

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

John Palmer Fishwick, Jr.

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

United States Attorney for the Western District of Virginia

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.

LichtensteinFishwick PLC
101 South Jefferson Street, Suite 400
Roanoke, Virginia 24011

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

1957; Roanoke, Virginia

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.

August 1980-May 1983: Washington and Lee Law School, J.D. *cum laude* May 1983
September 1975-June 1979: Harvard College, B.A., June 1979

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.

LichtensteinFishwick PLC
101 South Jefferson Street, Suite 400
Roanoke, Virginia 24011
Position: Member
June 2010-Present

Lichtenstein Fishwick & Johnson, PLC
101 South Jefferson Street, Suite 400
Roanoke, Virginia 24011
Position: Member
August 2001-May 2010

Billable Hours, Inc.
101 South Jefferson Street, Suite 500
Roanoke, Virginia 24011
Position: President, Part-time
September 1996-December 2000

Virginia Online Legal Research Company
101 South Jefferson Street, Suite 500
Roanoke, Virginia 24011
Position: President, Part-time
June 1996-December 2010

Lichtenstein & Fishwick, PLC
101 South Jefferson Street, Suite 400
Roanoke, Virginia 24011
Position: Member
January 1996-August 2001

Fishwick, Jones & Glenn
101 South Jefferson Street, Suite 400
Roanoke, Virginia 24011
Position: Member
April 1992-December 1995

Fishwick & Jones
101 South Jefferson Street, Suite 400
Roanoke, Virginia 24011
Position: Member
April 1991-April 1992

John P. Fishwick, Jr.
400 Shenandoah Building
305 1st Street
Roanoke, Virginia 24011
Position: Sole Practitioner
March 1989-March 1991

Fishwick & Young
400 Shenandoah Building
305 1st Street
Roanoke, Virginia 24011
Position: Member
November 1988-March 1989

John P. Fishwick, Jr.
400 Shenandoah Building
305 1st Street
Roanoke, Virginia 24011
Position: Sole Practitioner
February 1986-October 1988

McGuire Woods Battle & Boothe (now McGuire Woods)
900 East Main Street
Richmond, Virginia 23219
Position: Associate
August 1984-February 1986

Honorable James C. Turk
Judge, United States District Court for the Western District of Virginia
250 Franklin Road, SW
Roanoke, Virginia 24016
Position: Law Clerk
August 1983-August 1984

Mays & Valentine (now Troutman Saunders)
1111 East Main Street
Richmond, Virginia 23219
Position: Summer Clerk
June 1982-August 1982

Key, Tatel & King (now Key, Tatel and McNally)
1143 1st Street, SW
Roanoke, Virginia 24016
Position: Summer Clerk
June 1981-August 1981

J.M. Turner & Company
3115 Shenandoah Avenue, NW
Roanoke, Virginia 24011
Position: Laborer
April 1980-August 1980

Anthony Popple & Company Limited
(I believe the company is out of business; I do not recall its exact name.)
London, England (exact address unknown)
Position: Intern
November 1979-December 1979

Hopkins for Senate
Boxley Building
416 South Jefferson Street
Roanoke, Virginia 24011
Position: Campaign Volunteer
August 1979-November 1979

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. Based on my birth year, I was not required to register for the selective service.

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

Progressive Democrats of America, 2011
Leadership & Activism Award (for civil rights work)
Selected, Virginia Super Lawyers, 2008 – Present
Selected, Best Lawyers of America, 2005 – Present

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
Federal Bar Association
Delegate, National Convention (2011)
Fourth Circuit Judicial Conference
National Association of Criminal Defense Lawyers
Roanoke Bar Association
Board Member (approximately 1989 – 1991)
Selection Panels
Chaired, United States Magistrate Selection Committees for Western District of Virginia (1997, 2003 and 2011)
Ted Dalton American Inn of Court
Executive Committee (2004 – Present)

President (2011 – 2013)
Virginia Bar Association
Chair, Law Practice Management Section (1997 – 1998)
Committee Member, Federal Judgeship, Western District (2008 – 2013)
Virginia State Bar
Bar Council (2001– 2007)
Standing Committee Legal Ethics (2003 – 2007)
Member, Board of Governors, Criminal Law Section (2012 – 2013)
Virginia Trial Lawyers Association
Board of Governors (2002 – 2011)
Chair, Commercial Litigation Section (2002 – 2008)
Chair, Business Litigation Section (2008 – 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.

Virginia State Bar
October 1983
No membership lapses.

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

United States District Court, Western District of Virginia
November 1983
No membership lapses.

United States District Court, Eastern District of Virginia
November 1983
No membership lapses.

United States Court of Appeals for the Fourth Circuit
September 1985
No membership lapses.

