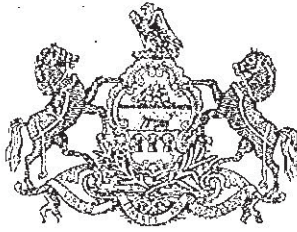


COMMONWEALTH OF PENNSYLVANIA

EDWARD G. SMITH
JUDGE
NORTHAMPTON COUNTY COURTHOUSE
669 WASHINGTON STREET
EASTON, PENNSYLVANIA 18042

TEL 610-559-6940
FAX 610-559-6943



THIRD JUDICIAL DISTRICT

January 6, 2014

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

Dear Mr. Chairman:

I have reviewed the questionnaire that I previously filed in connection with my nomination on August 1, 2013, to be a Judge on the United States District Court for the Eastern District of Pennsylvania. Incorporating the additional information below, I certify that the information contained in these documents is, to the best of my knowledge, true and accurate.

Q. 13(c)

In *Commonwealth v. Ballard*, the Supreme Court of Pennsylvania recently affirmed the four death sentences imposed in the case. See *Commonwealth v. Ballard*, -- A.3d --, 2013 WL 6124340 (Pa. Nov. 21, 2013).

Q. 13(f)

In *Commonwealth v. Watley*, the Superior Court of Pennsylvania, sitting *en banc*, recently affirmed the defendant's judgment of sentence. See *Commonwealth v. Watley*, -- A.3d --, 2013 WL 6164340 (Pa. Super. Nov. 25, 2013).

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.

Respectfully yours,

A handwritten signature in black ink, appearing to be 'E. G. Smith'.

Edward G. Smith

cc: The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Edward George Smith

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

United States District Judge for the Eastern District of Pennsylvania

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.

Northampton County Courthouse
669 Washington Street
Easton, Pennsylvania 18042

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

1961; Fort Knox, Kentucky

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.

April 2004, United States Army Judge Advocate General's Legal Center and School, Charlottesville, Virginia, three-week inter-service Military Judge Course; certified and sworn in as a General Court-Martial Military Judge

January 1987 – March 1987, Naval Justice School; Certification to Practice Before Military Courts-Martial, 1987

1983 – 1986, Dickinson School of Law (now known as Dickinson School of Law of the Pennsylvania State University); J.D., (*cum laude*), 1986

1979 – 1983, Franklin and Marshall College; B.A., 1983

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.

2002 – present

Judge, Court of Common Pleas of Northampton County
Third Judicial District of Pennsylvania
669 Washington Street
Easton, Pennsylvania 18042
Presiding Judge, Asbestos Division (2004 – present)
Supervising Judge of the Grand Jury (2012 – present)

1990 – present

United States Navy Reserve, Judge Advocate General's Corps
1322 Patterson Avenue, SE, Suite 3000
Washington, D.C. 20374
Counsel (1990 – 2004)
Military Judge (2004 – 2007, 2008 – 2009, 2011 – 2012)
Rule of Law Advisor (2007 – 2008)
Commanding Officer (2009 – 2011, 2012 – present)

1990 – 2001

DeRaymond & Smith
717 Washington Street
Easton, Pennsylvania 18042
Partner

1997 – 2001

Northampton County Industrial Development Authority
669 Washington Street
Easton, Pennsylvania 18042
Solicitor

1990 – 2001

Upper Nazareth Township
100 Newport Avenue
Nazareth, Pennsylvania 18064
Solicitor

1991 – 1999

Pennsylvania Office of Attorney General
Strawberry Square, 16th Floor
Harrisburg, Pennsylvania 17120
Special Deputy Attorney General

1996 – 1998

County of Northampton

669 Washington Street
Easton, Pennsylvania 18042
Assistant Solicitor

1984 – 1990
United States Navy, Judge Advocate General's Corps
1322 Patterson Avenue, SE, Suite 3000
Washington, D.C. 20374
Senior Trial/Defense Counsel, NLSO, Philadelphia, Pennsylvania (1988 – 1990)
Assistant Force Judge Advocate, Commander Naval Air Force, U.S. Atlantic Fleet,
Norfolk, Virginia (1987 – 1988)
Assistant Federal Tort Claims Officer, Naval Legal Service Office, Naval Base,
Philadelphia, Pennsylvania (Summer 1985)

July 1986 – January 1987, May 1983 – August 1983
Widow Brown's Inn
200 Main Street
Stockertown, Pennsylvania 18083
Busboy/Kitchen Help

Other affiliations (uncompensated except as otherwise noted)

March 2009 – present
Smith Gas Lease Investors, LP (compensated)
467 Apple Blossom Road
Easton, Pennsylvania 18040
Limited Partner

2009 – 2012
Northampton Community College Paralegal Advisory Committee
Northampton Community College
3835 Green Pond Road
Bethlehem, Pennsylvania 18020
Board Member

1996 – 2001
YMCA of Easton, Phillipsburg and Vicinity
1225 West Lafayette Street
Easton, Pennsylvania 18042
Director

1996 – 2001
Brown & Lynch American Legion Post
2260 Corriere Drive
Easton, Pennsylvania 18042
Judge Advocate

2001

Boys & Girls Club of Easton
210 Jones Houston Way
Easton, Pennsylvania 18044
President of Board of Directors

1998 – 1999

Easton Fire Civil Service Commission
City Hall
One South Third Street
Easton, Pennsylvania 18042
Chairman

1994 – 1995

Northampton County Drug and Alcohol Commission
Governor Wolf Building
45 North Second Street
Easton, Pennsylvania 18042
Former Chairman

1995 – 1996

Kiwanis Club of Palmer Township
106 Brynwood Drive
Easton, Pennsylvania 18045
Former President

1991 – 2001

Nazareth Area Chamber of Commerce
201 North Main Street
Nazareth, Pennsylvania 18064
Director

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.

1984 – 1990

United States Navy, Judge Advocate General's Corps
Commissioning date: November 5, 1984

1990 – present

United States Navy Reserve, Judge Advocate General's Corps
Current rank: Captain (O-6)

Current billet: Commanding Officer, NR Naval Justice School 0101 (December 2012 – present)

Billet history:

March 2012 – November 2012, Military Trial Judge (Navy-Marine Corps Trial Judiciary), Naval Reserve Trial Judiciary Activity, Washington Navy Yard, District of Columbia

December 2011 – February 2012, Appellate Military Judge (Navy-Marine Corps Court of Criminal Appeals (NMCCA)), Naval Reserve Appellate Judiciary Activity, Washington Navy Yard, District of Columbia

December 2009 – November 2011, Commanding Officer, Naval Reserve Navy and Marine Corps Appellate Review Activity (Appellate Review), Washington Navy Yard, District of Columbia

July 2008 – November 2009, Appellate Military Judge (NMCCA), Naval Reserve Judiciary Activity, Washington Navy Yard, District of Columbia

November 2007 – June 2008, Rule of Law Advisor, Task Force 134, Multi-National Force-Iraq (Deployed to Baghdad, Iraq in support of Operation Iraqi Freedom)

October 2004 – October 2007, Military Trial Judge (Navy-Marine Corps Trial Judiciary), Naval Reserve Judiciary Activity, Washington Navy Yard, District of Columbia

October 2001 – September 2004, Executive Officer, Naval Reserve Legal Service Office North Central 104, Naval Weapons Station Earle, Colts Neck, New Jersey

October 2000 – September 2001, International and Operational Lawyer, Naval Reserve Naval War College (LAW) 104, Naval War College, Newport, Rhode Island

October 1998 – March 2000, Trial Counsel, Naval Reserve Legal Service Office North Central 104, Naval Weapons Station Earle, Colts Neck, New Jersey

October 1994 – September 1998, International Law Attorney, Naval Reserve Civil Law Support Activity 104, Naval Weapons Station Earle, Colts Neck, New Jersey

October 1992 – September 1994, Operations Officer/Staff Judge Advocate, Naval Reserve Personnel Mobilization Team 504, Naval Base, Philadelphia, Pennsylvania

May 1990 – September 1992, Defense Counsel, Naval Reserve Legal Service Office 104, Naval Base, Philadelphia, Pennsylvania

March 1988 – April 1990, Senior Trial/Defense Counsel, Naval Legal Service Office, Naval Base, Philadelphia, Pennsylvania

March 1987 – March 1988, Assistant Force Judge Advocate, Commander Naval Air Force, United States Atlantic Fleet, Norfolk, Virginia

January 1987 – March 1987, Student, Naval Justice School, Newport, Rhode Island (honor graduate)

Summer 1985, Assistant Federal Tort Claims Officer, Naval Legal Service Office, Naval Base, Philadelphia, Pennsylvania

Summer 1985, Candidate, Officer Indoctrination School, Naval Station, Newport, Rhode Island (graduated with academic distinction)

I registered for selective service upon my eighteenth birthday.

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.

Military Awards:

Bronze Star Medal (2008)

Meritorious Service Medal (2004)

Navy and Marine Corps Commendation Medal (1990)

Joint Meritorious Unit Commendation (2009)

National Defense Service Medal (2) (approximately 1990 and 2001)

Iraq Campaign Medal (2008)

Navy Meritorious Unit Commendation (1993)

Armed Forces Reserve Medal with “M” Device and Silver Hourglass (2008)

Global War on Terrorism Service Medal (2003)

Sea Service Deployment Ribbon (2008)

Overseas Service Ribbon (2006)

USCG Special Operations Ribbon (2000)

Expert Rifleman Medal (1991)

Expert Pistol Medal (1989)

Professional/Civic Recognition:

Northampton Community College, 2011 Award of Excellence for Community Service (2011)

Boy Scouts of America, 2011 Good Scout Award in recognition of service to the community and to youth in scouting (2011)

Easton Area High School Day Honoree (2009)

Easton Area Veterans Memorial Day Council, Certificate of Appreciation (2009)

Pen Argyl Area High School – Veterans Day Ceremony, Certificate of Appreciation (2008)

United States Marine Corps League, Bethlehem Detachment, Distinguished Citizen Award (2006)
American Legion, Eckley E. Patch, Post 470, Bath, Pennsylvania, Certificate of Appreciation (2004)
Forks Township Police Department Civilian Academy, Certificate of Appreciation (2003)
Domestic Relations Association of Pennsylvania, Certificate of Appreciation (2002)
Lehigh Valley Twelve Club #493, Certificate of Appreciation (2002)
New York Naval Militia, State of New York Service Medal (1999)
Lehigh Valley Business/Education Partnership, Certificate of Appreciation (1996)
Kiwanis Club of Palmer Township, Certificate of Appreciation (1993)
American Bar Association, Award for Professional Merit (for having attained highest score upon graduation from Naval Justice School) (1987)

Academic Honors:

Woolsack Honor Society, Dickinson School of Law (1986)
Prentice-Hall Federal Tax Award, Dickinson School of Law (1986)
Irving J. Kaufman Securities Law Moot Court Team, Dickinson School of Law (1985 – 1986)

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

American Bar Association, Judicial Division

American Judicature Society

Northampton County Bar Association

Bench Bar Committee, f/k/a Bench Bar Steering Committee (2002 – 2003, 2009 – 2010)

American Citizenship Committee, Chairman (1996 – 1998)

Pennsylvania Bar Association

Civil and Equal Rights Committee (1996 – 1997)

Judicial Administration Committee, f/k/a Judicial Selection and Administration Committee, f/k/a Judicial Selection Commission (1994 – 2008, 2013 – present)

Legislative Subcommittee (1998 – 2000)

Merit Selection Subcommittee (1998 – 2000)

Military & Veterans Affairs Committee (2006 – 2008, 2013 – present)

Pennsylvania Conference of State Trial Judges

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

New Jersey, 1987

Upon becoming a judge in Pennsylvania in 2002, I terminated my membership in the New Jersey Bar.

