

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Charles Esque Fleming

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

United States District Judge for the Northern District of Ohio

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

Office: Office of the Federal Public Defender for the Northern District of Ohio  
1660 West 2nd Street, Suite 750  
Cleveland, Ohio 44113

Residence: Oakwood Village, Ohio

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

1962; Cleveland, 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.

1987 – 1990, Case Western Reserve University Law School; J.D., 1990

1982 – 1986, Kent State University; B.A. 1986

1980 – 1981, Boston University; no degree

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.

1991 – present

Office of the Federal Public Defender for the Northern District of Ohio  
1660 West 2nd Street, Suite 750  
Cleveland, Ohio 44113  
Supervisor of Cleveland Trial Team (2016 – present)  
Supervisor of Investigative and Paralegal Staff (2010 – 2016)  
Assistant Federal Public Defender (1991 – present)

2007 – 2018  
Cleveland Marshall College of Law at Cleveland State University  
1801 Euclid Avenue  
Cleveland, Ohio 44114  
Adjunct Professor/Instructor

Summer 1989; 1990 – 1991  
Forbes, Forbes, and Associates  
614 Superior Avenue, West, Suite 700  
Cleveland, Ohio 44113  
Attorney (1990 – 1991)  
Legal Intern (summer 1989)

Summer 1988  
Greater Cleveland Regional Transit Authority  
615 Superior Avenue, West, 10th Floor  
Cleveland, Ohio 44113  
Legal Intern

1986 – 1987  
Criminal Division of the Cleveland Municipal Court  
1200 Ontario Street, 3rd Floor  
Cleveland, Ohio 44113  
Chief Deputy Clerk

Other affiliations (Uncompensated):

Approximately 2006 – present  
The Stephanie Tubbs Jones Summer Legal Academy  
Case Western Reserve University School of Law  
11075 East Boulevard  
Cleveland, Ohio 44106  
Executive Board Member and Benefactor

Approximately 2007 – present  
The Norma E. Fleming and Family Excel Fund  
6705 Chinkapin Court  
Oakwood Village, OH 44146  
Creator and Benefactor

Approximately 1996 – 2013  
Women's Alliance for Recovery Services  
2012 West 25 Street, Suite 620  
Cleveland, Ohio 44113  
Benefactor

1996 – present  
The Judge Charles W. Fleming Scholarship Fund Committee Cleveland-Marshall College  
of Law, Cleveland State University  
1801 Euclid Avenue  
Cleveland, Ohio 44115  
Committee Member

Approximately 1995 – 1997  
Legal Aid Society of Cleveland  
1223 West Sixth Street, Fourth Floor  
Cleveland, Ohio 44113  
Member, Board of Trustees

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

I did not serve in the military. I registered for the selective service upon turning 18.

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.

Franklin A. Polk Public Servants Merit Award from Cleveland Metropolitan Bar Foundation (2018)

National Trial Lawyers Top 100 Criminal Defense Lawyers in Ohio (2016)

American Jurisprudence Award for Excellence in the Study of Trial Practice (highest grade in the class) (1989)

Honorable Louis Stokes Scholarship (1988 – 1989)

Greater Cleveland Regional Transit Authority, Mock Trial Competition Winner (1988)

Case Western Reserve University Law School Scholarship (1987 – 1990)

Inter-Fraternity Council Award (highest G.P.A. of all fraternity members campus-wide) (1984)

National Dean's List (1984)

Outstanding Young Men of America (1984)

John Coates Memorial Award for Academic Achievement (approximately 1983 – 1986)

Mary McCleod Bethune Award for Academic Excellence (approximately 1983 – 1986)

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.

Cleveland Metropolitan Bar Association (1991 – present)

Federal Bar Association (1991 – present)

Harold Burton Inns of Court (approximately 1996 – 1998)

National Bar Association (approximately 1991 – 2000)

Norman S. Minor Bar Association (1990 – 2010)

Chairman, Criminal Law Committee (approximately 1997)

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.

Ohio, 1990

There have been no lapses in membership.

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

United States Court of Appeals for the Sixth Circuit, 1991

United States District Court for the Northern District of Ohio, 1991

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.