United States Supreme Court
February 2003
No membership lapses.

Pro Hac Vice for particular cases: North Carolina (2009); West Virginia (2013); Pennsylvania (2014); and Tennessee (2014).

11. **Memberships:**

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

I have contributed to other charitable organizations over the years. I have not included any organizations to which I contributed money, but did not otherwise participate in the organizational activities. Some of the organizations, however, may label me as a member because of my contributions.

Roanoke Country Club
Member, 1983 – Present

Metropolitan Club
Member, 1983 – Present

Shenandoah Club
Member, 1985 – Present
Board Member, 2001-2003

Roanoke German Club
Member, 1988 – 2013

Roanoke Rotary Club
Member, approximately late 1980s – early 1990s

Roanoke City Democratic Committee
Chairman, early 1990s

Sixth District Democratic Committee
Member, early 1990s

The Owners Club at the Homestead, Owners Association, Inc.
Member, 2005 – Present

Hidden Valley Country Club
Member, 2008 – Present

- b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken

to change these policies and practices.

To the best of my knowledge, none of these organizations discriminates. I note that the German Club is a male social group, but there is a companion women's social group that meets with the German Club.

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.

I have done my best to identify all items called for in this question, including a review of my personal files and search of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or recall. I have located the following:

Affirmative Action Requirements for Government Subcontractors:
Statutory Authority for Executive Order 11246
39 Washington and Lee Law Review 628 (1982)
Copy Attached

Multiple Parties in Product Liability Case - draft section for Products
Liability Treatise (2014)
Copy Attached

- 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.

I have done my best to identify all items called for in this question, including a review of my personal files and search of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or recall. I have located the following:

Renaissance of the Oliver Hill House – description of project undertaken by the
Ted Dalton American Inn of Court(January 2013)
Copy Attached

- 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.

Not applicable.

- 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.

Not applicable.

- 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 done my best to identify all items called for in this question, including a review of my personal files and search of publicly available databases. Despite my searches, there may be other materials I have been unable to identify, find or recall. I have located the following:

September 29, 2014
The Roanoke Times
Editorial, Our view: To learn from a mockingbird
Copy Attached

October 8, 2013
Virginia Lawyers Weekly
Deborah Elkins, No punitive damages claim for triple-hit by trucker
Copy Attached

March 15, 2013
Prison Legal News
Excessive Force Claim Against Virginia Jail Settled
Copy Attached

November 13, 2012
WSLS 10 NBC
Morgan Donnelly, Roanoke County Supervisors approve prayer resolution
Copy Attached

July 5, 2012
Queerly.com
Dan Avery, Gay Dads Slap VA Health Club with Lawsuit for Nixing Membership
Copy Attached

June 27, 2012
The Roanoke Times
Neil Harvey, Roanoke Athletic Club sued over contract
Copy Attached

June 14, 2012
The Roanoke Times
Laurence Hammack, Roanoke deputies sued for \$6 million over alleged assault
Copy Attached

May 8, 2012
Virginia Lawyers Weekly
Peter Vieth, State will pay \$2.4M to settle fraud claims
Copy Attached

May 7, 2012
WSET.com
David Tate, Students Win Lawsuit Against Virginia Western Community College
Copy Attached

May 7, 2012
The Roanoke Times
Sarah Bruyn Jones, State settles lawsuit filed by former VWCC nursing students
Copy Attached

December 16, 2011
WSLS 10 NBC
Aaron Martin, Plowshare lawsuit heard in federal court
Copy Attached

September 20, 2011
The Roanoke Times
Laurence Hammack, Robert Ballou named to magistrate's post
Copy Attached

January 31, 2011
The Roanoke Times
Duncan Adams, Judge: Covington Paperworkers Union Local 675 has right to hall
Copy Attached

August 9, 2010
The Roanoke Times
Laurence Hammack, John P. Fishwick: Norfolk & Western president kept railroad
alive in Roanoke
Copy Attached

December 22, 2009
Virginia Lawyers Weekly
Peter Vieth, Lottery lawsuit still pending
Copy Attached

September 21, 2009
Virginia Lawyers Weekly
Peter Vieth, ER doc gets \$900,000 for job tort claim
Copy Attached

September 11, 2009
Virginia Lawyers Weekly
Peter Vieth, \$900,000 is verdict for fired doctor
Copy Attached

April 22, 2009
WHSV.com
Appeal Denied in VA Lottery Lawsuit
Copy Attached

February 9, 2009
Virginia Lawyers Weekly
News in Brief, ALJ orders new union vote at MeadWestvaco paper mill
Copy Attached

