

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

David John Novak

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

United States District Judge, Eastern District of Virginia

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

David J. Novak
United States Magistrate Judge
Eastern District of Virginia
701 East Broad Street
Richmond, Virginia 23219

Residence: Montpelier, Virginia

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

1961; Greensburg, Pennsylvania

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: Villanova University Law School; J.D., 1986

1980 – 1983: St. Vincent College; B.S. (*Magna Cum Laude*), 1983

1979 – 1980: University of Pittsburgh at Johnstown; 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.

2012 – present
Eastern District of Virginia (Richmond Division)
701 East Broad Street
Richmond, Virginia 23219
United States Magistrate Judge

2014 – present
William & Mary Law School
613 South Henry Street
Williamsburg, Virginia 23185
Adjunct Professor

2013 – present
University of Richmond School of Law
203 Richmond Way
Richmond, Virginia 23173
Adjunct Professor

1994 – 2012
United States Attorney's Office
Eastern District of Virginia
919 East Main Street, Suite 1900
Richmond, Virginia 23219
Assistant United States Attorney

1991 – 1994
United States Attorney's Office
Southern District of Texas
Worked in both Houston and McAllen:
919 Milam Street
Houston, Texas 77208
1701 West Highway 83, Suite 600
McAllen, Texas 73341
Assistant United States Attorney

1991
United States Department of Justice
Criminal Division, Money Laundering Section
1400 New York Avenue, N.W.
Washington, D.C. 20530
Trial Attorney

1986 – 1991; Summer 1985
Philadelphia District Attorney's Office
1421 Arch Street

Philadelphia, Pennsylvania 19102
Assistant District Attorney (1986 – 1991)
Student Intern (Summer 1985)

1984 – 1986 (excluding Summer 1985)
Court of Common Pleas
City of Philadelphia
219 North Broad Street
Philadelphia, Pennsylvania 19103
Pretrial Services Interviewer

Summer 1984
Honorable Eugene E.J. Maier
Judge, Court of Common Pleas
Room 390, City Hall
Philadelphia, Pennsylvania 19102
Student Law Clerk

1985 (intermittent)
Law Offices of Daniel-Paul Alva
1601 Market Street, Suite 690
Philadelphia, Pennsylvania 19103
Student Law Clerk

1984 (intermittent)
Carroll & Carroll Law Firm
150 South Independence Mall West
Philadelphia, Pennsylvania 19106
Student Law Clerk

1983
Greensburg Tribune-Review
Greensburg, Pennsylvania
Maintenance worker/student intern

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

I have not served in the military. I 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.

St. George Tucker Award for Outstanding Adjunct Professor, William & Mary Law School (2018)

“Leaders of the Law” – *Virginia Lawyers Weekly* (Class of 2013)

Fellow, Virginia Law Foundation (2010)

Attorney General’s Award for Excellence in Furthering Interests of United States National Security (2006)

CIA Seal Medallion for contributions to war on terrorism (2006)

Commendation Letter from Attorney General Alberto R. Gonzales (2006)

Commendation Letter from FBI Director Robert S. Mueller, III (2006)

Appellate Advocacy Award from the Association of Government Attorneys in Capital Litigation (2005)

Director’s Award for Superior Performance (DOJ) (2001, 1998)

DEA Administrator’s Award of Honor (1998)

International Narcotic Enforcement Officers Assoc. Special Award of Honor (1998)

U.S. Commissioner of Customs Commendation Award (1996)

U.S. Deputy Commissioner of Customs Commendation Award (1994)

Outstanding Prosecutor from the Philadelphia Fraternal Order of Police (1991)

Graduated *Magna Cum Laude* from St. Vincent College (1983)

Excellence Award for Political Science, St. Vincent College (1983)

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

American Bar Association (1987 – 1995)

Federal Bar Association (2012 – present)
Executive Board (2012 – 2013)

Federal Magistrate Judges Association (2012 – present)

John Marshall Inn of Court (2006 – 2008)

National Association of Assistant U.S. Attorneys (1995 – 2008)

Pennsylvania State Bar (1986 – present)

Richmond Bar Association (2012 – present)
Honorary Vice-President (2013 – 2014)

Virginia Bar Association (2012 – 2016)

Virginia Law Foundation (2010)
Fellow (2010)

Virginia State Bar (1995 – present)

Virginia State Bar Harry L. Carrico Professionalism Course (2008 – present)
Faculty Member:
Appointed by Chief Justice Hassell (2008) (3-year term but still support)
Appointed to the law school faculty (2011) (3-year term but still on-going)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Pennsylvania (1986)
Virginia (1995)

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 Fourth Circuit, 1995
United States District Court for the Eastern District of Virginia, 1996
Commonwealth of Pennsylvania, 1986
Commonwealth of Virginia, 1995

There have been no lapses in membership.

11. **Memberships:**

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

None.

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

Not applicable

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.

Anatomy of a Federal Death Penalty Prosecution: A Primer for Prosecutors, 50 S.C. L. Rev. 645 (1999). 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.

On April 3, 2008, I testified before the Senate Judiciary Committee in confirmation hearings to be a district court judge. I also received Questions for the

Record and provided responses. Copies of my testimony, Questionnaire for Judicial Nominees, and responses to Questions for the Record are 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.

October 8, 2018: Speaker, Ceremony for the St. George Tucker Award for Outstanding Adjunct Professor from the William & Mary Law School, Williamsburg, Virginia. I gave brief, unscripted remarks after accepting the award. I have no notes, transcript, or recording. The address for the William & Mary Law School is 613 South Henry Street, Williamsburg, Virginia 23185. Press report supplied.

September 21, 2018: Speaker, Centre College, Danville, Kentucky. I spoke about the prosecution of Zacarias Moussaoui. My remarks followed the outline supplied for the November 14, 2017, speech at the John Marshall Inn of Court.

September 20, 2018: Speaker, Constitution Day Address, Centre College, Danville, Kentucky. Draft remarks supplied.

September 12, 2018: Speaker, Virginia State Bar Professionalism Course Luncheon Speech for new attorneys, Richmond, Virginia. Draft remarks supplied.

November 14, 2017: Speaker, John Marshall Inn of Court, Richmond, Virginia. Outline of remarks supplied.

September 14, 2017: Speaker, Virginia State Bar Professionalism Course Luncheon Speech for new attorneys, Richmond, Virginia. My remarks were essentially the same as those supplied for the September 12, 2018, speech above.

September 11, 2017: Speaker, Patriot's Day, hosted by multiple civic organizations, Richmond, Virginia. I spoke about the prosecution of Zacarias Moussaoui. My remarks followed the outline supplied for the November 14, 2017, speech at the John Marshall Inn of Court.

May 24, 2017: Speaker, CLE Program on Handling of Settlement Conferences, joint conference hosted by the Federal Bar Association, Virginia Association of Defense Attorneys, and the Virginia Trial Lawyers' Association, Richmond,

Virginia. Outline of draft remarks supplied.

November 4, 2016: Speaker, McNeil Society Induction Ceremony, University of Richmond Law School, Richmond, Virginia. Draft remarks supplied.