- 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 Supreme Court, 1992

United States Court of Appeals for the Third Circuit, 1997

United States District Court for the Eastern District of Pennsylvania, 1992

United States District Court for the District of New Jersey, 1987

United States Court of Military Appeals, 1987

United States Court of International Trade, 1994

Court of Common Pleas of Northampton County, Pennsylvania, 1986

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.

Association of the United States Navy (1990 – 2009)

Boys & Girls Club of Easton (1993 – 2001)

President of Board of Directors (2001)

Brown & Lynch American Legion Post (1996 – present)

Judge Advocate (1996 – 2001)

Easton Fire Civil Service Commission (1995 – 1999)

Chairman (1998 – 1999)

Honorary First Defenders (2001 – present)

Kiwanis Club of Palmer Township (1992 – 2001)
President (1995 – 1996)
Advisor, Notre Dame Key Club (1995 – 1999)

Marine Corps League, Detachment 298 (2001 – present)

Northampton Community College Paralegal Advisory Committee
Board Member (2009 – 2012)

Northampton County Drug and Alcohol Commission (1990 – 1996)
Chairman (1994 – 1995)

Pomfret Club (1992 – present)

Supreme Court Historical Society (2011 – present)

The Pennsylvania Society (2012 – present)

Two Rivers Area Chamber of Commerce (1991 – 2001)

U.S. Naval Institute (1989 – present)

YMCA of Easton, Phillipsburg and Vicinity
Director (1996 – 2001)

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

I have been a member of the Pomfret Club since 1992, and I was a member of the Kiwanis Club of Palmer Township from 1992 until 2001. During my periods of membership, neither organization discriminated on the basis of race, sex, religion, or national origin. The Pomfret Club is a social club that required all members to be male until permitting women as members in approximately 1985 or 1986. The Kiwanis Club is a service organization that required all members to be male until approximately 1987; prior to 1987, the Kiwanis Club had distinct clubs comprised of the wives of Kiwanis members. To the best of my knowledge, none of the other organizations listed in my response to Question 11a discriminate or have formally discriminated on the basis of race, sex, religion, or national origin.

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.

None.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

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

I have searched my files and electronic databases in an effort to locate all information related to this question. When I speak, I do not speak from prepared text and I generally do not rely upon outlines or notes. Listed below are all of the speaking engagements that I have been able to recall or locate. There may be additional speeches for which I have no record or recollection.

Throughout my career, I have spoken as a guest lecturer at various colleges, including DeSales University, Moravian College, Cedar Crest College, and Northampton Community College, in which I have spoken about many different issues, including military law, civil and criminal practice and procedure, and criminal law. I do not have any notes from any of those lectures. Additionally, as

a judge on the Court of Common Pleas of Northampton County since 2002, classes from a number of local schools regularly attend trial proceedings in my courtroom. As part of their visit, I will often engage the students in discussions about various topics of law and procedure and answer any questions they might pose. Some of the schools that often send classes to my courtroom include:

Bangor Area High School, 187 Five Points Richmond Road, Bangor, Pennsylvania 18013

Easton Area High School, 2601 William Penn Highway, Easton, Pennsylvania 18045

Johns Hopkins Center for Talented Youth, McAuley Hall, 5801 Smith Avenue, Suite 400, Baltimore, Maryland 21209

Lafayette College, Quad Drive, Easton, Pennsylvania 18042

Nazareth Area High School, 501 East Center Street, Nazareth, Pennsylvania 18064

Northampton Community College, 3835 Green Pond Road, Bethlehem, Pennsylvania 18020

Pen Argyl High School, 501 West Laurel Avenue, Pen Argyl, Pennsylvania 18072

Saucon Valley High School and Saucon Valley Middle School, 2100 and 2095 Polk Valley Road, Hellertown, Pennsylvania 18055

Wilson Area School District, 424 Warrior Lane, Easton, Pennsylvania 18042.

May 27, 2013: Easton Area Memorial Day Exercises. I spoke about Memorial Day. I have no notes, transcripts, or recording, but press coverage is supplied. The address of the Veterans Memorial Day Council of Easton is 2161 Gateway Terrace, Easton, Pennsylvania 18042.

May 15, 2013: I gave a presentation about exercising good judgment to the fourth grade class at Avona Elementary School. I have no notes, transcripts, or recording. The address of the Avona Elementary School in the Wilson School District is 424 Warrior Lane, Easton, Pennsylvania 18042.

April 29, 2013: I gave a presentation about Law Day to the Wilson Area Intermediate School Gifted Program. I have no notes, transcripts, or recording. The address of the Wilson Area Intermediate School is 2400 Firmstone Street, Easton, Pennsylvania 18042.

April 25, 2013: I spoke about exercising good judgment and decision-making at the Easton Area Middle School's Medici Luncheon for Emerging Leaders. I have no notes, transcripts, or recording. The address of the Easton Area Middle School is 21 North 11th Street, Easton, Pennsylvania 18042.

March 14, 2013: Quarterly Association Meeting of the Northampton County Bar Association. I gave a CLE presentation on "The Rule of Law in a War Zone." I have no notes, transcripts, or recording. The address of the Northampton County Bar Association is 155 South Ninth Street, Easton, Pennsylvania 18042.

February 26, 2013: Opening Ceremony, Special Session of the Superior Court of Pennsylvania. I briefly spoke about honoring those who have served in the military. I have no notes, transcripts, or recording, but press coverage is supplied. The address of the Superior Court of Pennsylvania is 601 Commonwealth Avenue, Suite 1500, Harrisburg, Pennsylvania 17120.

February 20, 2013: Graduation Speaker for the Community Education Centers (CEC) Program. I spoke to prisoners graduating from the CEC program about learning from the past and embracing the future. I have no notes, transcripts, or recording. The address of the Northampton County Prison is 666 Walnut Street, Easton, Pennsylvania 18042.

November 13, 2012: Presiding Judge, Naturalization Court. I spoke to the individuals seeking to become naturalized citizens and their families about becoming citizens of the United States. I have no notes, transcripts, or recording. The address of the Northampton County Courthouse is 669 Washington Street, Easton, Pennsylvania 18042.

November 9, 2012: I gave a presentation about Veterans Day to the sixth grade class at the Wilson Area Intermediate School. I have no notes, transcripts, or recording. The address of the Wilson Area Intermediate School is 2400 Firmstone Street, Easton, Pennsylvania 18042.

September 4, 2012: I gave a presentation to the Lehigh Valley High Twelve Club about various aspects of constitutional law. I have no notes, transcripts, or recording. The address of the Lehigh Valley High Twelve Club is 323 Lone Lane, Allentown, Pennsylvania 18104.

May 28, 2012: West Bangor Memorial Day Services. I spoke about Memorial Day. I have no notes, transcripts, or recording. The address of the Bangor American Legion is 11 South Main Street, Bangor, Pennsylvania 18013.

May 19, 2012: Armed Forces Day Ceremony. I gave a speech to citizens of Hanover Township about recognizing members of the armed services for their

service to this country. I have no notes, transcripts, or recording. The address of Hanover Township is 3630 Jacksonville Road, Bethlehem, Pennsylvania 18017.

April 26, 2012: I gave a presentation about Northampton County's court system. I have no notes, transcripts, or recording. The address of the Rotary Club of Easton is 2886 Hope Ridge Drive, Easton, Pennsylvania 18045.

March 19, 2012: I gave a presentation on government and the law to the 12th grade government class at the Easton Area High School. I have no notes, transcripts, or recording. The address of the Easton Area High School is 2601 William Penn Highway, Easton, Pennsylvania 18045.

January 4, 2012: Graduation Speaker for the Community Education Centers (CEC) Program. I spoke to prisoners graduating from the CEC program about learning from the past and embracing the future. I have no notes, transcripts, or recording. The address of the Northampton County Prison is 666 Walnut Street, Easton, Pennsylvania 18042.

November 9, 2011: I participated in a panel discussion about President Abraham Lincoln and the Civil War at Northampton Community College. I have no notes, transcripts, or recording. The address of the Northampton Community College is 3835 Green Pond Road, Bethlehem, Pennsylvania 18020.

October 26, 2011: I gave a presentation on the Northampton County court system to the Rotary Club of Nazareth. I have no notes, transcripts, or recording. The address of the Rotary Club of Nazareth is 118 North Chew Street, Nazareth, Pennsylvania 18064.

October 11, 2011: I gave a presentation on the Constitution of the United States to the Kiwanis Club of Palmer Township. I have no notes, transcripts, or recording. The address of the Kiwanis Club of Palmer Township is 106 Brynwood Drive, Easton, Pennsylvania 18045.

May 17, 2011: I gave a presentation on the Constitution of the United States to the Sons of the American Revolution. I have no notes, transcripts, or recording. The address of the Sons of the American Revolution is 252 East Fifth Street, Bernville, Pennsylvania 19506.

May 6, 2011: I gave a presentation about service to our country and to the community to the Boy Scouts of America, Minsi Trail Council. I have no notes, transcripts, or recording. The address of the Boy Scouts of America, Minsi Trail Council is 991 Postal Road, Allentown, Pennsylvania 18109.

April 10, 2011: I gave a presentation about the state of justice in Northampton County to the Rotary Club of Easton. I have no notes, transcripts, or recording.

The address of the Rotary Club of Easton is 2886 Hope Ridge Drive, Easton, Pennsylvania 18045.

December 14, 2010: People's Law School, sponsored by the Northampton County Bar Association and Northampton Community College. I gave a presentation on various aspects of law from my perspective as a judge. I have no notes, transcripts, or recording. The address of the Northampton Community College is 3835 Green Pond Road, Bethlehem, Pennsylvania 18020.

