

**UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY**

**QUESTIONNAIRE FOR JUDICIAL NOMINEES**

**PUBLIC**

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

Todd Michael Hughes

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

United States Circuit Judge for the Federal Circuit

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.

Commercial Litigation Branch  
Civil Division, U.S. Department of Justice  
P.O. Box 480, Ben Franklin Station  
Washington, DC 20044

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

1966; Delaware, Ohio

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

1989 – 1992, Duke Law School; J.D. (with honors), 1992

1989 – 1992, Duke University; M.A., 1992

1985 – 1989, Harvard College; A.B. (*cum laude*), 1989

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.

1994 – present  
Commercial Litigation Branch

Civil Division, U.S. Department of Justice  
P.O. Box 480, Ben Franklin Station  
Washington, DC 20044  
Trial Attorney (1994 – 1999)  
Assistant Director (1999 – 2007)  
Deputy Director (2007 – present)

Spring 1994  
Cleveland-Marshall College of Law  
2121 Euclid Avenue  
Cleveland, Ohio 44115  
Adjunct Lecturer in Law

1992 – 1994  
United States Court of Appeals for the Sixth Circuit  
201 Superior Avenue  
Cleveland, Ohio 44114  
Law Clerk to Judge Robert Krupansky

1992  
The Princeton Review  
309 North Elliott Road  
Chapel Hill, North Carolina 27514  
Instructor

Summer 1991  
Crowell & Moring  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004  
Summer Associate

Fall 1990  
Duke University Writing Program  
Duke University  
Durham, North Carolina 27706  
Instructor

Summer 1990  
Baker & Hostetler  
65 East State Street  
Columbus, Ohio 43215  
Summer Associate

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social

security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I have registered with the selective service.

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

Special Commendation, Civil Division, U.S. Department of Justice, Federal Personnel Law Team (2011)

Special Contribution Award, Department of Veterans Affairs (2008)

Attorney General's John Marshall Award, Outstanding Legal Achievement for Preparation or Handling of Legislation (2007)

Special Commendation, Civil Division, U.S. Department of Justice, for Handling Veterans Appeals (2004)

Special Commendation, Civil Division, U.S. Department of Justice, for Harbor Maintenance Tax Litigation (2000)

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.

Federal Circuit Bar Association (2003 – present)

Co-Chair, Planning Committee for Bench and Bar Annual Conference (2009 – 2011)

Gay, Lesbian, Bisexual and Transgender Attorneys of Washington (2010 – 2011)

National LGBT Bar Association (2010 – 2011)

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.

Pennsylvania, 1992 (inactive)

District of Columbia, 2009

There have been no lapses in membership, although my membership is inactive in Pennsylvania.

- 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.

Supreme Court of the United States, 1997  
United States Court of Appeals for the Federal Circuit, 2010  
United States Court of Appeals for the Ninth Circuit, 2006  
United States Court of International Trade, 1996  
United States Court of Federal Claims, 1994

There have been no 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.

None.

- 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 do not belong to any organizations that are the subject of question 11a.

**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.

With Claudia Burke, *Constitutional Litigation and Its Jurisdictional Implications in the Court of International Trade*, 17 Tul. J. Int'l & Comp. L. 541 (2009). Copy supplied.

*Making Romer Work*, 33 Cal. W. L. Rev. 169 (1997). Copy supplied.

I wrote a book review for The Harvard Advocate during my attendance at Harvard College. I do not have a copy of the book review and have been unable to locate one.

- 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.

May 9, 2012: Mock argument before a panel of Federal Circuit judges presented as part of the Merit Systems Protection Board's Symposium, Washington, DC. I represented the government agency and Kristen Alden of the Alden Law Group represented the employee in a mock argument concerning a whistleblower claim. Argument outline supplied.

March 16, 2011: Member of a panel discussion and webcast concerning the Supreme Court's decision in *Henderson v. Shinseki*, 131 S. Ct. 1197 (2011), sponsored by the Federal Circuit Bar Association in Washington, DC. An audio recording is available at [http://www.fedcirbar.org/olc/pub/LVFC/cpages/misc/careers\\_relocate.jsp](http://www.fedcirbar.org/olc/pub/LVFC/cpages/misc/careers_relocate.jsp).