October 20, 2016: Panelist, CLE Program on Mediation, Richmond Bar Association's Bench-Bar Conference, Richmond, Virginia. I gave brief unscripted remarks as part my participation on a panel about settlement conferences in the Richmond Division of the Eastern District of Virginia. I have no notes, transcript, or recording. The address for the Richmond Bar Association is 707 East Main Street, Suite 1620, Richmond, Virginia 23219. Press report supplied.

September 22, 2016: Speaker, Virginia State Bar Professionalism Course Luncheon Speech for new attorneys, Richmond, Virginia. My remarks were essentially the same as those supplied for the September 12, 2018, speech above.

June 19, 2015: Speaker, Philadelphia Bench Bar Conference, Philadelphia, Pennsylvania. I spoke about the prosecution of Zacarias Moussaoui. My remarks followed the outline supplied for the November 14, 2017, speech at the John Marshall Inn of Court. Press report supplied.

March 22, 2015: Speaker, Mock Trial Keynote Speech, Furman University, Greenville, South Carolina. Draft remarks supplied.

October 18, 2014: Speaker, St. Catherine's School, Richmond, Virginia. I spoke about the prosecution of Zacarias Moussaoui. My remarks followed the outline supplied for the November 14, 2017, speech at the John Marshall Inn of Court.

September 18, 2014: Speaker, Virginia State Bar Professionalism Course Luncheon Speech for new attorneys, Richmond, Virginia. My remarks were essentially the same as those supplied for the September 12, 2018, speech above.

September 8, 2014: Speaker, Altria, Richmond, Virginia. I spoke about the prosecution of Zacarias Moussaoui. My remarks followed the outline supplied for the November 14, 2017, speech at the John Marshall Inn of Court.

April 9, 2014: Speaker, Trinity Episcopal High School, Richmond, Virginia. I spoke about the prosecution of Zacarias Moussaoui. My remarks followed the outline supplied for the November 14, 2017, speech at the John Marshall Inn of Court.

March 24, 2014: Speaker, St. Thomas More Society, Richmond, Virginia. I spoke about the prosecution of Zacarias Moussaoui. My remarks followed the outline supplied for the November 14, 2017, speech at the John Marshall Inn of Court.

February 14, 2014: Speaker, Nomination Speech for the Carrico Award, Virginia State Bar conference, Williamsburg, Virginia. Draft remarks supplied.

December 10, 2013: Speaker, Intellectual Property Inn of Court, Richmond, Virginia. I spoke about the prosecution of Zacarias Moussaoui. My remarks followed the outline supplied for the November 14, 2017, speech at the John Marshall Inn of Court.

November 16, 2013: Speaker, St. Vincent College Law Society Address, St. Vincent College, Latrobe, Pennsylvania. Draft remarks supplied.

September 18, 2013: Speaker, Virginia State Bar Professionalism Course Luncheon Speech for new attorneys, Richmond, Virginia. My remarks were essentially the same as those supplied for the September 12, 2018, speech above.

June 7, 2013: Speaker, Commencement Address for the Eighth Grade, St. Mary's Catholic School, Richmond, Virginia. Draft remarks supplied.

May 13, 2013: Speaker, Richmond Paralegals Association, Richmond, Virginia. I spoke about the prosecution of Zacarias Moussaoui. My remarks followed the outline supplied for the November 14, 2017, speech at the John Marshall Inn of Court.

March 22, 2013: Speaker, Virginia Trial Lawyers Conference, Williamsburg, Virginia. Draft remarks supplied.

January 17, 2013: Speaker, Luncheon Speaker for the Richmond Bar Association, Richmond, Virginia. Draft remarks supplied.

September 13, 2012: Keynote Speaker, Clerk's Office Conference for the Eastern District of Virginia, Williamsburg, Virginia. Draft remarks supplied.

October 4, 2011: Speaker, Lewis Powell Inn of Court, Richmond, Virginia. I spoke about the prosecution of Zacarias Moussaoui. My remarks followed the outline supplied for the November 14, 2017, speech at the John Marshall Inn of Court.

September 8, 2011: Speaker, Tenth Anniversary of 9-11 Attacks, U.S. Attorney's Office in the Eastern District of Virginia, Alexandria, Virginia. Draft remarks supplied.

September 15, 2010: Speaker, Retired FBI Special Agents Association, Richmond, Virginia. I spoke about the prosecution of Zacarias Moussaoui. My remarks followed the outline supplied for the November 14, 2017, speech at the John Marshall Inn of Court.

July 20, 2010: Speaker, Remarks about Operation of U.S. Attorney's Office, Capital One's Headquarters, Arlington, Virginia. Draft remarks supplied.

Mid-March 2010: Speaker, CIPA Training for FBI Agents, FBI Field Office, Washington, D.C. Outline of remarks supplied.

May 2009: Speaker, CLE Program on Handling Classified Information given on different dates in various branches of the U.S. Attorney's Office for the Eastern District of Virginia. Outline of remarks supplied.

March 26, 2009: Speaker, Career Day Remarks, St. Mary's Middle School, Richmond, Virginia. Outline of draft remarks supplied.

September 6, 2007: Speaker, Connecticut Federal Bar Association, Bridgeport, Connecticut. I spoke about the prosecution of Zacarias Moussaoui. My remarks followed the outline supplied for the November 14, 2017, speech at the John Marshall Inn of Court.

July 21, 2007: Speaker, International Trial Lawyers' Association, White Sulphur Springs, West Virginia. I spoke about the prosecution of Zacarias Moussaoui. My remarks followed the outline supplied for the November 14, 2017, speech at the John Marshall Inn of Court.

June 1, 2007: Speaker, U.S. Attorney's Office for the Eastern District of Pennsylvania, Philadelphia, Pennsylvania. I spoke about the prosecution of Zacarias Moussaoui. My remarks followed the outline supplied for the November 14, 2017, speech at the John Marshall Inn of Court.

May 19, 2007: Speaker, Virginia Women Judge's Association, Richmond, Virginia. I spoke about the prosecution of Zacarias Moussaoui. My remarks followed the outline supplied for the November 14, 2017, speech at the John Marshall Inn of Court.

April 26, 2007: Speaker, University of Richmond Law School Forensic Evidence class, Richmond, Virginia. I spoke about the prosecution of Zacarias Moussaoui. My remarks followed the outline supplied for the November 14, 2017, speech at the John Marshall Inn of Court.

November 27, 2006: Speaker, Forensic Evidence Class, Virginia Commonwealth University, Richmond, Virginia. I spoke about the prosecution of Zacarias Moussaoui. My remarks followed the outline supplied for the November 14, 2017, speech at the John Marshall Inn of Court.

November 14, 2006: Speaker, U.S. Attorney's Office for District of Columbia, Washington, D.C. I spoke about the prosecution of Zacarias Moussaoui. My

remarks followed the outline supplied for the November 14, 2017, speech at the John Marshall Inn of Court.

October 10, 2006: Speaker, John Marshall Inn of Court, Richmond, Virginia. I spoke about the prosecution of Zacarias Moussaoui. My remarks followed the outline supplied for the November 14, 2017, speech at the John Marshall Inn of Court.

On multiple dates, I spoke at William & Mary Law School, Williamsburg, Virginia, about the prosecution of Zacarias Moussaoui. Although I no longer have records on the precise dates, my remarks followed the outline supplied for the November 14, 2017, speech at the John Marshall Inn of Court. The address for the William & Mary Law School is 613 South Henry Street, Williamsburg, Virginia 23185. Illustrative press report supplied.