November 11, 2010: I gave a presentation concerning my active-duty service in Iraq as part of a Veterans Day ceremony at Northampton Community College. I have no notes, transcripts, or recording, but press coverage is supplied. The address of the Northampton Community College is 3835 Green Pond Road, Bethlehem, Pennsylvania 18020.

September 29, 2010: I gave a presentation about my experiences on active duty in Iraq to the Kiwanis Club of Easton. I have no notes, transcripts, or recording. The address of the Kiwanis Club of Easton is P.O. Box 3165, Palmer, Pennsylvania 18043.

June 30, 2010: I gave a presentation about the Northampton County court system to the Kiwanis Club of Palmer Township. I have no notes, transcripts, or recording. The address of the Kiwanis Club of Palmer Township is 106 Briewood Drive, Easton, Pennsylvania 18045.

May 31, 2010: Nazareth Memorial Day Services and Parade. I spoke to the citizens of Nazareth about Memorial Day. I have no notes, transcripts, or recording. The address of the Harold V. Knecht Post 415 American Legion is 158 South Main Street, Nazareth, Pennsylvania 18064.

May 6, 2010: I gave a presentation to the Law Explorer Post of the Northampton County Bar Association in which I compared certain aspects of military law with Pennsylvania law. I have no notes, transcripts, or recording. The address of the Northampton County Bar Association is 155 South Ninth Street, Easton, Pennsylvania 18042.

February 19, 2010: Annual Conference of the Pennsylvania Conference of State Trial Judges. I gave a presentation on the Servicemembers Civil Relief Act. I have no notes, transcripts, or recording. The address of the Pennsylvania Conference of State Trial Judges is 606 City Hall, Philadelphia, Pennsylvania 19107.

May 29, 2009: Easton Area Memorial Day Exercises. I spoke about Memorial Day. I have no notes, transcripts, or recording. The address of the Veterans Memorial Day Council of Easton is 2161 Gateway Terrace, Easton, Pennsylvania 18042.

May 8, 2009: Easton Area High School Day Honoree. I gave a presentation on service to our country and the community. I have no notes, transcripts, or recording. The address of the Easton Area High School is 2601 William Penn Highway, Easton, Pennsylvania 18045.

May 5, 2009: I gave a presentation on exercising good judgment and making good choices at the Bangor Middle School. I have no notes, transcripts, or recording. The address of the Bangor Middle School is 401 Points Richmond Road, Bangor, Pennsylvania 18013.

March 10, 2009: I gave a presentation on the justice system in Northampton County to Leadership Lehigh Valley. I have no notes, transcripts, or recording. The address of Leadership Lehigh Valley is Northampton County Community College, 3835 Green Pond Road, Bethlehem, Pennsylvania 18020.

November 13, 2008: I gave a presentation on government and the law to the twelfth grade government class at the Easton Area High School. I have no notes, transcripts, or recording. The address of the Easton Area High School is 2601 William Penn Highway, Easton, Pennsylvania 18045.

November 11, 2008: I gave a presentation as part of the Veterans' Day assembly at the Pen Argyl Area High School. I have no notes, transcripts, or recording. The address of Pen Argyl Area High School is 501 West Laurel Avenue, Pen Argyl, Pennsylvania 18072.

November 6, 2008: I gave a presentation about my observations after serving in Iraq to the Rotary Club of Easton. I have no notes, transcripts, or recording. The address of the Rotary Club of Easton is 2886 Hope Ridge Drive, Easton, Pennsylvania 18045.

October 27, 2008: I gave a presentation on constitutional law at Cedar Crest College. I have no notes, transcripts, or recording. The address of Cedar Crest College is 100 College Drive, Allentown, Pennsylvania 18103.

October 24, 2008: Bench-Bar Conference of the Northampton County Bar Association. I gave a presentation on detention operations in Iraq. I have no notes, transcripts, or recording. The address of the Northampton County Bar Association is 155 South Ninth Street, Easton, Pennsylvania 18042.

September 3, 2008: I gave a presentation about detention operations in Iraq to the Kiwanis Club of Palmer Township. I have no notes, transcripts, or recording. The address of the Kiwanis Club of Palmer Township is 106 Brynwood Drive, Easton, Pennsylvania 18045.

June 6, 2007: I gave a presentation about the Northampton County court system to the Kiwanis Club of Palmer Township. I have no notes, transcripts, or recording. The address of the Kiwanis Club of Palmer Township is 106 Brynwood Drive, Easton, Pennsylvania 18045.

February 1, 2006: I gave a presentation about the Northampton County court system to the Kiwanis Club of Palmer Township. I have no notes, transcripts, or recording. The address of the Kiwanis Club of Palmer Township is 106 Brynwood Drive, Easton, Pennsylvania 18045.

October 21, 2005: "Qualifications for Defense Counsel in Capital Cases 2." I participated in a presentation discussing current issues in capital case litigation. I have no notes, transcripts, or recording. The address of the Bar Association of Lehigh County is 1114 West Walnut Street, Allentown, Pennsylvania 18102.

May 30, 2004: Memorial Day Ceremony. I spoke about Memorial Day. I have no notes, transcripts, or recording. The address of the American Legion, Eckley E. Patch, Post 470 is 278 Race Street, Bangor, Pennsylvania 18014.

April 24, 2004: I gave a presentation to various county and court employees and their children discussing aspects of the courtroom as part of "Take our Daughters and Sons to Work Day." I have no notes, transcripts, or recording. The address of the Northampton County Courthouse is 669 Washington Street, Easton, Pennsylvania 18042.

February 26, 2003: I gave a presentation about the Northampton County court system to the Forks Township Police Department Civilian Academy. I have no notes, transcripts, or recording. The address of the Forks Township Police Department Civilian Academy is 1604 Sullivan Trail, Easton, Pennsylvania 18040.

February 19, 2003: I gave a presentation about the Northampton County court system to the Kiwanis Club of Palmer Township. I have no notes, transcripts, or recording. The address of the Kiwanis Club of Palmer Township is 106 Brynwood Drive, Easton, Pennsylvania 18045.

December 10, 2002: Annual Training Conference, Domestic Relations Association of Pennsylvania. I gave a presentation on child and spousal support issues unique to military personnel. I have no notes, transcripts, or recording. The address of the Domestic Relations Association of Pennsylvania is Philadelphia Family Court, 46 South 11th Street, Suite 400, Philadelphia, Pennsylvania 19107.

November 13, 2002: I gave a presentation about due process considerations to the Easton Police Department, Weed and Seed Civilian Criminal Academy. I have no notes, transcripts, or recording. The address of the Easton Police Department,

Weed and Seed Civilian Criminal Academy is One South Third Street, Easton, Pennsylvania 18042.

November 8, 2002: Bench-Bar Conference of the Northampton County Bar Association. I gave a presentation on effective trial presentation. I have no notes, transcripts, or recording. The address of the Northampton County Bar Association is 155 South Ninth Street, Easton, Pennsylvania 18042.

January 22, 2002: I spoke at the ceremony for my swearing-in as a judge of the Court of Common Pleas of Northampton County. The address of the Court of Common Pleas of Northampton County is 669 Washington Street, Easton, Pennsylvania 18042. I have no notes, transcripts or recording of this event, but press coverage is supplied.

January 2001 – November 2001: I participated in several forums with other candidates running for Common Pleas judge in Northampton County between the time that I filed my candidacy for election in January 2001 and the election in November 2001. Business groups, social organizations, and political organizations generally sponsored these forums. I have no notes, transcripts or recording of these events.

January 1997 – November 1997: I participated in several forums with other candidates running for Common Pleas judge in Northampton County between the time that I filed my candidacy for election in January 1997 and the election in November 1997. Business groups, social organizations, and political organizations generally sponsored these forums. I have no notes, transcripts or recording of these events, but press coverage is supplied where available.

August 1995 – April 1996: I participated in several forums with other candidates running for Congress in the 15th Congressional District between the time that I filed my candidacy for election in August 1995 and the primary election in April 1996. Business groups, social organizations, and political organizations generally sponsored these forums. I have no notes, transcripts or recording of these events, but press coverage is supplied where available.

- 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.

Sarah Peters, *Northampton County Judge Edward Smith 'Humbled' by Nomination to Federal Bench*, THE EXPRESS TIMES, Aug. 1, 2013. Copy supplied.

Jill Colford Schoeniger, *The Hon. Edward G. Smith '83*, FRANKLIN & MARSHALL MAG., Apr. 29, 2009. Copy supplied.

Riley Yates, *Jurist Named Appellate Military Judge*, THE MORNING CALL, Nov. 26, 2008. Copy supplied.

Tyra Braden, *Northampton Judge Returns from 6-Month Stint in Iraq*, THE MORNING CALL, June 30, 2008. Copy supplied.

Joe Nixon, *Northampton Judge Trades Bench for Baghdad Post*, THE MORNING CALL, Oct. 16, 2007. Copy supplied.

Tyra Braden, *Review Finds Smith Erred on Expense Report*, THE MORNING CALL, Feb. 21, 2002. Copy supplied.

Tyra Braden, *Barbs, Funds Fly in Judgeship Race*, THE MORNING CALL, Nov. 1, 2001. Copy supplied.

Tom Coombe, *Upper Nazareth Apartments Now on Supervisors' Agenda*, THE MORNING CALL, July 11, 2001. Copy supplied.

Tyra Braden, *Judge Candidates Look Forward to Rest, Relaxation*, THE MORNING CALL, May 20, 2001. Copy supplied.

Scott Kraus, *County Seeks Approval for 300-Foot Radio Tower*, THE MORNING CALL, May 15, 2001. Copy supplied.

Tyra Braden, *County Judicial Candidates Vary in Age, Court Experience, Outlook*, THE MORNING CALL, May 11, 2001. Copy supplied.

Tyra Braden, *Ridge's Judge Choice Asks for Quick Confirmation*, THE MORNING CALL, Mar. 29, 2001. Copy supplied.

Scott Kraus, *Ridge Picks GOP Attorney to Fill County Judgeship*, THE MORNING CALL, Mar. 28, 2001. Copy supplied.

Madeleine Mathias, *Furniture Caper Had No Bad Guys, A Good One*, THE MORNING CALL, Mar. 16, 2001. Copy supplied.

Tom Davis, *Smith Runs for Judge for 2nd Time*, THE MORNING CALL, Jan. 16, 2001. Copy supplied.

Tracy Jordan, *Smith to Run Again for County Judge*, THE MORNING CALL, Jan. 10, 2001. Copy supplied.