May 20, 2010: Member of a panel for the Merit Systems Protection Board session at the Federal Circuit Judicial Conference, Washington, DC. Our topic was best advocacy practices. I have no notes, transcript, or recording. The Federal Circuit is located at 717 Madison Place, NW, Washington, DC 20005.

February 19, 2009: Moderator of a panel, "Excellence in Appellate Advocacy," for a Federal Circuit Bar Association webcast, Washington, DC. Outline supplied and audio recording is available at <http://www.fedcirbar.org/olc/pub/LVFC/cpages/misc/friedman.jsp>.

November 19, 2008: Panelist at the 15th Judicial Conference of the Court of International Trade, New York, New York. I presented a paper, co-authored with Claudia Burke, published as *Constitutional Litigation and Its Jurisdictional Implications in the Court of International Trade*, 17 Tul. J. Int'l & Comp. L. 541 (2009). A copy of the article is supplied in response to question 12a.

May 15, 2008: Panelist at the Federal Circuit Judicial Conference, Washington, DC. My topic was, "An Examination of the Federal Circuit's Deference to Board Interpretations of Civil Service Law." I have no notes, transcript or recording. The Federal Circuit is located at 717 Madison Place, NW, Washington, DC 20005.

August 21, 2007: Speaker at Customs & Border Protection's Chief Counsel Conference, Providence, Rhode Island. I spoke regarding recent developments in federal personnel and whistleblower law. I have no notes, transcript or recording. The conference was sponsored by the Chief Counsel, Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

May 19, 2006: Panelist at the Federal Circuit Judicial Conference, Washington, DC. My topic was, "Non-Precedential Decisions in Trade Cases: Problems and Advantages of Current Practice and Effect of Proposed FRAP 32.1." A copy of my unpublished paper, co-authored with Claudia Burke, is supplied.

July 27, 2002: Panelist at the Federal Circuit Bench and Bar, San Diego, California. I participated in a panel about amicus briefs at the Federal Circuit. I have no notes, transcript or recording. The Federal Circuit is located at 717 Madison Place, NW, Washington, DC 20005.

September 18, 2000. Panelist at the Sixth Judicial Conference of the Court of Veterans Appeals (currently the Court of Appeals for Veterans Claims). My topic was "The Evolving and Expanding Role of Veterans Benefits Jurisprudence of the Federal Circuit." I have no notes, transcript or recording. The conference was sponsored by the Court of Veterans Appeals, 625 Indiana Avenue, NW, Suite 900, Washington, DC 20004.

March 1997: Panelist at California Western Law Review Symposium, "Towards a Radical and Plural Democracy," in San Diego, California. I participated in a panel about programs designed to increase participation of the disenfranchised. I have no notes, transcript or recording. A copy of the paper I prepared for the symposium is supplied.

- 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.

I have not given any interviews.

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 any 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 any 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 held no public offices. I have not been a candidate for elective office or nominee to any 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 any 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;

From 1992 to 1994, I served as a law clerk to the Honorable Robert Krupansky, Circuit Judge of the United States Court of Appeals for the Sixth Circuit.

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

I have never practiced alone.

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

1994 – present  
Commercial Litigation Branch  
Civil Division, U.S. Department of Justice  
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Trial Attorney (1994 – 1999)  
Assistant Director (1999 – 2007)  
Deputy Director (2007– present)

- 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 an arbitrator or mediator in alternative dispute resolution proceedings.

b. Describe:

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

Following my clerkship, I have devoted my entire 18 years of legal practice to public service at the Department of Justice. Although my work has primarily focused on appellate litigation, I also have gained substantial experience at the trial court level and some experience before federal administrative bodies. In addition to my litigation experience, in more recent years, I have provided advice and counseling to other parts of the Department of Justice and other federal agencies.

