

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Richard Alan Hertling

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

Judge, United States Court of Federal Claims

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

Office: Covington & Burling LLP
One City Center
850 Tenth Street NW
Washington, DC 20001

Residence: Chevy Chase, Maryland

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

1960; New York, New York

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.

1982 – 1985; University of Chicago Law School; J.D., 1985

1978 – 1982; Brown University; B.A. (*magna cum laude*), 1982

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.

2013 – present
Covington & Burling LLP

One City Center
850 Tenth Street NW
Washington, DC 20001
Of Counsel

2008 – 2013
Committee on the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515
Staff Director and Chief Counsel (2012 – 2013)
Deputy Chief of Staff and Policy Director (2011 – 2012)
Minority Deputy Chief of Staff and Policy Director (2008 – 2011)

2007 – 2008
Friends of Fred Thompson
1700 Old Meadow Road
McLean, VA 22102
Director of Special Projects/Legal Policy

2007
Office of Legislative Affairs
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
Acting Assistant Attorney General

2003 – 2007
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
Principal Deputy Assistant Attorney General (2005 – 2007)
Deputy Assistant Attorney General (2003 – 2005)

2003
Office of Senator Lamar Alexander
United States Senate
455 Dirksen Senate Office Building
Washington, DC 20510
Deputy Chief of Staff and Legislative Director

2002 – 2003
Committee on Governmental Affairs
United States Senate
605 Hart Senate Office Building

Washington, DC 20510
Minority Staff Director

1999 – 2002
Office of Senator Peter Fitzgerald
United States Senate
555 Dirksen Senate Office Building
Washington, DC 20510
Chief of Staff

1997 – 1999
Committee on Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510
Senior Counsel

1990 – 1996
Office of Senator Arlen Specter
United States Senate
Washington, DC 20510
Chief Counsel

1995 – 1996
Subcommittee on Terrorism, Technology and Government Information
Committee on the Judiciary
United States Senate
161 Dirksen Senate Office Building
Washington, DC 20510
Chief Counsel and Staff Director

1993 – 1995
Subcommittee on Technology and the Law
Committee on the Judiciary
United States Senate
161 Dirksen Senate Office Building
Washington, DC 20510
Minority Chief Counsel and Staff Director

1990 – 1993
Subcommittee on the Constitution
Committee on the Judiciary
United States Senate
161 Dirksen Senate Office Building
Washington, DC 20510
Minority Chief Counsel and Staff Director (1990 – 1993)

Minority Counsel (1990)

1986 – 1990

Federal Programs Branch
Civil Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20510
Trial Attorney

1985 – 1986

Honorable Henry A. Politz
United States Court of Appeals for the Fifth Circuit
2B04 Joe D. Waggoner United States Courthouse and Federal Building
500 Fannin Street
Shreveport, LA 71101
Law Clerk

1984

Stroock & Stroock & Lavan
180 Maiden Lane
New York, NY 10038
Summer Associate

The following were uncompensated student internships:

1981 & 1983

Honorable Marc A. Costantino
United States District Judge, Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201
Judicial intern (summers)

1981 – 1982

Honorable Florence K. Murray
Justice, Rhode Island Supreme Court
250 Benefit Street
Providence, RI 02903
Judicial intern (during school year)

1980 – 1981

Honorable John F. Doris
Justice, Rhode Island Supreme Court
250 Benefit Street
Providence, RI 02903

Judicial intern (during school year)

1980

Honorable Milton Mollen
Presiding Justice
Appellate Division, Second Department
Supreme Court of New York
45 Monroe Place
Brooklyn, NY 11201
Judicial intern (summer)

1979

Consumer Protection & Complaint Bureau
New York County District Attorney's Office
1 Hogan Place
New York, NY 10013
Intern (summer)

Other Affiliation:

1991 – 1993 (approx.)
Tornado Alley
Fern Street
Wheaton, MD
Partner in a bar/restaurant/music club

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

I did not serve in the military. I registered for selective service in a timely manner.

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.

Legal 500 US, Intellectual Property - Trade Secrets (2017)
Legal 500 US, Telecoms and Broadcast: Regulatory and Transactional (2014)
Recognition for service in the U.S. House of Representatives by Lamar Smith (2013)
Attorney General's Distinguished Service Award, U.S. Department of Justice (the Department's second highest honor) (2005)
Letters of Commendation, U.S. Secret Service and the U.S. Department of Commerce (1988 & 1989)
Special Achievement Awards, U.S. Department of Justice (1987 & 1989)
Phi Beta Kappa (1982)

James Pirce Prize, Brown Classics Department (1982)
Minnie Helen Hicks Prize, Brown Classics Department (1982)

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 (1986 – 1995 (approx.), 2015 – 2016)
Section on Administrative Law and Practice (1986 – 1995 (approx.))

American Judicature Society (1986 – 1995 (approx.))

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.

New York, 1986
District of Columbia, 1988

There have been no lapses in membership.

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

I was admitted *pro hac vice* in the United States Court of Appeals for the Eleventh Circuit to file a brief *amicus curiae* when I was employed by the House Judiciary Committee in 2008.

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.

American Automobile Association (1982 – present)

Intellectual Property Rights Working Group of the Trans-Atlantic Business Council (2016 – 2017)
U.S. Co-Chair (2016 – 2017)

Phi Beta Kappa Society (2000 – present (approx.))

Royal Oak Society (U.S. affiliate of the National Trust of Great Britain) (2013 – present)

Selden Society (1982 – 1995 (approx.))

Tornado Alley (Partner in a bar/restaurant/music club) (1991 – 1993 (approx.))

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

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

From June 2017 through January 2018, I co-wrote with my Covington colleague Kaitlyn McClure a monthly column “The Congressional Agenda” for the coming month, published in Law360. Copies of each column are supplied.

Between January 2015 and May 2017, Ms. McClure and I co-wrote a weekly column “This Week in Congress” for Law360. Copies of each of those columns are supplied.

In addition to these monthly and weekly columns, I have written or co-written the following:

Brian Smith, Muftiah McCartin, Richard Hertling and Joshua DeBold, “House of Representatives Seeks to Strengthen Subpoena Enforcement Dramatically,” Global Policy Watch blog, November 9, 2017. Copy supplied.