On multiple dates, I spoke at Virginia Commonwealth University, Richmond, Virginia, about the prosecution of Zacarias Moussaoui. Although I no longer have records on the precise dates, my remarks followed the outline supplied for the November 14, 2017, speech at the John Marshall Inn of Court. The address for Virginia Commonwealth University is Virginia Commonwealth University, Richmond, Virginia 23284.

As part of my duties as a Magistrate Judge, I often preside over Naturalization Ceremonies, and I usually offer general remarks about the duties of citizenship. Illustrative press reports supplied.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Administration of Justice Committee Members Visit Federal Judges and Receive Helpful Feedback, The Richmond Bar Newsletter, Jan. 2019. Copy supplied.

Federal Judges Provide Feedback on Discovery Matters and Familiarity With Local Rules, The Richmond Bar Newsletter, Jan. 2018. Copy supplied.

Federal Judges Provide Procedural, Other Pointers for Practitioners, The Richmond Bar Newsletter, Jan. 2017. Copy supplied.

Administration of Justice Committee Receives Feedback From Federal Judges, The Richmond Bar Newsletter, Jan. 2016. Copy supplied.

Administration of Justice Committee Receives Feedback From Federal Judges, The Richmond Bar Newsletter, Jan. 2015. Copy supplied.

Administration of Justice Committee Receives Feedback From Federal Judges, The Richmond Bar Newsletter, Jan. 2014. Copy supplied.

Evonne Coutros, *The State Cop Who Helped Put Away Moussaoui*, New Jersey Record, May 18, 2006. Copy supplied.

Patti Dobranski, *Greensburg Native Played Big Role in Moussaoui Case*, Trib.-Rev. (Greensburg, Pa.), May 4, 2006. Copy supplied.

Jerry Markon, *Sept. 11 Victims' Chronicle of Loss May Go Unheard*, Wash. Post, Oct. 27, 2003. Copy supplied.

Matthew Junker, *Lawyer Going After '20th Hijacker' Schooled Locally*, Pittsburgh Trib.-Rev., Mar. 25, 2002. Copy supplied. Reprinted in multiple outlets.

There are a small handful of articles quoting me where I cannot recall whether my statements were made in court, or in an interview. In an abundance of caution, I have listed them below:

Tom Campbell, *Jurors Say No to Death Penalty for Poison Clan*, Richmond Times-Dispatch, July 26, 1997. Copy supplied.

Robb Mandelbaum, *Play Hardball, Pay \$7 Million*, Am. Law., March 1995. Copy supplied.

James Pinkerton, *Former Bank Executive, Ex-aide Sentenced/Pair Gets Prison in Money Laundering*, Houston Chronicle, Aug. 13, 1994. Copy supplied.

Banker Convicted of Money Laundering – Man Linked To Mexican Drug Lord Faces 15 Years in Prison, Dallas Morning News, June 3, 1994. 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.

United States Magistrate Judge for the Eastern District of Virginia. Appointed by the District Court Judges, effective February 1, 2012 to the present.

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

Criminal cases (misdemeanors or petty offenses): 1585 cases (approximately).
Includes 7 bench trials and 1 jury trial.

Civil cases on consent (excluding Social Security Cases): 120 (approximately).

Includes 2 jury trials.

Social Security Opinions (both on consent and for Report and Recommendation):
221 (approximately).

i. Of these, approximately what percent were:

jury trials:	10%
bench trials:	90%
civil proceedings:	10%
criminal proceedings:	90%

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

See attached chart that lists each opinion I have written as of March 31, 2019, provides a citation for each opinion, and identifies any subsequent history.

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).

1. *United States v. Lewis*, Criminal Case No. 3:13mj488 (E.D. Va.).

This misdemeanor criminal prosecution arose from a DUI offense committed on the Ft. Lee military base. The defendant demanded a jury trial. The jury convicted him of the DUI charge. I also found the defendant guilty of a petty offense of driving a vehicle with defective equipment. I sentenced the defendant to forty-five days imprisonment, a fine of \$500 (mandatory under the statute) and a special assessment of \$25 (mandatory under the statute) for the DUI offense and a special assessment of \$5 (mandatory under the statute) for driving a vehicle with defective equipment. There was no appeal. Copy of judgment supplied.

Counsel for the Government

Heather Hart Mansfield
United States Attorney's Office
Eastern District of Virginia
919 East Main Street
Suite 1900
Richmond, Virginia 23219
(804) 819-5400

Counsel for the Defendant

Scott Pickus
11321 Church Road
Henrico, Virginia 23233
(804) 377-6688

2. *Rountree Motors, Inc. v. Commonwealth Dealers Life Insurance Co.*, Civil Case No. 3:13cv47, 2013 WL 4102161 (E.D. Va. Aug. 13, 2013).

This breach of contract case was assigned to me after the parties consented to Magistrate Judge jurisdiction. I denied the parties' summary judgment motions, and the case proceeded to trial before a jury. The jury ruled in favor of the defendant. No appeal was filed after the verdict.

Counsel for the Plaintiff

Steven Biss
Law Office of Steven S. Biss
300 West Main Street
Suite 102
Charlottesville, Virginia 22903
(804) 501-8272

Counsel for the Defendant

William Bayliss
Williams Mullen
200 South 10th Street
Suite 1600
Richmond, Virginia 23219
(804) 420-6459

3. *Scott v. Watsonstown Trucking Co., Inc.*, Civil Case No. 3:12cv176, 920 F. Supp. 2d 644 (E.D. Va. 2013), *aff'd*, 533 F. App'x 259 (4th Cir. 2013).

This personal injury case involved a tractor-trailer striking a motorcyclist, causing significant injuries to the motorcyclist. The jury found for the defendant, concluding that there was no negligence. I denied a post-trial motion by the plaintiff for a new trial, and the Fourth Circuit affirmed my decision.

Lead counsel for the Plaintiff

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17 West Jefferson Street, Suite 100
Rockville, Maryland 20850

(301) 340-8200

Lead counsel for the Defendant

John Messersmith
Kalbaugh Pfund & Messersmith PC
901 Moorefield Park Drive
Suite 200
Richmond, Virginia 23236
(804) 320-6300

4. *Commonwealth of Virginia, ex rel. Integra Rec LLC v. Countrywide Securities Corporation, et al.*, Civil Case No. 3:14cv706 (E.D. Va.).

In this securities fraud case, the Attorney General of Virginia sued many of the largest banking institutions in the country for fraud based on their issuance of mortgage-backed securities that were purchased by the Virginia Retirement System. I mediated the settlement conference for this case. All of the financial institutions ultimately settled in a total amount that exceeded \$60 million. Copy of judgment supplied.

Counsel for the Attorney General's Office

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Counsel for Morgan Stanley & Co. LLC

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5. *Clark, et al. v. TransUnion*, Civil Case No. 3:15cv391 (E.D. Va.); *Anderson, et al. v. TransUnion*, Civil Case No. 3:16cv558 (E.D. Va.); *Clark, et al., v. Experian Information Solutions, Inc.*, Civil Case No. 3:16cv32 (E.D. Va.); *Brown, et al., v. Experian Information Solutions, Inc.*, Civil Case No. 3:16cv670 (E.D. Va.).