From 1994 to 1999, I served as a Trial Attorney in the Commercial Litigation Branch of the Civil Division. My practice consisted of work before three different courts: the Court of Appeals for the Federal Circuit, the Court of International Trade, and the Court of Federal Claims. I also handled a few cases at the boards of contract appeals. A substantial portion of my time was devoted to two large matters. The first was a massive government contracts case for which I conducted extensive document discovery, took and defended multiple depositions, and drafted portions of motions and other briefs. The second matter involved a large number of cases challenging the Harbor Maintenance Tax. For those cases, I drafted briefs to the Court of International Trade, the Federal Circuit, and the Supreme Court. I also oversaw a claims resolution process that efficiently disposed of thousands of Harbor Maintenance Tax cases without expending substantial litigation resources. I personally handled a significant number of appellate matters at the Federal Circuit, mostly involving federal personnel law and government contracts, and presented in excess of 20 oral arguments. Finally, I handled a number of other trial-level matters at the Court of Federal Claims.

From 1999 to 2007, I served as an Assistant Director in the Commercial Litigation Branch. In that capacity, I continued to personally handle a large number of appeals at the Federal Circuit, arguing approximately 17 appeals, including my first *en banc* argument. The subject matter of those appeals covered the broad range of the Federal Circuit's non-patent jurisprudence, including federal personnel law, veterans benefits, international trade, and government contracts. My work at the trial courts diminished somewhat but I still handled several significant matters at the Court of International Trade and Court of Federal Claims. In addition to the cases I personally handled, as an Assistant Director, I became the supervisory attorney for a large number of cases. As a supervisory attorney, I consulted with the assigned trial attorneys, providing guidance and support in how to approach their cases and making suggestions about litigation strategy and potential arguments; I personally reviewed all of the

trial attorneys' written work, making substantial edits and revisions where necessary; and, more generally, I mentored attorneys to ensure sound professional development. During this time period, I also assumed responsibility for our internal moot court program, ensuring that all attorneys with Federal Circuit arguments participated in at least one moot court, and personally judging many of those moots. During this time period, I also was frequently called on to provide advice to other parts of the Department of Justice and other federal agencies, particularly with regard to my expertise in federal personnel and whistleblower law, and veterans benefits.

Since 2007, I have served as a Deputy Director in the Commercial Litigation Branch. Due to an increase in my management responsibilities, the number of cases I personally handle has decreased, although I still regularly handle some of the more significant matters at the Federal Circuit involving federal personnel law, veterans benefits and international trade. I briefed and presented my second *en banc* argument in 2009 and have presented oral argument in at least eight other cases since 2007. I also continue to supervise trial attorneys in individual cases. In my role as a senior manager, I have taken a broader approach to improving my office's performance. I have implemented new and novel training procedures, restructured the office support staff to better aid attorneys in their legal work, and devised new team structures to better leverage the substantial experience of our office attorney staff. Of particular note, I created and continue to supervise an appellate team of extremely well-qualified attorneys to handle the most difficult and significant litigation at the Federal Circuit. Their expertise ensures that we provide the very best representation to our client agencies and also provides an important resource for other attorneys in the office handling Federal Circuit appeals. I also now devote substantially more time to advising and counseling other attorneys, from the Department of Justice and from other federal agencies. Among other things, I routinely provide advice about the Civil Service Reform Act and the Whistleblower Protection Act, international trade, veterans benefits, and jurisdictional issues regarding the Court of Federal Claims.

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

As an attorney for the Department of Justice for over 18 years, my client has been the United States. I have specialized in the areas of federal personnel and whistleblower law, veterans benefits, international trade, and government contracts.

- 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.

Almost all of my work has involved litigation, with the vast majority in federal courts and a very small number of cases in federal administrative agencies. As described above, much of that work has involved me appearing as counsel of record, but I also have been a supervisory attorney for thousands of cases in litigation. I frequently appear in court, particularly before the Federal Circuit. Prior to 1999, I also personally appeared frequently before the Court of International Trade and the Court of Federal Claims. I continue to supervise a large number of matters before those trial courts.

- i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 99% |
| 2. state courts of record:  | 0%  |
| 3. other courts:            | 0%  |
| 4. administrative agencies: | 1%  |

- ii. Indicate the percentage of your practice in:

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

- 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 have not played an in-court role in any trial. I conducted a direct examination of a witness in a preliminary injunction hearing regarding the award of a government contract, a case in which I was counsel of record. I have been the supervisory attorney for a number of trials. For those matters, I reviewed all filings and provided advice, where necessary, regarding trial strategy.