Richard Hertling, “Privacy and Data Security in the Trump Administration,”

Global Policy Watch blog, November 14, 2016. Copy supplied.

Daniel Spiegel, Layth Elhassani, and Richard Hertling, "Congress Overwhelmingly Approves Federal Civil Cause of Action for Trade Secret Misappropriation Backed by Broad Coalition of U.S. Interests," Global Policy Watch blog, April 29, 2016. Copy supplied.

Richard Hertling, Layth Elhassani, and Kaitlyn McClure, "Bipartisan Trade Secrets Bill Passes U.S. Senate," Global Policy Watch blog, April 6, 2016. Copy supplied.

Richard Hertling and Kaitlyn McClure, "This Week in Congress -- a Year-End Review," Global Policy Watch blog, December 22, 2015. Copy supplied.

Aaron Cooper, Richard Hertling and Stephen Kiehl, "Bipartisan Trade Secrets Legislation is Back," Global Policy Watch blog (also in Law360), August 4, 2015. Copy supplied.

Jon Kyl and Richard Hertling, "As We Were Saying, Tax Reform is Dead," Global Policy Watch blog, June 10, 2015. Copy supplied.

Jon Kyl and Richard Hertling, "Tax Reform is Dead! Long Live Tax Reform!", Global Policy Watch blog, January 20, 2015. Copy supplied.

Jon Kyl and Richard Hertling, "Tax Reform is Already on the Table," Global Policy Watch blog, December 15, 2014. Copy supplied.

Richard Hertling and Aaron Cooper, "Progress on Federal Trade Secrets Legislation," Global Policy Watch blog, September 19, 2014. Copy supplied.

Aaron Cooper and Richard Hertling, "Trade Secrets on the Move," Global Policy Watch blog, August 18, 2014. Copy supplied.

David Fagan, Richard Hertling and Katherine Goodloe, "New Version of USA Freedom Act Introduced," Global Policy Watch blog, July 31, 2014. Copy supplied.

David Fagan, Richard Hertling and Sumon Dantiki, "House of Representatives Passes Three Cybersecurity Bill," Global Policy Watch blog, July 31, 2014. Copy supplied.

Richard Hertling and Aaron Cooper, "Trade Secrets Legislation Introduced in the House of Representatives," Global Policy Watch blog, July 30, 2014. Copy supplied.

Richard Hertling and Aaron Cooper, "Trade Secret Theft: The Need for a Federal

Civil Remedy,” Global Policy Watch blog, June 25, 2014. Copy supplied.

I have written reviews of recordings for the Bowdoin (College) Orient newspaper in approximately 1982 and for the D.C. Blues Society newsletter in approximately 1988-90. I do not have copies of these reviews and am unable to find them online.

- 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.

Richard Hertling and Brendan Parets, “Sixth Circuit’s Bright-Line Rule for Removal Deadline Under CAFA Embraces Trend,” Legal Opinion Letter, Washington Legal Foundation, June 10, 2016. A copy is supplied.

Ankenbrandt and Vormann with R. Hertling, “Comparing U.S. and EU Trade Secret Law: An Analysis Prepared for TABC’s Intellectual Property Working Group, June 30, 2016. A copy is supplied.

- 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.

I signed a letter to Senator Warner and Senator Kaine endorsing Zachary Terwilliger to be United States Attorney for the Eastern District of Virginia, November 22, 2017. Copy supplied.

In addition, I have submitted letters to the Senate in support of the confirmation of the following nominees:

Greg Katsas, U.S. Circuit Judge for the D.C. Circuit, October 13, 2017.

Dabney Friedrich, U.S. District Judge for D.C., July 7, 2017

Brent McIntosh, Treasury Department General Counsel, June 6, 2017

Courtney Elwood, CIA General Counsel, April 6, 2017

Stuart Delery, Associate Attorney General, June 17, 2015

Suzanne Spaulding, Undersecretary of DHS, Sept. 13, 2013

Copies supplied.

On behalf of my client, the Protect Trade Secrets Coalition, I testified before the House Judiciary Committee at its hearing on “Trade Secrets: Promoting and Protecting American Innovation, Competitiveness and Market Access in Foreign

Markets” on June 24, 2014. A copy of my testimony and my prepared written statement are supplied.

During my tenure as Acting Assistant Attorney General for Legislative Affairs at the Department of Justice in 2007, I signed numerous letters to Congress on the behalf of the Department that were drafted by others. I did not retain copies of any of these letters in my personal records.

As Principal Deputy Assistant Attorney General, I testified before the U.S. Sentencing Commission on criminal penalties for firearms trafficking on March 15, 2006. A copy of my testimony and a prepared written statement, which reflected the official position of the Department of Justice and the executive branch, are supplied.

As Justice Department liaison to the American Judicature Society’s Commission on Forensic Science and Public Policy in 2006, I attended and spoke at the initial Commission meeting, March 31 to April 2, 2006. I have no notes, transcript, or recording. The address for the American Judicature Society is P.O. Box 656, Honolulu, Hawaii 96809.

- 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.

2015 – 2017: Judge, Legislative Practice Clinic, Georgetown University Law School, Washington, DC. I have served as a “judge” for the legislative practice clinic on three separate occasions, role-playing as a congressional staff member to whom students present their legislative proposals and the arguments in support of the proposals. I have no notes, transcripts, or recordings. The address for Georgetown University Law School is 600 New Jersey Avenue NW, Washington, DC 20001.

June 14, 2012: Panelist, “Hot Topics in Federal Sentencing,” Annual National Seminar on the Federal Sentencing Guidelines, U.S. Sentencing Commission, New Orleans, Louisiana. I spoke about federal sentencing on a panel moderated by Judge Ketanji Brown-Jackson (then not-yet appointed to the district court). I have no notes, transcript, or recording. The address for the U.S. Sentencing Commission is One Columbus Circle, NE, Suite 2-500, Washington, DC 20002.

2004: Panelist, Sentencing Law and Policy, Criminal Law Committee of the

Judicial Conference of the United States, Atlanta, Georgia. I spoke on a panel moderated by Judge Emmet Sullivan on sentencing law and policy. I have no notes, transcript, or recording. The address for the Judicial Conference of the United States is One Columbus Circle NE, Washington, DC 20544.