January 15, 2009
Virginia Lawyers Weekly
Sarah Rodriguez, Stuart hospital workers sue for lost wages
Copy Attached

January 12, 2009
Virginia Lawyers Weekly
News in Brief, Why Fishwick nixes run for AG nomination
Copy Attached

January 5, 2009
The Roanoke Times
Michael Sluss, Roanoke lawyer Fishwick ends bid for attorney general
Copy Attached

January 5, 2009
Virginia Lawyers Weekly
Peter Vieth, Fishwick drops out of AG race
Copy Attached

November 21, 2008
Vivian J. Paige Blog
Vivian J. Paige, Who is John Fishwick?
Copy Attached

November 18, 2008
Virginia Lawyers Weekly
Peter Vieth, No “class action” for lottery lawsuit
Copy Attached

November 6, 2008
Virginia Lawyers Weekly
Peter Vieth, AG candidate calls for early voting in Va
Copy Attached

October 20, 2008
Virginia Lawyers Weekly
Paul Fletcher, Fishwick mulls run for Demo nod for AG
Copy Attached

October 13, 2008
The Roanoke Times
Duncan Adams, Vendors claim city negligent landlord of market building
Copy Attached

September 26, 2008
Dr. Phil Show
Fighting the System
Video Disc Attached

September 3, 2008
The Roanoke Times
Jeff Sturgeon, Proposed electrical rate hikes protested
Copy Attached

July 7, 2008
CNN.com
Jason Carroll and Susan Chun, ‘Zero’ chance lottery tickets stun some players
Copy Attached

June 30, 2008
Fox News
Associated Press, \$85M Sought for Defective Lottery Tickets
Copy Attached

June 8, 2008
The Roanoke Times
Mike Allen, Roanoke law firm plan to sue Virginia Lottery
Copy Attached

December 20, 2007
The Roanoke Times
Laurence Hammack, Students sue college over accreditation
Copy Attached

December 17, 2007
Virginia Lawyers Weekly
Alan Cooper, Crack guidelines change to impact Eastern District
Copy Attached

October 1, 2007
Virginia Lawyers Weekly
Richmond circuit judge latest to uphold fees
Copy Attached

September 14, 2007
The Roanoke Times
Mike Allen, Man sues hospital in death of son, 41
Copy Attached

August 14, 2007
Virginia Lawyers Weekly
Let's go to the Supreme Court, AG says
Copy Attached

May 10, 2007
The Roanoke Times
Shawna Morrison, Woman's suit against Christiansburg Police Department
settled
Copy Attached

February 5, 2007
Virginia Lawyers Weekly
Roanoke firm opens Charlottesville office

Copy Attached

February 1, 2007

The Roanoke Times

Lindsey Nair, Bacova settles lawsuit with ex-supplier

Copy Attached

November 5, 2006

The Roanoke Times

Robert Anderson, Longtime tennis pro at RCC dies

Copy Attached

November 19, 2004

The Roanoke Times

Jen McCaffery, Good lawyers, good people

Copy Attached

May 11, 2004

The Roanoke Times

Laurence Hammack, Va. Supreme Court to hear appeal over death at hospital

Copy Attached

December 8, 2003

Virginia Lawyers Weekly

Commonwealth Paid \$350,000 to Settle Suit in Inmate's Death

Copy Attached

September 29, 2003

Virginia Lawyers Weekly

Peter Fletcher, Conrad is Confirmed

Copy Attached

June 5, 2000

Virginia Lawyers Weekly

That depends on what "is" is

Copy Attached

July 27, 1998

Virginia Lawyers Weekly

Family sues carrier after plane hits home

Copy Attached

August 29, 1994

Virginia Lawyers Weekly

Robert Smithmidford, Focus: Specialization spurs growth of Roanoke legal community

Copy Attached

13. **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.

Member, Virginia Access to Justice Commission
Appointed by Chief Justice Cynthia Kinser
2013 – Present

Board Member, Virginia Foundation for the Humanities
Appointed initially by Governor Mark Warner, and then by Governor Tim Kaine
for second term
2004 – 2010

- 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.

Statewide Democratic Election Day Legal Teams (responsible for areas of
Western Virginia)
2012, 2008 and 2004

Co-Chair Virginia, Dick Gephardt for President
2004

Chair, Roanoke City Democratic Committee
Early 1990s

Member, 6th District Democratic Committee
Early 1990s

Campaign Treasurer, Congressman Jim Olin
Appointed by Congressman Jim Olin
Approximately 1988 – 1991

Volunteer, many Democratic candidates over the years

14. **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;

Law Clerk, Honorable James C. Turk, Judge, United States District Court for the Western District of Virginia, 1983 – 1984

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

John P. Fishwick, Jr.
400 Shenandoah Building
305 1st Street
Roanoke, Virginia 24011
Position: Sole Practitioner
March 1989-March 1991

John P. Fishwick, Jr.
400 Shenandoah Building
305 1st Street
Roanoke, Virginia 24011
Position: Sole Practitioner
February 1986-October 1988

- 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.