- i. What percentage of these trials were:

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

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

I have not been counsel of record or personally argued before the Supreme Court. I have participated in the writing of many briefs in cases handled by the Solicitor General's office. In some cases, I personally prepared a draft brief for the

Solicitor General's office; in other cases, I commented on drafts prepared by other attorneys. In cases argued before the Supreme Court, I have participated in moot courts and provided advice to attorneys in the Solicitor General's office. I also am routinely asked to provide a recommendation as to whether to waive the government's response to a petition for a writ of certiorari.

To the best of my knowledge, the following is a list of the Supreme Court cases in which I have participated in the writing of a brief. Copies supplied.

*Byron v. Shinseki*, No. 12-389, *cert. denied*, 133 S. Ct. 843 (2013) (brief in opposition, available at 2012 WL 5940290)

*Guerra v. Shinseki*, No. 11-773, *cert. denied*, 132 S. Ct. 1795 (2012) (brief in opposition, available at 2012 WL 590122)

*Roberts v. Shinseki*, No. 11-603, *cert. denied*, 132 S. Ct. 1741 (2012) (brief in opposition, available at 2012 WL 522094)

*Dean v. United States*, No. 11-329, *cert. denied*, 132 S. Ct. 1002 (2012) (brief in opposition, available at 2011 WL 5548720)

*Consolidation Coal Co. v. United States*, No. 10-1020, *cert. denied*, 131 S. Ct. 2990 (2011) (brief in opposition, available at 2011 WL 1769335)

*Henderson v. Shinseki*, No. 09-1036, 131 S. Ct. 1197 (2011) (brief in opposition, available at 2010 WL 2173778; brief for respondent, available at 2010 WL 4312791)

*Yant v. United States*, No. 09-1100, *cert. denied*, 131 S. Ct. 69 (2010) (brief in opposition, available at <http://www.justice.gov/osg/briefs/2009/0responses/2009-1100.resp.pdf>)

*Laroche v. Shinseki*, No. 08-1413, *cert. denied*, 130 S. Ct. 552 (2009) (brief in opposition, available at 2009 WL 3183065)

*Haas v. Peake*, No. 08-525, *cert. denied*, 555 U.S. 1149 (2009) (brief in opposition, available at 2008 WL 5328208)

*Shinseki v. Sanders*, No. 07-1209, 556 U.S. 396 (2009) (petition for writ of certiorari, available at 2008 WL 782560; reply brief, available at 2008 WL 2277933; brief for the petitioner, available at 2008 WL 3895908; reply brief, available at 2008 WL 4892758)

*Nufarm America's Inc. v. United States*, No. 08-31, *cert. denied*, 555 U.S. 1011 (2008) (brief in opposition, available at 2008 WL 4533648)

*Amber-Messick v. United States*, No. 07-176, *cert. denied*, 552 U.S. 1038 (2007) (brief in opposition, available at 2007 WL 3085078)

*White v. Nicholson*, No. 05-762, *cert. denied*, 547 U.S. 1018 (2006) (brief in opposition, available at 2006 WL 331819)

*Mapu v. Nicholson*, No. 05-605, *cert. denied*, 547 U.S. 1018 (2006) (brief in opposition, available at 2006 WL 354226)

*George E. Warren Corp. v. United States*, No. 03-1280, *cert. denied*, 543 U.S. 808 (2004) (brief in opposition, available at 2004 WL 1347281)

*Thomson Multimedia v. United States*, No. 03-882, *cert. denied*, 541 U.S. 1040 (2004) (brief in opposition, available at 2004 WL 871294)

*Azdell v. James*, No. 03-624, *cert. denied*, 540 U.S. 1218 (2004) (brief in opposition, available at 2004 WL 198333)

*Cook v. Principi*, No. 02-1317, *cert. denied*, 539 U.S. 926 (2003) (brief in opposition, available at <http://www.justice.gov/osg/briefs/2002/0responses/2002-1317.resp.pdf>)

*Hohenberg Bros. Co. v. United States*, No. 02-1286, *cert. denied*, 538 U.S. 1068 (2003) (brief in opposition, available at <http://www.justice.gov/osg/briefs/2002/0responses/2002-1286.resp.pdf>)

*BMW Manufacturing Corp. v. United States*, No. 01-238, *cert. denied*, 534 U.S. 1065 (2001) (brief in opposition, available at 2001 WL 34116162)