Scott Kraus, *County Officials Think Marakovits Smeared Them*, THE MORNING CALL, Aug. 11, 2000. Copy supplied.

Lauri Rice-Maue, *Baratta Wins Judge Race*, THE MORNING CALL, Nov. 5, 1997. Copy supplied.

Lauri Rice-Maue, *Families Matter to Judge Candidates*, THE MORNING CALL, Nov. 1, 1997. Copy supplied.

Lauri Rice-Maue, *Baratta, Smith Chosen to Run in Final Race for County Judge*, THE MORNING CALL, May 21, 1997. Copy supplied.

Lauri Rice-Maue, *Northampton Race for Judge Offers 7 Experienced Choices*, THE MORNING CALL, May 16, 1997. Copy supplied.

Bryan Hay, *Ed Smith Denies Hinting He's Democrat*, THE MORNING CALL, May 14, 1997. Copy supplied.

County Republicans Endorse Edward Smith for Judge, THE MORNING CALL, Mar. 28, 1997. Copy supplied.

Matt Assad, *Angle Demands Bradt's Withdrawal*, THE MORNING CALL, Mar. 14, 1997. Copy supplied.

Matt Assad, *Life Behind Bars*, THE MORNING CALL, Feb. 20, 1997. Copy supplied.

Lauri Rice-Maue, *Third Man Joins Race for Judge*, THE MORNING CALL, Feb. 19, 1997. Copy supplied.

Lauri Rice-Maue, *Attorneys Are Lining Up for Proposed County Judgeship*, THE MORNING CALL, Jan. 30, 1997. Copy supplied (reprinted in multiple outlets).

Matt Assad, *Man Gets \$7,000 for False Imprisonment*, THE MORNING CALL, Jan. 23, 1997. Copy supplied.

John P. Martin & David Herzog, *Many Factors Helped Kilbanks*, THE MORNING CALL, Apr. 25, 1996. Copy supplied.

John P. Martin, *Race for GOP Hopefuls Has Variety*, THE MORNING CALL, Apr. 14, 1996. Copy supplied.

Martin Pflieger & John P. Martin, *Kilbanks is on Hot Seat*, THE MORNING CALL, Apr. 11, 1996. Copy supplied.

Martin Pflieger, *Hopefuls Create Environment for Debate*, THE MORNING CALL, Apr. 10, 1996. Copy supplied.

John P. Martin, *Edward Smith, McHale Jab over PAC Money*, THE MORNING CALL, Apr. 4, 1996. Copy supplied.

John P. Martin, *NRA Announces It Will Back Bob Kilbanks*, THE MORNING CALL, Mar. 30, 1996. Copy supplied.

John P. Martin, *Kilbanks Loses Easton GOP Endorsement by Minutes*, THE MORNING CALL, Mar. 23, 1996. Copy previously supplied in 12d.

Kathleen Parrish, *Edward Smith Faults Addition Funding*, THE MORNING CALL, Mar. 17, 1996. Copy supplied.

John P. Martin, *Dueling Campaign Events are Held*, THE MORNING CALL, Mar. 15, 1996. Copy supplied.

Martin Pflieger and Pete Leffler, *Ex-McHale Aide Hopes He Won't Hurt Campaign*, THE MORNING CALL, Mar. 11, 1996. Copy supplied.

Bryan Hay, *Edward Smith Predicts Focus on Him, Mayor Candidate Says GOP Nod for 15th District Will Come Down to Him and Ken*, THE MORNING CALL, Mar. 2, 1996. Copy supplied.

Mario F. Cattabiani, *Smith Got Your Vote?*, THE MORNING CALL, Feb. 22, 1996. Copy supplied.

John P. Martin, *15th District GOP Candidates Woo Voters*, THE MORNING CALL, Feb. 18, 1996. Copy supplied.

Martin Pflieger, *Republican Says Unified Party Can Defeat McHale*, THE MORNING CALL, Nov. 30, 1995. Copy supplied.

Pete Leffler, *Smith Seeking GOP Nod for McHale Seat*, THE MORNING CALL, Sept. 14, 1995. Copy supplied.

Bryan Hay, *Easton Lawyer Announces Bid for Congressional Seat*, THE MORNING CALL, Aug. 26, 1995. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have served as a judge on the Court of Common Pleas of Northampton County since January 2002 after being elected by the citizens of Northampton County to serve a ten-year term in November 2001. I was retained in November 2011 to serve an additional ten-year term. I have also served as the Presiding Judge of the Asbestos Division since 2004 and as the supervising judge of the Northampton County Grand Jury since 2012.

The Courts of Common Pleas are the trial courts of the Commonwealth of Pennsylvania, and they have jurisdiction over a wide variety of civil and criminal matters.

While in the Navy Reserve, I have served in three different judicial capacities. I served as a military trial judge for the Navy-Marine Corps Trial Judiciary from March 2012 until November 2012 and from October 2004 until October 2007. On both occasions, the Judge Advocate General of the Navy appointed me as a military trial judge. As a military trial judge, I presided over general and special Navy and Marine Corps courts-martial at military bases throughout the world.

I also served as an appellate military judge for the Navy-Marine Corps Court of Criminal Appeals (NMCCA) from December 2011 until February 2012 and from July 2008 until November 2009. On both occasions, the Judge Advocate General of the Navy appointed me as an appellate military judge. The NMCCA is the intermediate appellate court for most Navy and Marine Corps court-martials.

I further served as the Commanding Officer for the Navy-Marine Corps Appellate Review Activity (NAMARA) from December 2009 until November 2011. The Navy Apply Board selected me for this position. NAMARA is responsible for conducting appellate review of courts-martial pursuant to Articles 69(a) and (b) of the Uniform Code of Military Justice (UCMJ) and petitions for new trial under Article 73 of the UCMJ.

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

Between my service as a civilian and a military judge, I have presided over approximately 300 cases that have gone to verdict or judgment.

- i. Of these, approximately what percent were:

jury trials:	50%
bench trials:	50%
civil proceedings:	30%
criminal proceedings:	70%

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

As a state trial judge, almost all of my opinions are unreported decisions that are disseminated only to the parties involved in the case and lodged as part of the court record. Thus, there are very few citations to my opinions. The following cases are the only opinions on a publicly-accessible database for which I located citations:

Taverna v. Atlantic Van Buren Road, LLC, No. C-48-CV-2008-10465, 2012 WL 7659259 (C.P. Northampton May 1, 2012).

Lititz Ins. Co. v. Jenkins, No. C-48-CV-2009-9069, 2011 WL 8897942 (C.P. Northampton June 30, 2011).

Stone v. Langen, No. C-48-PF-2007-0592, 2007 WL 5479863 (C.P. Northampton Oct. 24, 2007).

Thornton v. Tax Claim Bureau of Northampton County, No. C-48-CV-2004-5700, 2005 WL 4927630 (C.P. Northampton Aug. 31, 2005).

Professional Site Mgmt., Inc. v. Pektor, No. C-48-CV-1999-8900, 2004 WL 5149830 (C.P. Northampton Mar. 15, 2004).

Nowak v. Napa Dev. Corp., No. C-48-CV-2001-2849, 2004 WL 5149832 (C.P. Northampton Nov. 1, 2004).

As a military trial judge, my rulings on pretrial motions were filed locally in the case file and, thus, there are no citations to these decisions. Further, military practice does not include the opportunity to file post-trial opinions to explain rulings during trial. As a military appellate judge, I could not locate any cited decisions other than the following:

United States v. Jones, No. NMCCA 200602320, 2009 WL 3435920 (N-M. Ct. Crim. App. Oct. 27, 2009).

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

1. *Commonwealth v. Ballard*, No. CP-48-CR-3058-2010 (C.P. Northampton). Copies of my opinions are supplied.

The Commonwealth charged the defendant with four counts of criminal homicide after he killed four people, including his former girlfriend, her father, her grandfather, and a good Samaritan that attempted to help them. The Commonwealth sought the death penalty for each homicide. The defendant filed omnibus pretrial motions seeking to exclude various statements he made to the police based on asserted constitutional violations. I denied the omnibus motions finding that no constitutional violations occurred. The defendant pleaded guilty to first-degree murder and, after a sentencing proceeding, the jury sentenced him to death for each murder. The defendant's direct appeal, which raises approximately 25 issues, is still pending before the Supreme Court of Pennsylvania.

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2. *Commonwealth v. Xander*, No. CP-48-CR-1052-2009 (C.P. Northampton June 29, 2010), *aff'd* 14 A.3d 174 (Pa. Super. 2011). A copy of my opinion is supplied.

The police arrested the defendant for suspicion of Driving Under the Influence ("DUI"). The defendant resisted during transportation to the DUI Center for a blood test. At the DUI Center, the defendant repeatedly stated her belief that she was entitled to counsel. The police determined that she refused to consent to the blood test and charged her with DUI. A jury found the defendant guilty of DUI. Under the DUI law, a convicted defendant may be subjected to enhanced penalties if the defendant refuses to submit to chemical testing and is properly warned about the consequences of refusing before actually refusing. The defense moved for a judgment of acquittal as to the enhanced penalties on the ground that the police did not appropriately warn the defendant of the enhanced penalties if she refused chemical testing. I granted the motion after determining that I could not sentence the defendant to the enhanced penalties because the police did not read the required warnings to her. I also rejected the Commonwealth's contention that the defendant's conduct created the police's inability to read the warnings to her. The Commonwealth appealed from my ruling, and the Superior Court affirmed my decision.

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3. *Commonwealth v. Andre*, No. CP-48-CR-2244-2008 (C.P. Northampton Apr. 30, 2010), *aff'd* 17 A.3d 951 (Pa. Super. 2011). A copy of my opinion is supplied.

The police charged the defendant with various crimes for allegedly setting her house on fire. The defendant filed a notice of defense of insanity or mental infirmity, and I granted a defense motion to bifurcate the trial pursuant to section 404(c) of the Mental Health Procedures Act, 50 P.S. § 7404(c). The first jury found the defendant guilty of causing the fire, but the second jury could not reach a unanimous verdict on the issue of the defendant's criminal responsibility. After I declared a mistrial, the Commonwealth claimed that I should either schedule sentencing or mold the verdict to reflect a guilty but mentally ill verdict. I denied the Commonwealth's requests and scheduled a new trial on the issue of the defendant's criminal responsibility. Prior to the time of the defendant's re-trial, the Commonwealth appealed to the Superior Court of Pennsylvania. On appeal to the Superior Court, the court affirmed my decision. After the Superior Court remitted the record, the defendant eventually entered *nolo contendere* pleas to lesser included offenses and the case concluded.