Alpha Phi Alpha Fraternity, Inc. (1983 – present)

The Judge Charles W. Fleming Scholarship Fund Committee Cleveland-Marshall College of Law, Cleveland State University (1996 – present)

Legal Aid Society of Greater Cleveland, Board of Trustees (approximately 1995 – 1997)

The Norma E. Fleming and Family Excel Fund, Benefactor (2007 – present)

The Stephanie Tubbs Jones Summer Legal Academy, Executive Board Member and Benefactor (approximately 2006 – present)

- 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.

Alpha Phi Alpha is a college fraternity in the Greek fraternity system that is open only to men, but there are equivalent organizations for women. To the best of my knowledge, none of the other organizations listed above currently discriminates 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.

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.

*The Federal War on Drugs; Justice or Just Us?* The Newsletter of the Norman S.

Minor Bar Association, Vol. 4, Issue 1 (1996). (Copy supplied).

- 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.

August 23, 2019: Panelist, "The Cooperating Defendant", Federal Public Defender's Office and the Federal Bar Association, Cleveland, Ohio. Recording supplied.

Approximately 2005: Speaker, "Federal Criminal Practice," Cleveland Marshall College of Law, Cleveland, Ohio. The presentation was on federal trial and sentencing practice. I have no notes, transcript, or recording. The address for Cleveland Marshall College of Law is 1801 Euclid Avenue, Cleveland, Ohio 44114.

Approximately 2000: Speaker, "Federal Criminal Practice," University of Akron School of Law, Akron, Ohio. The presentation was on federal trial and sentencing practice. I have no notes, transcript, or recording. The address of the University of Akron School of Law is 150 University Avenue, Akron, Ohio 44304.

Approximately 1999: Speaker, "Federal Criminal Practice," Federal Public Defender's Office and the Federal Bar Association, Cleveland, Ohio. The presentation was on federal gun laws. I have no notes, transcript, or recording.

The address of the Federal Public Defender's Office is 1660 West Second Street, Suite 750, Cleveland, Ohio 44113, and the address of the Federal Bar Association-Northern District of Ohio is P.O. Box 14760, Cleveland, Ohio 44114.

Approximately 1998: Moderator, "Parents, Children, and the Law—Rights and Responsibilities," Norman S. Minor Bar Association, Cleveland, Ohio. The presentation was on how federal laws affect young people. I have no notes, transcript, or recording. The address of Norman S. Minor Bar Association is 1375 East Ninth Street, Floor Two, Cleveland, Ohio 44114.

Approximately 1998: Speaker, "Federal Criminal Practice," United States District Court for the Northern District of Ohio, Cleveland, Ohio. The presentation was on the federal criminal process. I have no notes, transcript, or recording. The address of the United States District Court, Northern District of Ohio is 801 Superior Avenue, West, Cleveland, Ohio 44113.

Approximately 1997: Speaker, "Federal Criminal Practice," Holy Trinity Baptist Church, Cleveland, Ohio. The presentation was on my job, and the importance of getting an education and staying out of trouble. I have no notes, transcript, or recording. The address of Holy Trinity Baptist Church is 3808 East 131st Street, Cleveland, Ohio 44120.

Approximately 1996: Panelist, "Federal Criminal Practice," Case Western Reserve University School of Law, Cleveland, Ohio. The presentation was on the federal criminal process. I have no notes, transcript, or recording. The address of Case Western Reserve University Law School is 10900 Euclid Avenue, Cleveland, Ohio 44106.

Approximately 1996: Speaker, "The Federal Criminal Process," Cleveland Metropolitan Bar Association, Cleveland, Ohio. The presentation was about handling a federal criminal case—from initiation to final disposition. I have no notes, transcript, or recording. The address of the Cleveland Metropolitan Bar Association is 1375 East Ninth Street, Floor Two, Cleveland, Ohio 44114.

Approximately 1994: Speaker, "Federal Criminal Practice" Case Western Reserve University School of Law, Cleveland, Ohio. The presentation was on defending federal criminal cases. I have no notes, transcript, or recording. The address of Case Western Reserve University School of Law is 10900 Euclid Avenue, Cleveland, Ohio 44106.