*Smurfit-Stone Container Corp. v. United States*, No. 00-1131, *cert. denied*, 532 U.S. 971 (2001) (brief in opposition, available at 2001 WL 34117273)

*United States Postal Service v. Gregory*, No. 00-758, 534 U.S. 1 (2001) (petition for writ of certiorari, available at 2000 WL 33979515; brief for the petitioner, available at 2001 WL 492313; reply brief, available at 2001 WL 880285)

*Florida Sugar Marketing and Terminal Ass'n v. United States*, No. 00-660, *cert. denied*, 531 U.S. 1191 (2001) (brief in opposition, available at <http://www.justice.gov/osg/briefs/2000/0responses/2000-0660.resp.pdf>)

*International Business Machines Corp. v. United States*, No. 00-482, *cert. denied*, 531 U.S. 1183 (2001) (brief in opposition, available at 2000 WL 34000084)

*United States v. Swisher International, Inc.*, No. 00-415, *cert. denied*, 531 U.S. 1036 (2000) (petition for writ of certiorari, available at 2000 WL 34000578)

*Carnival Cruise Lines, Inc. v. United States*, No. 99-1600, *cert. denied*, 530 U.S. 1274 (2000) (brief in opposition, available at <http://www.justice.gov/osg/briefs/1999/0responses/99-1596.resp.pdf>)

*United States v. United States Shoe Corp.*, No. 97-372, 523 U.S. 360 (1998) (petition for writ of certiorari, available at 1997 WL 33485657; reply brief, available at 1997 WL 33485656; brief for petitioners, available at 1997 WL 772730; reply brief, available at 1998 WL 67748)

*Lachance v. Erickson*, No. 96-1395, 522 U.S. 262 (1998) (petition for writ of certiorari, available at 1997 WL 33485601; brief for the petitioner, available at 1997 WL 458823; reply brief for the petitioner, available at 1997 WL 643344)

*Diaz v. Department of the Air Force*, No. 95-1145, *cert. denied*, 517 U.S. 1208 (1996) (brief in opposition, available at 1996 WL 33467853)

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. *Haas v. Peake*, 525 F.3d 1168 (Fed. Cir.), *rehearing denied*, 544 F.3d 1306 (Fed. Cir. 2008) (before Chief Judge Michel, and Judges Bryson and Fogel).

For veterans seeking benefits due to Agent Orange exposure, Congress enacted a statutory presumption that all veterans who served in Vietnam are presumed to have been exposed because the nature of the war made it extremely difficult for individual veterans to prove actual exposure. In this appeal, I personally handled the briefing and argument, and successfully defended the Secretary's interpretation of that presumption as limited to veterans who served on ground and not in waters offshore because Agent Orange was used on the land mass. I received a special commendation from the General Counsel of the Department of Veterans Affairs for my handling of this appeal, which resulted in several billions of dollars in monetary savings.

My opposing counsel were Barton Stichman and Louis George of the National Veterans Legal Services Program, 1600 K Street, NW, Suite 500, Washington, DC 20006 (202.265.8605).

2. *Henderson v. Peake*, 589 F.3d 1201 (Fed. Cir. 2009) (*en banc*), *rev'd*, 131 S. Ct. 1197 (2011).

The court of appeals, sitting *en banc*, ruled that the statutory time limit to file an appeal to the Court of Appeals for Veterans Claims was a jurisdictional requirement and could not be extended for equitable reasons. This case involved extremely complicated questions of statutory interpretation and legislative history, as well as the application of relevant Supreme Court precedent. I personally handled the briefing, panel argument and *en banc* argument at the Federal Circuit. I also prepared drafts of the government's brief in opposition to the petition for a writ of certiorari and the government's brief on the merits to the Supreme Court, and worked closely with the Solicitor General's office as it prepared for argument before the Supreme Court. The Supreme Court held that the statutory time period was not jurisdictional and could be tolled for appropriate equitable reasons.

My primary opposing counsel at the Federal Circuit was Thomas Stoeve, Arnold and Porter, 370 Seventeenth Street, Suite 4500, Denver, CO 80202 (303.863.1000).

