

**Cynthia Ann Bashant
San Diego Superior Court
2851 Meadowlark
San Diego, California 92123**

January 6, 2014

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
Washington DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on September 19, 2013, to be a United States District Judge for the Southern District of California. Incorporating the additional information listed below, I certify that the information contained in these documents is, to the best of my knowledge, true and accurate.

Question 13f

A review of Westlaw now indicates that 351 of my cases have resulted in opinions. None of the 31 new cases has resulted in a reversal.

I am also forwarding an updated net worth statement and financial disclosure report as requested in the Questionnaire.

I thank the Committee for its consideration of my nomination.

Sincerely,



Cynthia Bashant

Cc: The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington DC 20510

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Cynthia Ann Bashant

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

United States District Judge for the Southern District of California

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

Superior Court of San Diego
220 West Broadway
San Diego, California 92101

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

1960; San Francisco, California

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.

1983 – 1986, Hastings College of the Law; J.D., 1986

Spring 1986, University of San Diego Law School; no degree

1978 – 1982, Smith College; A.B., 1982

1980 – 1981, Universite de Geneve; 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.

2000 – present
Superior Court of San Diego
220 West Broadway
San Diego, California 92101
Superior Court Judge
Presiding Judge, Juvenile Court (2010 – 2013)

1989 – 2000
United States Attorney's Office for the Southern District of California
940 Front Street
San Diego, California 92101
Assistant United States Attorney (1989 – 2000)
Chief of Border Crimes (1997 – 1998)
Deputy Chief of Narcotics (1995 – 1997)

1988 – 1989
Baker and McKenzie
101 West Broadway
San Diego, California 92101
Associate

1988 – 1991
Western State University (now Thomas Jefferson School of Law)
1155 Island Avenue
San Diego, California 92101
Adjunct Professor

1986 – 1988, Summer 1985
Macdonald Halsted and Laybourne
101 West Broadway
San Diego, California 92101
Associate (1986 – 1988)
Summer Associate (Summer 1985)

Fall 1985
California Courts of Appeal
750 B Street, Suite 300
San Diego, California 92101
Extern for Justice Robert Staniforth

1984 – 1985
Law Offices of Jon Sigerman
550 California Street
San Francisco, California 92104
Law Clerk

Summer 1984
Lane Powell Moss and Miller
1420 Fifth Avenue
Seattle, Washington 98111
Summer Associate

1982 – 1983
Copper Mountain Ski Resort
Copper Mountain, Colorado
Various positions (ski school desk, waitress, marketing department)

Summer 1982
Glacier National Park
Glacier Park, Montana
Information desk

Other Affiliations (uncompensated):

1992 – present
Lawyers Club of San Diego
701 B Street, Suite 224
San Diego, California 92101
Advisory Board (2010 – present, 1995 – 2008)
President (1994 – 1995)
Treasurer (1992 – 1993)
Board of Directors (1992 – 1995)

2011 – 2013
United Way Child Abuse Network Vision Council
4699 Murphy Canyon Road
San Diego, California 92123
Advisory Member

2010 – 2013
Children's Initiative of San Diego
4438 Ingraham Street
San Diego, California 92109
Board of Directors

2010 – 2013
San Pasqual Academy
17701 San Pasqual Valley Road
San Diego, California 92025
Advisory Board

2010 – 2012

San Diego County Commission on Children, Youth and Families
(now the County of San Diego Child Abuse Prevention Coordinating Council)

No physical address

San Diego, California

Chair

2002 – 2007

San Diego County Judges' Association

No physical address

San Diego, California

Board of Directors (2002 – 2007)

Secretary (2003 – 2004, 2005 – 2006)

2003 – 2005

June Burnett Institute

6505 Alvarado Road, #206

San Diego, California 92120

Advisory Board

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 never served in the military. I was not required to register for selective service.

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

San Diego Juvenile Justice Commission, Judge of the Year for service to juvenile justice (2012)

Special Commendations for Outstanding Performance as an Assistant United States Attorney (1999, 1998, 1997, 1996, 1995, 1994)

Director's Award for Superior Performance as an Assistant United States Attorney (1997)

Young Women's Christian Association of San Diego TWIN (Tribute to Women and Industry) Award (1997)

California Women in Government, Law and Justice Award (1996)

Office of the United States Attorney Victim-Witness Award (1991)

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.

California Women Lawyers (1989 – 2002)

Lawyers Club of San Diego (1987 – present)

Advisory Board (1995 – 2008, 2010 – present)

President (1994 – 1995)

Treasurer (1992 – 1993)

Newsletter Editor (1989 – 1991)

San Diego County Bar Association (1986 – present)

San Diego County Judges Association (2000 – present)

Board of Directors (2002 – 2007)

Secretary (2003 – 2004, 2005 – 2006)

San Diego Superior Court Executive Committee (2008 – 2013)

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.

California, 1986 (inactive)

There have been no lapses in membership. However, since becoming a judge, I have been on inactive judicial status.

- 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 Ninth Circuit, 1990

United States District Court for the Southern District of California, 1986

California State Court, 1986

I have not had any lapses in membership other than my inactive status while serving as a judge.

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.

Children's Initiative of San Diego (2010 – 2013)
Board of Directors

June Burnett Institute (2003 – 2005)
Advisory Board

San Diego County Child Abuse Prevention Coordinating Council (2012 – 2013)
Member

San Diego County Commission on Children Youth and Families (2010 – 2012)
Chair

San Pasqual Academy (2010 – 2013)
Advisory Board

United Way Child Abuse Network Vision Council (2011 – 2013)
Advisory Member

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

To the best of my knowledge, none of the organizations listed in 11a 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.

With Igelman, R., Ryan, B., Gilbert, A., and North, K., *Best Practices for Serving*

Traumatized Children, *Juvenile and Family Court Journal*, Fall 2008, Vol. 59, No. 4, pgs. 35-47. Copy supplied.

With Ryan, B. and Brooks, D., *Protecting and Supporting Children in the Child Welfare System and the Juvenile Court*, *Juvenile and Family Court Journal*, Winter 2006, Vol. 57, No.1, pgs. 61-68. Copy supplied.

As the president of the Lawyers Club of San Diego, I wrote eleven columns from 1994 to 1995. Copies 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.

As the Presiding Judge of the Juvenile Division, I was statutorily assigned as the Chair of the San Diego County Commission on Children, Youth and Families, which was subsequently renamed the San Diego County Child Abuse and Prevention Coordinating Council. We had regular meetings with all interested stakeholders to discuss how to better coordinate activities on behalf of abused children, foster, homeless and delinquent youth in San Diego. Meeting minutes supplied.

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

2010 – 2013: I gave quarterly addresses to the Juvenile Justice Commission about the state of the Juvenile Court. I have no notes, transcripts or recording. The address of the Juvenile Justice Commission is 2901 Meadowlark, San Diego, CA 92123.