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4. *United States v. Jones III*, No. NMCCA 200602320, 2009 WL 3435920 (N-M. Ct. Crim. App. Oct. 27, 2009), *aff'd*, 69 M.J. 294 (C.A.A.F. 2011).

The appellant wrongfully used government computer equipment to view child pornography. Although the Navy-Marine Court of Criminal Appeals ("N-M Ct. Crim. App.") affirmed the appellant's conviction, the Court of Appeals for the

Armed Forces (“CAAF”) granted a petition for grant of review and remanded the matter to the N-M Ct. Crim. App. to determine whether the military judge erred by denying the appellant the opportunity to review the child pornography at issue before pleading guilty and, thus, whether the appellant’s plea was provident. We concluded that the military judge violated the appellant’s rights under the Sixth Amendment and Rule for Courts Martial 701 in denying the appellant’s request to review the evidence. Also, even though the military judge denied the appellant’s request to view the child pornography, we determined that the plea was provident. On appeal to CAAF, the court affirmed the decision.

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5. *United States v. Garcia* (N-M. Corps Trial Judiciary Nov. 15, 2012). A copy of my opinion is supplied.

The accused was charged with various sexual offenses arising from his sexual encounter with the victim in May 2011. The accused raised a motion in *limine* to request a *Daubert* hearing to litigate the anticipated expert testimony concerning typical sexual assault victim behavior. After a *Daubert* hearing, the accused moved to exclude the testimony of the expert. After conducting the required analysis under the Rules for Courts Martial, I determined that the proposed expert testimony was admissible in this case. The accused was eventually tried before a panel of members and acquitted of the charges.

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6. *Commonwealth v. Collazo*, No. CP-48-CR-1202-2012 (C.P. Northampton). A copy of my opinion is supplied.

The defendant was charged with criminal homicide arising out of the killing of her former paramour as he slept. The defendant filed omnibus pretrial motions seeking to suppress the evidence the police obtained during consensual telephone intercepts made after the police were notified that the defendant was represented by counsel, but before she was charged with a crime. I denied the defendant's pretrial motions. In doing so, I concluded that the defendant's Sixth Amendment right to counsel was not violated when the police conducted the intercepts outside the presence of her counsel. After disposing of the defendant's pretrial motions, the defendant pleaded guilty to first-degree murder, and I sentenced her to a mandatory term of life imprisonment.

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7. *Commonwealth v. Ratushny*, No. CP-48-CR-1847-2008 (C.P. Northampton Apr. 5, 2010), *aff'd*, 17 A.3d 1269 (Pa. Super. 2011). A copy of my opinion is supplied.

The defendant was charged with various sex crimes based on his actions with his then-girlfriend's minor daughters. Just prior to trial before another judge, the

defendant raised various motions eventually resulting in the Commonwealth *nolle prosequing* the charges without prejudice to re-file them. The Commonwealth then re-filed charges against the defendant. The defendant again filed pretrial motions, which I denied. After a trial, the jury found the defendant guilty of various sexual offenses, including aggravated indecent assault, related to the older daughter, but acquitted him of the charges involving the younger daughter. I conducted a sexually violent predator hearing and found that the defendant satisfied the definition of a sexually violent predator under Megan's Law. After his sentencing, the defendant appealed to the Superior Court, asserting that the sexually violent predator determination was against the weight of the evidence. The Superior Court affirmed the conviction and the sexually violent predator determination. The defendant filed a petition for post-conviction relief that I recently denied. The defendant appealed from the denial of post-conviction collateral relief and this appeal is pending disposition by the Superior Court.

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8. *Lititz Insurance Co. v. Jenkins, et al.*, No. C-48-CV-2009-9069 (C.P. Northampton June 30, 2011), *aff'd* No. 2020 EDA 2011 (Pa. Super. May 21, 2012) (unpublished). Opinions supplied.

An insurance company brought a declaratory judgment action seeking a determination that it did not have a duty to defend or indemnify its insured in an action by the estate of a store clerk that was killed by the insured and another individual during an attempted robbery. The insured was covered under his father's homeowner's insurance policy at the time of the shooting. The insurance company moved for summary judgment with the issue involving whether the decedent's death was caused by an accident so that the incident would be covered under the policy. After reviewing the allegations in the complaint, I determined that the insured's conduct did not qualify as an accident under the policy. Even though the insured was only a look-out and not the actual shooter, his accomplice's conduct in shooting the decedent was the natural and expected result of the insured's conduct. I also noted that it was against public policy in Pennsylvania for an insurance company to indemnify an insured against his own criminal acts. Thus, I granted the motion and entered judgment in favor of the plaintiff. The defendant appealed from my decision, which was affirmed on appeal in an unpublished decision by the Superior Court of Pennsylvania.

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9. *Commonwealth v. Pascal*, No. CP-48-CR-1976-2006 (C.P. Northampton June 30, 2008), *aff'd*, No. 630 EDA 2008 (Pa. Super. June 8, 2009). Opinions supplied.

The Commonwealth charged the defendant with criminal homicide based on his actions in a drive-by shooting, which resulted in the victim's death. The Commonwealth sought the death penalty. I denied a motion by the Commonwealth to join the defendant's case with his co-conspirator's case. After a trial, a jury found the defendant guilty of first-degree murder but could not reach a unanimous verdict in favor of the death penalty. As such, I imposed a

mandatory term of life imprisonment without the possibility of parole. The defendant appealed from his judgment of sentence, and the Superior Court affirmed the conviction and judgment of sentence. *See Commonwealth v. Pascal*, No. 630 EDA 2008 (Pa. Super. June 8, 2009). The Supreme Court of Pennsylvania denied the defendant's petition for allowance of appeal. *See Commonwealth v. Pascal*, No. 470 MAL 2009 (Dec. 17, 2009). After exhausting his direct appeal rights, the defendant filed a petition for post-conviction collateral relief, which I denied after a hearing. The Superior Court affirmed the denial in an unpublished memorandum opinion, *see Commonwealth v. Pascal*, No. 1991 EDA 2011 (Aug. 24, 2012), and the Supreme Court of Pennsylvania denied the defendant's petition for allowance of appeal, *see Commonwealth v. Pascal*, No. 743 MAL 2012 (Feb. 14, 2013).

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10. *Commonwealth v. Hetzel*, No. CP-48-CR-3255-2000 (C.P. Northampton Sept. 13, 2012), *aff'd* No. 2664 EDA 2012 (Pa. Super. July 3, 2013) (Gantman, J.). Opinions supplied.

A jury found the defendant and her former boyfriend guilty of first-degree murder in the death of her female lover, and the judge that formerly presided over the case imposed a mandatory life sentence without the possibility of parole. The defendant's conviction was affirmed on appeal, and her first post-conviction relief petition was denied. The defendant filed a second post-conviction relief petition claiming that the fact that she was eighteen-years-old at the time of the murder

entitled her to a new trial under the Supreme Court of the United States' decision in *Miller v. Alabama*, 132 S.Ct. 2455 (2012). I denied the second post-conviction petition because the defendant was not entitled to post-conviction relief based upon *Miller*. In particular, *Miller* determined that a state's sentencing scheme that required the imposition of a mandatory term of life imprisonment for individuals *under* the age of eighteen at the time of the commission of a homicide offense was unconstitutional. Since the defendant was not under eighteen at the time of the killing, I determined that *Miller* did not apply to her claim. The Superior Court of Pennsylvania affirmed my decision in an unpublished memorandum opinion.

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Counsel for the defendant:
Pro se.

- 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. *Commonwealth v. Ballard*, No. CP-48-CR-3058-2010 (C.P. Northampton).
Opinions are supplied in response to Question 13(c).

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2. *Commonwealth v. Xander*, No. CP-48-CR-1052-2009 (C.P. Northampton June 29, 2010), *aff'd* 14 A.3d 174 (Pa. Super. 2011). A copy of my opinion is supplied in response to Question 13(c).

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3. *Commonwealth v. Andre*, No. CP-48-CR-2244-2008 (C.P. Northampton Apr. 30, 2010), *aff'd* 17 A.3d 951 (Pa. Super. 2011). A copy of my opinion is supplied in response to Question 13(c).

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4. *United States v. Jones III*, No. NMCCA 200602320, 2009 WL 3435920 (N-M. Ct. Crim. App. Oct. 27, 2009), *aff'd*, 69 M.J. 294 (C.A.A.F. 2011).

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5. *United States v. Garcia* (N-M. Corps Trial Judiciary Nov. 15, 2012). My opinion is supplied in response to Question 13(c).

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6. *Commonwealth v. Collazo*, No. CP-48-CR-1202-2012 (C.P. Northampton). My opinion is supplied in response to Question 13(c).

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7. *Commonwealth v. Ratushny*, No. CP-48-CR-1847-2008 (C.P. Northampton Apr. 5, 2010), *aff'd*, 17 A.3d 1269 (Pa. Super. 2011). A copy of my opinion is supplied in response to Question 13(c).

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Post-conviction collateral relief counsel for the defendant:
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(215) 345-1600

Robert E. Goldman, Esquire
Law Office of Robert E. Goldman, LLC
P.O. Box 239
Fountainville, Pennsylvania 18923
(215) 348-2605

8. *Lititz Insurance Co. v. Jenkins, et al.*, No. C-48-CV-2009-9069 (C.P. Northampton June 30, 2011), *aff'd*, No. 2020 EDA 2011 (Pa. Super. May 21, 2012) (unpublished). Opinions supplied in response to Question 13(c).

Counsel for the plaintiff:
Mark J. Conner, Esquire
Law Office of Mark J. Connor
535 North Church Street
West Chester, Pennsylvania 19380
(610) 719-1941

Counsel for the defendant:
James M. Turner, Jr., Esquire
Furia and Turner
1719 Rittenhouse Square
Philadelphia, Pennsylvania 19103
(800) 203-2725

Annette Ferrara, Esquire
920 McKean Street
Philadelphia, Pennsylvania 19148
(267) 879-6512

9. *Commonwealth v. Pascal*, No. CP-48-CR-1976-2006 (C.P. Northampton June 30, 2008), *aff'd*, No. 630 EDA 2008 (Pa. Super. June 8, 2009). Opinions supplied in response to Question 13(c).

Counsel for the Commonwealth:
First Deputy Assistant District Attorney Terrence Houck
Assistant District Attorney Michele Kluk
669 Washington Street
Easton, Pennsylvania 18042
(610) 559-3020

Trial counsel for the defendant:
Mark S. Refowich, Esquire (deceased)

Victor E. Scomillio, Esquire
Boyer, Holzinger, Harak & Scomillio
1216 Linden Street
P.O. Box 1409
Bethlehem, Pennsylvania 18016
(610) 867-5023

Post-conviction collateral relief counsel for the defendant:
Robert E. Sletvold, Esquire
29 South Law Street
Allentown, Pennsylvania 18101
(610) 332-9585

10. *Commonwealth v. Hetzel*, No. CP-48-CR-3255-2000 (C.P. Northampton Sept. 13, 2012), *aff'd*, No. 2664 EDA 2012 (Pa. Super. July 3, 2013). Opinions supplied in response to Question 13(c).