3. Harbor Maintenance Tax Cases.

The Harbor Maintenance Tax was enacted by Congress to provide a funding source for critical harbor maintenance and development projects. I was a primary author of the briefs to the Federal Circuit and the Supreme Court in the lead case, *United States v. United States Shoe*, 523 U.S. 360 (1998), *aff'g*, 114 F.3d 1564 (Fed. Cir. 1997). *United States Shoe* was selected as the lead test case to address several constitutional and jurisdictional issues regarding the Harbor Maintenance Tax. Ultimately, several thousand cases involving the tax were filed in the Court of International Trade. In *United States Shoe*, the Supreme Court held that the tax, as applied to exporters, violated the Export Clause of the Constitution. In a series of significant appeals following *United States Shoe*, I either personally handled or acted as the supervisory attorney for a number of cases in which various companies tried to extend *U.S. Shoe* to recover additional monies. My team successfully defended against those other arguments for refunds and preserved billions of funding for port maintenance and development provided by the Harbor Maintenance Tax. *E.g.*, *Thomson Multimedia, Inc. v. United States*, 340 F.3d 1355 (Fed. Cir. 2003) (tax assessed on domestic shippers was valid and did not violate Uniformity or Port Preferences Clauses of the Constitution); *Stone Container Corp. v. United States*, 229 F.3d 1345 (Fed. Cir. 2000) (upholding two-year statute of limitations for seeking refund of unconstitutional portion of the HMT); *Florida Sugar Marketing v. United States*, 220 F.3d 1331 (Fed. Cir. 2000) (tax on domestic shippers did not violate Export Clause); *Carnival Cruise Lines, Inc. v. United States*, 200 F.3d 1361 (Fed. Cir. 2000) (tax assessed on passenger liners is valid); *International Business Machines Corp. v. United*



*States*, 201 F.3d 1367 (Fed. Cir. 2000) (no waiver of sovereign immunity for interest on HMT refunds).

I personally handled the briefing and argument in *Stone Container* (before Judges Bryson, Linn and Dyk), *Florida Sugar* (before Judges Newman, Michel, and Gajarsa), and *Carnival Cruise Lines* (before Judges Michel, Friedman, and Bryson).

Opposing counsel in those cases were as follows:

*Stone Container*. Kirk T. Hartley, currently with Gnarus Advisors, LLC, 445 West Erie Street, Suite 102, Chicago, IL 60654 (312.857.5545).

*Florida Sugar*. Wesley Caine, Stewart and Stewart, 2100 M Street, NW, Washington, DC 20037 (202.466.1265).

*Carnival Cruise Lines*. Robert P. Parker, currently with Baker & McKenzie, 815 Connecticut Avenue, NW, Washington, DC 20006 (202.835.6172).

4. *Garcia v. Department of Homeland Security*, 437 F.3d 1322 (Fed. Cir. 2006) (*en banc*).

In a significant appeal involving the scope of the Merit Systems Protection Board's authority to consider certain discrimination cases, the court held that an employee must first prove that he or she had been subject to an adverse personnel action otherwise within the jurisdiction of the Merit Systems Protection Board before the board could exercise jurisdiction over a related discrimination claim. This distinction is important because Congress has set up a careful scheme where challenges to certain adverse personnel actions are to be considered by the Merit Systems Protection Board, while other types of discrimination complaints are channeled through the normal Equal Employment Opportunity Commission procedures. The court's *en banc* decision provides important clarity and efficiency both for the tribunals that hear the cases and for federal employees. I presented oral argument to the panel, and prepared the supplemental brief and presented argument to the *en banc* court.

My opposing counsel was Katherine McDonough, then of Baptiste & Wilder, P.C., 1150 Connecticut Avenue, NW, Suite 315, Washington, DC 20036 (202.223.0723). Ms. McDonough is no longer associated with that firm and I have been unable to locate current contact information for her.

5. *Meeker v. Merit Systems Protection Board*, 319 F.3d 1368 (Fed. Cir. 2003) (before Judges Schall, Bryson, and Linn).

The Office of Personnel Management is charged with creating and administering competitive examinations for the selection of administrative law judges. In this case, I personally handled the briefing and argument, and successfully defended a newly established examination that enabled agencies to hire much-needed new administrative

law judges. I received a special commendation from the General Counsel of the Office of Personnel Management for my handling of this appeal.