May 2013: I was the keynote speaker at the Annual Retreat of the County Counsel's Association of California, San Diego, California. I spoke about the necessity of coordinating between dependency (social worker) and delinquency (probation officer), child sex trafficking and concern about the disproportionality of African Americans and Native Americans in the child welfare system. I have no notes, transcripts or recording. The County Counsel's Association of California has no physical address.

March 2013: I led a dialogue for Aaron Price Fellows on what considerations judges should consider when deciding bail and/or sanctions for committing a crime. This took place at the San Diego Juvenile Court, San Diego, California. Notes supplied.

June 2012: I spoke to a group of foster youth graduating from high school as part of a Voices for Children event in San Diego, California. Outline supplied.

May 2012: I participated in a community forum for Project Save Our Children, discussing why so many African American children are active to the court system and what we are trying to do about it. This took place at the New Creation Church in Southeast San Diego, California. I have no notes, transcripts or recording. Project Save Our Children has no physical address.

January 2012: I delivered a State of the Juvenile Court address to Voices for Children at the University Club in San Diego, California. Notes supplied.

October 29, 2011 and June 26, 2010: I spoke at the "I Can Go To College" event for foster youth, which was sponsored by Superior Court of San Diego. In 2011, this was held at San Diego State University. In 2010, this was held at the University of San Diego. In the addresses, I encouraged foster youth to consider applying to college. I have no notes, transcripts or recording. The address of the Superior Court of San Diego is 220 West Broadway, San Diego, CA 92101.

January 2011: I delivered a State of the Juvenile Court address to Voices for Children at the University Club in San Diego, California. I have no notes, transcripts or recording, but the content of the speech was similar to the speech delivered in January 2012, for which notes have been supplied. The address of Voices for Children is 2851 Meadowlark, San Diego, CA 92123.

2006: I spoke at the Voices for Children Starry Starry Night event about how Court Appointed Special Advocates help children in the dependency system in San Diego, California. I have no notes, transcripts or recording. The address of Voices for Children is 2851 Meadowlark, San Diego, California 92123.

2005: I was a panelist discussing *Ethical Considerations in the Administration of Psychotropic Medication* at a program entitled "Advocating for Change!"

Improving Health Care for Children In Foster Care” sponsored by the San Diego Volunteer Lawyer Program in San Diego, California. I discussed the court process for obtaining a court order to administer psychotropic medications to any youth in the foster care system. I have no notes, transcripts or recording. The address for the San Diego Volunteer Lawyer Program is 707 Broadway, Suite 1400, San Diego, California 92101.

2005: I spoke to the Welcome Club of Scripps Ranch in Scripps Ranch, California, to give an overview of the foster care/dependency system. Notes supplied.

2002: I was a panelist with several other judges at a Lawyers Club lunch in San Diego, California, discussing “Effective Advocacy” in court. I have no notes, transcripts or recording. The address for the Lawyers Club is 701 B Street, San Diego, California 92101.

2002: I engaged high school students at several schools throughout San Diego in a discussion entitled “Dialogue On Freedom,” which was sponsored by the San Diego County Bar Association. I was one of hundreds of lawyers who went into the classroom with the intent of helping students to understand constitutional rights and the reasons for them. I have no notes, transcripts or recording. The address of the San Diego County Bar Association is 401 West A Street, Suite 1100, San Diego, California 92101.

1999: I spent a week in Latvia helping to train Latvian prosecutors in the area of corruption prosecution and money laundering. This was sponsored by the United States Department of Justice, OPDAT. I have no notes, transcripts, or recording. The address of the United States Department of Justice, OPDAT is 950 Pennsylvania Avenue, NW, Washington, DC 20530.

1995: I was a panelist at the California Bar Association Women In Law Conference in Monterrey, California, discussing “Women In Litigation: Do They Do It Differently?” I discussed being a woman in court and how women are perceived by juries. I have no notes, transcripts or recording. The address for the California Bar Association is 180 Howard Street, San Francisco, CA 94105.

- 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.

Kelly Rand, *Lawyers Club Presidents of the 1990's*, Lawyers Club Newsletter, April 2012. Copy supplied.

Jeff McDonald, *Youth Funds Go To Board Member Agencies*, San Diego Union-Tribune, November 4, 2011. Copy supplied.

Press Release, *Community Groups Unite To Encourage Foster Youth To Attend College*, San Diego Superior Court, October 28, 2011. Copy supplied.

“Smith Alumnae Quarterly,” Winter 2010-2011. Copy supplied.

Press Release, *Superior Court Leads Effort To Encourage Foster Youth To Attend College*, San Diego Superior Court, June 24, 2010. Copy supplied.

Governor and First Lady Schwarzenegger Name Foster Youth Advocate Kathryn Vaughn California’s Volunteer of the Year, Just In Time for Foster Youth Newsletter, May 6, 2010. Copy supplied.

“Smith Alumnae Quarterly,” Spring 2008. Copy supplied.

James W. Talley, *Meet the Bar’s New President: Jill Burkhardt*, San Diego Lawyer, November/December 2006. Copy supplied.

Tan Vinh, *Miss Muzzy Celebrates 100th Birthday With Former Students*, “The Seattle Times,” May 23, 2004. Copy supplied.

Judicial Profile: Kids in Dependency Court Exhaust But Touch Judge, “Los Angeles Daily Journal,” March 19, 2004. Copy supplied.

Accountant Pleads Guilty to Tax Evasion, “Sinocast,” May 22, 1999. Copy supplied.

CPA Admits Tax Evasion On Stolen Money, “Accounting Today,” April 26, 1999. Copy supplied.

Anne-Marie O’Connor, *U.S. Galled by Alleged Drug Lord’s Home*, “Los Angeles Times,” May 13, 1997. Copy supplied.

Arrest & Trial: The Tunnel Case, television show that aired in January 1997. Video supplied.

Tendria Narco Cadena Perpetua, “El Norte,” October 12, 1996. Copy supplied.

U.S. Convicts Man In Mexican Drug Smuggling Operation, “Daily News of Los Angeles,” October 11, 1996. Copy supplied.

San Diego, Channel 51 News story about the conviction of Enrique Avalos-Barriga, October 10, 1996. Video supplied.

Anne-Marie O’Connor, *Businessman Pleads Guilty In Drug Plot*, “Los Angeles Times,” September 25, 1996. Copy supplied.

Eric Shine, *Under the Border, Down Mexico Way*, "Business Week," October 15, 1995. Copy supplied.

Sebastian Rotella, *Food Company Owners Charged in Drug Tunnel Case*, "Los Angeles Times," September 29, 1995. Copy supplied.

2 Facing State Charges Arrested, "Associated Press," July 9, 1989. Copy supplied.

Jane Fritscht, *Rancho Santa Fe Pair Arrested Accused Of Massive Bankruptcy Fraud*, "Los Angeles Times," July 7, 1989. 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.

