

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

Clifford Darnell Johnson

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

United States Attorney, Northern District of Indiana

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: Not applicable (retired)

Residence: South Bend, Indiana

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

1954; Gary, Indiana

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.

Valparaiso University School of Law, 1977-1980
J.D. – May 1980

Valparaiso University, 1972-1976
B.A. - May 1976

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.

January 1986 – retirement (August 2020)
U.S. Department of Justice
United States Attorney's Office

Northern District of Indiana
204 S. Main Street
South Bend, IN 46601

Positions held in United States Attorney Office:

First Assistant United States Attorney	October 2017 – August 2020
Acting United States Attorney	March 2017 – October 2017
First Assistant United States Attorney	June 2010 – March 2017
Chief, Civil Division	October 1997 – June 2010
Civil AUSA	January 1986 – October 1997
Paid	

August 1980 – December 1985
Trial Attorney
U. S. Department of Justice
Main Justice
Civil Rights Division, Employment Litigation Section
10th & Pennsylvania Ave, N.W.
Washington, D.C. 20530
Paid

January 1979 – May 1980
Law Clerk
Law Office of Clorius L. Lay
1164 Pyramid Drive
Gary, IN 46407
Paid

June 1976 – August 1977
Commissioned Salesperson
Montgomery Ward (company no longer in existence)
The Village Shopping Center
3596 Village Court
Gary, Indiana 46408
Paid

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

I have not served in the military. I have registered for the selective service.

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

Special Achievement Award for Sustained Superior Performance of Duty, U.S. Department of Justice, December 1998, December 1995, and September 1991

Special Achievement Award for Meritorious Acts or Service, September 1994

Certificate of Commendation, Civil Rights Division, U.S. Department of Justice, January 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.

St. Joseph County Bar Association

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.

State of Indiana, October 1980

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.

Court of Appeals for the Seventh Circuit January 1986

Northern District of Indiana, January 1986

I was admitted to practice in federal courts due to representation of United States of America, its officers and officials (See, e.g., *N.D. Ind. L.R. 83-5(a)(2)(B).*)

Technically this authority/admission ended upon my retirement in August 2020.

All state courts in Indiana, October 1980

Except as noted above, there have been no lapses in membership.

11. **Memberships:**

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

Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

None

- b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Not applicable

12. Published Writings and Public Statements:

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

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 done my best to identify transcripts or recordings of all speeches or talks delivered, including through a review of my personal files and searches of publicly available electronic databases. I frequently speak without notes or speak from a handwritten outline. I did not retain the majority of the handwritten outlines and have attached all that I could find. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

City of South Bend Martin Luther King Jr. Event
South Bend Century Center
120 Dr. Martin Luther King Blvd, South Bend, IN 46601
January 2015

The City of South Bend, Indiana has implemented a group violence reduction strategy. This initiative began in approximately May of 2014. [South Bend Group Violence Intervention \(southbendin.gov\)](https://southbendin.gov/violence-intervention). After the implementation of this strategy, there was a public meeting on this strategy during which there was a panel discussion of the strategy. I was the U.S. Attorney Office's representative on the panel. I do not have any notes or an outline from this panel discussion.

Call in Meetings for South Bend Group Violence Intervention
Charles Martin Youth Center
802 Lincoln Way West, South Bend, IN 46616
Dates of the meetings I participated in: 5/15/2014; 8/28/2014; 12/16/2014; 4/16/2015; 11/10/2015; 4/19/2016; 10/26/2016; 4/19/2017; 10/12/2017; 5/2/2018; 9/27/2018; 5/9/2019 and 10/30/2019
A component of the group violence reduction strategy is having "call-in" meetings to explain how the strategy will be implemented against any group that continued to engage in gun violence. On average there were about 25 group members in attendance. Also attending the call-in are invited members of the public (on average about 60). I spoke at all but one of these call-in meetings on behalf of the U.S. Attorney's Office. Attached are several outlines of my talking points.

Call in Meeting for Gary For Life
Indiana University Northwest
3400 Broadway, Gary, IN 46408
Between May 2014 and March 2017

A component of the group violence reduction strategy is having "call-in" meetings to explain how the strategy will be implemented against any group that continued to engage in gun violence. I spoke on behalf of the U.S. Attorney's Office at one Gary For Life call-in meeting. I do not recall the specific date of this meeting. Copy not 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.

I have done my best to identify all interviews given, including through a review of my personal files, and searches of publicly available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find, or remember. I have located the following:

March 22, 2017

JED in the Region, WJOB 1230 AM

I was interviewed by blogger Jim Dedelow with the District's Criminal Chief Gary Bell when I was the Acting U.S. Attorney. I spoke without notes and there was no press coverage or transcript of the interview of which I am aware.

September 10, 2015

JED in the Region, WJOB 1230 AM

This was an interview with blogger Jim Dedelow. Former U.S. Attorney David Capp was the primary interviewee; however, I do recall being asked several questions, mostly about my background. I spoke without notes and there was no press coverage or transcript of the interview of which I am aware.

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

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

I have not run for public office.

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

I am a registered Democrat; I have not held a position or played a formal role in a political campaign.

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

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

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

I have not clerked for a judge.

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

I have not practiced alone.

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

August 1980 – December 1985

Trial Attorney

U. S. Department of Justice

Main Justice

Civil Rights Division, Employment Litigation Section

10th & Pennsylvania Ave, N.W.

Washington, D.C. 20530

January 1986 to retirement (August 2020)

U.S. Department of Justice

United States Attorney's Office

Northern District of Indiana

204 S. Main Street

South Bend, IN 46601

Positions held in United States Attorney Office

First Assistant United States Attorney October 2017 – August 2020

Acting United States Attorney March 2017 – October 2017

First Assistant United States Attorney June 2010 – March 2017

Chief, Civil Division October 1997 – June 2010

Civil AUSA January 1986 – October 1997

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

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

My entire professional career has been as a Department of Justice attorney

representing the United States of America, its interests, agencies, officials and employees.

From August of 1980 to December 1985, I was a trial attorney in the Civil Rights Division, first in its Indian Rights Section (approximately the first year) and then in the Employment Litigation Section. In both of these sections, the focus of my cases was civil employment litigation claims/suits brought against non-federal governmental units.

In January of 1980, I became an Assistant U.S. Attorney in the Civil Division of the U.S. Attorney's Office, Northern District of Indiana's South Bend office. I was a line Civil AUSA in the South Bend divisional office from January 1986 to October 1997. As a Civil AUSA, I represented the interests of the United States in a myriad of civil litigation, including, but not limited to, personal injury defense, medical malpractice defense, employment litigation defense, bankruptcy, state and federal foreclosure litigation, and defending federal officials in constitutional torts cases.

From October 1997 to June 2010, in addition to handling most of the civil cases (state and federal) filed in the South Bend Division, I served as the Chief of the Civil Division overseeing the work of six civil Assistant United States Attorneys and seven support staff members.

In June 2010, my direct litigation responsibilities were greatly reduced when I became the Office's First Assistant U.S. Attorney (FAUSA). As FAUSA I was primarily responsible for the day to day operation of the Office. I served as the FAUSA until my retirement from the Office in August 2020. For a brief period (from March 2017 to October 2017) I served as the Acting U.S. Attorney under the Vacancies Reform Act.

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

As an attorney with the U.S. Department of Justice, particularly since joining the U.S. Attorney's Office in January 1986, my clients are the United States of America, federal agencies, federal officials and officers, federal employees (official capacity and, when authorized, personal capacity in constitutional tort cases) and occasionally private citizens who the Department of Justice has statutory authority to represent (such as military personnel under USERRA).

- 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.

From June 2010 to August 2020 (the last ten years of my employment with the U.S. Attorney's office), I held senior management positions and during this period ~~and~~ I did not handle litigation. The "practice percentage" estimations reflect my litigation responsibilities earlier in my career (i.e. from August 1980 to June 2010).

- i. Indicate the percentage of your practice in:
 1. federal courts; 85%
 2. state courts of record; 15%
 3. other courts; 0%
 4. administrative agencies 0%
- ii. Indicate the percentage of your practice in:
 1. civil proceedings: 95%
 2. criminal proceedings: 5%
- 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 estimate that I have tried approximately 10 to 15 cases through trial before a finder of fact (either a judge or a jury); two trials were with co-counsel.

- i. What percentage of these trials were:
 1. Jury: 5%
 2. non-jury: 95%
- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

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

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

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and

- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United States v. James Fozo and Miemie Thomas*, 904 F.2d 1166 (7th Cir. 1990).

United States District Court for the Northern District of Indiana
The Honorable Robert Miller
1989-1990

I handled this federal criminal case on behalf of the United States with personnel from the Criminal Section of the Civil Rights Division, Department of Justice. Under the Department of Justice's delegation of authority between the Civil Rights Division and the U.S. Attorney's Offices, the U.S. Attorney's office was only authorized to commence a grand jury investigation under certain federal civil rights crimes, but charging decision had to be approved by the Criminal Section of the Civil Rights Division.

A Black family had purchased a home in an all-White neighborhood in South Bend. The home was vandalized with racial graffiti. The Black family rescinded the purchase and did not move into the home. A grand jury investigation was instituted to determine who had damaged the home. During the course of this investigation, several neighbors testified falsely before the grand jury that there had not been conversations about damaging the home as a means to deter the purchase by the Black family.

I started grand jury investigation, presented witnesses before the grand jury and assisted in the preparation and presentation of the indictment to the grand jury. The defendants were indicted for making false statements before the grand jury, conspiracy to make false statement before the grand jury and for a conspiracy to deprive citizens of civil rights.

At the trial, I handled the direct examination of several of government witnesses, the cross examination of defendant James Fozo and the closing argument.

During the course of the trial, I had observed defendant Fozo constantly reviewing sheets of paper and putting them in his coat pocket. After his direct examination, I made a motion under Rule 612 of the Federal Rule of Evidence to obtain all documents that he had used to prepare for his testimony including those in his coat pocket. These papers, which were subsequently entered into evidence, were "answers to the allegations set forth in the indictment. "The response to the allegations or 'script' had been written by Thomas for Fozo's use during trial testimony. The government argued the 'script' was designed to produce answers by Fozo consistent with those of Thomas, and thus the exhibit demonstrated

consciousness of guilt of both defendants.” *United States v. Fozo*, 904 F.2d at 1170.

Defendant Fozo was convicted of making false statements to a federal grand jury and Thomas was convicted of two counts of making false statements to the grand jury and a conspiracy to make false statements to the grand jury. The Court of Appeals affirmed the convictions and sentences of 18 months imprisonment for Thomas and 14 months imprisonment for Fozo.

Co-Counsel (trial):

Karla Dobinski (current address unknown)

Co-Counsel (Appeal only)

Andrew B. Baker, Jr.

7231 Rooses Drive

Indianapolis, IN 46217

Opposing Counsel:

Victor McFadden (deceased)

2. *Carter v. United States*, 768 F. Supp. 670 (N. D. Ind. 1991), *affirmed*, 982 F.2d 1141 (7th Cir. 1992).

United States District Court for the Northern District of Indiana

The Honorable Robert Miller

1989-1992

I handled district court litigation, supported appeal and handled the case on remand.

Plaintiffs, husband and wife, filed suit against the United States under the Federal Tort Claims Act seeking damages to compensate for alleged negligent medical care that the husband had received at Veterans Administration (VA) hospital. In its answer to the complaint, I asserted, as an affirmative defense, that the United States was entitled to the protection of Indiana’s medical malpractice cap. This affirmative defense was predicated upon the limited waiver of the United States’ sovereign immunity contained in “28 U.S.C. 2674 (i.e. that [t] United States shall be liable . . . to tort claims, in the same manner and to the same extent as a private individual under like circumstances . . .) Plaintiff sought summary judgment on this affirmative defense arguing that the United States had not complied with any of the state law provisions that Indiana doctors would have to comply with in order to be protected by the state statutory medical malpractice cap. The district court, determined that the “like circumstances” language meant the United States had to be placed in the “most reasonable analogy” of a private person/doctor, and that being a doctor who had done what would have been necessary to be protected

by the medical malpractice cap. While this decision was of first impression in the Seventh Circuit Court of Appeals, it was in line with federal court decisions in other circuits. This decision was affirmed by the Seventh Circuit.

Upon remand to the district court, the primary issue became how much, if any, of the possible recovery (limited to \$500,000.00 by the application of Indiana's medical malpractice cap) the plaintiffs could recover. After the surgery that plaintiffs' claimed was negligently performed, the VA has increased the amount of plaintiffs' monthly benefits. Based upon Indiana's collateral source rule, I filled a motion for summary judgment asserting that, even if plaintiffs were to prevail on their claim of medical malpractice, the court could not grant them a monetary judgment because the law required an offset of enhanced VA benefits and the present day value of those enhanced benefits exceeded Indiana's \$500,000.00 damages cap. This motion for summary judgment was granted and judgment was entered for the United States.

Opposing Counsel:
Barry D. Rooth,
8750 Broadway, Suite A
Merrillville, IN 46410
(219) 212-2462

3. *Bowyer v. U.S. Department of Air Force*, 875 F.2d 632 (7th Cir. 1989).

United States District Court for the Northern District of Indiana
The Honorable Robert Miller
1987-1989

I handled both the District court litigation and the appeal to the Seventh Circuit. To my knowledge this was one of the first cases in the Northern District of Indiana to address the Privacy Act's statute of limitations question. In sum, the court ruled that the plaintiff had filed his case beyond the Privacy Act's two year statute of limitations.

Opposing Counsel:
Mark T. Dykstra (current address unknown)
During parts of this litigation, plaintiff was proceeding *pro se*.

4. *Horn Farms v. Johanns* (Secretary of Agriculture), 319 F. Supp. 2d 902 (N.D. IN 2004), *aff'd*, 397 F.3d 472 (7th Cir. 2005)

United States District Court for the Northern District of Indiana
The Honorable Allen Sharp (deceased)
2002-2005

The Department of Agriculture had terminated certain farm subsidy payments to Horn Farms because it had drained wetlands and converted that acreage to

agricultural purposes in violation of federal law. Horn Farms filed suit to get those payments restored arguing, among other things, that the agency had misinterpreted the federal statute and that Congress' conditioning of these payments on compliance with wetlands preservation requirements would violate the Spending Clause of the Constitution. Although the District court ruled in plaintiff's favor, the Seventh Circuit found that the district judge had erroneously reached a constitutional issue when only a statutory interpretation resolution was needed (i.e. the Department's interpretation of the "Swampbuster provision" was correct). I represented the Secretary at the district court level and the appeal was handled by the identified Civil Division attorney.

Co-Counsel (On Appeal only):

John Koppel
Civil Division
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, D.C.
(202) 514-2495

Opposing Counsel:

Brandon L. Jensen
Budd-Falen law firm
300 East 18th Street
Cheyenne, WY
(307) 632-5105

5. *Stephen S. Marozsan v. United States et. al.*, 635 F. Supp. 578 (N.D. IN 1986), 852 F.2nd 1469 (7th Cir, 1988 ("Marozsan I")) and 849 F. Supp. 617 (N.D. IN 1994) (7th Cir. 1996) (Marozsan II).

United States District Court for the Northern District of Indiana
The Honorable Allen Sharp (deceased)
1986-1996

In *Marozsan I*, which was handled by another civil AUSA before I joined the U.S. Attorney's Office, the Seventh Circuit determined, for the first time, that "38 U.S.C. § 211(a), a door-closing statute forbidding judicial review of individual veterans' benefits decisions, did not bar a constitutional challenge to the procedures the VA uses in awarding benefits." I handled, as lead counsel, *Marozsan II* which litigated plaintiff's claims that unconstitutional procedures were used to determine his VA benefits and his constitutional tort claims (*Bivens* claims) against certain VA employees. All claims were found to be meritless.

Opposing Counsel:

Stephen S. Marozsan, *pro se*

6. *United States v. Real Property Known as 19026 Oakmont South Drive, 715 F. Supp. 233 (N.D. IN 1989)*

United States District Court for the Northern District of Indiana
The Honorable Allen Sharp (deceased)
1985-1990

A civil forfeiture proceeding was filed to forfeit to the United States several homes that had been purchased with illegal drug proceeds. Claims were filed by claimants asserting innocent ownership (i.e. a spouse not knowing about her husband's drug dealing as the source of funding). At an evidentiary hearing, the United States was able to put forth proof showing her presence during drug use and that, contrary to her claims that her husband had paid off the mortgage without her knowledge, she in fact, was the person who wrote the check for that transaction.

Opposing Counsel:
Joseph R. Lopez
53 West Jackson
Suite 1122
Chicago, IL 60604
(312) 922-2001

7. *Trader Vic's LTD v. O'Neill, 169 F. Supp. 2d 957 (N.D. IN. 2001)*

United States District Court for the Northern District of Indiana
The Honorable Allen Sharp (deceased)
2000-2001

Trader Vic had applied to the Secretary of the Treasury for a federal firearms license which would have allowed the petitioner to operate a business selling firearms in South Bend, Indiana. The Secretary had determined, following an administrative hearing that the application should be denied because of willful violation of firearms regulations at a petitioner's Michigan business location.

When Trader Vic had exhausted available administrative remedies to review the Secretary's denial of its FFL application, the company and its president (collectively referred to as Trader Vic's) filed suit in the U.S. District Court for the Northern District of Indiana seeking *de novo* review of the Secretary's administrative determination.

In addition to answering the complaint on the Secretary's behalf, I prepared and filed a motion for summary judgement. This motion, in large part, argued that the Secretary's determination should be affirmed because that determination was

supported by substantial evidence in the administrative record. The denial of the FFL was predicated, in large part, upon evidence that the petitioner had willfully violated federal firearms regulations that prohibited placing bayonets of certain rifles that were imported from China. Despite the submission and its consideration of additional evidence, the district court found that substantial evidence supported the Secretary's denial because of substantial evidence of willful violations.

Trader Vic appealed the district court decision. I handled the appeal, writing the Secretary's appellate brief and arguing the case before the court of appeals. The case was remanded back to district court due to a lack of appellate jurisdiction because the district court had not ruled on the Secretary's counterclaim. On remand, I moved to dismiss the counterclaim and moved the district court to re-instate judgment for the Secretary. The Court granted both of my motions. Trader Vic's did not seek further appellate review.

Opposing Counsel:

Nancy L. Moore (current contact information unknown)

8. *U.S. v. Stump Home Specialties Mfg*, 905 F.2d 1117 (7th Cir. 1990)

United States District Court for the Northern District of Indiana

The Honorable Robert L. Miller

1986-1990

As noted by the court of appeals, “[s]ome unusual facts redeem this case [a suit against loan guarantors upon default by the borrowers] from dryness.” At the loan closing the bank had the borrowers sign two notes; one bearing a fixed interest rate (9.5%) and another with a variable interest rate (of 1.5% over the Bank's prime). The borrowers executed a loan modification accepting the use of a variable interest rate of 1.5% over New York prime. Upon default, the SBA sued the guarantors (some of who had signed the modification) to recoup the debt plus interest. The district court had granted the United States a judgment in the amount of the loan balance plus interest at under the variable rate note (17.5%). The court of appeals affirmed the district court's determination. I handled the district court litigation which included drafting all motions, preparing all discovery (which included handling depositions) and conducting the bench trial (presenting the government's witnesses and the cross examination of defense witnesses). I drafted the appellate brief and argued the before the Seventh Circuit Court of Appeals.

Co-Counsel (Appeal only):

Andrew B. Baker, Jr.

7231 Rooses Drive

Indianapolis, IN 46217

Unable to locate phone number

Opposing Counsel:

Joseph V. Simeri,
Simeri Arbitration and Mediation, P.C.
1312 East Wayne Street South
South Bend, IN 46615
(574) 292-9757

9. *O'Vadka et al v. Blum et al.*, 2007 WL 1550429 (N.D. IN 2007) (only Westlaw citation available)

United States District Court for the Northern District of Indiana
The Honorable William C. Lee
2006-2007

In this suit, plaintiffs sought to recover money judgments from FAA employees who they believed to have taken unlawful actions that damaged them and their real property located near a municipal airport in Peru, Indiana. Claims against all FAA employees were dismissed because: (1) the United States was properly substituted as lone defendant for certain state law tort claims and plaintiffs had not complied with the terms of the Federal Tort Claims Act to pursue those claims; (2) the FAA defendants had not had sufficient contacts in the state to allow the court to exercise personal jurisdiction over them and; (3) for multiple reasons, Plaintiff's alleged *Bivens* claims lacked merit and/or were time barred. I was the sole counsel for the government and the *Bivens* defendants. I drafted the dispositive motions that lead to the Court's order dismissing plaintiff's claims. The District Court, consistent with local practice, ruled on the dispositive motions without holding either oral argument or evidentiary hearing.

Opposing party/counsel: *pro se*

10. *United States v. City of Farmington, New Mexico*

Case No.: 80-037-C
United States District Court for New Mexico
The Honorable Santiago E. Campos
1980-1982

This was a civil suit brought against the City of Farmington, New Mexico, alleging that the City and certain of its officials had engaged in "a pattern or practice of discrimination based on race, sex and national origin with respect to hiring, assignment and promotion opportunities within all City departments." After extensive discovery, the suit was resolved via consent decree that included both affirmative relief and specific relief for individuals harmed by defendants' discriminatory practices. As the junior counsel on this case, my primary duties were reviewing applicant pools to try to identify victims of discrimination, locating identified victims on the Navajo Indian reservation, and conducting interviews of potential victims of discrimination when located.

Co-Counsel:

William B. Fenton (deceased)

Thomas E. Stuen (current contact information unknown)

S. Theodore Merritt (current contact information unknown)

Opposing Counsel:

Nicholas J. Noeding

Lyman G. Sandy

Albuquerque, New Mexico

(current contact information unknown)

16. **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.)

Two cities in the Northern District of Indiana (Gary and South Bend) have implemented the group violence reduction strategy “model developed by David M. Kennedy, director of the National Network for Safe Communities at John Jay College of Criminal Justice. South Bend Group Violence Intervention (“SBGVI”) advocates direct, sustained engagement with street groups that cause the majority of South Bend’s gun violence.” Part of this strategy are “call-in meetings” with offenders; during these call-ins, law enforcement representatives, state prosecutors and the U.S. Attorney’s office would explain to the “invitees” the steps that would be taken against groups that persisted in group related gun violence. I was the U.S. Attorney’s spokesperson at twelve (12) call-ins in South Bend and one in Gary. Date information for the call-ins is provided in my response to question 12d above.

I have not engaged in any lobbying activities.

17. **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 any courses.

18. **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 have no arrangements in the future to be compensated for any financial or business interests.

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

None.

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

Please see my SF-278 as provide by the Office of Government Ethics.

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

See attached Net Worth Statement.

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors 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.

During the nomination process, I consulted with the Department of Justice's ethics office and Designated Ethics Officer to identify any potential conflicts. If I am confirmed, I will continue to consult with that office and will recuse myself from any matter in which recusal is required.

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

If I am confirmed, any potential conflict of interest will be resolved in accordance with the terms of an ethics agreement that I have entered with the Department's designated agency ethics official. If confirmed, I will continue to consult with the Department of Justice's ethics office and will recuse myself from any matter in which recusal is required.

23. **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. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

My entire legal career has been devoted to public service as a career federal litigator. In this role, early in my career, I have had the opportunity to work with and assist persons who were victims of unlawful employment discrimination. In the last few years of my career, I had the opportunity to represent the office in several violent crime reduction initiatives that were implemented in Gary, Indiana and in South Bend, Indiana. My responses to questions 12 and 16 provide more detail about my participation in those initiatives. I have not undertaken any outside legal activities.