November 21, 2002: Panelist, National Security Law: Capitol Hill Perspectives, American Bar Association Committee on National Security Law, Washington, DC. Video is available at <https://www.c-span.org/video/?173950-2/national-security-law-capitol-hill-perspective>.

November 15, 2002: Speaker, "The Department of Homeland Security: What Will It Look Like and What Will it Mean?," Luncheon Program, DC Bar, Washington, DC. I spoke about the Department of Homeland Security in my role as Minority Staff Director for the Senate Governmental Affairs Committee. I have no notes, transcript, or recording, but press coverage is supplied. The address for the DC Bar is 901 Fourth Street, NW, Washington, DC 20001.

1990 – 2003: During my tenure as a Senate and House staff member, I often spoke to groups, organizations, and foreign delegations visiting Capitol Hill. The topics varied depending on the interests of the audience, but were typically focused on congressional organization or process. I have no notes, transcripts, or recordings.

January 19, 1995: Panelist, Foreign State Accountability and International Human Rights, Immigration and Human Rights Committee of the International Law Section of the DC Bar, Washington, DC. I am listed as speaking at this program as a result of my role on the staff of the Senate Judiciary Subcommittee on the Constitution, but I have no independent recollection of the event. I have no notes, transcript, or recording. The address for the DC Bar is 901 Fourth Street, NW, Washington, DC 20001.

- 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.

During my service on Capitol Hill, I often spoke on background to journalists to explain legislation or procedural matters. I did not maintain a list of such interactions. Below are articles I was able to identify.

Hancock, *Making a Federal Case of It; Congress is Finally Poised to Put Trade Secrets on the Same Playing Field as Other IP*, The Recorder (California), April 11, 2016 (interviewed in my capacity as counsel for the Protect Trade Secrets Coalition). Copy supplied.

Klaidman, *Can This Man Protect Us? James Comey is Obama's Pick to Run the*

FBI – Our Front Line in the War on Terror. But is he too Self-Righteous for his own Good?, Newsweek, June 5, 2013. Copy supplied.

Covington & Burling LLP, *Congressional Staffer Richard Hertling Joins Covington*, April 4, 2013, press release. Copy supplied.

Teleconference, *FBI's Preliminary Uniform Crime Report*, U.S. Department of Justice, June 12, 2006. Transcript supplied (reprinted in multiple outlets).

Talbott, *Out of Political Spotlight, Chief of Staff Keep House*, Chicago Daily Herald, June 13, 1999. Copy supplied.

News in Brief: Exempts Avoid Hearings on Campaign Activities, The Exempt Organization Tax Review, December 1997. Copy supplied.

McCaslin, *Nation Inside the Beltway*, The Washington Times, November 10, 1997. Copy supplied.

Campaign-Funds Probe a Windfall for Lawyers: Broad Inquiry Creates Huge Legal Bills, Chicago Tribune, October 27, 1997. Copy supplied.

Riedi, *To Shift or To Shaft: Attorney Fees for Prevailing Claimants in Civil Forfeiture Suits*, Comment, Univ. of Miami Law Rev., September 1992. Copy supplied.

Walthall, *Specter Gets Some Heat Over Souter*, Allentown Morning Call, September 26, 1990. Copy supplied.

Drug Testing of Weather Service Workers Held Unconstitutional in California, Daily Labor Report, November 8, 1988. 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 never held judicial office.

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

- i. Of these, approximately what percent were: .

jury trials:	_____%
bench trials:	_____% [total 100%]
civil proceedings:	_____%
criminal proceedings:	_____% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
 - c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
 - d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
 - e. Provide a list of all cases in which certiorari was requested or granted.
 - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:
- 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.

I have never served as a judge.

15. Public Office, Political Activities and Affiliations:

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

I have never been a candidate for public office. I have held the following appointed positions:

Minority Deputy Chief of Staff and Policy Director (2008 – 2011), Deputy Chief of Staff and Policy Director (2011 – 2012), and Staff Director and Chief Counsel (2012 – 2013) to the House Judiciary Committee, appointed by Chairman Lamar Smith

Acting Assistant Attorney General (2007) for the Office of Legislative Affairs, U.S. Department of Justice, appointed by President George W. Bush

Deputy Assistant Attorney General (2003 – 2005), Principal Deputy Assistant Attorney General (2005 – 2007) for the Office of Legal Policy, U.S. Department of Justice, appointed by President George W. Bush

Senior Counsel (1997 – 1999) and Minority Staff Director (2002 – 2003) to the Committee on Governmental Affairs of the U.S. Senate, appointed by Senator Fred Thompson

Chief Counsel and Staff Director to the Senate Judiciary Subcommittee on Terrorism, Technology and Government Information (1995 – 1996), appointed by Senator Arlen Specter

Minority Chief Counsel and Staff Director to the Senate Judiciary Subcommittee on Technology and the Law (1993 – 1995), appointed by Senator Arlen Specter

Minority Chief Counsel and Staff Director to the Senate Judiciary Subcommittee on the Constitution (1990 – 1993), appointed by Senator Arlen Specter

- 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.

From 2007 to 2008, I served as the Director of Special Projects/Legal Policy for the Friends of Fred Thompson, during his campaign for the presidential nomination in 2008. I worked with Policy Director Mark Esper to develop domestic and legal policy proposals for the campaign. I also served as internal liaison to the campaign's lawyer, Michael Toner.

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 clerked for Judge Henry A. Politz, United States Court of Appeals for the Fifth Circuit, from 1986 to 1986.

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

I have never practiced alone.