From 2000 to the present, I have held the office of San Diego Superior Court Judge. I was appointed to this position by the Governor. I was reelected to this position in both 2008 and 2002. This is the trial court for San Diego County with jurisdiction over state criminal, civil, family, probate and juvenile matters.

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

Including juvenile dependency trials, I have presided over more than one thousand trials that have gone to verdict or judgment.

- i. Of these, approximately what percent were:

jury trials:	10%
bench trials:	90%
civil proceedings (juvenile)	90%
criminal proceedings:	10%

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

As a state court judge, I have not issued many written opinions. My trials have either involved juries or juvenile court trials without a jury, where written opinions are uncommon and decisions are generally made from the bench. None of these opinions has been published.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the

case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

Since my cases in juvenile court have all been confidential, I have listed the ten most significant criminal cases over which I have presided.

(1) *People v. Harper*, D052997 (Sup. Ct. of San Diego Co. 2009), *aff'd*, 2009 WL 4856788 (Cal. App. 4 Dist., 2009).

I presided over the jury trial of Mr. Harper, who was found guilty of multiple counts of bank robbery. Mr. Harper chose to represent himself, which posed unique challenges. Mr. Harper argued that he was not the individual in the surveillance photos and that someone else had made themselves up to look like him. He presented expert testimony on the unreliability of eyewitness testimony. After the jury convicted Mr. Harper of eight counts of bank robbery and found true the allegations of a prior strike conviction, I sentenced Mr. Harper to an aggregate term of twenty-two years in prison. The Court of Appeal affirmed the conviction and sentence.

Counsel for the People: George Bennett (now deceased)

Counsel for Defendant: *pro per*

(2) *In re: St. Martin*, D055287 (Sup. Ct. of San Diego Co., 2009), *rev'd and suspended*, 2011 WL 49695 (Cal. App. 4 Dist., 2011).

I presided over the trial involving a civil-commitment of a sexually-violent predator, in which the jury found that Mr. St. Martin was a sexually violent predator and should remain in a locked facility. Between the time of conviction and the time of appeal, the California Supreme Court issued an opinion placing the sexually violent predator statute in doubt on federal equal protection grounds. (*People v. McKee*, 47 Cal.4th 1172 (2010)). In light of the California Supreme Court case, the appellate court reversed Mr. St. Martin's true finding solely on the issue of federal equal protection and suspended further proceedings pending remand of the *McKee* case. On remand, the trial court in *McKee* found that the sexually violent predator statute did not violate equal protection and this was affirmed on appeal. The California Supreme Court refused to review the appellate court decision. Thus, Mr. St. Martin's true finding as a sexually violent predator was allowed to stand.

Counsel for the People: Deputy District Attorney Wendy Patrick
330 West Broadway, P.O. Box 121011
San Diego, California 92102
(619) 531-4040

Counsel for the Defendant: Deputy Public Defender Marion Gaston
450 B Street, #900
San Diego, California 92101
(619) 338-4699

(3) *People v. Ivy*, D055865 (Sup. Ct. of San Diego Co. 2011), *aff'd with directions*, 2011 WL 300339 (Cal. App. 4 Dist., 2011).

I presided over the jury trial in which Mr. Ivy was found guilty of second degree murder after he beat a man in a wheelchair to death with a cane. The jury also found that Mr. Ivy personally used a deadly or dangerous weapon in committing the murder. The trial included much expert testimony on the cause of death. After trial, I sentenced Mr. Ivy to an aggregate term of sixteen years to life in prison. The Court of Appeal affirmed the conviction and sentence, remanding the case for correction of the clerk's abstract of judgment.

Counsel for the People: Deputy District Attorney David Williams
330 West Broadway, P.O. Box 121011
San Diego, California 92101
(619) 531-4040

Counsel for the Defendant: Charles Guthrie
121 Broadway, #531
San Diego, California 92102
(619) 230-8598

(4) *People v. Jackson*, SCD 215451 (Sup. Ct. of San Diego Co., 2009) not appealed, no written judgment.

I presided over the trial in which the jury acquitted Mr. Jackson of selling marijuana. Mr. Jackson was a medical marijuana card holder who sold marijuana out of a cooperative to individuals who had medical marijuana cards. This was one of the first jury trials using the defense of medical marijuana. The case involved the interpretation of the new medical marijuana law and whether it applied to individuals who sold medical marijuana as part of a cooperative.

Counsel for the People: Deputy District Attorney Chris Lindberg
330 West Broadway, P.O. Box 121011
San Diego, California 92101
(619) 531-4040

Counsel for the Defendant: Kenneth Lance Rogers
110 West C Street, #1414
San Diego, California 92101
(619) 795-6460

(5) *People v. Monti*, M014004 (S.D.Sup.Ct. 2007) not appealed, no written judgment.

I presided over the trial in which the jury acquitted Mr. Monti of battery and hate crimes against local migrant workers. Mr. Monti had approached an area where local migrant workers gathered hoping to pick up employment. He began photographing the workers, which agitated them. A fracas ensued resulting in injury to several of the workers. Mr. Monti claimed self-defense, and the jury agreed.

Counsel for the People: Deputy District Attorney Scott Pirrello
330 West Broadway, P.O. Box 121011
San Diego, California 92101
(619) 531-4040

Counsel for the Defendant: Allison Aranda
932 D Street
Ramona, California 92065
(951) 541-9327

(6) *People v. Nunez*, SCD 217464 (S.D.Sup.Ct., April 8, 2009), no written judgment.

I presided over the preliminary hearing of this politically charged case that generated extensive press coverage. Several of the defendants were the sons of prominent political figures. The charges involved a brawl on the San Diego State University campus, which left one student dead of stab wounds. After several days of testimony, I bound all four defendants over for trial on charges of murder, assault with a deadly weapon and vandalism. Two of the defendants pled guilty after the preliminary hearing, and two proceeded to trial in front of a different judge.

Counsel for the People: Deputy District Attorney Jill DiCarlo
330 West Broadway, P.O. Box 121011
San Diego, California 92101
(619) 531-4040

Counsel for Defendant Mr. Nunez: Brad Patton
1808 Aston Avenue, #240
Carlsbad, California 92008
(760) 438-3636

Counsel for Defendant Mr. Garcia: Paul Pfingst
401 West A Street, #2600
San Diego, California 92102
(619) 236-1551

Counsel for Defendant Mr. Jett: Deputy Public Defender Terry Zimmerman
233 A Street, #800
San Diego, California 92101
(619) 338-4699

Counsel for Defendant Mr. Thomas: Leisbeth VandenBosch
Alternate Public Defenders
110 West C Street, #1100
San Diego, California 92101
(619) 446-2900

(7) *People v. Rouse*, D055804 (Sup. Ct. of San Diego Co., 2010), *aff'd*, 2012 WL 20532 (Cal. App. 4 Dist., 2012); *People v. Henderson*, D054494 (Sup. Ct. of San Diego Co., 2010), *rev'd in part* 2010 WL 3872022 (Cal. App. 4 Dist. 2010).