The plaintiffs in these four class action cases brought suit against TransUnion, LLC (“TU”) and Experian Information Solutions, Inc. (“Experian”) for violations of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681, *et seq.*, arising from Defendants’ use of a third-party vendor — LexisNexis — to report consumers’ civil judgments and tax liens. Plaintiffs alleged that Defendants violated § 1681g(a)(2) of the FCRA by failing to identify the proper source of civil judgments and liens to consumers, as well as § 1681e(b) by failing to follow reasonable procedures to assure maximum possible accuracy when preparing consumer reports.

After multiple rounds of mediation, the parties reached agreements that provided adversely affected consumers the opportunity to receive monetary relief and significant injunctive relief. To remedy § 1681g(a)(2) violations, TU agreed to include specific disclosure language in the header that accompanies the public record section on consumer reports, linking consumers to a webpage identifying the name, mailing address and web address of third-party vendors (i.e., LexisNexis) used by TU. To remedy § 1681(e)(b) violations, TU agreed to cease reporting civil judgments and tax liens for three years. Following this period, TU could report newly acquired civil judgment and tax lien public records only *after* notifying class counsel of TU’s new collection process, provided that the new collection process ensured accurate and complete reporting. Experian modeled their settlement after the TU settlement and reached a similar agreement with class counsel. These nationwide settlements significantly altered the credit-collection practices of the country’s leading credit-reporting agencies. Copies of

judgments supplied.

Counsel for Plaintiffs

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6. *In re: Health Diagnostic Laboratory, Inc.*, Bankruptcy Case No. 15-32919, Adversary Proceeding No. 16-03271, District Court Misc. Case No. 3:17mc004 (E.D. Va.).

This massive bankruptcy case arises from one of the largest health care frauds committed nationally. Health Diagnostic Laboratory (HDL) operated a clinical laboratory that provided testing of biomarkers for the indication of various illnesses. Their testing services offered physicians the ability to detect major health issues before potentially life-threatening events occurred. HDL processed lab tests for physicians from around the country. This business excelled for a number of years before allegations of impropriety were raised against the company, its CEO (LaTonya Mallory) and other directors and officers of the company, as well as investors and their sales force, which was known as BlueWave. Specifically, the Department of Justice (and now the Liquidating Trustee) allege that the defendants engaged in the following unlawful practices to secure the business of healthcare providers: (1) payment of processing and handling fees to physicians for lab tests that violated federal and state Anti-Kickback Statutes (AKS); (2) payment of percentage-based commissions to BlueWave's independent sales contractors in violation of the AKS; and (3) not collecting co-payments, co-insurance payments and deductibles from patients for HDL's testing in violation of the AKS and Civil Monetary Penalties Law.

The Government's investigation ultimately caused HDL to collapse and bankruptcy proceedings began on June 7, 2015. The Liquidating Trustee (LT) has filed a 76-count Omnibus Complaint against more than 100 defendants to include former officers/directors/shareholders of HDL, as well as the marketing company and salesforce (both individuals and their affiliated business entities). The LT values the estate at roughly \$400 million. This Adversary Proceeding alone has over 350 docket entries to date. Roughly 3,000 other adversary proceedings related to HDL have been filed, many of these actions based on efforts by the LT to sue approximately 1,200 physicians who profited from the scheme.

Even though Magistrate Judges normally do not handle bankruptcy cases, the district court assigned this case to me for mediation. To date, we already settled roughly 500 of the cases to include the cases against CEO LaTonya Mallory and Chief Scientist Russell Warnick. I have listed counsel for those two specific cases as examples of this litigation. Copies of judgments supplied.

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Counsel for Russell Warnick

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Gateway Plaza
800 East Canal Street
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(804) 775-1144

7. *Marks v. Scottsdale Insurance Company*, Civil Case No. 3:14cv25, 2014 WL 3767116 (E.D. Va. July 30, 2014), *aff'd*, 791 F.3d 448 (4th Cir. 2015).

This insurance dispute was assigned to me after the parties consented to Magistrate Judge jurisdiction. The case involved a dispute over the language of an insurance policy to determine whether the policy covered a member of a hunt club who discharged his firearm negligently while hunting, resulting in bodily injury to the driver of a vehicle on a nearby public road. I resolved the case by granting the summary judgment motion filed by the defendant insurance company, and the Fourth Circuit affirmed my decision.

Counsel for Plaintiff

T. Vaden Warren, Jr.
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(434) 972-9090

Counsel for Defendant

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Hancock Daniel
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8. *Roberts v. Cowan Distribution Services, LLC*, Civil Case No. 3:13cv766, 58 F. Supp. 3d 593 (E.D. Va. 2014).

This consent case involved a dispute under the Fair Labor Standards Act (FLSA) as to whether truck drivers who served as “yard jockeys” were entitled to overtime. In resolving the case, I issued an opinion that determined whether the Motor Carrier Act Exemption to the FLSA overtime requirements applied to the “yard jockeys” — an issue of first impression. After the issuance of the opinion, the parties settled the case in a manner consistent with the opinion.

Counsel for Plaintiff

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Counsel for Defendant

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Kim D. Mann
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9. *PNC Bank, N.A. v. Dominion Energy Management, Inc., et al.*, Civil Case No. 3:17cv311, 2018 WL 1768061 (E.D. Va. Apr. 12, 2018).

This consent case involved a dispute arising from the defendants' default on various commercial loans and lines of credit. I resolved the matter in favor of the plaintiff by granting summary judgment on plaintiff's behalf.

Counsel for Plaintiff

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Counsel for Defendants

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10. *United States v. Raynor*, Criminal Case No. 3:13MJ221, 2013 WL 5770529 (E.D. Va. Oct. 24, 2013), 2014 WL 1315970 (E.D. Va. Apr. 1, 2014).

This misdemeanor prosecution for driving under the influence of alcohol involved substantial litigation before the defendant ultimately pled guilty. Raynor and another defendant filed a selective prosecution motion alleging that they were arrested due to their race. I denied that motion. Raynor then filed a suppression motion, which I also denied. I then wrote an opinion supporting an upward departure at sentencing after I sentenced Raynor to seven months' imprisonment.

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- 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.
1. *Scott v. Watsonstown Trucking Co. Inc.*, 920 F. Supp. 2d 644 (E.D. Va. 2013), *aff'd*, 533 F. App'x 259 (4th Cir. 2013).

Lead Counsel for the Plaintiff

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2. *United States v. Williams*, 945 F. Supp. 2d 665, 667 (E.D. Va. 2013).

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3. *United States v. Raynor*, Criminal Case Nos. 3:13mj221, 3:13mj215, 2013 WL 5770529 (E.D. Va. Oct. 24, 2013).

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4. *United States v. Wingle*, 918 F. Supp. 2d 524 (E.D. Va. 2013), *aff'd*, 2013 WL 1167497 (E.D. Va. Mar. 20, 2013), *aff'd*, 565 F. App'x 265 (4th Cir. 2014), *cert. denied*, 135 S. Ct. 218 (2014).

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5. *Roberts v. Cowan Distribution Servs., LLC*, 58 F. Supp. 3d 593 (E.D. Va. 2014).