Approximately 1994: Panelist, "Federal Criminal Practice," Case Western Reserve University School of Law, Cleveland, Ohio. The presentation was on federal criminal practice and sentencing. I have no notes, transcript, or recording. The address of Case Western Reserve University School of Law is 10900 Euclid Avenue, Cleveland, Ohio 44106.

- 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.

Interview with Fox 8 News (Mar. 2, 2016). The interview was regarding preliminary proceedings in the case of a client who had been arrested for making threats regarding the president and a presidential candidate. I am unable to obtain any clip or transcript of this interview.

Dan Scharf, *Food, Family, And A Well-Worn Barrel Grill*, edible Cleveland, Summer 2014. Copy supplied.

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 judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? \_\_\_\_\_
  - i. Of these cases, approximately what percent were:
    - jury trials: \_\_\_\_\_%
    - bench trials: \_\_\_\_\_% [total 100%]
  - ii. Of these cases, approximately what percent were:
    - 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 of 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 (4) 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 judicial office.

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

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed

you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public office.

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

None.

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

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

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

I have not served as a clerk to a judge.

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

I have not practiced alone.

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

1990 – 1991

Forbes, Forbes, and Associates

614 Superior Avenue, West, Suite 700

Cleveland, Ohio 44113

Attorney

1991 – present

Office of the Federal Public Defender for the Northern District of Ohio

1660 West 2nd Street, Suite 750

Cleveland, Ohio 44113

Supervisor of Cleveland Trial Team (2016 – present)

Supervisor of Investigative and Paralegal Staff (2010 – 2016)

Assistant Federal Public Defender (1991 – present)

Law

- 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 not served as a mediator or arbitrator.

b. Describe:

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

I began my legal career in 1990 as an attorney at a small firm in general civil practice. My work focused primarily on wrongful discharge and employment discrimination cases. At the firm, I performed legal research, drafted memoranda, wrote dispositive motions, prepared jury instructions, assisted with depositions, and assisted with various aspects of case preparation from case initiation to final disposition.

In December 1991, I joined the Office of the Federal Public Defender as an Assistant Federal Public Defender. My practice is solely focused on federal criminal law. My caseload consists mostly of felony charges.

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

As an attorney at a small firm in general civil practice, my typical clients were largely corporate entities defending discrimination/wrongful termination claims, and individuals pursuing employment discrimination claims.

Since December 1991, I have served as an Assistant Federal Public Defender representing indigent defendants charged with crimes in federal court.

- 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.

At Forbes from 1990 to 1991, I only appeared in court occasionally. Since becoming an Assistant Federal Public Defender in December 1991, I appear in court frequently (approximately 15 to 20 times per month).

- i. Indicate the percentage of your practice in:
  - 1. federal courts: 99%
  - 2. state courts of record: 1%
  - 3. other courts: 0%

4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:

1. civil proceedings: 2%
2. criminal proceedings: 98%

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 tried approximately 17 federal felony cases to verdict. In one of those cases, I was associate counsel; in another case I was advisory counsel. In all other cases, I was sole counsel.

i. What percentage of these trials were:

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

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 argued before the Supreme Court of the United States, but I have appeared as counsel in petitions for certiorari in the following cases:

*United States v. Brown*, 558 U.S. 1133 (2010) (cert. denied). Copy supplied.

*United States v. Westerfield*, 555 U.S. 1163 (2009) (cert. granted and judgment vacated). Copy supplied.

*United States v. Keith*, 555 U.S. 1019 (2008) (cert. denied). Copy supplied.

*United States v. Campbell*, 552 U.S. 1083 (2007) (cert. denied). I am unable to obtain a copy.

*United States v. Pruitt*, 549 U.S. 1283 (2007) (cert. denied). Copy supplied.

*United States v. Brown*, 549 U.S. 1273 (2007) (cert. denied). Copy supplied.

*United States v. Wynn*, 549 U.S. 1070 (2006) (cert. denied). Copy supplied.