I presided over this month-long jury trial involving wire taps and charges of multiple gang-related robberies. Several cases were consolidated and all three defendants were tried together in one jury trial. The jury convicted all three defendants of multiple offenses and of gang and firearm enhancements. I denied Mr. Montgomery's motion to dismiss his prior strike conviction. I sentenced Mr. Rouse to thirty-five years, Mr. Henderson to fifteen years, and Mr. Montgomery to fifty years to life plus eleven years in prison. The Court of Appeal affirmed conviction on all counts and sentences for the lead defendant Mr. Rouse and co-defendant Mr. Henderson. The Court of Appeal affirmed one count of conspiracy to commit robbery, but found insufficient evidence for the jury conviction on the second count of conspiracy to commit robbery, for co-defendant Mr. Montgomery.

Counsel for the People: Deputy District Attorney Anthony
Campagna
330 West Broadway, P.O. Box 121011
San Diego, California 92101
(619) 531-4040

Counsel for Defendant Rouse: Charles Adair
1140 Union Street, #201
San Diego, California 92101
(619) 344-3161

Counsel for Defendant
Montgomery: Manuel Ramirez
550 West C Street, #2000
San Diego, California 92101
(619) 814-3521

Counsel for Defendant Henderson: Keith Rutman
402 West Broadway, #2010
San Diego, California 92101
(619) 573-4988

(8) *People v. Santillon*, D054494 (Sup. Ct. of San Diego Co. 2009) *aff'd*, 2010 WL 302232 (Cal. App. 4 Dist., 2010).

I presided over pretrial motions and jury trial of Mr. Santillon. Mr. Santillon was a soccer coach who was accused of child molestation and oral copulation of one of the young boys he coached. The jury found Mr. Santillon guilty of two counts of lewd act on a child under the age of 14 years old and found true the allegations of substantial sexual contact. After trial, I sentenced Mr. Santillon to an aggregate term of eight years in prison. The Court of Appeal affirmed my refusal to suppress Mr. Santillon's un-Mirandized statement, finding that Mr. Santillon was not in custody at the time of the statement.

Counsel for the People: Deputy District Attorney Enrique Camarena
330 West Broadway, P.O. Box 121011
San Diego, California 92101
(619) 531-4040

Counsel for the Defendant: Timothy Brackney
Alternate Public Defenders
110 West C Street, #1100
San Diego, California 92101
(619) 446-2900

(9) *People v. Westerfield*, D040021, (S.D.Sup.Ct. 2002), *aff'd in part*, 98 Cal.App.4th 145, 119 Cal.Rptr.2d 588 (2002).

I signed and sealed the various search warrants executed at the home and computers of Mr. Westerfield. After Mr. Westerfield was charged but before trial, the San Diego Union-Tribune petitioned to unseal the search warrant affidavits. Counsel for Mr. Westerfield opposed the request, and I presided over the motions in this highly publicized case. The case involved the kidnapping and murder of a nine-year-old girl. The Court of Appeal affirmed my decision to unseal the search warrant affidavits and release some of the documents, but it found that a few of the documents ordered released should not be released to the press. The case proceeded to trial in front of a different judge, and Mr. Westerfield was found guilty of all counts.

Counsel for the People: Deputy District Attorney Jeff Dusek
(now retired)

Counsel for the Defendant: Steven Feldman
Law Offices of Steven Feldman
934 23rd Street
San Diego, California 92102
(619) 232-8649

Counsel for the SD Union-Tribune: Guylyn Cummins
Sheppard Mullin Richter and Hampton
501 West Broadway, 19th Floor
San Diego, California 92101
(619) 338-6645

10) *People v. Wilson*, D052986 (Sup. Ct. of San Diego Co. 2009), *aff'd*, 2009 WL 932625 (Cal. App. 4 Dist., 2009).

I presided over the jury trial charging Mr. Wilson with rape, sodomy and kidnapping. The charges stemmed from events occurring in 1999. Mr. Wilson was identified after a DNA hit identified him as the perpetrator. The case involved interesting expert testimony regarding DNA and cold case identification. The jury convicted Mr. Wilson on all counts. I sentenced Mr. Wilson to fifty-eight years to life in prison. The Court of Appeal affirmed both the conviction and the sentence.

Counsel for the People: (now Judge) Dwayne Moring
220 West Broadway
San Diego, California 92101
(619) 450-5030

Counsel for the Defendant: Timothy Richardson
401 B Street, #2215
San Diego, California 92101
(619) 231-6577

- 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.

As a Superior Court judge, I have not written any significant opinions. My trials have either involved juries or juvenile court trials without a jury, where written opinions are uncommon and decisions are generally made from the bench. Moreover, the few opinions that I have written in juvenile cases are subject to non-disclosure rules.

- e. Provide a list of all cases in which certiorari was requested or granted. My trials have either involved juries or juvenile court trials without a jury, where written

opinions are uncommon. When required, my decisions were made orally from the bench.

I am not aware of any 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.

Because of the nature of juvenile dependency, a large percentage of cases get appealed. A quick Westlaw search shows that 320 of my cases have resulted in opinions. The vast majority of these are affirmances. I would estimate 90% were affirmed. I have listed the reversals below:

In re Eric B., No. D040087, *rev'd* (unpublished) 2002 WL 31517672 (S.D.Sup.Ct. Nov. 13, 2002). The appellate court upheld my decision as to the establishment of the guardianship, but concluded that I also should have determined the parents' visitation rights, rather than leaving it to the discretion of the guardians.

In re Eric B., No. D041082, D041411, *rev'd* (unpublished) 2003 WL 21300106 (S.D.Sup.Ct. June 6, 2003). The appellate court concluded that a hearing was necessary before denial of a mother's third motion to modify and return children to her.

In re KB, No. D042134, *rev'd* (unpublished) 2003 WL 22245941 (S.D.Sup.Ct. Oct. 1, 2003). The appellate court reversed the decision denying reunification services to a mother who had failed to reunify with other dependent children and had a 14-year history of cocaine and methamphetamine usage. Since the mother had been clean her last few months of pregnancy and was doing well with her drug treatment, the appellate court found reunification services should have been given to her.

In re Nicholas M., No. D043714, *rev'd in part* (unpublished) 2004 WL 1588335 (S.D.Sup.Ct. July 17, 2004). The appellate court affirmed an order denying contact between Nicholas M. and his father, but reversed as to the decision to give discretion to the social worker to allow visitation to begin if recommended by Nicolas M.'s therapist.