Counsel for the Commonwealth:
Assistant District Attorney William Blake

669 Washington Street
Easton, Pennsylvania 18042
(610) 559-3020

Counsel for the defendant:
Pro se.

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

I am unaware of any cases in which a party requested *certiorari* from the United States Supreme Court.

- 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.

Commonwealth v. Austin, No. CP-48-CR-2008-2008 (C.P. Northampton Aug. 24, 2010), *rev'd*, No. 1092 EDA 2011 (Pa. Super. Mar. 11, 2011). Opinions supplied.

A jury convicted the defendant of 96 counts of possession of child pornography. After the convictions, but prior to sentencing, another jury convicted the defendant of a number of other offenses, including raping a child. At sentencing in this matter, I sentenced the defendant to an aggregate sentence of a period of state confinement for a minimum of 72 years to a maximum of 192 years. The defendant appealed from the judgment of sentence. On appeal, the Superior Court affirmed the defendant's convictions, but the court vacated the judgment of sentence as excessive because the sentences for possession of child pornography were run consecutively, rather than concurrently. On remand for resentencing, I resentenced the defendant to a period of incarceration for a minimum of 35 years to a maximum of 70 years, and I ran that sentence consecutive to the defendant's sentence in the child rape matter (in which, after also determining that the defendant was a sexually violent predator ("SVP"), I sentenced him to a minimum of 15 years to a maximum of 40 years; the SVP determination, the sentence, and the defendant's convictions in that case were upheld on appeal). The Superior Court affirmed the new judgment of sentence. *See Commonwealth v. Austin*, 66 A.3d 798 (Pa. Super. May 13, 2013).

Commonwealth v. Watterson, CP-48-CR-2077-2007 (C.P. Northampton Dec. 29, 2009, *rev'd*, 2640 EDA 2009 (Pa. Super. Nov. 23, 2010). Opinions supplied.

A jury convicted the defendant of statutory sexual assault and other offenses, and the defendant appealed from his judgment of sentence to the Superior Court. On appeal, the Superior Court vacated the judgment of sentence and remanded the case for a retrial. The Superior Court determined that a mistrial should have been

granted based on the prosecutor's comments in her opening statement that the victim was a virgin at the time of the alleged sexual assault. The court found that the prosecutor's comments violated the rape shield law and my curative instruction to the jury was insufficient to eliminate any prejudice to the defendant. The Commonwealth filed a petition for allowance of appeal with the Supreme Court of Pennsylvania, which the Court denied. *See Commonwealth v. Watterson*, No. 960 MAL 2010 (Pa. Oct. 25, 2011).

Commonwealth v. Alvin, No. CP-48-CR-1226-2002 (C.P. Northampton Feb. 27, 2003), *rev'd*, No. 236 EDA 2003 (Pa. Super. Oct. 14, 2003). Opinions supplied.

The police subjected the defendant to an investigative detention after determining that he and another individual met the description of individuals involved in a strong-armed robbery. The defendant provided the police with his identification, and the police discovered that there was an outstanding arrest warrant. During a subsequent search of the defendant, the police found cocaine in his possession and charged him with possession of cocaine and possession of cocaine with the intent to deliver. The defendant filed a pretrial motion seeking to suppress the results of the search because the police lacked the requisite reasonable suspicion to conduct an investigative detention. I denied the motion, and a jury eventually convicted him of the two charges. The defendant appealed. The Superior Court vacated the judgment of sentence and remanded the case for a new trial after concluding that the police pressured the defendant into giving his identification and, as such, the results of the investigative detention should have been suppressed.

In Re: Nomination Pet. of Mellert, No. C-48-CV-2003-1696 (C.P. Northampton Apr. 7, 2003), *rev'd* No. 713 CD 2003 (Pa. Cmwlth. Apr. 17, 2003). Opinions supplied.

I struck the incumbent candidate for township supervisor from the ballot after she failed to timely file her financial interests statement in the proper manner with the local governing authority. On appeal, the Commonwealth Court reversed my decision, finding that the challenger to the candidate's nomination petition lacked standing to file the challenge.

Commonwealth v. Watley, No. CP-48-CR-1701-2009 (C.P. Northampton Sept. 28, 2011), *rev'd*, No. 1480 EDA 2011 (Pa. Super. May 18, 2012), *withdrawn*, No. 1480 EDA 2011 (Pa. Super. July 19, 2012).

A jury convicted the defendant of possessing ecstasy with the intent to deliver. The defendant appealed from his judgment of sentence and claimed that the evidence presented at trial was insufficient to sustain his conviction because the Commonwealth did not introduce an expert to testify that he possessed the ecstasy with the intent to deliver. The Superior Court, in a 2-1 unpublished decision filed on May 18, 2012, reversed the conviction, finding that the Commonwealth should have had an expert testify during the trial. However, based in part on the

dissenting opinion by the Honorable Gene Strassburger, the Superior Court withdrew the prior decision and granted argument *en banc*. The case is still pending final disposition by the Superior Court.

United States v. DiPaola, *aff'd*, No. 200602442 (N-M. Ct. Crim. App. Oct. 16, 2007), *rev'd*, No. 08-200/NA (C.A.A.F. Dec. 18, 2008). Opinions attached.

At a general court-martial, the officer members convicted the defendant of making a false official statement and two specifications of indecent assault. The members then determined the sentence, which the convening authority approved. On appeal to the Navy-Marine Court of Criminal Appeals, the defendant claimed that I erred by not instructing the members on the mistake of fact defense pertaining to the specifications of indecent assault. The court affirmed the guilty findings and the sentence approved by the convening authority and, in doing so, concluded that I did not abuse my discretion in not instructing the members on mistake of fact. On appeal to the United States Court of Appeals for the Armed Forces, the court, by a 2-1 decision, concluded that I erred in not instructing the members on the affirmative defense of mistake of fact because there was “some evidence” to support the defense.

- 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.

In my role as a judge of the Court of Common Pleas of Northampton County, approximately 95% of my opinions are unpublished. All of those opinions are stored in court files maintained by the Clerks of Court for our Civil Division, Criminal Division, and Orphan’s Court. In addition, some of the more recent opinions are stored on a local database, which is available to the public on the court’s website.

As a military trial judge, my rulings on pretrial motions were filed locally in the case file and, thus, there are no citations to these decisions. Also, unlike the procedure in Pennsylvania, there is no procedure for me to file written opinions justifying my trial rulings when cases proceed on appeal.

In my role as a military appellate judge, approximately 95% of my decisions were unpublished *per curiam* decisions. Those decisions are stored in the case file with the Office of the Judge Advocate General of the Navy.

- 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.

Commonwealth v. Ballard, No. CP-48-CR-3058-2010 (C.P. Northampton Dec. 14, 2011). Opinion supplied in response to Question 13(c).

Commonwealth v. Collazo, No. CP-48-CR-1202-2012 (C.P. Northampton Dec. 13, 2012). Opinion supplied in response to Question 13(c).

Commonwealth v. Comstock, No. CP-48-CR-2006-648 (C.P. Northampton Oct. 31, 2007). Opinion 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.

None.

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.

As a military judge (both trial and appellate), there were no instances in which a party moved for my recusal.

As a state trial judge, I assess the necessity or propriety of a recusal by thoroughly considering Canon 3(c) of the Pennsylvania Code of Judicial Conduct, which delineates the grounds by which a judge should disqualify himself or herself from a particular case. Although there have been instances where I have recused myself from a case *sua sponte*, I do not maintain a list of such cases and cannot provide one.

As far as I can recall, the only instances where parties or litigants sought my recusal are the following:

Commonwealth v. Austin, No. CP-48-CR-2007-2008 (C.P. Northampton). Prior to an evidentiary hearing on a petition for post-conviction collateral relief filed by the defendant, he orally moved for my recusal. The defendant essentially claimed that I was biased against him based on the sentences that I imposed in his two cases and comments that I made as part of my sentences in the cases. I carefully considered the defendant's request under the Code of Judicial Conduct and Pennsylvania Rule of Criminal Procedure 903(C) and denied the request. I determined that the interests of justice did not warrant my recusal because I was able to fairly and impartially analyze the defendant's claims raised in his petition.

Commonwealth v. Davis, No. CP-48-CR-1933-2004 (C.P. Northampton). The defendant moved for my recusal as part of a petition for post-conviction collateral relief; however, he withdrew the motion before I had to address or dispose of the motion.

Commonwealth v. Alvin, No. CP-48-CR-1323-2003 (C.P. Northampton). A jury found the defendant guilty of first-degree murder, and the appellate courts affirmed his conviction and sentence on appeal. After the defendant exhausted his direct appeal rights, he filed two petitions for post-conviction collateral relief, which I denied. The defendant then filed a third petition for post-conviction collateral relief, and I appointed counsel to assist the defendant in prosecuting the petition. The defendant followed my order appointing counsel by filing a *pro se* document titled, "My Will and Holographic Testament." In this document, he bequeathed me his radio, a television, and his body. He also named me as the executor of his will. Despite the defendant apparently intending that this document serve as his will, he ended the document with a motion to recuse me as the judge to review his petition because I was now a beneficiary and executor of his estate. Since this was a blatant attempt to manipulate the court, I denied the defendant's request for my recusal since he failed to establish bias, prejudice or unfairness that would raise a substantial doubt as to my ability to preside impartially.

Taverna v. Atlantic Equity Van Buren Road, LLC, et al., Nos. C-48-CV-2004-7183, 2005-3971, 2005-6147, 2005-6599, 2005-8045, 2005-9063, 2006-5035, 2008-4720, 2008-10465.

Throughout the approximately eight years of this litigation, the *pro se* plaintiffs filed numerous motions seeking my recusal, most of which I believe were filed after a non-jury trial in which I entered judgment against them. In one instance, the plaintiffs moved for my recusal, and I held a hearing in open court. After hearing argument from the parties, I determined that I had no doubt that I could preside impartially over the proceedings and did not believe that my impartiality could be reasonably questioned. The plaintiffs filed an appeal from my decision, which was later quashed *sua sponte* by the Superior Court. See *Taverna v. Atlantic Equity Van Buren Road, LLC, et al.*, No. 2781 EDA 2008 (Pa. Super. Dec. 12, 2008).