LichtensteinFishwick PLC
101 South Jefferson Street, Suite 400
Roanoke, Virginia 24011
Position: Member
June 2010-Present

Lichtenstein Fishwick & Johnson, PLC
101 South Jefferson Street, Suite 400
Roanoke, Virginia 24011
Position: Member
August 2001-May 2010

Billable Hours, Inc.
101 South Jefferson Street, Suite 500
Roanoke, VA 24011
Position: President, Part-time
September 1996-December 2000

Virginia Online Legal Research Company
101 South Jefferson Street, Suite 500
Roanoke, VA 24011
Position: President, Part-time
June 1996-December 2010

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Roanoke, Virginia 24011
Position: Member
January 1996-August 2001

Fishwick, Jones & Glenn
101 South Jefferson Street, Suite 400
Roanoke, Virginia 24011
Position: Member
April 1992-December 1995

Fishwick & Jones
101 South Jefferson Street, Suite 400
Roanoke, Virginia 24011
Position: Member
April 1991-April 1992

John P. Fishwick, Jr.
400 Shenandoah Building
305 1st Street
Roanoke, Virginia 24011
Position: Sole Practitioner
March 1989-March 1991

Fishwick & Young
400 Shenandoah Building
305 1st Street
Roanoke, Virginia 24011
Position: Member
November 1988-March 1989

John P. Fishwick, Jr.
400 Shenandoah Building
305 1st Street
Roanoke, Virginia 24011
Position: Sole Practitioner
February 1986-October 1988

McGuire Woods Battle & Boothe (now McGuire Woods)
900 East Main Street
Richmond, Virginia 23219
Position: Associate
August 1984-February 1986

Honorable James C. Turk
Judge, United States District Court for the Western District of Virginia
250 Franklin Road, SW
Roanoke, Virginia 24016
Position: Law Clerk
August 1983-August 1984

- 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 was an arbitrator in one case, UXB International, Inc. v. Explo Systems, Inc. (year) This case was a commercial dispute over work performed and monies owed; I made a decision as the arbitrator and the matter concluded.

b. Describe:

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

When I started my trial practice in Roanoke over twenty-five years ago, I was anxious to get as much trial practice as I could. I did extensive court appointed criminal work in state and federal courts, and I tried many federal criminal jury trials.

Over the past fifteen years, I sought and developed a varied trial practice, including a wide range of complex civil and criminal litigation, including civil rights cases, commercial litigation, personal injury and federal criminal cases. I have handled a significant number of cases in federal court; a Pacer search identifies me as counsel in 159 cases in the Western District of Virginia. These cases reflect the nature of my active trial practice.

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

I have always had a varied trial practice. My typical clients are

individuals, although in the commercial litigations cases, I have represented corporations.

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

i. Indicate the percentage of your practice in:

1. federal courts;
2. state courts of record;
3. other courts;
4. administrative agencies

My entire practice is a trial practice and I appear in court regularly.

Federal courts: 55%
State courts: 40%
Other courts: 0%
Administrative agencies: 5%

ii. Indicate the percentage of your practice in:

1. civil proceedings;
2. criminal proceedings.

Civil proceedings: 70%
Criminal proceedings: 30%

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. What percentage of these trials were:

1. jury;
2. non-jury.

Jury trials: 83%
Non-jury trials: 17%

I was sole counsel in thirteen of the jury trials, chief counsel in seven, and co-counsel in nine. I have tried five bench trials and at least one case before an administrative law judge. I was sole counsel in three of these trials, and co-counsel in three. Additionally, I have represented a number of individuals involved in Virginia education before fact-finding panels. For a number of years, I was a court-appointed lawyer in federal and state court for criminal cases, and I tried a number of cases in addition to those

identified above. I do not have the records for these cases.

- 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 filed four Petitions for Certiorari:

United States v. Parker, 834 F.2d 408, (4th Cir.), cert. denied, 485 U.S. 938 (1988); I no longer have a copy of the petition in this case.

United States v. Mackie, Fed. Appx. 860 (4th Cir. 2004), cert. denied, 544 U.S. 955 (2005); copy attached.

United States v. Gonzales, 2005 WL 2764749 (4th Cir. 2005), cert. denied, 546 U.S. 1130 (2006); copy attached.

James Ray v. CSX, 189 Fed. Appx. 154 (4th Cir. 2006), cert. denied (2006), petition for rehearing denied, 550 U.S. 914 (2007); copy attached.