In re Brittani O., No. D044578, *rev'd in part* (unpublished) 2004 WL 2809312 (S.D.Sup.Ct. Dec. 8, 2004). The appellate court affirmed the termination of parental rights but reversed the restraining order to clarify the boundaries of the order.

In re Jasmin B., No. D04457, *rev'd* (unpublished) 2004 WL 2569426 (S.D.Sup.Ct. Nov. 10, 2004). The appellate court reversed the finding of adoptability when the children had not yet met prospective adoptive parents.

In re Darin J., No. D045041, *rev'd* (unpublished) 2005 WL 555409 (S.D.Sup.Ct. Mar. 9, 2005). The appellate court reversed the decision denying reunification services to a father.

In re AG, No. D045978, *rev'd* (unpublished) 2005 WL 1926323 (S.D.Sup.Ct. Aug. 12, 2005). The appellate court concluded that I should have held a hearing on the relative's 388 motion to modify for placement before terminating parental rights.

In re Maya K., No. D046553, *rev'd in part* (unpublished) 2005 WL 3250003 (S.D.Sup.Ct. Dec. 1, 2005). The appellate court affirmed jurisdiction but reversed the order removing the child from her mother.

In re KD, No. D044381, *rev'd in part* 124 Cal.App.4th 1013 (2004). The appellate court affirmed the decision to grant guardianship, but reversed the decision to terminate jurisdiction, rather than to continue to monitor the mother's visitation.

Cheryl P. v. Superior Court, No. D047891, *rev'd* (unpublished) 139 Cal.App.4th 87 (2006). The appellate court concluded that reunification services should have been granted to developmentally disabled parents.

In re Jamie P., No. D047789, *rev'd* (unpublished) 2006 WL 2147607 (S.D.Sup.Ct. Aug. 2, 2006). The appellate court reversed, concluding that the mother's visitation should not have been changed from unsupervised to supervised when it was unclear who had caused the subdural hematoma on infant.

In re Courtney P., No. D048764, *rev'd* (unpublished) 2007 WL 521286 (S.D.Sup.Ct. Feb. 21, 2007). I had ruled against placing the three youngest children with an aunt because of a family multi-generational history of sexual assault and molestation. The appellate court reversed, finding I should have granted the sibling's 388 motion to place the children with an aunt.

In re Antonio G., No. D051079, *rev'd* 159 Cal.App.4th 369 (2007). The appellate court reversed, concluding that I should have held a hearing on a relative's motion to modify requesting placement of the children with her.

In re: Adoption of Joshua S., No. S138169, *rev'd* 42 Cal. 4th 945 (2008). The appellate court reversed solely as to attorney's fees under a private attorney general theory in a case involving adoption.

In re Cristian O., No. D053154, *rev'd* (unpublished) 2009 WL 151317 (S.D.Sup.Ct. Jan. 22, 2009). The appellate court reversed, concluding that a finding of adoptability was premature when children had lived with prospective adoptive relative for only one week and no home study had yet been completed.

People v. Hayes, No. D053795, *rev'd in part* (unpublished) 2010 WL 46875 (S.D.Sup.Ct. Jan. 7, 2010). The appellate court affirmed the conviction for grand theft. The appellate court reversed the conviction for willful failure to appear because there was a conflict in the evidence as to when defendant was ordered to appear. Therefore, the appellate court found that a jury could not have found beyond a reasonable doubt that defendant failed to appear as ordered.

People v. JB Heard, No. D054669, *rev'd in part* (unpublished) 2010 WL 2473261 (S.D.Sup.Ct. June 18, 2010). The appellate court struck the imposition of a \$200 probation revocation restitution fine and a \$40 state surcharge but affirmed in all other respects.

People v. Carradine, No. D053945, *rev'd in part* (unpublished) 2010 WL 819066 (S.D.Sup.Ct. March 10, 2010). The appellate court struck the blind victim enhancement finding but affirmed in all other respects.

People v. Henderson, No. D054494, *rev'd in part* (unpublished) 2010 WL 3872022 (S.D.Sup.Ct. Oct. 5, 2010). The appellate court affirmed the conviction for one count of conspiracy to commit robbery but found insufficient evidence for the jury conviction as to the second count of conspiracy to commit robbery.

In re Kaylee H., No. D060499, *rev'd* 205 Cal.App.4th 92 (2012). This case involved the interplay between the Probate guardianship system and the Juvenile dependency system. The appellate court ruled the case should have been allowed to go through Probate guardianship as opposed to Juvenile dependency if all the parties agreed.

Some reversals are stipulated reversals because of a change in circumstances between the time a decision was rendered and the time of appeal. These include the following cases:

In re Sarah N., No. D040839, D041221, *rev'd* (unpublished) 2003 WL 2002478 (S.D.Sup. Ct. May 1, 2003). The father filed a motion to remove children from the mother and place them with him. This motion was denied. However, while the case was on appeal, the mother's problems increased so everyone agreed a stipulated reversal was appropriate so the children could be placed with the father.

In re Brittany W., No. D042733, *rev'd* (unpublished) 2004 WL 100344 (S.D.Sup.Ct. Jan. 22, 2004). The parties stipulated to reversal of termination of parental rights because Brittany was no longer deemed adoptable.

In re Brooke N., No. D046335, *rev'd* (unpublished) 2006 WL 1174278 (S.D.Sup.Ct. May 4, 2006). Post-judgment developments resulted in stipulation of reversal since the recommendation was now guardianship instead of adoption.

Some cases involved evolving areas of the law creating block reversals. For example, numerous decisions from the California Supreme and Appellate courts regarding the Indian Child Welfare Act led to a large number of reversals in the trial court statewide. Many of these were stipulated reversals because of the new interpretation of the law. I have listed below the cases where all findings were affirmed except for a finding regarding the Indian Child Welfare Act notices:

In re Michael L., No. D041193, *rev'd* (unpublished) 2003 WL 1930340 (S.D.Sup.Ct. Apr. 24, 2003).

In re Christopher B., No. D043368, *rev'd* (unpublished) 2004 WL 811678 (S.D.Sup.Ct. Apr. 15, 2004).

Rosa v. Superior Court, No. D043068, *rev'd* (unpublished) 2004 WL 119838 (S.D.Sup. Ct. Jan. 27, 2004).

In re Angela J., No. D043200, *rev'd* (unpublished) 2004 WL 1260024 (S.D.Sup.Ct. June 9, 2004).

In re Louis S., No. D043166, *rev'd* 117 Cal.App.4th 622 (2004).

In re Mikal H., No. D046303, *rev'd* (unpublished) 2005 WL 2234075 (S.D.Sup.Ct. Sept. 14, 2005).

In re XJ, No. D045837, *rev'd* (unpublished) 2005 WL 1545778 (S.D.Sup.Ct. July 1, 2005).

In re Jessica G., No. D045158, *rev'd* (unpublished) 2005 WL 387902 (S.D.Sup.Ct. May 17, 2006).