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

1986 – 1990
Federal Programs Branch
Civil Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20510
Trial Attorney

1990 – 1993
Subcommittee on the Constitution
Committee on the Judiciary
United States Senate
161 Dirksen Senate Office Building
Washington, DC 20510

Minority Chief Counsel and Staff Director (1990 – 1993)
Minority Counsel (1990)

1990 – 1996
Office of Senator Arlen Specter
United States Senate
Washington, DC 20510
Chief Counsel

1993 – 1995
Subcommittee on Technology and the Law
Committee on the Judiciary
United States Senate
161 Dirksen Senate Office Building
Washington, DC 20510
Minority Chief Counsel and Staff Director

1995 – 1996
Subcommittee on Terrorism, Technology and Government Information
Committee on the Judiciary
United States Senate
161 Dirksen Senate Office Building
Washington, DC 20510
Chief Counsel and Staff Director

1997 – 1999
Committee on Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510
Senior Counsel

1999 – 2002
Office of Senator Peter Fitzgerald
United States Senate
555 Dirksen Senate Office Building
Washington, DC 20510
Chief of Staff

2002 – 2003
Committee on Governmental Affairs
United States Senate
605 Hart Senate Office Building
Washington, DC 20510
Minority Staff Director

2003
Office of Senator Lamar Alexander
United States Senate
455 Dirksen Senate Office Building
Washington, DC 20510
Deputy Chief of Staff and Legislative Director

2003 – 2007
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
Principal Deputy Assistant Attorney General (2005 – 2007)
Deputy Assistant Attorney General (2003 – 2005)

2007
Office of Legislative Affairs
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
Acting Assistant Attorney General

2007 – 2008
Friends of Fred Thompson
1700 Old Meadow Road
McLean, VA 22102
Director of Special Projects/Legal Policy

2008 – 2013
Committee on the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515
Staff Director and Chief Counsel (2012 – 2013)
Deputy Chief of Staff and Policy Director (2011 – 2012)
Minority Deputy Chief of Staff and Policy Director (2008 – 2011)

2013 – present
Covington & Burling LLP
One City Center
850 Tenth Street NW
Washington, DC 20001
Of Counsel

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant

matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator.

b. Describe:

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

The main focus of my career has been at the intersection of law and public policy. Having held senior positions in both houses of Congress and the Justice Department, I have familiarity with a broad range of substantive federal law, an understanding of the respective responsibilities of the legislative and executive branches, and a keen appreciation for the role and independence of the federal judiciary in our system of checks and balances.

1986-1990

Following my clerkship on the Fifth Circuit, I was hired through the Attorney General's Honors Program, as a trial attorney in the Federal Programs Branch of the Civil Division of the Department of Justice. The Federal Programs Branch handles the government's significant civil enforcement matters and defends the government against equitable claims, often involving constitutional and administrative law issues. During the more-than-three-years when I served in the Civil Division, I was co-counsel for one trial and argued approximately 30 times in federal district courts and the U.S. Tax Court. I also handled discovery matters and briefed multiple discovery motions.

1990-1996

In January 1990, I joined the staff of Senator Arlen Specter, a member of the Judiciary Committee, to serve as committee counsel. In that position, I advised Senator Specter on legal issues both in and outside the jurisdiction of the Judiciary Committee. I drafted legislation, hearing memos, statements, questions for hearings and negotiated on legislation. I advised on nominations with the jurisdiction of the Judiciary Committee, and in that capacity was involved in the confirmations of two Attorneys General and four Supreme Court justices. I also handled Justice Department, law enforcement, and judicial branch appropriations for Senator Specter, a member of the Appropriations Committee.

1997-1999

In 1997, I joined the staff of the Senate Governmental Affairs Committee (as it was then called) as senior counsel to the Chairman, Senator Fred Thompson (R-TN). As senior counsel I handled a variety of oversight and legislative matters within the committee's jurisdiction. Among these

issues were District of Columbia issues, government information and technology policy and management, including the legal aspects of procurement-related issues, and aspects of regulatory policy. I handled the confirmation for the judges of the District of Columbia courts as well. In addition, I handled a number of Judiciary Committee issues for Senator Thompson, who was also a member of that committee.

1999-2002

In 1999 I became the initial chief of staff for newly elected Senator Peter Fitzgerald. In that capacity, I was responsible for managing every aspect of the office, legislative, communications, and political, as well as the state offices and staff. I served as his chief advisor on all aspects of his work and, as part of that role, was responsible for advising him on the recommendation of federal judges, U.S. Attorneys and U.S. Marshals for the judicial districts in Illinois.

2002-2003

In 2002, I rejoined the Committee on Governmental Affairs as minority staff director, responsible for managing the staff and overseeing all oversight and legislative matters within the jurisdiction of the committee, which includes civilian procurement and personnel issues. I was also Ranking Member Thompson's principal advisor on all substantive and procedural matters within the committee's jurisdiction. Upon Senator Thompson's retirement, I joined the staff of his successor, Senator Lamar Alexander in January 2003 as his deputy chief of staff and legislative director. In that role I helped to manage the Washington office and put together his initial legislative team.

2003-2007

In July 2003 I was appointed a deputy assistant attorney general in the Office of Legal Policy at the Department of Justice and was promoted in 2005 to the role of principal deputy assistant attorney general. At OLP, I handled a variety of issues, including criminal justice policy (excluding drug issues), criminal gangs, explosives and firearms, prisons and prisoner reentry, trafficking in persons, civil justice, federal personnel law, government ethics, and Justice Department grants policy; I also oversaw OLP's role in Justice Department-wide regulatory processes (except for Drug Enforcement Administration regulations). In January 2007 I was named acting assistant attorney general for legislative affairs, overseeing the Justice Department's relations with Congress, including legislative, oversight, and nominations matters.

2007-2008

In July 2007 I became domestic and legal policy advisor for the campaign of Republican presidential candidate Fred Thompson, whom I had served in the Senate. I helped to develop the domestic and legal policy agendas

for the campaign. Despite the fact that a number of media sources and commentators were complimentary of the campaign's policy proposals, Senator Thompson withdrew from the campaign in January 2008, although I stayed on with the campaign through February to assist in closing down its operations.

2008-2013

When Senator Thompson's presidential campaign ended, I was hired as minority deputy chief of staff and policy director for the House Judiciary Committee. In 2012 I was promoted to staff director and chief counsel. I was responsible for overseeing all policy and oversight initiatives and for managing Republican staff. I also worked closely with committee members, House Republican leadership, and the committee's Democratic staff to ensure the functioning of the committee.