My opposing counsel were Joyce Friedman, now retired, of the Merit Systems Protection Board, 1615 M Street, NW, Washington, DC, and William Bransford, Shaw, Bransford & Roth, 1100 Connecticut Avenue NW, Suite 900, Washington, DC 20036 (202.463.8400).

6. *Hesse v. Department of State*, 217 F.3d 1372 (Fed. Cir. 2000) (before Judges Michel, Schall, and Bryson).

The court held that the Merit Systems Protection Board lacked jurisdiction under the Whistleblower Protection Act to consider whether an employee's security clearance was revoked in reprisal for whistleblowing. In doing so, the court recognized both the broad discretion the Executive Branch has in making security clearance determinations and the many judicial determinations, including the Supreme Court's decision in *Department of the Navy v. Egan*, 484 U.S. 518 (1988), concluding that nonexpert bodies should not second guess the agency's national security determinations. I personally handled the briefing and argument of this appeal.

My opposing counsel was F. Douglas Hartnett, currently of Elitok & Hartnett, 2428 Wisconsin Avenue, NW, 2nd Floor, Washington, DC 20007 (202.965.0529).

7. *Stanley v. Gonzales*, 476 F.3d 653 (9th Cir. 2007) (before Judges Tashima, McKeown, and Carter); *Stanley v. Department of Justice*, 423 F.3d 1271 (Fed. Cir. 2005) (before Judges Mayer, Rader, and Linn).

In these two appeals, one in the Federal Circuit and one in the Ninth Circuit, I successfully defended the authority of the Attorney General to remove two United States Trustees. Both courts held that Congress had provided discretionary authority to the Attorney General to remove the trustees. I personally handled the argument and briefing of these cases at the Merit Systems Protection Board, the district court, and the Federal and Ninth Circuits.

My opposing counsel in both cases was Howard Moore, Jr., Moore and Moore, 445 Bellevue Avenue, 2nd Floor, Oakland, California, 94610 (510.451.0104). Ellen Vergos appeared pro se on her own behalf in the Federal Circuit appeal. She is currently with Wyatt Tarrant and Combs LLP, The Renaissance Center, 1715 Aaron Brenner Drive, Suite 800, Memphis, TN 38120 (901.537.1059).

8. *King v. Erickson*, 89 F.3d 1575 (Fed. Cir. 1996) (before Judges Rich, Lourie and Rader), *rev'd sub nom. Lachance v. Erickson*, 522 U.S. 262 (1998).

This case involved the question of whether the Due Process Clause prohibits a federal agency from disciplining employees for making false statements regarding alleged employment-related misconduct. The Merit Systems Protection Board held that

employees could not be separately charged with a false statement when they denied committing misconduct. On behalf of the Office of Personnel Management, I prepared the briefs and presented oral argument to the Federal Circuit. After an adverse decision from the Federal Circuit, I prepared drafts of the petition for writ of certiorari and the merits briefing at the Supreme Court. The Supreme Court reversed the Federal Circuit and held that a separate charge of falsification did not violate the Due Process clause.

My opposing counsel at the Federal Circuit was Gail Heglund, then of Best Roberts and Associates, Albuquerque, New Mexico (I have been unable to locate current contact information for Ms. Heglund), and M. Jefferson Euchler, 708 South Rosemont Road, Virginia Beach, VA 23452 (757.498.8011).

9. *Briggs v. Merit Systems Protection Board*, 331 F.3d 1307 (Fed. Cir. 2003) (before Judges Lourie, Schall, and Prost).

The court held that the application of the Hatch Act, which prohibits partisan political activities by some public employees, to a District of Columbia public school teacher, did not violate the First Amendment or the Equal Protection Clause. I personally handled the briefing and argument of this appeal.

My opposing counsel was Matthew S. Yeo, Steptoe & Johnson, LLP, 1330 Connecticut Avenue, NW, Washington, DC, 20036 (202.429.8184).

10. *Consolidation Coal Co. v. United States*, 615 F.3d 1378 (Fed. Cir. 2010) (before Judges Lourie, Friedman, and Moore); *Consolidation Coal Co. v. United States*, 528 F.3d 1344 (Fed. Cir. 2008) (before Judges Newman, Prost, and Moore).