In re Francisco W., No. D047094, *rev'd* 139 Cal.App.4th 695 (2006).

In re S.C., No. D047452, *rev'd* (unpublished) 2006 WL 2045780 (S.D.Sup.Ct. July 24, 2006).

In re N.G., No. D049963, *rev'd* (unpublished) 2007 WL 1559231 (S.D.Sup.Ct. May 31, 2007).

In re Makayla P., No. D059889, *rev'd* (unpublished) 2011 WL 4382162 (S.D.Sup.Ct. Sept. 21, 2011).

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

I have issued very few written opinions, none of which were published. I would approximate ten cases – all juvenile dependency or adoption – resulted in some sort of written decision, and many of these were very cursory opinions consisting of no more than a short paragraph. When these opinions were issued, they were filed directly in the confidential Juvenile court file. I have not kept copies of these opinions.

- 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 have not issued any written opinions on federal or state constitutional issues.

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

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

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

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

California Code of Civil Procedure section 170.6 allows each party to exercise one peremptory challenge to any sitting judge without the need for showing cause. These motions are fairly routine in the Superior Court. In San Diego County these requests are processed as a matter of course. The Court does not maintain any data for such requests or file them in any particular way. During my thirteen years on the bench, I recall two or three such peremptory challenges that were timely and, therefore, automatically granted.

I did deny one of these peremptory challenges as untimely. The attorney then filed a challenge for cause alleging that I could not hear a case because I had been the judge who had heard an earlier matter in the case. After consultation with colleagues and a review of the codes of conduct, I denied the challenge. I denied the challenge first because I found that hearing the earlier case as a judge was not grounds for recusal and second because the case was assigned to me for settlement conference. There is case law confirming that a challenge did not

apply to a settlement conference. The attorney took the case up on a writ alleging that I should have granted the motion for a challenge, but the Court of Appeal dismissed the case as moot. I cannot recall the name of this case.

I was prepared to recuse myself sua sponte in any case in which there was a conflict of interest or the appearance of any such conflict. When I was first appointed to the bench, I did recuse myself on cases involving an attorney whom I had been investigating as an Assistant United States Attorney before being appointed to the bench. I was also prepared to recuse on any case in which a family member or close friend appeared. However, that has not proved necessary during my time on the Superior Court.

15. Public Office, Political Activities and Affiliations:

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

I have not held any public offices other than judicial office.

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

I have not held any office in a political party or election committee. I have endorsed the following judges for judicial office in non-partisan campaigns: Terrie Eileen Roberts in 2012; Steven Clark, Robert C. Longstreth, and Joel R. Wohlfeil in 2010; Garry Haehnle in 2008; Joseph P. Brannigan in 2006; Daniel Zeke Zeidler in 2004; and Jeff Bostwick in 2002.

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.

1986 – 1988
Macdonald Halsted and Laybourne
101 West Broadway
San Diego, California 92101
Associate

1988 – 1989
Baker and McKenzie
101 West Broadway
San Diego, California 92101
Associate

1989 – 2000
United State Attorney's Office for the Southern District of California
940 Front Street
San Diego, California 92101
Assistant United States Attorney (1989 – 2000)
Chief of Border Crimes (1997 – 1998)
Deputy Chief of Narcotics (1995 – 1997)

- 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 in alternative dispute resolution proceedings.

b. Describe:

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

After graduation from law school, I practiced law with Macdonald Halsted and Laybourne in San Diego. My practice consisted of general civil litigation. Many of these cases consisted of insurance defense or employment litigation cases. In 1988, Macdonald Halsted and Laybourne merged with Baker and McKenzie, where I continued to practice civil

litigation in San Diego. I spent three months working in the New York City office of Baker and McKenzie.

In 1989, I became an Assistant United States Attorney for the Southern District of California. My practice was solely criminal, focusing on narcotics cases, general crimes (i.e. bank robbery and fraud) and border crimes. I served as the Chief of the Border Crimes section and the Assistant Chief of the Narcotics section. As the Chief of Border Crimes, I supervised approximately thirty new lawyers who were trying primarily cases involving smuggling of drugs or people across the border. I met with each of these lawyers pre-trial to discuss trial tactics and assist them in preparing their cases for trial. As the Assistant Chief of Narcotics, I supervised approximately twelve lawyers who were investigating larger narcotics organizations. Many of the narcotics cases involved wire taps, so I reviewed numerous wire taps and assisted lawyers who were attempting to obtain information about high-level drug traffickers operating in the Southern California area. I then assisted with indictment and trial preparation.

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

When I was at Macdonald, Halsted and Laybourne and Baker and McKenzie, most of my clients were corporate. For example, I represented several insurance agencies and local businesses, such as La Mesa RV and Bradco Inc. I did also represent several individual plaintiffs in their employment litigation. As discussed above, my practice consisted of general civil litigation.

At the United States Attorney's Office for the Southern District of California, I represented the government and people of the United States. As discussed above, my practice was solely criminal, consisting of narcotics, general crimes and border crimes.

- 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.

100% of my practice has been litigation, either civil or criminal. I appeared in court much more frequently as a criminal attorney than I did as a civil attorney, although I did appear in court on civil motions regularly and had two civil trials while I was in private practice.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. state courts of record: | 20% |
| 2. federal courts: | 79% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 1% |

ii. Indicate the percentage of your practice in:

- | | |
|-------------------------|-----|
| 1. civil proceedings | 20% |
| 2. criminal proceedings | 80% |

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.

As a lawyer I tried at least sixteen cases to verdict. I served as chief counsel on two of these cases, associate counsel on two of these cases, and sole counsel on all remaining cases.

i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 94% |
| 2. non-jury: | 6% |

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 never practiced before the Supreme Court of the United States.

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

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

(1) *United States v. Delgado*, 98-2507-JM (S.D. Cal. 1995), before the Honorable Jeffrey Miller, United States District Court for the Southern District of California.

This was the first federal domestic violence case in the Southern District of California and one of the first in the country. Defendant was accused of luring his wife, who had just filed for a divorce, into his car, after which he took her involuntarily to Mexico where he committed acts of domestic violence against her. He believed that by taking her to Mexico, he would be immune from prosecution in the United States, which was exactly what the federal domestic violence statute was designed to address. I presented the case to the grand jury for indictment, which included presenting the wife-victim as a witness even though she was reticent to testify against her husband. Post-indictment, I negotiated a plea agreement with Defendant. Defendant pled guilty to interstate domestic violence and Judge Miller sentenced him to twenty-one months in custody.

Defense counsel: Ricardo Gonzalez
LKA 105 West F Street, Suite 203
San Diego, California 92101
(619) 238-9910

(2) *United States v. Fasola*, 91-0353-GT (S.D. Cal. 1991), *aff'd* 67 F.3d 309 (9th Cir. 1995), before the Honorable Gordon Thompson, United States District Court for the Southern District of California.

Defendant came to the U.S.-Mexico border with a large amount of China White heroin hidden in secret compartments of a suitcase. On his person, the agents also found swallowing instructions. Defendant had just completed a trip from Nigeria to Amsterdam and from Amsterdam to Tijuana, after which he attempted to cross into the United States. I was sole counsel at the jury trial in late 1991. During the trial, the defendant took the stand in his own defense and claimed that the suitcase had been given to him by a friend and that the swallowing instructions were a religious ritual. The jury convicted Defendant.

Defense counsel: Howard Frank
136 Redwood Street
San Diego, California 92103
(619) 574-1888

(3) *United States v. Guzman-Loera et al.*, 95-973-N, 97-50016-N, 97-050043-N, 97-50142-N (S.D. Cal. 1998), *aff'd* (unpublished) 1998 WL 23248 (9th Cir. 1998), before the Honorable Leland C. Nielsen, United States District Court for the Southern District of California.

This was a multi-jurisdictional drug and money laundering investigation involving multiple wire taps in Chicago, San Antonio, Los Angeles and San Diego. Among other acts, the defendants were accused of constructing a 1,600 foot tunnel under the U.S. –

Mexico border to import cocaine. I successfully presented 23 defendants for indictment. After indictment, I presided as chief counsel over the more than 30,000 pages of discovery, defended numerous suppression motions and negotiated plea agreements with all defendants found in the United States except one. I was then lead trial attorney at the trial of the remaining defendant, Avalos. The jury convicted Defendant Avalos, and Judge Nielsen sentenced him to life in prison. The Ninth Circuit upheld his conviction for running a continuing criminal enterprise as well as the life sentence.

Co-counsel: Assistant U.S. Attorney Todd Robinson
880 Front Street
San Diego, California 92101
(619) 557-2034

Trial Counsel for Lead Defendant: Jan Ronis
105 West F Street, Third Floor
San Diego, California 92101
(619) 239-1199

Appellate Counsel for Lead Defendant: Bernard Scomal (now Magistrate Judge)
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Other Defense Attorneys: Gerard Wasson
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San Diego, California 92101
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Legal Aid Society of San Diego
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Frank Ragen
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San Diego, California 92101
(619) 231-4330

Michael Pancer
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(619) 236-1826

(4) *United States v. Ho*, 98-2886-T (S.D. Cal. 1999), *rev'd* 232 F.3d 897 (9th Cir. 2000), before the Honorable Mitchell Fitzgerald, United States District Court for the Southern District of California.

Ms. Ho was a law enforcement officer, working as an investigator for the Department of Health and Human Services. As such, she was responsible for investigating and assisting in the prosecution of Medi-Cal fraud cases. In March 1997, several members of the Vietnamese community were arrested and prosecuted federally for Medi-Cal and bank fraud. In June 1997, two of these individuals (eventually cooperating defendants) were introduced to Ms. Ho. Ms. Ho then promised she could get their case dismissed or their sentences reduced, claiming she was good friends with the lead investigator and prosecutor, AUSA Carol Lam. She also gave the cooperating defendants "hot tips" about the progress of their case. In exchange, she demanded various gifts, including a two-carat diamond ring, a designer purse, sunglasses and money for a face lift. With the help of the cooperating defendants, FBI agents caught Ms. Ho on tape warning the cooperating defendants about an up-coming search warrant. I participated in both the investigation and the jury trial. The jury convicted Ms. Ho of two counts of extortion and one count of revealing a search warrant to prevent seizure. The jury acquitted Ms. Ho of one additional count of extortion.

I was appointed to the bench before the case was heard on appeal. Ms. Ho appealed the conviction based on the trial court's admission of her post-arrest confession, which she gave after she asked the FBI officer if he thought she needed a lawyer. On appeal, the Ninth Circuit reversed, finding that Ms. Ho's inquiry to the FBI officer amounted to a request for an attorney, and thus her post-arrest statement was improperly admitted. I understand that the case resulted in a guilty plea on remand.

Defense Counsel: Everett Bobbitt (now deceased)

(5) *United States v. Kelley*, 89-0647-JLI, (S.D. Cal. 1992), *aff'd* 953 F.2d 59 (9th Cir. 1991), before the Honorable Lawrence Irving, United States District Court for the Southern District of California.

Mr. Kelley was responsible for robbing 21 banks in the Southern California area. In 1990, I tried six counts of bank robbery against Mr. Kelley before a jury. The jury convicted on three counts and hung on three counts, after which Mr. Kelly entered into a plea agreement on the remaining three counts. I also argued the case on appeal. The case was affirmed and resulted in a published appellate opinion.

Defense Counsel: Debra DiIorio
964 Fifth Avenue, #214
San Diego, California 92101
(619) 544-1451

(6) *Longley v. La Mesa RV*, 567190 (Sup. Ct. of San Diego Co., June 24, 1986)

I was associate counsel with Charles Dick, representing La Mesa RV in an employment case filed by local attorney Mr. Longley. Mr. Longley was the CFO at La Mesa RV and alleged he had been fired after he complained about some questionable accounting practices at La Mesa RV. I interviewed numerous witnesses, conducted many depositions, wrote and argued motions, supervised discovery and coordinated the accountant expert witnesses who were reviewing the books at La Mesa RV. The case was settled shortly after I left Baker and McKenzie to work at the U.S. Attorney's office.

Co-Counsel: Charles Dick
12544 High Bluff Drive, Third Floor
San Diego, California 92130
(619) 744-7085

Plaintiff's Counsel: Jeffrey Lewin
550 West C Street, #1500
San Diego, California 92101
(619) 595-3222

(7) *United States v. Marin-Colon*, 90-0841-R (S.D. Cal. 1990), *rev'd and remanded* (unpublished) 1992 WL 208002 (9th Cir 1992) before the Honorable John Rhoads, United States District Court for the Southern District of California.

Defendant led a group of undocumented immigrants, including a mother and her six children ranging in age from six to fifteen years north from Mexico. Just south of the San Clemente checkpoint, Defendant led the group across the I-5 freeway in an attempt to circumvent the checkpoint. The six-year-old boy was killed by oncoming traffic in front of his mother. After the accident, Defendant left in the waiting pick-up car, leaving the mother and her remaining five children by the side of the road. In preparation for trial, I

met extensively with the mother and her sister. Defendant pled guilty to alien smuggling, leaving the issue of the appropriate sentence open for argument. I then engaged in extensive litigation on the issue of sentencing, resulting in two appeals to the Ninth Circuit. In the first appeal, the Ninth Circuit reversed the trial court's 48-month sentence solely on the issue of whether Defendant's two prior DUI convictions should be treated as related. On all other issues, the Ninth Circuit affirmed. Finding the two prior convictions should have been related, the Ninth Circuit remanded to the trial court to determine whether the extent of departure would have been the same had the prior offenses been related. On remand, the trial court reinstated its 48-month sentence, finding it was appropriate even if the two prior DUI convictions were related, and this sentence was affirmed in the second appeal.

Defense Counsel: John Lanahan
550 West C Street, #1670
San Diego, California 92101
(619) 237-5498

(8) *United States v. Preciado-Robles*, 91-50332-L (S.D. Cal. 1992), before the Honorable Leland Nielsen, United States District Court for the Southern District of California.

Defendant was arrested at an immigration checkpoint in Northern San Diego County in possession of one kilogram of cocaine. I tried the case in front of a jury that found the defendant guilty. I then defended the case on appeal. The defendant argued that using the immigration checkpoint to find drugs was an illegal search and seizure. The Ninth Circuit affirmed the conviction, finding that the initial detention for immigration purposes was legal and that the defendant had later consented to the search of his car.

Defense Counsel: James Mangione, Mitchell and Mangione
600 West Broadway
San Diego, California 92101
(619) 232-8151

(9) *United States v. Ta, al.*, 94-170 and 171-R (S.D. Cal. 1994), before The Honorable John Rhoads, United States District Court for the Southern District of California.

During an undercover operation, I supervised the wire taps that were obtained. These wire tapes revealed that Mr. Ta was acting as a "godfather" in the Vietnamese community, responsible for a multitude of crimes, including drug trafficking and trafficking in stolen property. On the wiretaps, Mr. Ta unwittingly introduced an undercover officer, posing as a Hawaiian marijuana grower, to Mr. Schuman, a practicing defense attorney at the time. Mr. Schuman proceeded to launder the undercover officer's "drug money" using several different methods, including setting up trust accounts off the coast of Great Britain and opening a corporation in the Philippines with offices in the United States so the drug money could be run through this corporation overseas. All defendants pled guilty after motions.

Defense Counsel for Lead Defendant: Eugene Iredale
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(619) 233-1525

Other Defense Attorneys: Thomas Warwick
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Steven Hubachek
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Gretchen Von Helms
105 West F Street, Suite 306
San Diego, California 92101
(610) 239-1199

Peter Vance (no current listing)

Martha Hall
964 Fifth Avenue, #214
San Diego, California 92101
(619) 544-1451

(10) *Taylor v. Thistle*, 586345 (Sup. Ct. of San Diego Co., June 9, 1987)

I was associate counsel with Abby Silverman representing the plaintiff, Ms. Taylor, in her lawsuit for legal malpractice and intentional infliction of emotional distress against her attorney, Mr. Thistle. Ms. Taylor was a police officer and had retained Mr. Thistle to assist her in a disability claim against the City of San Diego. After her disability claim was settled, Mr. Thistle turned over confidential information, including Ms. Taylor's diary, to the press in an effort to discredit then-Police Chief Kolender. Although there was no claim of actual monetary damages, the jury awarded a six figure judgment to Ms. Taylor for her emotional distress.

Co-Counsel: Abby Silverman Weiss
600 B Street, #220
San Diego, California 92101
(619) 906-2400

Counsel for Mr. Thistle: Doug Hendriks (no current listing)

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.)

Throughout my legal career I have been involved with the Lawyers Club of San Diego, which was formed in the 1970s to advance the status of women in law and in society. The organization is comprised of approximately 1,000 members and has over twenty subcommittees responsible for various activities, including monthly luncheons and an annual dinner, all with prominent speakers. I began as the newsletter editor, responsible for formatting and distributing a monthly newsletter, and served in this capacity for two years. I was then elected to the Board of Directors, and I served as both the Treasurer and the President of the association. I now serve on the Advisory Board, which meets monthly as an ad hoc advisory counsel for the President.

I have not performed any lobbying activities for a client or organization.

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 1988 to 1991 I was an adjunct professor for Western State University (now Thomas Jefferson School of Law). I taught Professional Responsibility and Legal Writing. I no longer have syllabi for these courses.

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.

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

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

Please see the attached Financial Disclosure Report.

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

Please see the attached Statement of Net Worth.

24. **Potential Conflicts of Interest**:

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

I do not anticipate any major conflicts of interest during my time on the bench. If any family members or close friends were involved in federal litigation, I would recuse myself. Although it has been thirteen years since I was at the United States Attorney's Office and is unlikely to involve many cases, I would be cognizant of any cases that might have originated while I was an Assistant United States Attorney. I would handle all matters involving actual or potential conflicts of interest through thoughtful application of the code of conduct for district judges as well as any pertinent advisory opinions.

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

In resolving any conflicts of interest, I would consult the Code of Conduct for United States Judges, as well as other relevant canons, statutory provisions and the published Advisory Opinions issued by the Committee on Codes of Conduct.

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.

When I was at Baker and McKenzie, I was on the list of appointed attorneys for the San Diego Volunteer Lawyers Program (SDVLP) and for the American Civil Liberties Union. I took cases for both organizations. For example, I took one consumer fraud case (a referral from the SDVLP) to bench trial and received a favorable verdict for the client.

Once I moved to the U.S. Attorney's Office, I volunteered on a monthly basis for several years at the Domestic Violence Prevention Project (DVPP) run by the SDVLP. At the DVPP, I assisted individuals in obtaining restraining orders against their batterers. As a lawyer I was also active in fund-raisers for the SDVLP.

As a judge I volunteer regularly for the Kids In Court program, working with children who are required to testify in court to acclimatize them to the court process.

As the Presiding Judge of Juvenile Court, I had responsibility for coordinating and developing services to juveniles in the dependency and delinquency systems. Pursuant to the California Judicial Council's Standards of Judicial Administration, as the Presiding Judge, I took an active leadership within the community determining the needs of and obtaining the resources and services for at-risk children and their families. I had the opportunity to interact with many of our collaborative partners, including Child Welfare Services, Probation, public schools, mental health providers, attorneys representing all parties, as well as various other community groups to try to ensure the delivery of adequate services to at-risk youth.

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.

In early 2013, I submitted my application to Senator Feinstein's local advisory committee. On April 16, 2013, I interviewed with this committee in San Diego, California. On May 2, 2013, I interviewed with the statewide chair of Senator Feinstein's judicial advisory process in San Diego, California. On May 12, 2013, I spoke to this chair by telephone to discuss some follow-up questions. Since late June 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 18, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On September 19, 2013, the President submitted my nomination to the Senate.

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

No

AFFIDAVIT

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

9/20/13
(DATE)

Cynthia Bashant
(NAME)

(NOTARY)

State of California

County of San Diego

Subscribed and sworn to (or affirmed) before me on this 20 day of
Sept, 2013, by Cynthia Bashant
proved to me on the basis of satisfactory evidence to be the person (s) who
appeared before me

Almirones
Signature of Notary Public