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6. *Marks v. Scottsdale Ins. Co.*, Civil Case No. 3:14-cv-25, 2014 WL 3767116 (E.D. Va. July 30, 2014), *aff'd*, 791 F.3d 448 (4th Cir. 2015).

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7. *Bisceglia v. Colvin*, 173 F. Supp. 3d 326 (E.D. Va. 2016).

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Lead Counsel for the Government

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8. *United States v. De Leon-Ramirez*, Criminal Case No. 3:17cr89, 2017 WL 5163607 (E.D. Va. Oct. 11, 2017), *report and recommendation adopted*, 2017 WL 5162815 (E.D. Va. Nov. 7, 2017), *appeal docketed*, No. 18-4121 (4th Cir. Feb. 26, 2018).

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9. *PNC Bank, Nat'l Assoc. v. Dominion Energy Mgmt., Inc.*, Civil Case No. 3:17cv311, 2018 WL 1768061 (E.D. Va. Apr. 12, 2018).

Lead Counsel for the Plaintiff

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10. *United States v. Morgan*, Criminal Case No. 3:18cr48 (ECF No. 21) (E.D. Va. July 2, 2018), *report and recommendation adopted*, 2018 WL 3832849 (E.D. Va. Aug. 13, 2018).

Lead Counsel for the Government

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- e. Provide a list of all cases in which certiorari was requested or granted.

United States v. Wingle, 918 F. Supp. 2d 524 (E.D. Va. 2013), *aff'd*, 2013 WL 1167497 (E.D. Va. Mar. 20, 2013), *aff'd*, 565 F. App'x 265 (4th Cir. 2014), *cert. denied*, 135 S. Ct. 218 (2014).

Johnson v. Berryhill, Civil Case No. 3:16cv923 (E.D. Va. Apr. 10, 2017) (ECF No. 35), *report and recommendation adopted sub nom.*, *Johnson v. Soc. Sec. Admin.*, 2017 WL 2624207 (E.D. Va. June 16, 2017), *aff'd sub nom.*, *Johnson v. Berryhill*, 733 F. App'x 107 (4th Cir. 2018), *cert. denied*, 2019 WL 655938 (Feb. 19, 2019).

Johnson v. Berryhill, Civil Case No. 3:16cv923 (E.D. Va. Jan. 3, 2018) (ECF No. 51), *report and recommendation adopted*, 2018 WL 1426562 (E.D. Va. Mar. 22, 2018), *aff'd*, 733 F. App'x 107 (4th Cir. 2018), *cert. denied*, 2019 WL 655938 (Feb. 19, 2019).

- 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.

L. Foster Consulting, LLC v. XL Group, Inc., Civil Case No. 3:11cv800, 2012 WL 2785904 (E.D. Va. June 1, 2012), *report and recommendation adopted in part*, 2012 WL 2785902 (E.D. Va. July 6, 2012) (District court did not accept the Report and Recommendation's conclusion that (i) second amended complaint stated a claim under "work-for-hire" doctrine and (ii) alternate *Brown v. Flowers* doctrine applied).

Fed. Nat'l Mortg. Ass'n v. CG Bellkor, LLC, 980 F. Supp. 2d 703 (E.D. Va. Oct. 29, 2013), *aff'd in part and vacated in part*, 576 F. App'x 196 (4th Cir. 2014) (vacated for recalculation of damages).

Loving v. Astrue, Civil Case No. 3:11cv411, 2012 WL 4329277 (E.D. Va. June 22, 2012), *report and recommendation adopted in part and objections sustained in part and overruled in part*, 2012 WL 4329283 (E.D. Va. Sept. 20, 2012) (declining to award benefits).

Parham v. Colvin, Civil Case No. 3:14cv283, 2015 WL 1649143 (E.D. Va. Apr. 13, 2015), *rev'd and remanded sub nom. Parham v. Comm'r of Soc. Sec.*, 627 F. App'x 233 (4th Cir. 2015) (remanded for consideration of new and material evidence by ALJ).

Testamark v. Berryhill, Civil Case No. 3:16cv202, 2017 WL 4544899 (E.D. Va. Aug. 21, 2017), *rev'd*, 736 F. App'x 395 (4th Cir. 2018) (remanded because ALJ failed to adequately explain weight afforded to medical opinions).

Taylor v. Timepayment Corp., 2019 WL 1375594 (E.D. Va. Feb. 5, 2019), *report and recommendation adopted in part*, Case No. 3:18cv378 (ECF Nos. 36, 37) (E.D. Va. Mar. 31, 2019) (sustaining plaintiff's objection to Count I based on *Curtis v. Propel Property Tax Funding, LLC, et al.*, 915 F.3d 234 (4th Cir. 2019), which the Fourth Circuit issued the day after publication of the report and recommendation). Copy supplied.

- 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 305 opinions, 298 (97.7%) of which are unpublished. I define "unpublished" decisions as those opinions not printed in a federal reporter (i.e., available on ECF or Westlaw only). The Clerk's Office uploads all of my opinions to the CM/ECF database. The case manager uploading the opinion assigns it an ECF number and stores the opinion on the docket page for the case.

- 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.

Balsly v. West Michigan Debt Collections, Inc., Civil Case No. 3:11cv642, 2012 WL 628490 (E.D. Va. Feb. 27, 2012).

Brainware, Inc. v. Scan-Optics, Ltd., Civil Case No. 3:11cv755, 2012 WL 1999549 (E.D. Va. May 9, 2012), *report and recommendation adopted*, 2012 WL 1999636 (E.D. Va. June 4, 2012).

Jenkins v. Nduime Youth & Family Servs., Inc., Civil Case No. 3:11cv385 (ECF No. 112) (E.D. Va. May 30, 2012), *report and recommendation adopted*, Civil Case No. 3:11cv385 (ECF No. 124) (E.D. Va. July 6, 2012), *appeals dismissed*, Civil Case No. 3:11cv385 (ECF No. 167) (4th Cir. May 24, 2013). Copy supplied.

Daly v. Commonwealth of Virginia, Civil Case No. 3:14cv250 (ECF No. 49) (E.D. Va. July 15, 2014). Copy supplied.

English Boiler & Tube, Inc. v. Glex Inc., Civil Case No. 3:12cv88, 2012 WL 2131895 (E.D. Va. June 12, 2012).

Hurt v. Bank of America, Civil Case No. 3:12cv184, 2012 WL 12904236 (E.D. Va. July 11, 2012), *report and recommendation adopted*, 2012 WL 12904087 (E.D. Va. Sept. 21, 2012), *aff'd sub nom. Hurt v. Bank of America BAC Home Loan Servicing, LP*, 511 F. App'x 256 (4th Cir. 2013).

Chennault v. Mitchell, 923 F. Supp. 2d 765, 775 (E.D. Va. Dec. 14, 2012), *report and recommendation adopted*, 923 F. Supp. 2d 765 (E.D. Va. Feb. 7, 2013).

Whitlock v. Street, Civil Case No. 3:12cv95, 2012 WL 6589545 (E.D. Va. Dec. 17, 2012).

United States v. Wingle, 918 F. Supp. 2d 524 (E.D. Va. 2013), *aff'd*, 2013 WL 1167497 (E.D. Va. Mar. 20, 2013), *aff'd*, 565 F. App'x 265 (4th Cir. 2014), *cert. denied*, 135 S. Ct. 218 (2014).

Perry-Bey v. Virginia, Civil Case No. 3:12cv704, 2013 WL 2476491, at *1 (E.D. Va. Apr. 29, 2013), *report and recommendation adopted*, 2013 WL 2476491 (E.D. Va. June 7, 2013).

United States v. Williams, 945 F. Supp. 2d 665 (E.D. Va. May 13, 2013).

Pettis v. Nottoway Cty. Sch. Bd., Civil Case No. 3:12cv864, 2013 WL 3063704, at *1 (E.D. Va. May 30, 2013), *report and recommendation adopted*, 2013 WL 3063704 (E.D. Va. June 17, 2013).

Bolling v. Virginia Dep't of Health, Civil Case No. 3:12cv593, 2013 WL 12101106 (E.D. Va. Sept. 3, 2013), *report and recommendation adopted*, 2013 WL 12099378 (E.D. Va. Oct. 17, 2013), *aff'd*, 570 F. App'x 313 (4th Cir. 2014).

United States v. Raynor, Criminal Case Nos. 3:13mj221, 3:13mj215, 2013 WL 5770529 (E.D. Va. Oct. 24, 2013.)

United States v. Raynor, Criminal Case Nos. 3:13mj221, 3:13mj215 (ECF No. 64) (E.D. Va. Oct. 29, 2013). Copy supplied.

Jackson v. Natrass, Civil Case No. 3:13cv535, 2014 WL 3697505, at *1 (E.D. Va. June 25, 2014), *report and recommendation adopted*, 2014 WL 3697505 (E.D. Va. July 23, 2014).

Newby v. Bon Secours St. Francis Family Med. Residency Program, Civil Case No. 3:14cv459, 2014 WL 5465094, at *1 (E.D. Va. Sept. 22, 2014), *report and recommendation adopted*, 2014 WL 5465094 (E.D. Va. Oct. 28, 2014).

United States v. Cross, Criminal Case No. 3:14mj245, 2014 WL 5162379 (E.D. Va. Oct. 14, 2014).

McIntyre v. City of Chesapeake, Civil Case No. 3:14cv449, 2015 WL 2064007 (E.D. Va. Apr. 30, 2015).

Parham v. Colvin, Civil Case No. 3:14cv283, 2015 WL 1649143 (E.D. Va. Apr. 13, 2015), *rev'd and remanded sub nom. Parham v. Comm'r of Soc. Sec.*, 627 F. App'x 233 (4th Cir. 2015).

Gilbertson v. Jones, Civil Case No. 3:16cv255, 2016 WL 6518659 (E.D. Va. Sept. 22, 2016), *report and recommendation adopted*, 2016 WL 6518631 (E.D. Va. Nov. 1, 2016)

United States v. Nabaya, Criminal Case No. 3:17cr3 (ECF No. 51) (E.D. Va. Apr. 7, 2017). Copy supplied.

United States v. Morgan, Criminal Case No. 3:18cr48 (ECF No. 21) (E.D. Va. July 2, 2018), *report and recommendation adopted*, 2018 WL 3832849 (E.D. Va. Aug. 13, 2018). Copy supplied.

Chien v. Motz, et al., Civil Case No. 3:18cv106, 2019 WL 346761 (E.D. Va. Jan. 7, 2019), *report and recommendation adopted*, 2019 WL 346406 (E.D. Va. Jan. 28, 2019).

Suarez v. Berryhill, Civil Case No. 3:18cv128, 2019 WL 959606 (E.D. Va. Jan. 28, 2019), *report and recommendation adopted*, 2019 WL 943389 (E.D. Va. Feb. 26, 2019).

Taylor v. Timepayment Corp., 2019 WL 1375594 (E.D. Va. Feb. 5, 2019), *report and recommendation adopted in part*, Case No. 3:18cv378 (ECF Nos. 36, 37) (E.D. Va. Mar. 31, 2019) (sustaining plaintiff's objection to Count I based on *Curtis v. Propel Property Tax Funding, LLC, et al.*, 915 F.3d 234 (4th Cir. 2019), which the Fourth Circuit issued the day after publication of the report and recommendation). Copy supplied.

- 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.

When I assumed the position of United States Magistrate Judge, I notified the United States Attorney's Office by letter dated February 3, 2012, that I would "recuse myself from any criminal matter in which I actively participated during my tenure in the United States Attorney's Office. See 28 U.S.C. § 455(b)(3) (recusal required where the judge 'served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy.')

This [included] any matter that was approved for prosecution during my tenure as Chief of the Criminal Division (December 18, 2009-December 1, 2011)." As a result, all criminal cases falling under this description were automatically assigned to the other Magistrate Judge in Richmond. Because this was a systematic assignment, I cannot identify each specific case that would have been assigned to me absent my notification.

Beyond the automatic assignment described above, no other recusal motions have been made in any other case that I participated in, nor did I recuse myself from any other matter.

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 was nominated to the District Court for the Eastern District of Virginia by

President George W. Bush in November 2007. I received a hearing in April 2008, but never received a vote on my nomination.

- 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 did not serve as a clerk to a judge.

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

I have never practiced alone.

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

1986 – 1991; Summer 1985
Philadelphia District Attorney's Office
1421 Arch Street
Philadelphia, Pennsylvania 19102
Assistant District Attorney (1986 – 1991)

1991
United States Department of Justice
Criminal Division, Money Laundering Section
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Trial Attorney

1991 – 1994
United States Attorney's Office for the Southern District of Texas
Worked in both Houston and McAllen:
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1994 – 2012
United States Attorney's Office
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Assistant United States Attorney

- 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.

Before becoming a Magistrate Judge, I never served as a mediator or arbitrator.

b. Describe:

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

For the first five years of my career, 1986 to 1991, I served as a state prosecutor in Philadelphia. I practiced criminal law exclusively in the Pennsylvania state courts.

From 1991 to 2012, I served as a federal prosecutor, practicing criminal law exclusively in the federal courts. I spent the last two years as the Chief of the Criminal Division for the Eastern District of Virginia, overseeing more than one hundred prosecutors in four divisions and all criminal prosecutions brought in the district.

I became a United States Magistrate Judge in 2012. My workload now focuses more on civil cases, as I routinely conduct settlement conferences and handle civil cases on consent, including two jury trials. On the criminal side, I handle "duty matters" such as approving search and arrest warrants, while also conducting initial appearances, detention and preliminary hearings, arraignments and guilty pleas for felonies. I also preside over misdemeanor prosecutions from a local military base and other federal locations. Along with my colleague, we preside over a drug court for violators of supervised release who have drug addiction issues. Finally, I preside over naturalization ceremonies.

- ii. your typical clients and the areas at each period of your legal career, if

any, in which you have specialized.

During my time as a State prosecutor, my client was the Commonwealth of Pennsylvania, and when I became a federal prosecutor, my client was the United States of America. As a Magistrate Judge, I have no clients.

- 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.

My entire practice consists of litigation and I am often in court, generally on a daily basis at this point. The frequency of my appearances has depended on the nature of the litigation. As a state prosecutor, I was normally in court every day, and I practiced exclusively in state courts. As a federal prosecutor, I regularly appeared in court but less frequently because the cases were more significant, and I practiced exclusively in federal courts. As a federal Magistrate Judge, I am on the bench most days.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 85% |
| 2. state courts of record: | 15% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 0% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 70% |
| 2. criminal proceedings: | 30% |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Before becoming a judge, I tried approximately 35 jury trials and hundreds of bench trials. For the vast majority of the cases, I served as either sole counsel or lead counsel. I have also personally argued a number of appeals to the Fourth Circuit.

- i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 20% |
| 2. non-jury: | 80% |

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

I have not practiced before the Supreme Court of the United States.

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

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

1. *United States v. Zacarias Moussaoui*, Criminal Case No. 01CR455 (E.D. Va.) (Brinkema, J.).

I served as one of three prosecutors of the only person charged with offenses pertaining to the September 11, 2001 attacks. Moussaoui was convicted and sentenced to life imprisonment on May 4, 2006, after one juror refused to impose a death sentence. The case involved extensive litigation including the following Fourth Circuit opinions:

United States v. Moussaoui, 483 F.3d 220 (4th Cir. 2007) (Wilkins, C.J., Williams, Gregory, JJ.).

In re Associated Press, 172 F. App'x 1 (4th Cir. 2006) (Wilkins, C.J., Gregory, Duncan, JJ.).

United States v. Moussaoui, 382 F.3d 453 (4th Cir. 2004) (Wilkins, C.J., Williams, Gregory, JJ.), *cert. denied*, 544 U.S. 931 (2005).

United States v. Moussaoui, 365 F.3d 292 (4th Cir. 2004) (Wilkins, C.J., Williams, Gregory, JJ.).

United States v. Moussaoui, 333 F.3d 509 (4th Cir. 2003) (Wilkins, C.J., Williams, Gregory, JJ.).

United States v. Moussaoui, 65 F. App'x 881 (4th Cir. 2003) (Wilkins, C.J., Widener, Niemeyer, JJ.).

United States v. Moussaoui, 43 F. App'x 612 (4th Cir. 2002) (Wilkins, C.J., Williams, Gregory, JJ.).

In re Moussaoui, 41 F. App'x 686 (4th Cir. 2002) (Wilkins, C.J., Williams, Gregory, JJ.).

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2. *United States v. Jordan, et al.*, Criminal Case No. 3:04CR58 (E.D. Va.) (Hudson, J.); 399 F. Supp. 2d 706 (E.D. Va. 2005); 357 F. Supp. 2d 889 (E.D. Va. 2005); 343 F. Supp. 2d

514 (E.D. Va. 2004); *aff'd in part & rev'd in part*, *United States v. Jordan*, 509 F.3d 191 (4th Cir. 2007) (Williams, C.J., Gregory, Wilson, JJ.).

I served as lead counsel throughout all pretrial litigation of this capital prosecution that charged two defendants with a drug-related murder. Due to a conflict with *United States v. Moussaoui*, I had to turn over trial of the case to my co-counsel, Roderick C. Young, who is now my fellow Magistrate Judge in Richmond.

I argued the appeal for the Government on September 8, 2007. On December 4, 2007, the Fourth Circuit issued its opinion, affirming in part and reversing in part, which resulted in one defendant's conviction being vacated due to a prior plea agreement.

Co-counsel

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3. *United States v. Friend, et al.*, Criminal Case No. 3:99CR201 (E.D. Va.) (Payne, J.); 92 F. Supp. 2d 534 (E.D. Va. 2000).

I served as lead prosecutor of a family (a mother and three sons, as well as their associates) of truck hijackers, who hijacked trucks and trailers from independent truckers traveling on Interstate 95 in Virginia. Two truckers were brutally murdered and a third was rendered permanently disabled. Two of the sons faced the death penalty, but pled guilty to life imprisonment. The youngest son, a juvenile, was transferred to adult status and then pled guilty to life imprisonment (his sentence was later reduced). The mother was tried to a jury in July of 2000, convicted of all offenses and sentenced to life imprisonment. Five of their associates also pled guilty to various offenses.

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Thomas P. Collins
Retired

Matthew P. Geary
Deceased

4. *In re Morrissey*, Case No. 3:97MS16 (E.D. Va.) (Payne, J.); 996 F. Supp. 530 (E.D. Va. 1998), *aff'd*, 168 F.3d 134 (4th Cir. 1999) (Ervin, Hamilton, Moon, JJ.); 238 F.3d 413, 2000 WL 1868978 (4th Cir. Dec. 22, 2000) (unpublished) (Williams, Motz, Hamilton, JJ.).

I served as the sole trial attorney for the prosecution of criminal defense attorney Joe Morrissey, who previously served as the Commonwealth's Attorney for the City of Richmond, for violating the local rules of the Eastern District of Virginia regarding pretrial publicity. The defendant was convicted of two counts of criminal contempt by United States District Judge Robert E. Payne after a bench trial and sentenced to three months of imprisonment and three years of probation, which included 300 hours of community service. Upon release from custody, he attempted to bribe a representative of Habitat for Humanity to indicate falsely that the defendant had performed his community service when he had not. His probation was revoked and he was sentenced to another three months of imprisonment after another bench trial.

Opposing Counsel

Murray J. Janus
Deceased

Everette G. Allen, Jr.
Deceased

5. *United States v. Beckford, et al.*, Criminal Case No. 3:96CR66 (E.D. Va.) (Payne, J.); 962 F. Supp. 748 (E.D. Va. 1997); 962 F. Supp. 767 (E.D. Va. 1997); 962 F. Supp. 780 (E.D. Va. 1997); 962 F. Supp. 804 (E.D. Va. 1997); 964 F. Supp. 993 (E.D. Va. 1997); 964 F. Supp. 1010 (E.D. Va. 1997); 966 F. Supp. 1415 (E.D. Va. 1997); *aff'd*, 211 F.3d 1266, 2000 WL 376155 (4th Cir. 2000) (unpublished) (Wilkinson, C.J., Michael, Traxler, JJ.).

I served as the lead prosecutor of this capital prosecution of 40 members of a Jamaican drug organization known as the "Poison Clan" that distributed "crack" cocaine throughout the eastern United States and committed eight murders in the Eastern District of Virginia (and ultimately was determined to have committed approximately 20 homicides nationally). Ultimately, five defendants went to trial of which four faced the death penalty. The jury convicted all defendants, but declined to impose the death penalty. In addition to being lead trial counsel, I also wrote the appellate brief and argued the case to the Fourth Circuit, which affirmed the convictions.

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6. *United States v. Spencer Bowens*, Criminal Case No. 3:98CR110 (E.D. Va.) (Payne, J.), *aff'd in part & vacated in part*, 224 F.3d 302 (4th Cir. 2000) (Michael, Niemeyer, Traxler, JJ.).

I served as the sole prosecutor of Spencer Bowens aka "Scooter" for his role as the head of the "Poison Clan's" drug activities in North and South Carolina. After a one-week trial, the jury convicted the defendant and he was sentenced to life imprisonment. I then served as appellate counsel and argued the case to the Fourth Circuit. The Fourth Circuit affirmed his drug conspiracy charge (and his life sentence), but vacated his convictions for harboring a fugitive on venue grounds.

Opposing Counsel

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7. *United States v. Giraldi, et al.*, Criminal Case No. B-93-028 (S.D. Tex.) (Vela, J.), *aff'd*, 86 F.3d 1368 (5th Cir. 1996) (Barksdale, DeMoss, Parker, JJ.).

I served as lead prosecutor for the prosecution of the money laundering operation of the Mexican drug cartel headed by Juan Garcia-Abrego and two Vice-Presidents (Antonio Giraldi and Lourdes Reategui) of American Express Bank International for their role in laundering \$33 million of Abrego's personal drug profits. The Mexican money

launderers, who were captured, pled guilty. The two American Express bankers went to trial before United States District Judge Filemon Vela and a jury in Brownsville, Texas. The jury convicted the bankers after a trial that lasted approximately five weeks. The convictions were affirmed by the Fifth Circuit. After Giraldi and Reategui were convicted, we filed a civil money laundering action against the corporation pursuant to 18 U.S.C. § 1956(b), which resulted in a settlement approved by Judge Vela. As a result of the Giraldi prosecution and the settlement with AEBI, the Government received \$47 million. *United States v. American Express Bank International*, Civil Case No. B-94-311 (S.D. Tex.). I was also the lead prosecutor for the civil action against AEBI.

Co-counsel (trial)

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8. *Commonwealth v. Ronald Mason*, Criminal Case No. 586-590-9007 (Pa. Ct. Common Pleas, City of Philadelphia) (Sabo, J.), *aff'd*, 423 Pa. Super. 636, 616 A.2d 717 (Pa. Super. 1992) (table); 533 Pa. 643, 622 A.2d 1375 (Pa. 1993) (table).

I served as the sole prosecutor of a hit man for a gang known as the "Junior Black Mafia" or "JBM" for the murder of a drug rival. Mason was convicted of first degree murder by a jury and sentenced to life imprisonment. The Pennsylvania appellate courts affirmed the convictions.

Opposing Counsel

F. Emmett Fitzpatrick
Retired

9. *Commonwealth v. Aaron Jones*, Criminal Case No. N/A (Pa. Ct. Common Pleas, City of Philadelphia) (Herron, J.).

I served as the sole prosecutor of the leader of a gang known as the “Junior Black Mafia” or “JBM” for the stabbing of a fellow prisoner. Jones was convicted by a jury and sentenced to twenty years imprisonment. The conviction led to the downfall of JBM. To my knowledge, no reported decisions exist for the case.

Opposing Counsel

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10. *Commonwealth v. Brian Smith*, Criminal Case No. 87-03-534-37 (Pa. Ct. Common Pleas, City of Philadelphia) (Guarino, J.), *aff'd*, 413 Pa. Super. 643, 595 A.2d 194, *alloc. denied*, 529 Pa. 619, 600 A.2d 536 (Pa. Super. 1991); *see also Shaffer v. Smith*, 543 Pa. 526, 673 A.2d 872 (1996) (appeal of related civil case).

I served as the sole prosecutor of a defendant for knocking out the eye of a Temple law student with a weapon known as a nunchaku. After a lengthy trial, a jury convicted the defendant, and he was ultimately sentenced to 6.5 years to 15 years imprisonment. The Pennsylvania appellate courts affirmed.

Opposing Counsel

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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.)

As a Magistrate Judge, I have presided, along with my colleague, over a drug court for convicted felons who violated the terms of their supervised release due to drug addiction issues.

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.

2014 – present: National Security Law, William & Mary Law School. I teach during alternating semesters. The class focuses on litigating a national security case in the federal courts and addresses such topics as jurisdiction, venue, *Miranda*, the collection of evidence abroad and the handling of classified information. Syllabi supplied.

2013 – present: National Security Law, University of Richmond School of Law. I teach during alternating semesters. The class focuses on litigating a national security case in the federal courts and addresses such topics as jurisdiction, venue, *Miranda*, the collection of evidence abroad and the handling of classified information. Syllabi 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.

I hope to continue to teach at the University of Richmond School of Law and the William & Mary Law School.

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

See attached Financial Disclosure Report.

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

detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.
 - i. My wife's employment as a teacher with the Richmond Public Schools (RPS): I would recuse from any case in which the RPS is a party.
 - ii. Teaching Employment: As long as I teach at the University of Richmond or the College of William & Mary, I would recuse from any case in which either is a party.
 - iii. My nephew serves as a Richmond City Police Officer: I would recuse from any case in which my nephew is a potential witness.
 - iv. Cases that I supervised or participated in while an Assistant U.S. Attorney: after becoming a Magistrate Judge, I recused from any criminal case that I participated in or supervised, and I continue to monitor whether I had a role in any case that comes before me.
- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

When confronted by any potential conflict of issue, I will comply with the Code of Conduct for United States Judges and applicable statutes, including 28 U.S.C. § 455. I will be guided by Fourth Circuit precedent, procedures and policies.

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.

I have dedicated my career to public service. I have not engaged in any pro bono work as an attorney, because there are limits on what a federal prosecutor and judge can do. However, I have assisted in coaching moot court teams for my daughters' high schools and mentored high school students interested in the law. Also, our family has participated in church activities that assist in feeding the homeless. I have also donated time to support school functions and my children's activities, such as the Girl Scouts.

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.

Prior to my nomination in November 2007, I was interviewed by U.S. Senators John Warner and Jim Webb, along with members of their staff, in Senator Warner's office on April 16, 2007. Senators Warner and Webb then forwarded my name, along with six others, to the White House as part of their bipartisan process for selecting candidates for two openings for the United States District Court for the Eastern District of Virginia. I was interviewed by members of the White House Counsel's Office and the Department of Justice at the White House on May 17, 2007. I had subsequent conversations with Justice Department staff regarding the nomination paperwork. My nomination was submitted to the Senate on November 15, 2007, and was returned to the President on January 2, 2009, at the *sine die* adjournment of the 110th Congress.

I subsequently applied for an opening in the Alexandria Division of the Eastern District of Virginia, submitting an application to Senators Mark Warner and Tim Kaine on September 13, 2017. I interviewed with the bar associations considering applicants and consistently received the highest ratings. A selection panel selected by Senators Warner and Kaine interviewed me on October 24, 2017. I then interviewed with Senators Warner and Kaine on November 7, 2017. I understand that the Senators contacted the White House and asked that I be interviewed. I then interviewed with members of the White House Counsel's Office and members of the Department of Justice, Office of Legal Policy, on December 11, 2017. Thereafter, Senator Kaine called me and indicated that I would not be on their list of two names that he and Senator Warner would be submitting for the Alexandria opening, because the Senators viewed me as a better candidate for an upcoming opening in Richmond, which is the position for which I have now been nominated.

When the Richmond opening arose, I again applied to the Senators, submitting an application on April 30, 2018. Senators Warner and Kaine re-interviewed me on August 21, 2018. The Senators recommended me and another candidate to the President in a letter dated September 21, 2018. Members of the White House Counsel's Office then conducted a follow-up interview of me by telephone on September 26, 2018. A member of the White House Counsel's Office notified me

on October 9, 2018, that I had been selected by the President for the position, subject to a background investigation. Since approximately October 12, 2018, I have been in contact with Justice Department staff regarding the nomination paperwork.

- 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.