*United States v. Wynn*, 543 U.S. 1102 (2005) (cert. granted and judgment vacated). Copy supplied.

*United States v. Meyer*, 543 U.S. 906 (2004) (cert. denied). Copy supplied.

*United States v. Coatoam*, 534 U.S. 924 (2001) (cert. denied). I am unable to obtain a copy.

*United States v. King*, 528 U.S. 1055 (1999) (cert. denied). I am unable to obtain a copy.

*United States v. Crenshaw*, 528 U.S. 865 (1999) (cert. denied). I am unable to obtain a copy.

*United States v. Yaromich*, 526 U.S. 1032 (1999) (cert. denied). I am unable to obtain a copy.

*United States v. Word*, 519 U.S. 849 (1996) (cert. denied). I am unable to obtain a copy.

*United States v. Prince*, 516 U.S. 935 (1995) (cert. denied). I am unable to obtain a copy.

*United States v. Bryant*, 514 U.S. 1088 (1995) (cert. denied). I am unable to obtain a copy.

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

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

1. *United States v. Fips*, 1:18CR722 (N.D. Ohio 2020)

In December 2018, Mr. Fips was charged with being a felon in possession of a firearm (maximum jail time 10 years), possession with intent to distribute crack cocaine (maximum jail time 20 years), and possession of the firearm in furtherance of a drug trafficking crime (minimum jail time 5 years to maximum life). The charges resulted from an encounter he had with police in September 2018, in which a gun and drugs were confiscated. We filed a motion to suppress. It was undisputed that Mr. Fips was standing

outside the vehicle he was driving; another person was also there. A police task force arrived in the vicinity. The parties had conflicting assertions as to what happened once the task force arrived. We asserted that the encounter and confiscation of evidence violated his Fourth Amendment rights; specifically, we argued that the officers seized Mr. Fips and confiscated evidence without probable cause to believe a crime had been committed. The court agreed. All evidence was suppressed; the case was dismissed on December 11, 2020.

Dates of Representation:

2018 – 2020

Presiding Judge:

United States District Judge Solomon Oliver, Jr.

Opposing Counsel:

Assistant United States Attorney Kathryn Andrachik  
United States Attorney's Office for the Northern District of Ohio  
801 West Superior Avenue  
Cleveland, OH 44113  
(216) 622-3600

2. *United States v. Young*, 5:11CR328 (N.D. Ohio 2012)

Mr. Young was charged with being a felon in possession of a firearm. Because of his prior convictions, the government alleged he was an armed career criminal under 18 U.S.C. § 924(e) which increased his potential sentence from a maximum of 10 years in custody to a minimum of 15 years, and a maximum of life. He was alleged to have sold a firearm to a confidential informant. He was 68 years old and had serious medical problems; the trial had to be delayed because he was hospitalized for his conditions. He was convicted after trial and sentenced in May 2012, to 188 months in jail. In May 2020, I filed a motion to sentence Mr. Young to time served under the compassionate release statute (18 U.S.C. § 3582, as amended by the First Step Act of 2018). I asserted that Mr. Young's age (76), health conditions, and the dangers associated with COVID-19 warranted his immediate release. Judge Gwin granted the motion, and Mr. Young was ordered released in July 2020.

Dates of Representation:

2012, 2020

Presiding Judge:

United States District Judge James Gwin

Opposing Counsel:

Assistant United States Attorney Gregory Sasse (retired)  
Assistant United States Attorney Elliot Morrison (now assigned)  
United States Attorney's Office for the Northern District of Ohio

801 West Superior Avenue  
Cleveland, OH 44113  
(216) 622-3600

3. *United States v. Ray*, 1:13CR344 (N.D. Ohio 2014)

Mr. Ray was charged with being a felon in possession of a firearm. The charged carried a maximum term of 10 years in prison. The case was tried to a jury. He was found guilty and sentenced to approximately eight years in custody. I was sole counsel, argued all motions, gave opening statements and closing arguments, and examined or cross-examined all witnesses.