Commonwealth v. Collazo, No. CP-48-CR-1202-2012 (C.P. Northampton).
The defendant filed a motion seeking my recusal as the presiding judge in the death penalty matter because I previously presided over a protection from abuse proceeding between the defendant and the victim. The defendant withdrew the motion before I had the chance to rule on the motion.

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.

Public offices (other than judicial offices):

1990 – 2001

Upper Nazareth Township

100 Newport Avenue

Nazareth, Pennsylvania 18064

Solicitor

Appointed by the Board of Supervisors of Upper Nazareth Township

1991 – 1999

Pennsylvania Office of Attorney General

Strawberry Square, 16th Floor

Harrisburg, Pennsylvania 17120

Special Deputy Attorney General

Appointed by then-Attorney General of Pennsylvania, Ernest D. Preate, Jr.

1996 – 1998

County of Northampton

669 Washington Street

Easton, Pennsylvania 18042

Assistant Solicitor

Appointed by former Northampton County Executive, William Brackbill

1997 – 2001

Northampton County Industrial Development Authority

669 Washington Street

Easton, Pennsylvania 18042

Solicitor

Appointed by the Board of the Northampton County Industrial Development Authority

Unsuccessful campaigns:

1996, Campaign for United States House of Representatives

1997, Campaign for Judge of the Court of Common Pleas of Northampton County

Unsuccessful nomination:

After I was recommended by a judicial advisory committee, former-Pennsylvania Governor Thomas Ridge nominated me to fill a vacancy on the Court of Common Pleas of Northampton County on March 27, 2001. The nomination was never considered by the Senate Judiciary Committee, and I was ultimately elected to the position in November 2001.

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

I have not held office in or rendered services to any political party or election committee. I have not held a position or played a role in a political campaign other than the two listed in my response to 15(a).

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 never served as a judicial clerk.

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

I never had a solo practice.

- 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.

1984 – 1990

United States Navy, Judge Advocate General's Corps

1322 Patterson Avenue, SE, Suite 3000

Washington, D.C. 20374

Senior Trial/Defense Counsel, NLSO, Philadelphia, Pennsylvania (1988 – 1990)

Assistant Force Judge Advocate, Commander Naval Air Force U.S. Atlantic Fleet, Norfolk, Virginia (1987 – 1988)

1990 – present

United States Navy Reserve, Judge Advocate General's Corps

1322 Patterson Avenue, SE, Suite 3000

Washington, D.C. 20374

Counsel (1990 – 2004)

Military Judge (2004 – 2007, 2008 – 2009, 2011 – 2012)

Rule of Law Advisor (2007 – 2008)

Commanding Officer (2009 – 2011, 2012 – present)

1990 – 2001

DeRaymond & Smith

717 Washington Street

Easton, Pennsylvania 18042

Partner

1990 – 2001

Upper Nazareth Township

100 Newport Avenue

Nazareth, Pennsylvania 18064

Solicitor

1991 – 1999

Pennsylvania Office of Attorney General

Strawberry Square, 16th Floor

Harrisburg, Pennsylvania 17120

Special Deputy Attorney General

1996 – 1998

County of Northampton

669 Washington Street

Easton, Pennsylvania 18042

Assistant Solicitor

1997 – 2001

Northampton County Industrial Development Authority

669 Washington Street

Easton, Pennsylvania 18042

Solicitor

- 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.

While I was in private practice, I occasionally served as an arbitrator as part of Northampton County's arbitration procedure. This procedure calls for mandatory arbitration in any case where the amount in controversy is less than \$50,000. When called to serve as an arbitrator, I would sit on a panel with two other attorneys. I do not recall the particular matters in which I sat as an arbitrator.

b. Describe:

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

My civilian law practice was a two-attorney general practice that terminated in January 2002 when I assumed the bench. As a general practitioner, I handled many different types of civil matters including, among other subjects, divorce and custody cases, wills and estates, real estate transactions, and general civil litigation.

While I was in private practice, I also served as a solicitor for Upper Nazareth Township, the Northampton County Industrial Development Authority, and Northampton County. From 1990 until 2001, I served as solicitor to the Upper Nazareth Township Board of Supervisors and the Planning Commission. From 1996 until 1998, I served as an assistant solicitor to Northampton County and represented various county departments including, among others, the prison, the Sheriff's department, the civil division, the criminal division, the orphan's court, and the recorder of deeds. From 1997 until 2001, I served as solicitor for the Northampton County Industrial Development Authority and assisted with processing economic development loans and related legal matters.

While I was on active-duty with the U.S. Navy Judge Advocate General's Corps, my first assignment after completing the Basic Lawyer Course at the Naval Justice School was as an assistant force judge advocate for the Commander Naval Air Force, U.S. Atlantic Fleet in Norfolk, Virginia. My duties included handling disciplinary matters, reviewing disciplinary actions of subordinate commanders, conducting and reviewing investigations, and generally providing legal advice to the Admiral and his staff.

My second assignment on active duty was as defense counsel (and ultimately senior defense counsel) at Naval Legal Service Office, Naval Base, Philadelphia, Pennsylvania. In this role I represented Navy and Marine Corps personnel at courts-martial, administrative discharge boards, non-judicial punishment hearings, medical boards and review boards.

Later in this tour I was reassigned as senior trial counsel, and I was responsible for prosecuting cases at courts-martial, providing legal advice to commanders, and supervising the trial (prosecution) department.

After leaving active duty, I affiliated with the Navy Reserve and have been in a drilling capacity for the past 23 years. I started as defense counsel and as I moved up in rank I assumed positions of greater responsibility, including positions as a military trial judge, military appellate judge, executive officer, and two tours as a commanding officer. I was also recalled to active duty in 2007 and deployed to Iraq as the Rule of Law Advisor for Task Force 134, Multinational Force Iraq.

- 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 private practitioner, my practice was properly characterized as a general practice and my typical clients were individuals and businesses located in the Lehigh Valley. I also performed municipal work in my role as solicitor to Upper Nazareth Township, and I assisted Northampton County in my roles as solicitor for the Northampton County Industrial Development Authority and assistant solicitor for Northampton County. I also represented the state of Pennsylvania in my role as a special deputy attorney general for the post-trial work on a murder case.

- 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.

While on active duty in the military and assigned as an assistant force judge advocate, I often advised the command regarding litigation, but I was not a litigator. As trial defense counsel, I was primarily a litigator and I handled approximately 17 general courts-martial, 204 special courts-martial, and 37 article 32 investigations.

While in private practice, although I appeared in court on a relatively frequent basis for various types of court proceedings, including oral arguments, miscellaneous hearings, and child custody and divorce proceedings, I did not have a practice that involved significant amounts of trial litigation. Thus, trial litigation was a very small part of my practice.

- i. Indicate the percentage of your practice in:
 - 1. federal courts: 5%
 - 2. state courts of record: 95%
 - 3. other courts: 0%
 - 4. administrative agencies: 0%

- ii. Indicate the percentage of your practice in:
 - 1. civil proceedings: 80%
 - 2. criminal proceedings: 20%
- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I cannot recall the precise number of cases that I tried to verdict, judgment or final decision. Nonetheless, to the best of my knowledge, I tried at least 25 cases before civilian and military tribunals to verdict, judgment or final decision.

- i. What percentage of these trials were:
 - 1. jury: 10%
 - 2. non-jury: 90%
- 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:

- 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.

The information requested dates back over ten years and, unfortunately, I no longer have access to the records relating to my private practice. In particular, upon becoming a judge, I left my records with my former law firm and that law firm no longer exists. Additionally, I attempted to search for cases through our Prothonotary's Office, but that office upgraded its file retention system in approximately 2000 and the overwhelming majority of cases filed prior to that time were not transferred over to the new system because they were not "active" cases at the time of the system upgrade.

With respect to my non-judicial litigation experience in the Navy, I do not have access to the records of specific cases that I handled while a trial counsel in the Navy. I do have records indicating that I handled 17 general courts-martial (15 for the defense; two for the prosecution), 204 special courts-martial (180 for the defense; 24 for the prosecution), and 37 Article 32 Investigations (34 for the defense; three for the prosecution). Despite the lack of available records, I have attempted to identify significant cases with as much specificity as I can recall and provide the information that I obtained through my investigation.

1. *Senick v. Senick*, No. C-48-CV-1992-9896 (C.P. Northampton); The Honorable James C. Hogan of the Court of Common Pleas of Northampton County (now serving as a senior judge); 1991 – 1998.

Four brothers owned a variety of corporations and partnerships including an excavating business, an oil company, and a number of rental properties. Disagreements arose among the brothers, and I represented two of the brothers who sued under the Pennsylvania Corporation Law for an accounting, the appointment of a receiver and partition. A receiver was appointed and the various properties and corporate assets were sold. During the pendency of this dissolution, one of my clients died, and one of the remaining brothers filed a declaratory judgment action against the brother that I represented and the estate of the deceased brother to have a property owned by the three brothers be deemed owned by just the two surviving brothers, a position my client and the estate opposed. After a non-jury trial, a verdict was entered in the estate's and my client's favor. Although the plaintiff appealed from the verdict to the Superior Court of Pennsylvania, the plaintiff eventually withdrew the appeal.

For J. Senick, Jr.:
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Maloney, Danyi, O'Donnell & Tranter
901 West Lehigh Street
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Bethlehem, Pennsylvania 18016
(610) 691-3450

Court-appointed receiver:
William B. Joachim, Esquire (deceased)

For Timpko, as Executor of the Estate of M. Senick, Jr.
Charles Bruno, Esquire
Pfeiffer, Bruno, Minotti & DeEsch
44 North Second Street
P.O. Box 468
Easton, Pennsylvania 18044
(610) 258-4003

2. *Commonwealth v. DiVentura*, No. CP-48-CR-1787-1976 (C.P. Northampton); The Honorable Richard D. Grifo of the Court of Common Pleas of Northampton County (deceased); January 1991 – December 2001.

The defendant was convicted of first-degree murder for the strangulation death of his estranged wife. On January 2, 1991, the Pennsylvania Attorney General appointed me as a special deputy attorney general for the purpose of representing the Commonwealth in this matter. At the time of my appointment, the defendant had filed a petition for post-conviction collateral relief. To accommodate the defense, the hearing on the petition for post-conviction relief was held in the Luzerne County Courthouse before Judge Grifo. Ultimately, Judge Grifo denied relief and his decision was affirmed on appeal. The defendant continued to file post-conviction petitions, all of which were denied. On one occasion, the Superior Court of Pennsylvania affirmed one of Judge Grifo's orders denying a post-conviction petition, in the nature of a writ for *habeas corpus*, in a published decision. *See Commonwealth v. DiVentura*, 734 A.2d 397 (Pa. Super. 1999).