In this long-running case, a group of domestic coal producers challenged the application of a reclamation fee imposed by the Surface Mining Control and Reclamation Act. The coal producers contended that, to the extent that the fee was imposed on coal eventually destined for exportation, it violated the Export Clause of the Constitution. We successfully argued that the fee was a general tax on the production of coal, and did not burden the export process. I personally argued the 2010 appeal, and participated in the briefing and preparation for argument of the 2008 appeal.

Opposing counsel was Steven H. Becker, 600 Third Avenue, New York, NY 10016 (212.499.9098).

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.)

Following my clerkship, my entire legal career has been spent at the Department of Justice, performing civil litigation, primarily in the United States Supreme Court, the Federal Circuit, the Court of International Trade, and the Court of Federal Claims. I have personally handled roughly 200 cases, about 100 of which were in the Federal Circuit, and have been the supervisory attorney for roughly 2,000 cases. In addition to cases for which I am directly responsible, I also routinely advise trial and other supervisory attorneys about other cases handled by my office, or other parts of the Department of Justice.

Apart from my litigation practice, I regularly review proposed legislation and regulations, and provide comments in a number of subject matter areas, most notably federal personnel and whistleblower law, veterans benefits, international trade law, and jurisdictional issues regarding the federal courts.

I have never performed any 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.

In 1994, I taught an advanced legal writing course at Cleveland-Marshall College of Law. The focus of the course was legal scholarship and the students were required to produce an original piece of legal scholarship. I do not have a copy of the syllabus.

In 1990, I taught freshman writing at Duke University. I do not have a copy of the syllabus.

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 do not have any arrangements for deferred income or future benefits from previous business relationships.

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

I have no plans, commitments, or agreements to pursue outside employment during service with the court.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

I am unaware of any individuals, family or otherwise, that are likely to present potential conflicts of interest. As a senior attorney at the Department of Justice, I am currently responsible, either as attorney of record or as a supervisory attorney, for a large number of cases currently pending before the Federal Circuit. If confirmed, I would recuse myself from all cases in which I was either directly or indirectly involved during my tenure at the Department of Justice.

For matters handled by the Department of Justice after my departure, I would apply the standards of 28 U.S.C. § 455 and the Code of Conduct for United States Judges, as well as any other pertinent principles of judicial ethics, to determine whether to recuse in other matters.

- 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 would consult rules and decisions that address what constitutes a conflict of interest, including 28 U.S.C. § 455 and the Code of Conduct for United States Judges, and based on that consultation, I would compile a comprehensive list of matters for easy flagging of potential conflicts of interest. In close cases, I would consult other judges and any persons designated by the court or judicial organizations to provide advice on such questions as they arise.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in

serving the disadvantaged.” Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

In the late 1990s, I attended a training workshop at the Whitman Walker Clinic in Washington, D.C. Following that training, I staffed an intake clinic on several occasions, providing legal advice about a variety of issues. From that clinic, I also took three separate matters. In one case, an individual believed that he was being discriminated against because he had AIDS. I corresponded both orally and in writing with his supervisor in an attempt to resolve the situation. In another instance, I advised an individual regarding an insurance situation. In the final matter, I investigated whether a pharmacy had breached any legal obligations when it inadvertently disclosed the names of certain drugs used to treat AIDS to an individual other than the person for whom the drugs were prescribed. None of these matters advanced to litigation.

**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 November 1, 2012, I received a message from an official in the White House Counsel’s Office, who asked me whether I was interested in the possibility of serving on the Federal Circuit. I confirmed that I would be interested and spoke with that official. On November 13, 2012, I met with officials from the White House Counsel’s Office. Since November 13, 2012, I have been in contact with officials from the Office of Legal Policy of the Department of Justice. On January 8, 2013, I met with officials from the White House Counsel’s Office and the Department of Justice in Washington, DC. On February 7, 2013, 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, Todd M. Hughes,  
do swear that the information provided in this statement is, to  
the best of my knowledge, true and accurate.

2/7/13  
(DATE)

  
(NAME)

NATALIE R. PALMER  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires June 30, 2015

Natalie Palmer  
(NOTARY)