Dates of Representation:  
2013 – 2014

Presiding Judge:  
United States District Judge Sara Lioi

Opposing Counsel:  
Assistant United States Attorney Matthew Cronin  
United States Attorney's Office for the Northern District of Ohio  
801 West Superior Avenue  
Cleveland, OH 44113  
(216) 622-3600

4. *United States v. Butcher*, 5:12CR024 (N.D. Ohio 2012)

Mr. Butcher was charged with distribution of drugs and with being a felon in possession of a firearm. The drug charge carried a maximum term of 20 years in prison and the gun charge carried a maximum of 10 years in prison. The case was tried to a jury. He was found guilty. He had different counsel at sentencing, but was sentenced to 20 years in jail. I was sole counsel at trial, argued all motions, gave opening statements and closing arguments, and examined or cross-examined all witnesses.

Date of Representation:  
2012

Presiding Judge:  
United States District Judge Christopher Boyko

Opposing Counsel:  
Assistant United States Attorney Kelly Galvin  
Assistant United States Attorney Chelsea Rice  
United States Attorney's Office for the Northern District of Ohio  
801 West Superior Avenue  
Cleveland, OH 44113

(216) 622-3600

5. *United States v. Pearson*, 1:09CR0347 (N.D. Ohio 2010)

In 2009, Ms. Pearson was charged with theft of government funds. She had been receiving her deceased mother-in-law's pension checks since approximately 1978. The amount of loss was almost \$350,000. When the fraud was discovered (approximately 2008), Ms. Pearson was elderly, terminally ill with cancer, and had a host of other serious ailments. She ultimately pled guilty to the crime. Her suggested sentencing range under the guidelines was 41 to 51 months in custody. Prior to sentencing, we filed a sentencing memorandum requesting a sentence of probation. The primary bases for the request were her age and faltering health. Before the hearing, the judge met with counsel for both parties and the probation officer who prepared the presentence report. The judge notified counsel that, while he was considering a sentence lower than the guideline range, he intended to put Ms. Pearson in custody – due in large part to the amount of money stolen. The probation officer informed the judge and counsel that Ms. Pearson would be incarcerated at the federal medical facility in Carswell, Texas (“Carswell”); at the time, it was the only full service federal medical facility for incarcerated women. I requested a continuance of the sentencing hearing to have an opportunity to investigate Carswell and determine whether it was an appropriate facility for Ms. Pearson. Our investigation revealed that Carswell had myriad problems. We documented these issues in a supplemental sentencing memorandum filed with the court. When the case reconvened for sentencing in June 2010, Judge Economus sentenced Ms. Pearson to a term of probation. Ms. Pearson died in September 2011, while on probation.

Dates of Representation:

2009 – 2010

Presiding Judge:

United States District Judge Peter Economus (retired)

Opposing Counsel:

Assistant United States Attorney John Sammon (retired)

6. *United States v. Williams*, 1:07CR0041(N.D. Ohio 2009)

In 2007, Mr. Williams was charged with being a felon in possession of a firearm. Because of his prior convictions, the government alleged he was an armed career criminal under 18 U.S.C. § 924(e); this increased his potential sentence from a maximum of 10 years in custody to a minimum of 15 years, and a maximum of life. Mr. Williams had exited a house that was being watched by police for suspected drug activity. His car was parked on the street at the curb, directly across the street from the house. Police alleged that when he drove away from the curb he failed to use a turn signal, and that when they activated their overhead lights and siren he fled from them. Mr. Williams testified that he never got a chance to leave his parking spot, because police arrested him before he could. Through investigation, we obtained a report from the company that towed Mr. Williams'

car from the scene; it was filled out by one of the police officers and signed by the tow truck driver. It stated that the car was towed from the residence where it was originally parked. Based on this and other information adduced at the suppression hearing, the judge found that the police officers had not testified truthfully and had violated Mr. Williams' constitutional rights. All evidence was suppressed; the case was dismissed in May 2009.