15. **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. Plowshare Peace and Justice Center v. Market Building Partners, LP, et al.

No. 7:11cv00522

Judge and Court: Honorable Samuel G. Wilson, then United States District Judge, Western District of Virginia

Date of Representation: November 2011-January 2012

Co-Counsel: Carrol M. Ching
 Monica L. Mroz
 LichtensteinFishwick PLC
 101 South Jefferson Street, Suite 400

Roanoke, Virginia 24011
540-343-9711

Defense Counsel: Paul Beers and Harwell M. Darby, Jr.
Glenn Feldman Darby & Goodlatte
P.O. Box 2887
Roanoke, Virginia 24001
540-224-8035
*Counsel for Market Building Partners, LP and Market Building
Foundation)*

Gary E. Tegenkamp,
Office of Roanoke City Attorney
464 Municipal Building
215 Church Avenue, SW
Roanoke, Virginia 24011
540-853-2431
Counsel for City of Roanoke

Gregory J. Haley and James O’Keeffe, IV
Gentry Locke Rakes & Moore
P.O. Box 40013
Roanoke, Virginia 24022
540-983-9368
Co-counsel for the City of Roanoke

We represented a nonprofit organization that had conducted for many silent protest vigils on the Roanoke City Market against the wars and conflicts our country was involved in. The Market Building is owned by the City of Roanoke and prior to this litigation, it had been leased to a private entity, primarily to manage the Market Building. This private entity prohibited the plaintiff from protesting at the Market Building. The City’s position was that the plaintiff could protest but at an alternative site across the street. We filed suit, under 42 U.S.C. § 1983, and sought a preliminary injunction that would allow our client to continue with their protests in the location they had been using. After extensive briefing, an injunction hearing was heard by the Court. The Court made no rulings but suggested the parties try to negotiate a settlement. I was lead counsel in court and during the negotiations. We reached a settlement with the defendants whereby our client could continue to protest at the Market Building pursuant to a permit from the City.

2. Joseph R. Frazier v. Ronald J. Angelone, Director of the Virginia Department of Corrections, et al.

No. 7:02cv01208

Judge and Court: Honorable Jackson L. Kiser, Western District of Virginia

Date of Representation: November 2002-October 2005

Co-counsel: John E. Lichtenstein
LichtensteinFishwick PLC
101 South Jefferson Street, Suite 400
Roanoke, Virginia 24011
540-343-9711

Defense Counsel: George W. Chabalewski
Mark R. Davis
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
804-786-0038
Counsel for Ronald J. Angelone, Stanley K. Young, Correctional Officer Adams, Correctional Officer Davidson, Correctional Officer Flanary, Correctional Officer Fletcher, Correctional Officer Hockett, Correctional Officer Kiser, Correctional Officer Love, Correctional Officer Meyer, Correctional Officer Taylor, Correctional Officer Thacker, Jeffrey Compton, Mark Deahl, Virgil Hall, Matthew Hamilton, Adam Harvey, Robert Young, and Nurse Johnson

Edward J. McNelis, III
Rawls McNelis and Mitchell
211 Rocketts Way, Suite 100
Richmond, Virginia 23231
804-344-0038
Counsel for Dr. Larry Howard, Nurse Johnson, Nurse Green and Correctional Medical Services

John D. McChesney
Office of the Attorney General
Civil Litigation Division – Trial Division
900 East Main Street
Richmond, Virginia 23219
804-782-0606
Counsel for Dr. Larry Howard, Nurse Johnson, Nurse Green and Correctional Medical Services

I was the lead lawyer in a wrongful death lawsuit under 42 U.S.C. § 1983, filed in June 2002 on behalf of the family of a deceased inmate, Larry Frazier. Larry Frazier was incarcerated at

Wallens Ridge State Prison, a supermax prison located in Big Stone Gap, Virginia. We alleged that Mr. Frazier, a known diabetic, suffered a diabetic seizure, which led officers to transport him on a gurney to the medical unit. While in the medical unit, Mr. Frazier's seizures continued, and when he tried at one point to get up from the gurney, he was "stunned" at least three times with the Ultron II Stun Gun, and placed in a five point restraint. Mr. Frazier died as a result. We also challenged the failure of certain defendants to use the defibrillator to save Mr. Frazier's life. We brought this case against multiple defendants and conducted extensive discovery. After thorough discovery, the matter settled.

3. Mary R. Smith v. Cole National Corp., et al.

No. 7:05cv00576

Judge and Court: Honorable James C. Turk, then United States District Judge,
Western District of Virginia

Date of Representation: September 2005 – August 2007

Co-Counsel: John E. Lichtenstein
LichtensteinFishwick PLC
101 South Jefferson Street, Suite 400
Roanoke, Virginia 24011
540-343-9711

Devon J. Munro (former associate)
Cranwell & Moore P.L.C.
111 W. Virginia Avenue
Vinton, Virginia 24179
540-904-1621

Defense Counsel: Earle Duncan Getchell, Jr. and William Harrison Baxter, II
McGuire Woods LLP
One James Center
901 East Cary Street
Richmond, Virginia 23220
804-775-1000
*Counsel for Cole National Corp., Cole National Group, Inc.
and Cole Vision Corp.*

Melissa Wolf Riley and Jonathan Todd Blank
McGuire Woods LLP
Court Square Building

310 Fourth Street, NE
Suite 300
Charlottesville, Virginia 22902
434-977-2598
*Co-Counsel for Cole National Corp., Cole National Group, Inc.
and Cole Vision Corp.*

Joseph A. DiBenedetto
Winston & Strawn, LLP
200 Park Avenue
New York, New York 10166
212-294-6700
*Co-Counsel for Cole National Corp., Cole National Group, Inc.
and Cole Vision Corp.*

After significant investigation and research, we filed a class action lawsuit in September 2005, alleging false representations and practices in the sale of eyeglasses to consumers. Plaintiffs alleged they unknowingly purchased a warranty when they bought eyeglasses. The parties entered into extensive negotiations, culminating in a joint motion to approve a class action settlement, which was filed in September 2006. Under the terms of the settlement, class members received a coupon representing the amount of the warranty or alternatively they could receive a smaller cash payment. I was the lead lawyer on the case. The Court approved the settlement in October 2006. The total value of the settlement for the class was \$771,675.00.

4. James Ray v. CSX Transportation, Inc.

No. 7:04cv00134

Judge and Court: Honorable James C. Turk, then United States District Judge
Western District of Virginia

Date of Representation: March 2004-November 2005

Co-Counsel: Devon J. Munro (former associate)
Cranwell & Moore P.L.C.
111 West Virginia Avenue
Vinton, Virginia 24179
540-904-1621

R. Creigh Deeds
2696 Main Street
Hot Springs, Virginia 24445
540-839-2473

Defense Counsel: Robert Craig Wood
McGuire Woods LLP
Court Square Building

310 Fourth Street, NE
Suite 300
Charlottesville, Virginia 22902
434-977-2558
Counsel for CSX Transportation, Inc.

We filed a lawsuit alleging race discrimination on behalf of an African American employee, who had been terminated from his job as a conductor with CSX Transportation. In March 2005, we tried a two-day jury trial where I was lead counsel. We argued that our client was terminated for the same behavior as certain Caucasian employees who were not terminated. We won the jury trial and our client was awarded back pay and compensatory damages. The District Court set aside the verdict on the grounds that the plaintiff had not proven discriminatory intent, and the Fourth Circuit affirmed the District Court's decision in an unpublished decision, 189 Fed. Appx. 154 (4th Cir. 2006). The U.S. Supreme Court declined to hear the petition for certiorari, 549 U.S. 1053 (2006), petition for rehearing denied, 550 U.S. 914 (2007).

5. USA v. Carl B. Hutcherson, Jr.

No. 6:05cr00039

Judge and Court: Honorable James C. Turk, then United States District Judge
Western District of Virginia

Date of Representation: December 2005-January 2008

Co-Counsel: John E. Lichtenstein
LichtensteinFishwick PLC
101 South Jefferson Street, Suite 400
Roanoke, Virginia 24011
540-343-9711

Counsel for
the Government: Thomas J. Bondurant, Jr.
U.S. Attorney's Office
BB&T Building
310 First Street, SW, Room 906
Roanoke, Virginia 24011
540-857-2250

William F. Gould
U.S. Attorney's Office
255 West Main Street
Room 130
Charlottesville, Virginia 22902

In December 2005, the Mayor of Lynchburg, Carl B. Hutcherson, Jr., was indicted for social security fraud, mail fraud, false statements to a federal official, and obstruction of justice. I tried the five-day trial with my partner, John E. Lichtenstein. The jury found the defendant guilty on

all counts. At the sentencing hearing, the Court sentenced Mr. Hutcherson to probation. The government appealed the sentence imposed by the Court, and the defendant appealed his convictions. The appeals were dismissed following the U.S. Supreme Court's decision in Gall v. United States, 552 U.S. 38 (2007).

6. USA v. Amos Law

No. 7:00cr00033

Judge and Court: Honorable Jackson L. Kiser, Western District of Virginia

Date of Representation: March 2000-September 2000

Counsel for

the Government:

Craig J. Jacobsen
Sharon Burnham
U.S. Attorney's Office
BB&T Building
310 First Street, SW, Room 906
Roanoke, Virginia 24011
540-857-2250

Amos Law was charged with perjury and lying to the grand jury about his involvement in the moonshining business. We represented Mr. Law in all pretrial proceedings and at trial. We moved to dismiss the indictment, asserting that the questions posed to him during questioning in the grand jury were double negatives, and that Mr. Law had in fact not lied. The District Court denied our motion to dismiss. We tried a two-day jury trial in September 2000, and argued that our client had no intent to lie. The jury acquitted Mr. Law.

7. Christina Brink, et al. v. Virginia Western Community College

No. CL07-1457

Judge and Court: Honorable James R. Swanson, Roanoke County Circuit Court

Date of Representation: December 2007-April 2012

Co-Counsel:

Monica L. Mroz
LichtensteinFishwick PLC
101 South Jefferson Street, Suite 400
Roanoke, Virginia 24011
540-343-9711

Jeffrey L. Dorsey
25 Library Square
Salem, Virginia 24153
540-389-8800

Defense Counsel:

Michael Melis
C. Nicole Gilliam
John Gilbody
Crystal Twitty
Office of the Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
*Counsel for Virginia Western Community College, the
Commonwealth of Virginia and David Van Moll, Comptroller of
the Commonwealth of Virginia*

We filed suit in December 2007 on behalf of seventy-five Virginia Western Community College nursing students. (We filed one lawsuit in state court as there is no class action in Virginia state court, but there is a provision for similarly situated plaintiffs to be joined in the same lawsuit.) The crux of our claim was that the school, which for years had been nationally accredited, had lost its national accreditation without informing the students of this significant loss. Our case was that national accreditation was critical to employment and economic opportunities. The Court made a pretrial ruling that the seventy-five cases would be divided into multiple trials, with sixteen cases being tried in the first trial. I, along with associate attorney Monica Mroz, tried the 16 cases over a period of two weeks. This was a large trial with many moving parts and I put on many witnesses, cross-examined several key witnesses, and gave the closing and rebuttal arguments. The jury found for each of the sixteen plaintiffs on both the contract and fraud claims. Ultimately, all of our clients settled their cases for a total settlement of \$2.4 million.

8. William F. Trinkle v. Roanoke Athletic Club, a/k/a CHS, Inc. and Carilion Clinic
No. CL12-1234

Judge and Court: Honorable Charles N. Dorsey, Roanoke City Circuit Court

Date of Representation: June 2001-January 2013

Co-Counsel: Monica L. Mroz
LichtensteinFishwick PLC
101 South Jefferson Street, Suite 400
Roanoke, Virginia 24011
540-343-9711

Defense Counsel: P. Doug Henson
Senior Director, Legal Services
Carilion Clinic
213 Jefferson Street, Suite 720
Roanoke, Virginia 24011
540-224-5066
*Counsel for Roanoke Athletic Club, a/k/a CHS, Inc.
and Carilion Clinic*

We represented a man whose family consisted of his same sex partner and their son. They had applied for a family membership to the Roanoke Athletic Club (“RAC”). They were initially admitted to the RAC, but then were told that their membership was being rejected. We filed suit in June 2012, seeking specific performance of the parties’ contract, thus permitting our client and his family to join the athletic club as a family. After suit was filed, the parties entered into

negotiations. I was lead counsel on the case. The decision not to admit our client's family was reversed, and the lawsuit was nonsuited in January 2013.

9. USA v. Richard B. Burrow

Nos. 6:02cr70068, 3:04cr60006, 3:04cr30006

Judge and Court: Honorable James C. Turk, then United States District Judge
Western District of Virginia (*Presided over both trials*)

Date of Representation: June 2002-November 2004

Co-Counsel: John E. Lichtenstein
Gregory L. Lyons
LichtensteinFishwick PLC
101 South Jefferson Street, Suite 400
Roanoke, Virginia 24011
540-343-9711

Counsel for
the Government: C. Patrick Hogeboom, III
Morgan E. Scott, Jr.
U.S. Attorney's Office
BB&T Building
310 First Street, Southwest, Room 906
Roanoke, Virginia 24011
540-857-2250
Counsel in the Lynchburg case

C. Patrick Hogeboom, III
Thomas J. Bondurant, Jr.
U.S. Attorney's Office
BB&T Building
310 First Street, SW, Room 906
Roanoke, Virginia 24011
540-857-2250
Counsel in Charlottesville case

Our client was indicted with multiple criminal fraud charges for his actions in fundraising and management while President of the National D-Day Foundation. The Foundation is a non-profit 501(c)(3) organization responsible for the building and maintenance of the National D-Day Memorial in Bedford, Virginia. The first of two trials was a week-long jury trial in Lynchburg, Virginia in December 2002. The jury was deadlocked and the Court dismissed the jury. The case was brought again with additional charges. The second trial was held in Charlottesville, Virginia in January 2004, and again the jury was deadlocked. The government did not pursue a third trial, and the charges were dismissed. In each trial, my partner, John Lichtenstein, was lead counsel. In each trial, I put on direct testimony, cross-examined a number of witnesses, and argued a number of motions.

10. Cynthia D. Deel v. Bank of America, N.A.
No. 7:04cv00150
Judge and Court: Honorable James C. Turk, then United States District Judge
Western District of Virginia
Date of Representation: March 2004-October 2006

Co-Counsel: Devon J. Munro (former associate)
Cranwell & Moore P.L.C.
111 W. Virginia Avenue
Vinton, Virginia 24179
540-904-1621

Defense Counsel: Bruce M. Steen
Richard F. Kane
Aaron J. Longo
McGuire Woods LLP
201 North Tryon Street, Suite 3000
Charlotte, North Carolina 28202
704-353-6244

In March 2004, we filed an opt in class action lawsuit on behalf of a Bank of America employee, alleging that she and other employees, pursuant to the Fair Labor Standards Act (FLSA) were not being paid for overtime work. After extensive discovery, the parties mediated the case with Magistrate Judge B. Waugh Crigler, and the matter settled in August 2006. Ultimately, twenty-four plaintiffs opted in to the class action case. The District Court approved the parties' settlement in October 2006. I was lead counsel in this case.

16. **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.)

In 2008, after an extensive investigation, we brought suit against the Virginia Lottery for sales of scratcher tickets. We alleged that the Lottery led consumers to believe the top prizes were still available to win, when in fact they were not. After extensive work in the case, our client concluded that the lottery had discontinued this practice, and the case was nonsuited.

In the early 1990s I tried a criminal antitrust price fixing jury trial in the Western District, and my client was acquitted. I also have represented individuals in connection with federal criminal investigations and in a number of instances, the client was able to avoid criminal prosecution. Additionally, I have represented individuals who have brought federal tort claims cases for personal injury.

I have not performed lobbying activities.

17. **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.

I have been a guest lecturer for one class at Washington and Lee Law School in 2012, 2013, and 2015, on the topic of 42 U.S.C. § 1983 cases. The course is a local government law seminar. Attached hereto are the documents I used for this class.

This year (2015) I also taught one class at Roanoke College on the Americans with Disabilities Act. The course was a year-end seminar. Attached hereto are the documents I used for this class.

18. **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.

Upon confirmation, I will resign from Lichenstein Fishwick PLC and I will transfer to the firm several cases in which I have a contingent fee interest. I will withdraw as counsel from these cases and all outstanding client fees will be fixed prior to my assuming the duties of United States Attorney. The firm will remove my name from the law firm name and I will divest my shareholder interest in the firm upon confirmation and will receive a payout of that shareholder interest or services performed through my resignation. The firm will also reimburse me for costs in cases in which I have advanced the costs.

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

None.

20. **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 SF-278, as provided by the Office of Government Ethics.

21. **Statement of Net Worth:** Please complete the attached financial net worth statement in

detail (add schedules as called for).

See attached Net Worth Statement.

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors 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.

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

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

In the event of a potential conflict of interest, I will consult with the ethics officials in the Executive Office for United States Attorneys, Department of Justice.

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

As an attorney, I am most proud of our accomplishment in resurrecting the Oliver Hill House. As a lawyer and as President of the Ted Dalton American Inn of Court, I was privileged to be active in that work of our organization to help reopen the Oliver Hill House in Roanoke. The house where Mr. Hill spent his early years had been vacant, and we began the process, with the blessing of the Oliver Hill Foundation, to find an appropriate use for the house. Today, with the assistance of the Roanoke City School System and Big Brothers Big Sisters, young students from Roanoke City schools are mentored and tutored after school at the Oliver Hill House. Our Inn was honored for this work, and it is something of which we are all very proud. I have continued to assist this program.

I regularly represent at no charge individuals in cases of discrimination, financial matters, and other general litigation. Often these individuals have lost their jobs and have few if

any resources. I also routinely handle general litigation matters for people of limited means. I regularly advise without charge individuals who seek consultation, whether or not we can represent them. From early in my law practice, I have helped people at no charge. At any given time, five to ten percent of my work is pro bono.

In 2002, my father and I also started a legal scholarship at Washington and Lee Law School. The scholarship is awarded to a law student of a disadvantaged background who has demonstrated financial need. The scholarship is for all three years of the recipient's law school education.