2013-present

When Chairman Lamar Smith was forced by operation of term limits to give up the chairmanship of the House Judiciary Committee, I left government and in April 2013 joined Covington & Burling LLP, a Washington-based global law firm, as of counsel. I represent corporations, coalitions, non-profit institutions, and individuals in providing strategic and tactical advice and in lobbying Congress and executive agencies on public policy matters. I have also represented entities on legal matters before federal agencies. In addition, I have pursued an active *pro bono* practice on behalf of individuals and entities that cannot otherwise afford legal representation.

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

Over the course of my legal career, I have considered the American people, the elected officials, and the institutions I have served to have been my clients. Due to my extensive public service, there is practically no substantive federal legal issue with which I am not familiar due to the breadth of legal policy matters that come before Congress and the Justice Department. Since joining Covington, my clients have ranged from trade associations, corporations, and coalitions of corporations to individuals with specific policy interests. I have also represented a number of clients on a *pro bono* basis.

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

My litigation experience was exclusively in federal courts, primarily in district courts. When I served in the Civil Division of the Justice Department, 1986-

1990, I appeared in federal courts throughout the country with frequency. As part of a large team of lawyers, I tried one case to judgment. I argued many times in federal district courts and appeared in one matter in the Tax Court.

When I joined the staff of the Senate, I stopped appearing in court, although I did assist in the preparation of the briefs in a Supreme Court case argued by Senator Specter. When I returned to the Justice Department, I served in policy roles and did not appear in court. As a House staff member, I signed two *amicus* briefs, one in a criminal case in the Eleventh Circuit and one in a civil congressional-subpoena-enforcement case in the district court in Washington.

Since joining Covington & Burling LLP, I have filed a brief in the Board of Veterans Appeals and assisted in preparing an *amicus* brief to the Supreme Court on behalf of Members of Congress. I also filed a brief before an administrative component of the Justice Department in a regulatory matter.

- i. Indicate the percentage of your practice in:
 - 1. federal courts: 100%
 - 2. state courts of record: 0%
 - 3. other courts: 0%
 - 4. administrative agencies: 0%

- ii. Indicate the percentage of your practice in:
 - 1. civil proceedings: 99%
 - 2. criminal proceedings: 1%

- 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 handled approximately 20 cases that were resolved through final judgment and not settled. All but one of these I handled as sole counsel. Of these dozen cases, only one went to trial, and in that case I was part of a team of Justice Department lawyers, with each of us responsible for a particular element of the defense of the case.

- i. What percentage of these trials were:
 - 1. jury: 0%
 - 2. non-jury: 100%

- 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.

Zubik v. Burwell, 136 S. Ct. 1557 (2016), Brief of Amici Curiae 207 Members of Congress in Support of Petitioners, including eight current members of the Senate Judiciary Committee, 2016 WL 155628 (Jan. 11, 2016).

Dalton v. Specter, 511 U.S. 462 (1994), Respondents' Brief in Opposition to Petition for Writ of Certiorari, 1993 WL 13010963 (Sept. 23, 1993) and Merits Brief for Respondents, 1994 WL 82044 (Jan. 5, 1994).

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

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

1) *National Association of Radiation Survivors v. Derwinski*, No. C-83-1861, 782 F. Supp. 1392 (N.D. Cal.), *rev'd*, 994 F.2d 583 (9th Cir. 1992), *cert. denied*, 510 U.S. 1023 (1993).

I was involved in this case from December 1986 through December 1987. Trial was held in September, October and November 1987 before Judge Marilyn Hall Patel, United States District Court, Northern District of California. Discovery disputes were handled by then-Magistrate Judge (and now District Judge) Claudia Wilken.

The case was a constitutional challenge to the then-existing cap on the fees lawyers could charge to represent veterans in the then-Veterans Administration (VA), now the Department of Veterans Affairs, benefits process. At an earlier stage of the case, the district court had ruled the statute was facially unconstitutional, but the Supreme Court reversed. A concurring opinion by Justice O'Connor left open the possibility of an as-applied challenge to the statute, and the plaintiffs, a class representing survivors of atmospheric nuclear testing from 1946 until 1962, pursued such a claim. The case presented significant issues regarding the quality of the VA's benefits processing and the need for independent judicial review of the VA's benefits decisions. The case helped produce significant legislative reform for the VA, the repeal of the fee cap, and the creation of the Court of Veterans Appeals (with appellate review in the Court of Appeals for the Federal Circuit).

As a junior Justice Department lawyer, I was initially assigned the task of overseeing the

discovery from the Departments of Defense and Energy. I managed the production of more than 500,000 pages of documents. I also asserted available privilege claims and prepared relevant motions, on the large majority of which the government prevailed.

As the case shifted to trial preparation, I was assigned the responsibility to defend the government's radiation-dose reconstructions for class members. This portion of the case was critical to the defense but quite challenging, requiring that I become familiar with aspects of nuclear physics and the effects of ionizing radiation. I identified, interviewed, and selected the government's expert witnesses, defended their depositions, and took the deposition of the plaintiffs' expert witnesses. At trial, I handled the direct and cross-examination of these witnesses. Following the trial, I drafted the relevant portions of the government's 300-page proposed findings of fact and conclusions of law.

Five years after the completion of the trial (much of the delay was attributable to the legislative proceedings that followed the trial and resulted in the prospective repeal of the fee cap), the district court ruled in favor of the plaintiff class and held that the fee limit violated the due process rights of the class members. On appeal, the Ninth Circuit reversed and upheld the fee cap on the basis of the factual record the government had developed at the trial. The Supreme Court declined to hear the case.

Co-counsel

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Opposing counsel

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2) *Wilson v. Commissioner of Internal Revenue*, No. 20369-83 (U.S. Tax Court).

The petitioner was a former CIA agent convicted of smuggling firearms to Libya and also of plotting to kill the Assistant U.S. Attorney who prosecuted him for the first offense. Upon his convictions, the IRS filed a deficiency assessment and sought to collect back taxes and penalties in excess of \$20 million. The petitioner challenged the assessment in the Tax Court and filed for bankruptcy as well. In the course of the Tax Court proceeding, he sought discovery from several intelligence agencies of materials that had been denied to him during the course of his criminal trials, and, without consulting those agencies, the IRS consented to this third-party discovery.

The matter was of great importance to the intelligence agencies from which the petitioner sought the discovery and because the denial of the discovery in the criminal cases had been upheld by the courts, preserving the integrity of the earlier judicial proceedings was also at stake.

At the request of the intelligence agencies, the Federal Programs Branch took over responsibility for the matter, and I was assigned to handle the case as sole counsel from 1988 to 1989. I managed the agency review of all responsive documents and ensured that each agency's declassification procedures were processing the documents that could be declassified in a timely manner. I oversaw the production of the declassified documents. Upon the completion of the declassification process, I defended the classification decisions with respect to documents that were not produced and proposed a procedure for the Tax Court to review those documents. The Tax Court upheld almost all of the decisions. The case was heard by Senior Judge Theodore Tannenwald, who is deceased.

I also helped resolve a dispute between the Justice Department and Switzerland over bank records that the Swiss had produced for the criminal trial but which, under Swiss law, could not be used for tax-enforcement purposes. The documents had been produced inadvertently to the IRS by the Justice Department prior to my involvement in the matter. I negotiated a successful resolution of the dispute.

Following the resolution of the initial subpoena, the petitioner sought additional discovery from a wider array of federal agencies. At that point, I developed a strategy that led to the settlement of the bankruptcy case and resolved all of the tax claims against the petitioner, mooted the Tax Court case without any further discovery from the intelligence community.

Counsel for the IRS

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Counsel for the trustee in bankruptcy

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3) *United States Information Agency v. Krc*, No. 87-1740 (D.D.C.), *aff'd in part and remanded in part*, 905 F.2d 389 (D.C. Cir. 1990), *aff'd after remand*, 989 F.2d 1211 (D.C. Cir. 1993).

The case was one for which I handled only a small portion in the district court. The defendant was an employee of the U.S. Information Agency and a member of the foreign service. While posted in Yugoslavia (the events occurring before the end of the Cold War), he had an intimate relationship with a Yugoslav national. USIA terminated the defendant's appointment to the foreign service and posted him to a civil service position in the United States. Mr. Krc sought review of the decision before the Foreign Service Grievance Board, which overturned the agency's decision, and USIA sought judicial review of that decision. The defendant claimed that the agency's sanction against him violated the equal protection clause because the Yugoslav national with whom he had been intimate was also a male, and that the agency had discriminated against him on the basis of his homosexuality. The case had been fully briefed by another lawyer when the district judge sent to the parties a set of questions on which he requested supplemental briefing due to the Supreme Court's then-recent decision in *Department of the Navy v. Egan*, 484 U.S.518 (1988). Because the lawyer previously involved in the case was at that time tied up in another matter, the case was reassigned to me. I filed a brief in response to the district court's questions arguing that pursuant to *Egan* the agency's

security-related decision was not reviewable by either the Foreign Service Grievance Board or the federal courts. The district court ruled in the government's favor and the court of appeals affirmed in large measure but remanded for further development of Mr. Krc's equal protection claims. See *United States Information Agency v. Krc*, 905 F.2d 389 (D.C. Cir. 1990). The case was important at the time as one of the first cases to interpret the Supreme Court's holding in *Egan*. On remand, the district court again ruled against Mr. Krc, but by that time I had left the Justice Department and was not involved in the subsequent proceedings. The district court's decision on remand was again affirmed by the court of appeals. See *United States Information Agency v. Krc*, 989 F.2d 389 (D.C. Cir. 1993).

I handled the last phase of the briefing in the initial district court litigation as sole counsel; there was no oral argument that I recall. I was not involved in the earlier stages of the case, in the district court proceedings on remand, or in the appellate portions of the matter. My involvement with the case occurred in 1988-1989. The case was heard in the district court by Judge Charles Richey, now deceased.

Opposing counsel

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4) *Uniformed Division Officers Association v. Brady*, No. 88-3377 (D.D.C.); *Hartness v. Bush*, 712 F. Supp. 986 (D.D.C. 1989), *rev'd in part*, 919 F.2d 170 (D.C. Cir. 1990); & *Quadros v. Reagan*, No. 88-1764 (N.D. Cal.).

In 1988, I was assigned to a team of Justice Department lawyers organized to defend the implementation of mandatory random, suspicion-less (and warrantless) drug testing through urinalysis of certain classes of federal employees. These cases were important in establishing the parameters of Fourth Amendment protections for public employees and for ultimately approving random drug-testing for employees with national-security and public-safety responsibilities. In each of these cases, I handled the briefing and argued the case as sole counsel.

The *Brady* case, brought by the organized labor representative of the officers of the Uniformed Division of the Secret Service, was only the second case nationally to result in a judgment favorable to the government in upholding the random drug-testing and protocol. The case was heard by Judge Thomas A. Flannery, who is deceased.

The *Hartness* case was unusually high-profile because the plaintiffs were career employees of the Executive Office of the President who were to be subject to random drug-testing. The plaintiffs sought a preliminary injunction, which the district court largely granted. Shortly after the injunction was entered, the D.C. Circuit decided two

relevant cases, and I thereafter moved to vacate the preliminary injunction. The district court granted the motion in part. The following year, after I had left the Justice Department, the court of appeals reversed the remaining aspects of the injunction, and the case was ultimately resolved on terms largely favorable to the government. The case was heard in the district court by Judge Louis B. Oberdorfer, now deceased.

The *Quadros* case was one of the earliest challenges to the random drug-testing for federal civilian employees. The case was brought by employees of the National Weather Service in a district court in the Ninth Circuit, where the precedent was favorable to the plaintiffs. The case was focused largely on the aviation-safety aspects of the job functions of the Weather Service employees subject to the testing. The district court ruled for the plaintiffs and preliminarily enjoined the random, suspicion-less portion of the testing. I thereafter negotiated a final resolution of the case and settled the plaintiffs' petition for attorney's fees on terms favorable to the government. The case was heard by Judge Robert Schnacke, who is deceased.

Opposing counsel in *Brady*

George B. Driesen (retired)

Opposing counsel in *Hartness*

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Opposing counsel in *Quadros*

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5) *Nuclear Regulatory Commission* litigation (N.D.N.Y.).

I am unable to locate the case name or docket number for this matter. Unlike the previous cases, this case did not involve random drug-testing of federal employees. Instead, it presented a challenge by a union representing private-sector employees who worked in nuclear power plants to the regulations of the Nuclear Regulatory Commission requiring such employees to be subject to random, suspicion-less drug-testing. The case presented a uniquely grave risk of harm. The case was filed during the holiday season, and the complaint was accompanied by a motion for a temporary restraining order and a motion for a preliminary injunction. I opposed both motions and also moved to dismiss on jurisdictional grounds, arguing that the case, filed in the United States District Court

for the Northern District of New York, should have been filed in the Court of Appeals and was also untimely.

The case was argued to the district court on the motion for a temporary restraining order in the first week of January 1990 before Judge Howard Munson, who is deceased. The court denied the temporary restraining order. At the end of that week, I left the Justice Department, but it was reported to me that shortly thereafter Judge Con G. Cholakis, the judge to whom the case had been assigned (also now deceased), dismissed the matter on the briefs based on the arguments I had raised regarding jurisdiction.

Opposing counsel

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6) *United States v. Anderson Clayton, Inc.*, 652 F. Supp. 340 (E.D. Cal. 1987).

This case was important not only because it was the first matter I ever litigated to a conclusion, but also because it was the first case securing judicial approval for a subpoena issued by the National Institute for Occupational Safety and Health (NIOSH). The agency conducts research into occupational safety and health issues, working closely with the Occupational Safety and Health Administration of the Department of Labor. NIOSH had issued a subpoena to the defendant for its employee health records. The defendant refused to comply, arguing that NIOSH lacked the statutory authority to issue and enforce a subpoena. A ruling against the government would have undermined NIOSH's ability to perform the work assigned to it by Congress and severely weakened the government's occupational safety and health program. Although previous employers had questioned NIOSH's subpoena authority, this case was the first to produce a judicial ruling on the question. The matter received high-level attention at both NIOSH and the Labor Department. The district court ruled in favor of NIOSH and enforced the subpoena. I was subsequently told that, at least as of three years after the case was resolved, NIOSH had not had to go to court again to enforce one of its subpoenas.

I handled the matter as sole counsel from 1986-1987. I prepared the briefs and argued the motion to enforce the subpoena. I had also prepared witnesses in case the district court decided it needed to hear evidence, but the case was resolved on oral argument without the need to introduce testimony at the hearing. The case was heard by Judge Edward Dean Price, who is deceased.

Opposing counsel

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7) *Phillips v. Lyng*, No. CIV-86-1028C (W.D.N.Y. 1987), *aff'd*, 847 F.2d 835 (2d Cir. 1988) (table).

From 1987 through 1989, I was the lead government attorney in a series of cases challenging the Department of Agriculture's interpretation of the statutory implementation date of the provisions of the Food Security Act of 1985. I handled six cases (several of which follow) in the district courts; the U.S. Attorney for the Southern District of New York handled a seventh case, and the Department of Agriculture's Office of the General Counsel handled an eighth case. All eight cases presented the same legal question. The issue was important because the question of the effective date of statutorily mandated changes to the then-food stamp program (now called the Supplemental Nutrition Assistance Program), one of the federal government's most costly social-welfare programs, had not been resolved prior to this series of cases.

I was sole counsel in the *Lyng* case. I handled the briefing and argued the case in the district court in February 1988. The district court ruled for the government and the Second Circuit affirmed in an unpublished decision. The district judge was John T. Curtin, who is deceased. I did not handle the appeal.

I do not have information on opposing counsel.

8) *Lynch v. Min*, 684 F. Supp. 498 (M.D. Tenn. 1988), *rev'd*, 872 F.2d 718 (6th Cir. 1989).

I was again sole counsel and prepared all the briefing. The district court ruled for the government by published opinion without oral argument. The judge was Chief Judge Thomas Wiseman, who is deceased. On appeal, the Sixth Circuit reversed and ruled for the plaintiffs. I was not involved in the appeal.

Opposing counsel

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615-244-6610

My records do not include the name of the counsel for the co-defendant state agency.

9) *Brooks v. Min*, No. 86-2577 (W.D. Tenn. 1988).

This case presented the same issue as *Lynch* but produced a different result. The district court held for the plaintiffs in an unpublished opinion. I was again sole counsel and

handled all the briefing. There was no oral argument on the cross-motions for summary judgment. The Sixth Circuit ruled the same way as the district court in this case when it overturned the decision in *Lynch*. The judge in the case was Julia Smith Gibbon, now a judge on the Sixth Circuit.

Counsel for the plaintiffs

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My records do not disclose the name of the counsel for the co-defendant state agency.

10) *Murty v. Norman*, No. C-86-172 (N.D. Iowa) & *Doss v. Norman*, No. C-86-52 (N.D. Iowa).

These two cases were briefed but before any decision was obtained, the appeal from the initial Minnesota case was taken to the Eighth Circuit, and as a result these cases were both stayed, following briefing, pending the Eighth Circuit's decision. When the Eighth Circuit's decision compelled judgments in both these cases for the plaintiffs, I promptly resolved both cases. The district judge was David Hansen, who was subsequently elevated to the Eighth Circuit; Judge Hansen never heard argument and never had to rule in the case.

Counsel for plaintiffs

Sharon McMulin (current contact information unavailable)

Counsel for co-defendant state agency

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18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Litigation matters

The following are significant litigation matters that did not proceed to judgment.

a) I played a role in resolving a precedent-setting matter within the executive branch between a federal agency and the Justice Department as to the authority of the agency to file litigation in federal court without Justice Department authorization. While a criminal investigation was open and evidence was being presented to a grand jury, a federal agency involved in the underlying dispute sought Justice Department approval to seek judicial enforcement of a subpoena it had issued to one of the parties as part of its civil inquiry, despite the opposition of the United States Attorney handling the grand jury. The dispute was ultimately resolved by the Deputy Attorney General in accordance with the recommendation I had made and on the basis of the argument I had developed.

b) I helped resolve a dispute between two federal agencies. The disagreement had resulted in the filing of a class action suit challenging the actions of one of the agencies. I convened lawyers from each agency and, working with them and their program staff, helped to fashion a position that was acceptable to both agencies. Within weeks, both agencies had started to implement the revised policy. Shortly thereafter, the plaintiffs voluntarily dismissed the suit.

c) I handled one of the first challenges to the use of the then-relatively new law authorizing agencies to offset debts administratively. I developed a litigation strategy that resulted in the debtor dropping its challenge to the administrative offset.

Legislation and policy matters

During 19 years on Capitol Hill and four as a political appointee at the Justice Department, I was involved in a wide range of legal policy issues. During that period, I played a role in hundreds of bills that were enacted into law involving a broad scope of substantive federal legal issues. I was also involved in hundreds of judicial and executive branch nominations and a number of high-profile oversight and other investigatory matters. During the course of my public sector career, there is almost no issue of substantive federal law that I did not touch in some manner. Of greatest relevance to the position to which I have been nominated was my work on what was then the Governmental Affairs Committee of the Senate (since 2003 the Homeland Security and Governmental Affairs Committee). The Committee's jurisdiction over federal civilian procurement and personnel laws is directly relevant to work of the Court of Federal Claims. In addition, during my work for members of the Senate Judiciary Committee and on the House Judiciary Committee, I was involved in legislation and oversight hearings involving government takings of private property. I was also active in reviewing various proposed amendments to the Federal Rules of Procedure and Evidence submitted to Congress by the Supreme Court before such amendments take effect.

Since leaving Capitol Hill and joining Covington & Burling LLP, I have represented corporate clients, trade associations, non-profits, and individuals on a variety of public

policy matters, primarily in the jurisdiction of the Judiciary Committees of each chamber. I represented the 568 Presidents' Group and the American Council on Education in the renewal of an expiring exemption from the antitrust laws for certain colleges that employ-need-blind admissions. I also represented a coalition of companies that successfully advocated for the enactment of the Defend Trade Secrets Act, to provide a federal civil cause of action for the misappropriation of trade secrets. A complete list of the clients for whom I was registered to lobby follows:

American Council on Education
American Council on Education on behalf of the 568 Presidents' Group
American Watch Association
Alkermes, Inc.
Anheuser-Busch, Inc.
Avantel S.A.
Bacardi North America, Inc.
Back9Network Inc.
Copart, Inc.
Cultural Care, Inc., d/b/a Cultural Care Au Pair
Embassy of New Zealand
FAIR Coalition (informal coalition)
Georgetown University
Donald E. Graham
Great Lakes Dredge & Dock Co.
Katrina Hansing
Illumina, Inc.
JW Aluminum
LCR Franchise Finance
Merck & Co., Inc.
Microsoft Corp.
Monster Energy Co.
Motion Picture Association of America
National Association of Broadcasters
National Association of Independent Colleges and Universities
Northrop Grumman
NT Concepts, Inc.
Pharmaceutical Research & Manufacturers of America, Inc.
Protect Trade Secrets Coalition (informal coalition)
Qualcomm, Inc.
Samsung Electronics Co. Ltd.
SAP America, Inc.
Tennis Channel

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.

I have not taught.

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.

I currently receive an annuity from the United States Government, having retired from federal service in 2013. I also have a Thrift Savings Account from my prior federal service. From Covington & Burling LLP, I have a 401k plan, independently managed by Charles Schwab. I do not expect to derive any further income from Covington & Burling LLP once I leave the firm.

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 currently have no such plans.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

If confirmed, I will recuse myself in any matter in which I have played a role. For a reasonable period of time, I anticipate recusing in all cases in which my current firm, Covington & Burling LLP, represents a party. My wife works for a federal agency, the Overseas Private Investment Corporation. Although as a federal

employee she would have no personal stake in litigation involving her agency, I would recuse myself in the event of a case involving her agency. Finally, I will evaluate any other real or potential conflict or relationship that could give rise to an actual conflict or the appearance of a conflict on a case-by-case basis and determine appropriate action with the input of the parties and their counsel and would recuse myself when appropriate.

- 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, I would carefully review and resolve any potential conflicts by adhering to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances, including those governing the U.S. Courts generally and the Court of Federal Claims in particular. I would promptly review the parties, their affiliates, their counsel, and the issues presented in any matter assigned to me in order to make an informed decision at the commencement of any case regarding the need for recusal.

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.

For most of my career, I was in public service and considered all my activities to be *pro bono publico*. Since joining the private sector, I have endeavored to put my experience to use on behalf of clients who are unable to afford legal services. On purely legal matters, I have successfully represented a veteran in an appeal before the Board of Veterans Appeals and another veteran in developing the factual record to support his claim before the VA regional office, resulting in an award of benefits. I also assisted in drafting a brief *amicus curiae* submitted on behalf of 207 Members of Congress in support of the petitions in *Zubik v. Burwell*, 578 U.S. ____ (2016).

In addition, I have sought to use my knowledge of public policy and legislative issues and process to assist clients. I have helped successfully represent an organization serving victims of trafficking in persons to secure an amendment to an authorizing statute. I have advised lawyers at the firm with reports on prison conditions and on policing policies in the District of Columbia on behalf of the Washington Lawyers Committee for Civil Rights Under Law. I also assisted the National Law Center on Homelessness and Poverty in securing revisions to the McKinney-Vento Act. I also advise the National Legal Aid and Defenders Association on its efforts to secure appropriations for the Legal Services Corporation.

During my first two years at Covington & Burling LLP, I devoted in excess of 20 hours to *pro bono* work; during the past three years, I have devoted in excess of 50 hours

each year to *pro bono* activities and have received recognition from the firm for my *pro bono* activities.

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 February 2017 I expressed interest to White House staff in being considered for a judgeship, including on the Court of Federal Claims. I interviewed for a Court of Federal Claims judgeship on February 17, 2017 with officials from the White House Counsel's Office. On January 3, 2018, I received a call from White House Counsel's Office informing me that the President intended to move forward with my nomination. Since January 4, 2018 I have been in contact with officials from the White House Counsel's Office and the Department of Justice Office of Legal Policy. On May 7, 2018, 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