Dates of Representation:

2007—2009

Presiding Judge:

United States District Judge Ann Aldrich (deceased)

Opposing Counsel:

Assistant U.S. Attorney Mark Bennett  
United States Attorney's Office for the Northern District of Ohio  
801 West Superior Avenue  
Cleveland, OH 44113  
(216) 622-3600

7. *United States v. Westerfield*, 1:05 CR 0428 (N.D. Ohio 2009), *aff'd*, No. 07-3438, 2008 WL 2796057 (6th Cir. July 21, 2008), *cert. granted and judgment vacated*, 555 U.S. 1163 (2009)

Mr. Westerfield was charged with and pled guilty to being a felon in possession of a firearm. At sentencing, the prosecutor alleged that he was an armed career criminal ("ACC") under 18 U.S.C. § 924(e). This designation carries a minimum penalty of 15 years and a maximum of life. Absent that designation, he faced only a maximum penalty of 10 years. We challenged whether he was an ACC at sentencing and lost. We also lost our challenge in the Sixth Circuit. We appealed the matter to the U.S. Supreme Court. The case was held in abeyance because the Court had just granted certiorari in another case, *Chambers v. United States*, 555 U.S. 122 (2009), challenging whether a conviction for escape is a crime of violence. In Mr. Westerfield's case, we were also challenging whether it could be used as a predicate conviction for the ACC designation. The Supreme Court held that it is not a crime of violence. The Court then granted certiorari in Mr. Westerfield's case, vacated the judgment of the court of appeals, and remanded the case to the court of appeals for further consideration in light of its holding in *Chambers*. The case was ultimately sent back to the district court for reconsideration in light of the *Chambers* decision. The district court found that Mr. Westerfield was not an ACC, in light of *Chambers*. In 2009, his sentence was reduced from 180 months (15 years) to 100 months (just over eight years). I was sole counsel in the matter before the U.S. District Court; I was lead counsel in the appellate matters.

Dates of Representation:

2005 – 2009

Presiding Judges:

United States Circuit Judge Damon J. Keith  
United States Circuit Judge Richard Allen Griffin  
United States Circuit Judge John R. Gibson  
United States Circuit Judge Kathleen O'Malley (previously of the United States District Court for the Northern District of Ohio)  
United States District Judge Benita Pearson (now assigned to the case)

Co-counsel on Appeal

Amy Cleary  
Office of the Federal Public Defender, District of Nevada  
411 East Bonneville, Suite 250  
Las Vegas, NV 89101  
(702) 388-5170

Opposing Counsel

Assistant United States Attorney Duane Deskins (retired)  
Assistant United States Attorney David Toepfer (now assigned)  
United States Attorney's Office for the Northern District of Ohio  
325 City Centre One  
100 East Federal Plaza  
Youngstown, OH 44503  
(330) 740-6986

8. *United States v. Meyer*, 1:01CR085 (N.D. Ohio 2002)

Mr. Meyer was charged with postal robbery and use of a gun during the robbery. The robbery carried a maximum penalty of 25 years in prison and the gun charge carried a minimum of five years in prison and a maximum of life. The case was tried to a jury. He was found guilty and sentenced to approximately 11 years in jail. I was sole counsel, argued all motions, gave opening statements and closing arguments, and examined or cross-examined all witnesses.

Dates of Representation:

2001 – 2002

Presiding Judges:

United States District Judge Ann Aldrich (Deceased)

Opposing Counsel:

Assistant United States Attorney Nancy Kelley (Retired)

9. *United States v. Walker*, 4:98CR147 (N.D. Ohio 1999)

Mr. Walker was charged with the armed robbery of a Dunbar armored truck driver and the use of a firearm during the robbery. The robbery count carried a maximum term of 20

years in prison; the gun charge carried a minimum of five years and a maximum of life in prison. The first trial ended in a hung jury and the case was tried to a jury a second time. He was convicted after the second trial and sentenced to approximately 12 years in custody. I was sole counsel, argued all motions, gave opening statements and closing arguments, and examined or cross-examined all witnesses.