Counsel for the defendant:
Philip D. Lauer, Esquire
701 Washington Street
Easton, Pennsylvania 18042
(610) 258-5329

3. *Hoffmeister v. Keystone Millwork and Constr. Co., Inc., et al.*, No. C-48-CR-1999-4669 (C.P. Northampton); The Honorable Robert A. Freedberg of the Court of Common Pleas of Northampton County (retired); 1999 – 2001.

One of the defendants, Skepton Construction, Inc., was the general contractor for the construction of a school. Another defendant, United States Fidelity & Guaranty Company, was responsible under a payment bond. When the general contractor encountered problems with the original subcontractor responsible for installing millwork, the general contractor's owner contacted the plaintiff to finish the work. The plaintiff accepted the offer and proceeded to complete the work. While completing the work, the plaintiff regularly submitted invoices for payment; however, the defendant general contractor failed to pay the full amount of the invoices. I filed a civil action on behalf of the plaintiff. I also filed a brief and argued in opposition to preliminary objections filed by the defendant, which the court eventually denied. I engaged in discovery, which included litigating motions to compel. Upon my election as a judge, the case was transferred to substitute counsel. After a non-jury trial in 2006, judgment was eventually entered in favor of the plaintiff and against Skepton Construction, Inc. in the amount of approximately \$284,000 and United States Fidelity & Guaranty Company in the amount of approximately \$128,000.

Counsel for Saucon Valley School District:
Domenic P. Sbrocchi, Esquire
King, Spry, Herman, Freund & Faul, LLC
One West Broad Street, Suite 700

Bethlehem, Pennsylvania 18018
(610) 332-0390

Counsel for Keystone Millwork and Construction Company, Inc., Kavusak, Skepton
Construction, Inc., and United States Fidelity and Guaranty Company:
Joseph F. Leeson, Jr., Esquire
Leeson, Leeson & Leeson
70 East Broad Street
P.O. Box 1426
Bethlehem, Pennsylvania 18016
(610) 691-3320

4. *Kise v. Commonwealth of Pennsylvania, Dep't of Mil. and Veteran's Affairs and the Adjutant Gen. of Pennsylvania*, No. 1205 CD 2000, 784 A.2d 253 (Pa. Cmwlth. 2001) (*en banc*), *rev'd*, 832 A.2d 987 (Pa. 2003); 2000 – 2001.

I represented Kise, who had served as a dually-enlisted member of the United States National Guard and the Pennsylvania Army National Guard on full-time active service as part of the Active Guard/Reserve program. In mid-2000, the Adjutant General of Pennsylvania conducted an investigation of Kise and ordered him separated from the Active Guard/Reserve program for cause because of misconduct. Despite his separation from the program, he continued to serve as an active member of the Pennsylvania Army National Guard. On Kise's behalf, I filed a petition for review in the Commonwealth Court of Pennsylvania. I argued that Kise's due process rights were violated in the investigation and, as such, the court should vacate the separation order. The Commonwealth of Pennsylvania, Department of Military and Veteran's Affairs (the "Department") filed a motion to dismiss claiming the Commonwealth Court lacked jurisdiction over Kise's petition because the case was federal in nature insofar as Kise was separated only from the United States National Guard. The Commonwealth Court initially granted a stay of the separation order, but the Department of Military and Veterans Affairs refused to restore Kise to his full-time position. I then filed a petition to hold the Department in contempt. The Commonwealth Court denied the petition for contempt and vacated the stay because of concerns that the court lacked jurisdiction. The Commonwealth Court, sitting *en banc*, issued a divided opinion in which the majority determined that the court had jurisdiction over the case and the Adjutant General abused his discretion in failing to address certain considerations that were required to be included in a separation inquiry. The Department appealed from the Commonwealth Court's decision to the Supreme Court of Pennsylvania. Shortly after the Department filed the petition, I withdrew my appearance in the case because of my election as judge. On appeal with the Supreme Court, the Court considered an issue of first impression concerning whether judicial review of a military personnel decision by the National Guard is appropriate. Although the Court concluded that the Commonwealth Court had jurisdiction to review the decision of the Adjutant General, the Court also concluded that the Adjutant General acted within his discretion in issuing the separation order.

Additional Counsel for Kise:
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Counsel for the Department of Military and Veteran's Affairs:
Eclemus Wright, Esquire
Michael C. Barrett, Esquire
Pennsylvania Department of Military and Veteran's Affairs
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Counsel for the United States Department of Justice:
Mary C. Frye, Esquire
United States Department of Justice
Office of the United States Attorney
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Counsel for the Pennsylvania National Guard:
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Annville, Pennsylvania 17003
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5. *United States v. Raven*; Convening Authority: Naval Weapons Station Earle; Military Judge: Captain Walter J. Landen, Sr., 1988.

The case was referred for a general courts-martial. The defendant and another Marine stole an M-16 rifle from a guard office at the Naval Weapons Station Earle and smuggled out rounds of ammunition. After becoming intoxicated, the defendant fired 30 rounds from the rifle into a neighborhood in Belmar, New Jersey, killing a cat, severing a television cable line, and endangering the lives of the residents within a four-block radius. The defendant was facing a maximum of 25 years in a military prison for the related charges. I was assigned to represent the defendant and was able to negotiate a pretrial agreement for a maximum of 20 months of incarceration. At the sentencing hearing, the prosecution put on a robust case in aggravation. I presented the case in

extenuation and mitigation, which resulted in a sentence of only seven months of incarceration.

Counsel for the prosecution:
Captain Bernard E. Delury
Superior Court of New Jersey, Atlantic County Vicinage I
Criminal Division
Criminal Court Complex
4997 Unami Boulevard
Mays Landing, New Jersey 08330
(609) 909-8217

6. *Administrative Discharge Board for R. Jackson*, United States Naval Reserve, Naval Reserve Center, Kearny, New Jersey, 1998 – 1999.

The respondent reservist tested positive for cocaine after a urinalysis test. As a result of the positive drug test, the command instituted discharge proceedings against him. The respondent denied knowingly using cocaine and demanded an Administrative Discharge Board. I was assigned as the recorder (prosecutor) for the Board. At the Board, the respondent argued that the positive test result was caused by a recent medical procedure involving spinal anesthesia. I countered this argument with expert testing that such a procedure could not cause the positive test result. The Board agreed with my contention and found that the respondent had committed misconduct due to drug abuse. As such, the Board recommended that the respondent receive an other-than-honorable discharge from the Navy.

Members of the Administrative Board:

Captain Jeffrey C. Milanette
(could not locate address or phone number)

Commander Erik A. Tobiason
(could not locate address or phone number)

Lieutenant Commander William R. Greenough
(could not locate address or phone number)

Counsel for the respondent:
Lawrence M. Frangiosa
1220 Valley Forge Road, Suite Three
Phoenixville, Pennsylvania 19460
(610) 935-3373

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.)

Northampton County Court has been inundated with asbestos-related civil filings due in large part to the Bethlehem Steel plant located in Northampton County prior to its closing. The asbestos-related cases are complicated by the numerous named defendants that have filed for bankruptcy, the trust funds established as a result of those bankruptcies, and the common difficulty of product identification due to the long latency period between exposure and disease. As Presiding Judge of the Asbestos Division since 2004, I have had the opportunity to manage this complex process, which involves the grouping of multiple cases for trial before a single jury.

In my capacity as a military trial judge, I was detailed to conduct two separate ethics investigations: one of an active duty judge and the other of an active duty defense counsel. My responsibilities included thoroughly investigating the allegations of professional misconduct, which included interviewing all witnesses and reviewing the relevant transcripts and other documents. In each case, I prepared a report with recommendations to the Rules Counsel.

As part of my service with the United States Navy, I spent six months as the Rule of Law Advisor for Task Force 134, Multi-National Force Iraq, in Baghdad, Iraq, during Operation Iraqi Freedom. In this position, I directly contributed to the effort at implementing the Rule of Law in Iraq and to create the conditions for the reintegration of coalition detainees into Iraqi society.

As solicitor to the Northampton County Industrial Development Authority, I was responsible for reviewing bond applications, advising the Authority's Board, preparing the necessary legal documentation relating to the issuance of the bonds, and ensuring compliance with the terms of the bonds. These bonds were instrumental in attracting and retaining some of the most successful enterprises in the Lehigh Valley.

I have not performed any lobbying activities.

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

Effective December 1, 2012, I assumed command of NR Naval Justice School 0101, which supports the Naval Justice School in Newport, Rhode Island, by providing subject matter experts to serve as instructors of various courses at the school. In addition to serving as commanding officer, my expertise is in military justice.

From October 1, 2000 to September 30, 2001, I was assigned to Naval Reserve Naval War College (LAW) 101 as a reserve instructor at the college in the areas of international and operational law. I have been unable to locate a syllabus.

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

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 am currently serving as a Captain in the United States Navy Reserve, assigned to a two-year billet as the Commanding Officer of NR Naval Justice School 0101 in Newport, Rhode Island. I am prepared to retire from the Navy if appointed to serve as a judge on the federal bench.

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.

To the best of my knowledge, the only possible potential conflict-of-interest that could arise is if there are federal habeas corpus proceedings where I presided over the underlying conviction. I would recuse myself from any matter in which I had any prior judicial involvement.

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

If confirmed as a federal judge, I would adhere to the Code of Conduct for United States Judges and any other relevant canons, statutes or rules in resolving any potential conflicts of interest and in determining whether my recusal is appropriate under the circumstances.

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.

As an attorney, I was involved in the Northampton County Bar Association Pro Bono Program. As part of my involvement, the Bar Association would assign various cases to me throughout the year, as needed. I handled numerous matters for various indigent individuals. I also represented the Brown & Lynch American Legion Post No. 9 and assisted with any legal issues that arose.

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 December 2012, I received a letter from the office of Senator Patrick Toomey inviting persons interested in being considered for appointment to the position of United States District Court Judge for the Eastern District of Pennsylvania to submit an application to the Federal Judicial Nominating Committee formed by Senator Toomey and Senator Robert Casey, Jr. On January 4, 2013, I submitted an application, and on April 23, 2013, I was interviewed in Philadelphia by the Committee. On April 30, 2013, I interviewed with Senator Toomey in Allentown, Pennsylvania, and on May 23, 2013, I interviewed with Senator Casey and his staff in Washington, D.C. Since May 31, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 2, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On August 1, 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, EDWARD G. SMITH, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

8/5/2013
(DATE)



(NAME)

Jill M. Cicero

(NOTARY)

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal

Jill M. Cicero, Notary Public

City of Easton, Northampton County

My Commission Expires Oct. 16, 2016

MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES