court of Appeals. A six week jury trial followed, ultimately resulting in a Rule 29 acquittal in favor of our client. I participated in the case from shortly after its inception until the successful conclusion of the trial, including work on the motion to dismiss, the Tenth Circuit appeal, preparing the case for trial, and as associate counsel during the trial. I sat third chair during the trial. This work was performed between approximately 2000 and the conclusion of the trial in December 2003.

Presiding Judge:
The Honorable David Sam
Senior United States District Judge for the District of Utah

Reported Decisions:
United States v. Welch, 327 F.3d 1081 (10th Cir. 2003)
United States v. Welch, 201 F.R.D. 521 (D. Utah 2001)

Co-Counsel (Representing a Co-Defendant):
William W. Taylor III
Blair G. Brown
Amit P. Mehta
Zuckerman Spaeder LLP
1800 M Street, NW
Washington, DC 20036
(202) 778-1800

Opposing Counsel:
Richard N. Wiedis
John W. Scott
United States Department of Justice
Criminal Division, Fraud Section
950 Pennsylvania Avenue, NW
Washington, DC 20530
(202) 514-7023

2. *Russo v. Ballard Medical Products*, Case No. 2:05-CV-59 TC, United States District Court for the District of Utah

This was an intellectual property theft case brought on behalf of an independent medical device inventor. We asserted against Kimberly Clark and Ballard Medical Products claims for intellectual property theft under the Utah Trade Secrets Act, as well as claims for conversion and unjust enrichment. We successfully obtained a \$20 million verdict at the conclusion of a two week jury trial. The verdict was upheld on appeal to the Tenth Circuit Court of Appeals. I worked extensively on the case from its inception, including substantial work in discovery and motion practice, and preparing the case for trial. I did not participate directly in the trial, though I provided extensive assistance with motions in limine, jury instructions, preparing witnesses, and assisting with witness examination outlines. I also assisted with the successful defense of the verdict on appeal. This work was performed from approximately 2004 through the final appeal in December 2008.

Presiding Judge:

The Honorable Tena Campbell

United States District Judge for the District of Utah

Reported Decisions:

Russo v. Ballard Medical Products, 550 F.3d 1004 (10th Cir. 2008)

Co-Counsel:

Joseph A. Kelly

Paula Kelly

Carroll, Kelly & Murphy

One Turks Head Place, Suite 400

Providence, RI 02903

(401) 331-7272

Opposing Counsel:

Brett L. Foster

Mark A. Miller

Holland & Hart

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Salt Lake City, UT 84101

(801) 799-5800

Daniel T. Flaherty

Godfrey & Kahn

100 West Laurence Street

Appleton, WI 54911

(920) 830-2800

3. *ClearOne Communications, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, Case No. 2:04-CV-119 TC, United States District Court for the District of Utah

This matter primarily focused on an insurance carrier's refusal to honor a claim made by our client, ClearOne Communications, pursuant to a director and officer policy issued by defendants. The case involved parallel investigations by federal agencies, extensive litigation in federal courts concerning the scope and applicability of the policies at issue, an appeal to the Tenth Circuit Court of Appeals of a ruling granting a motion for summary judgment shortly before trial, and ultimately a related federal prosecution of several of our client's former principals. Save for the criminal proceedings, in which our firm did not participate, I was heavily involved in the litigation upon arriving at Burbidge Mitchell & Gross in 2005, and continued my extensive involvement until after our appeal was resolved. Among other things, I took numerous depositions of key third party witnesses around the country, provided significant work on briefing for cross motions for summary judgment, participated in oral argument on several motions, and was involved in preparing the case for trial before it was ultimately dismissed by the trial court. I also assisted with the briefing on appeal.

Presiding Judge:

The Honorable Tena Campbell

United States District Judge for the District of Utah

Reported Decisions:

ClearOne Communications, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA, 494 F.3d 1238 (10th Cir. 2007)

Lower Court Decision (Not Reported):

ClearOne Communications, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA, 2005 WL 2716297 (D. Utah)

Opposing Counsel:

Phillip S. Ferguson

Christensen & Jensen PC

15 West South Temple, Suite 800

Salt Lake City, UT 84101

(801) 323-5000

Anneliese C. Booher

Director of Professional Development

S.J. Quinney College of Law at the University of Utah

332 South 1400 East

(801) 581-8700

(Formerly with Christensen & Jensen, PC)

Douglas R. Irvine
Lewis, Brisbois, Bisgaard & Smith LLP
221 North Figueroa Street, Suite 1200
Los Angeles, CA 90012
(213) 250-1800

4. *Miller v. Basic Research, et al.*, Case Number 2:07-CV-871 TS, United States District Court for the District of Utah

In this case, we are defending numerous entities and individuals named in a national advertising class action lawsuit. Plaintiffs seek hundreds of millions of dollars in damages in connection with claims asserted under the Utah Consumer Sales Practices Act, Utah's Pattern of Unlawful Activity Act, and federal RICO, as well as claims for unjust enrichment and fraud. The case has been very heavily litigated since its inception. The parties have engaged in extensive motion practice and discovery related to class and merits issues. Among other things, we successfully petitioned the court for dismissal of several parties and claims. The case also involved a Rule 23(f) petition to the Tenth Circuit Court of Appeals for interlocutory appellate review of the trial court's order certifying a class, and a subsequent motion for reconsideration. I have had primary responsibility for the day-to-day activity in the case throughout most of its duration, beginning in 2007. This includes overseeing and conducting discovery, including taking and defending numerous fact and expert depositions, providing argument at hearings, and generally overseeing the course of the litigation and the strategies employed. The case is set for trial in late 2012.

Presiding Judge:
The Honorable Ted Stewart
United States District Judge for the District of Utah

Related Decisions:
Miller v. Basic Research, Inc., 2011 WL818150 (D. Utah), March 2, 2011 (Not Reported)
Miller v. Basic Research, Inc., 2008 WL 4755787 (D. Utah), RICO Bus. Disp. Guide 11, 573 (Not Reported)

Opposing Counsel:
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James C. Shah
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Kevin P. Roddy
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(732) 855-6066

5. *Lutron v. Vantage*, Case Number 2:03-CV-488 TC, United States District Court for the District of Utah

Our firm represented Vantage Lighting Controls in defense of patent infringement and related claims. We asserted and prosecuted counterclaims for declaratory judgment that the asserted patents were invalid, and for a declaration of non-infringement. The case involved complex and heavily contested issues concerning patent claim interpretation and application to certain lighting control devices manufactured by our client. The case was ultimately resolved by the parties in the very late stages of the litigation. From my arrival at Burbidge Mitchell & Gross through final resolution of the case, I was extensively involved in both fact and expert discovery, including preparing witnesses, defending and taking numerous fact and expert depositions, coordinating work with our experts, as well as substantial work on the voluminous motion practice that continuously arose throughout the case.

Presiding Judge:
The Honorable Tena Campbell
United States District Judge for the District of Utah

Related Decisions:
Vantage Controls Co., v. Lutron Electronics Co., Inc., 2006 WL 539517
(D. Utah) (Not Reported)

Co-Counsel:
Grant R. Clayton
Brett J. Davis
Clayton Howarth & Cannon, PC
P.O. Box 1909
Sandy, UT 84091
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William D. Sims, Jr.
Scott W. Breedlove
Vinson & Elkins, LLP
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6. *NetJapan v. StorageCraft Technology Corp.*, Case No. 060920091, Third Judicial District Court, Salt Lake County, Utah

Our firm represented a Japanese software manufacturer in a dispute with a Utah company. The case involved affirmative claims for fraud, negligent misrepresentation and various breaches of contract. We also defended several counterclaims relating to the same transactions. The case was aggressively litigated through the eve of trial, and settled shortly after the trial court continued the trial approximately two days before it was set to begin. I was extensively involved in fact and expert discovery, as well as significant motion practice throughout the case. Together with my law partner, I prepared the case for presentation to a jury before the court continued the trial. I was designated to sit second chair for the trial.

Presiding Judges:
The Honorable Vernice S. Trease
Third District Judge

The Honorable Robert K. Hilder
Presiding Third District Judge

Opposing Counsel:
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Snell & Wilmer
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Hon. Todd M. Shaughnessy
Third District Court Judge
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Salt Lake City, UT 84114
(801) 238-7300
(Formerly with Snell & Wilmer)

7. *Ekstrom v. Trend Micro Devices*, Case No. 050907533, Third Judicial District Court, Salt Lake County, Utah

Our firm was brought into this case several months before trial to represent the co-founders of Trend Micro Devices, a Taiwanese network security company in a dispute with a former consultant seeking tens of millions of dollars in monies allegedly owing under the terms of an oral agreement. We coordinated closely with co-counsel representing the corporation, conducted expedited discovery and prepared the case for presentation to a jury. The matter was resolved days before trial was set to begin. Respecting the representation of our clients, I was responsible for handling the day-to-day activity in the case, including preparing witnesses, taking depositions of fact and expert witnesses, overseeing the pre-trial motion practice, and related activities. I also conducted the settlement negotiations that ultimately concluded with a global resolution of all claims as to all parties on the eve of trial. Virtually all of the trial work was completed before the case settled. My work on the case was largely performed in 2007 and 2008.

Presiding Judge:
The Honorable John Paul Kennedy
Third District Court Judge

Co-Counsel:
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Robert P.K. Mooney
Law Office of Robert P.K. Mooney
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Opposing Counsel:
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Rachel G. Terry
Fabian & Clendenin
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Salt Lake City, UT 84111
(801) 531-8900

8. *Coxey v. Fraternal Order of Eagles*, Case No. 980907047, Second Judicial District Court, Weber County, Utah

This was a premises liability case involving two jury trials and an appeal to the Utah Court of Appeals. I was brought in as associate counsel for the second jury trial. We represented the Fraternal Order of Eagles in defense of claims asserted by a former Ogden City police officer arising out of injuries allegedly sustained while visiting our client's property. We successfully persuaded the trial court to dismiss the case with prejudice during the trial on the basis that plaintiff's former attorneys had willfully secreted and failed to produce evidence we requested in discovery years earlier. The trial court's decision was upheld on appeal after I left my former firm. My involvement in the matter was primarily limited to preparing the case for the second jury trial, and participating in the trial as the second chair. I conducted live witness examination in the trial prior to the court's ruling dismissing the case. To the best of my recollection, that work was largely performed in 2004.

Presiding Judge:
The Honorable Pamela G. Heffernan
Second District Judge

Opposing Counsel:
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Peter W. Summerill
Hasenyager & Summerill
1004 24th Street
Ogden, UT 84401
(801) 621-3662

Reported Decisions:
Coxey v. Fraternal Order of the Eagles, 112 P.3d 1244 (Utah App.
2005)

9. *Bilanzich v. Lonetti*, Case No. 010500411, Fifth Judicial District Court,
Washington County, Utah

I was brought into this case to prepare and conduct a trial upon remand from the Utah Supreme Court. The underlying litigation involved a complex series of guarantees, notes and agreements relating to a several million dollar loan secured by real property. Our firm represented the plaintiff, on whose behalf our firm filed an action seeking a declaration that our client's personal guarantee was unenforceable, and asserting claims for rescission and unjust enrichment. The defendant asserted counterclaims. The claims were eventually resolved through settlement after we successfully obtained partial summary judgment. We then filed a petition for attorneys' fees and costs, which the trial court denied. Appeals followed to the Utah Court of Appeals, and eventually the Utah Supreme Court, which reversed the trial court and remanded for a trial on issues relating to the petition for attorneys' fees and costs. I was not involved in the preliminary work or the appeal, but was brought in as lead counsel to prepare and try the case on remand. Following additional discovery and a bench trial, we prevailed on our claims. My work on this case was largely performed in 2007.

Presiding Judge:
The Honorable James L. Shumate
Fifth District Court Judge

Opposing Counsel:
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Bryan J. Pattison
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111 East Broadway, Suite 900
Salt Lake City, UT 84111
(801) 415-3500

10. *Bad Ass Coffee Co. of Hawaii, Inc. v. J.H. Enterprises, LLC*, Case number: 2:09-CV-452 CW, United States District Court, District of Utah

The Bad Ass Coffee Company of Hawaii, a national franchisor and one of the largest importers of specialty Kona Coffee in the United States, retained our firm to seek injunctive relief against a Florida franchisee who was unlawfully competing with our client in violation of a non-compete agreement. Acting as lead counsel, I prepared and filed a Complaint, and sought and obtained a permanent injunction against the defendants, preventing them from operating in competition with our client. The case was handled on an expedited basis and involved an evidentiary hearing following discovery and briefing. I conducted all of the discovery, and put on all of the evidence at trial, including all of the witness examinations. I also provided all of the argument to the Court on behalf of our client. My work in this case was performed in 2009.

Presiding Judge:
The Honorable Clark Waddoups
United States District Judge for the District of Utah

Reported Decision:
Bad Ass Coffee Co. of Hawaii, Inc. v. J.H. Enterprises, LLC, 636 F. Supp. 2d 1237 (D. Utah 2009)

Opposing Counsel:
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Matthew J. Kreutzer
Holland & Hart
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Las Vegas, NV 89169
(702) 669-4600

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.)

Outside of litigation, my most significant legal activities have involved bar related service, including work with the American Inns of Court and several bar committees.

The American Inns of Court focuses on mentoring and training young trial lawyers, and reinforcing the highest ethical standards for the practice of law. I have been a member of the local Inn for the last 13 years. For many of those years, I served as a pupillage group leader, organizing and planning pupillage group presentations on various professional and ethical topics. In addition, I served as an officer of our local Inn for three years between 2008 and 2011, culminating in a term as president of the Inn for the 2010 to 2011 program. Among other things, that work involved developing and preparing the materials for use by our pupillage groups throughout the year.

I have also invested significant time serving our State and local bar organizations. Since 2002, I have been a member of the Salt Lake County Bar Association Executive Committee. That organization plans and sponsors continuing legal education events, supports local pro bono initiatives, and fosters professionalism and collegiality among the local bar. I have been an officer of the Salt Lake County Bar Association for each of the last three years. I am the vice president this year, and am set to be sworn-in as president of the organization in June 2012.

In addition, the Utah Supreme Court has appointed me to two select bar committees. The first is the Utah Supreme Court's Ethics and Discipline Committee. This body hears cases filed against lawyers for alleged violations of the Utah Rules of Professional Conduct. Now in my sixth year on the committee, my work involves sitting on panels that review briefs and party submissions, hear live testimony, examine parties and witnesses, make factual findings, and, depending on the severity of violations, select appropriate sanctions or makes recommendations to state trial courts for the same. This committee plays an essential role in self-policing the professional conduct of the Utah Bar, as well as instilling in the community confidence in the ethical and professional standards among Utah lawyers. The Utah Supreme Court also appointed me in 2010 to its Advisory Committee on the Rules of Civil Procedure. This body is responsible for evaluating the rules of civil procedure and making recommendations concerning proposed revisions. The Utah Supreme Court made effective on November 1, 2011, a sweeping set of revisions to the rules of civil procedure recommended by our committee. The changes, focused on fundamental changes to discovery practice, are designed to make access to courts more affordable for a wide range of civil disputes. Finally, I am certified by the Utah Supreme Court as a mentor for new lawyers, and am currently mentoring a new lawyer as part of Utah's New Lawyer Training Program.

I have performed no lobbying activities.

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

2000 – 2004
LSAT Preparatory Course Instructor
University of Utah
Division of Continuing Education

I taught this course for the University of Utah approximately 12 times between 2000 and 2004. The course was designed to prepare University of Utah students for the Law School Admission Test. The course focused on education and practical skills training in logical reasoning, analytical reasoning and reading comprehension. I no longer have a syllabus for this course.

Fall 1993 – Spring 1994
Philosophy Lecturer
Utah State University
Department of Languages and Philosophy

I taught *Deductive Logic* and *Introduction to Problems* courses at Utah State University. The *Introduction to Problems* course included exploration of several classic philosophical topics, including ethics, the mind-body problem, God and religion, and existentialism. *Deductive Logic* focused on the study of deductive arguments and techniques for evaluating their validity. This involved symbolizing English sentences and arguments to make their meanings more precise. We also studied logical fallacies in reasoning. I did not retain my syllabus for either course.

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

I have made no arrangements for future compensation.

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

I have no such plans.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

If confirmed, I will carefully assess all actual or potential conflicts of interest in accordance with a careful and diligent application of Canon 3 of the Code of Conduct for United States Judges, together with all laws, rules and practices governing such circumstances. For a significant period of time, I anticipate recusing myself from all cases involving my current law firm, Snow, Christensen & Martineau. I also anticipate recusing for a period of time from all cases involving my former law firm, Burbidge Mitchell & Gross. If confirmed, I intend to recuse myself for a significant period of time from all cases involving clients I have served during my tenures with both Snow, Christensen & Martineau, and Burbidge Mitchell & Gross. Further, I will recuse myself from all cases involving Wells Fargo, as a subsidiary of that company manages diversified mutual funds held in my retirement account. In all respects, I would be vigilant about avoiding any conflicts of interest or the appearance of any such conflicts.

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

If confirmed, I will vigorously apply all relevant guidelines, including Canon 3 of the Code of Conduct for United States Judges and other applicable statutes, with sensitivity that a federal judge must avoid both actual conflicts, as well as the appearance of conflicts. I also anticipate soliciting advice as necessary from available resources, including the Codes of Conduct Committee of the Judicial Conference. Finally, I expect I would consult with my colleagues as appropriate to ensure compliance with local custom and practice above and beyond the standards applicable under the Code of Conduct for United States Judges.

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.

It has been my practice throughout my career to provide legal services at no charge or for a substantially reduced rate for financially disadvantaged clients. The majority of that work early in my career entailed providing representation to criminal defendants. During my first period of employment at Snow, Christensen & Martineau, I estimate I handled on a pro-bono basis approximately two criminal matters a year. Those cases included criminal prosecutions for theft, embezzlement, assault, probation violations, and other offenses. In addition, I prepared and tried a number of small claims cases for individuals in need. I estimate I handled approximately one small claims trial a year in addition to the criminal defense work provided.

Because I no longer handle criminal defense matters, my pro-bono work at Burbidge Mitchell & Gross related exclusively to civil disputes. I estimate I handled on average one to two pro-bono cases a year while with that firm. Some of those matters involved pre-litigation assistance resolving disputes, and others involved formal appearances in litigation, primarily in state courts. My most recent pro-bono cases involved assisting with a homeowner's association dispute, handling a residential property dispute with a local municipality, and trying a small claims property damage case for a student. In addition, I have also handled several cases at a significantly reduced rate, including construction disputes.

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.


Sometime in or about September 2010, I submitted copies of my materials to Senator Orrin Hatch and Congressman Jim Matheson. I forwarded with those materials copies of letters of recommendation from several very prominent Utah trial attorneys.

Since December 16, 2010, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On January 18, 2011, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On September 19, 2011, I had a telephone interview with an official from the White House Counsel's Office. I interviewed with Senator Mike Lee on September 27, 2011. On November 30, 2011, the President submitted my nomination to the Senate.

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

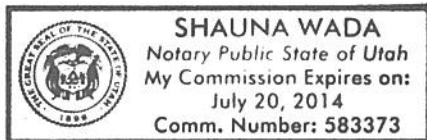
No.

AFFIDAVIT

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

30 Nov. '11
(DATE)

Robert J. Shelby
(NAME)



Shauna Wada
(NOTARY)