Dates of Representation:

1998 – 1999

Presiding Judges:

United States District Judge Ann Aldrich (First trial) (Deceased)  
United States District Judge Lesley Wells (Second trial) (Retired)

Opposing Counsel:

Assistant United States Attorney Gary Arbezniak (Retired)

10. *United States v. Yaromich*, 5:97CR090 (N.D. Ohio 1997)

Mr. Yaromich was charged with three counts of armed bank robbery and three counts of using a gun during each of the robberies. The robbery counts carried a maximum of 25 years in prison. The gun counts carried a minimum of five years in prison for the first count and 20 years in prison for the second and third counts; all gun counts carried a maximum term of life in prison. The case was tried to a jury. He was found guilty. He received a sentence of approximately 50 years in jail. I was sole counsel, argued all motions, gave opening statements and closing arguments, and examined or cross-examined all witnesses in the case.

Date of Representation:

1997

Presiding Judge:

United States District Judge Sam Bell (Deceased)

Opposing Counsel:

Assistant United States Attorney Robert Becker (Deceased)  
Assistant United States Attorney Kathryn Andrachik (Now assigned)  
United States Attorney's Office for the Northern District of Ohio  
801 West Superior Avenue  
Cleveland, OH 44113  
(216) 622-3600

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.)

Within my office, the most significant legal activity that I pursue is active litigation as well as supervision and case management. My representation of indigent clients has involved every aspect of litigation of their cases from initiation to final disposition, including appeals and supervision-violation matters. It has also included assisting clients with needs that occur after the litigation has concluded. This includes making sure they regain lost or misplaced paperwork (as appropriate), assisting them with institutional matters that occur while they are incarcerated, and matters that ultimately result in further litigation. From 2010 to 2016, I supervised the investigators and the research and writing attorneys. In 2016, I began supervising the Cleveland trial unit, which is presently comprised of two investigators, two research and writing attorneys, two paralegals, and five assistant federal public defenders.

I have not performed any lobbying activities or registered as a lobbyist.

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

From 2007 to 2018, I taught Trial Advocacy, a semester-long course at the Cleveland Marshall College of Law at Cleveland State University. The course covered all aspects of the trial process from voir dire to closing argument. 2018 syllabus supplied.

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

None.

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

None.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

If confirmed, I would recuse myself from any litigation in which I ever played a role. I anticipate recusing myself in any criminal matters handled by the Office of the Federal Public Defender during my tenure in the office. I will evaluate any other real or potential conflict, or relationship that could give rise to the appearance of a conflict, on a case-by-case basis, and determine appropriate action with the advice of the parties and their counsel including recusal where necessary.

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

I would evaluate any potential conflicts of interest by applying the rules and standards in 28 U.S.C. § 455 and Canon 3 of the Code of Conduct for United States Judges, as well as any other applicable canons, rules, statutes, and treatises. In addition, I would advise the parties before me of any potential conflict and seek their input. I would evaluate each situation on a case-by-case basis to determine the appropriate action, seek counsel where necessary, and recuse myself appropriately.

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.

My career has focused on advocating on behalf of the disadvantaged. Since 1991, I have represented disadvantaged persons who are indigent and charged with crimes in federal court.

I have also donated my time and resources to charitable causes. Between 1996 and 2013, I cooked in a yearly charitable event entitled "Real Men Cook." Funds raised by the event

supported the Women's Alliance for Recovery Services, a charitable organization which provides support services to battered, destitute, and drug-addicted women.

In about 2007, I established the Norma E. Fleming and Family Excel Fund, which has given cash awards to Cleveland-area youths in various programs who have achieved personal and academic excellence. It has also made charitable donations to Shareholders in Growth, a nonprofit organization that provides scholarships for local student artists to attend the Interlochen program.

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.

Ohio has a bipartisan judicial selection commission run by Senator Brown and Senator Portman. On March 16, 2021, I submitted my application to the commission. On May 22, 2021, I interviewed with the full commission. On June 4, 2021, I interviewed with members of Senator Brown's staff. On June 11, 2021, I interviewed with Senator Portman. On June 24, 2021, I interviewed with Senator Brown. Senator Brown notified me on July 2, 2021, that he submitted my name to President Biden as a potential nominee for one of the judicial vacancies in the Northern District of Ohio. On July 13, 2021, I interviewed with the White House Counsel's Office. Since July 14, 2021, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 30, 2021, my nomination was submitted 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.