

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Julie Elizabeth Carnes
Julie Carnes Cowen
Julie Carnes Campanella

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

United States Circuit Judge for the Eleventh Circuit.

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.

United States District Court for the Northern District of Georgia
75 Spring Street, Southwest, Suite 2167
Atlanta, Georgia 30303

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

1950; Atlanta, Georgia

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.

1972 – 1975, University of Georgia School of Law; J.D. (*magna cum laude*), 1975
1968 – 1972, University of Georgia; A.B. (*summa cum laude*), 1972

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.

1992 – present
United States District Court for the Northern District of Georgia
75 Spring Street, Southwest, Suite 2167
Atlanta, Georgia 30303

Chief United States District Judge (2009 – present)
United States District Judge (1992 – present)

1990 – 1996
United States Sentencing Commission
One Columbus Circle, Northeast, Suite 2-500
Washington, D.C. 20002
United States Sentencing Commissioner

February – July 1989
United States Sentencing Commission
One Columbus Circle, Northeast, Suite 2-500
Washington, D.C. 20002
Special Counsel

1978 – 1990
United States Attorney's Office for the Northern District of Georgia
75 Spring Street, Southwest
Atlanta, Georgia 30303
Appellate Chief, Criminal Division (1982 – 1990)
Assistant United States Attorney (1978 – 1990)

1975 – 1977
United States Court of Appeals for the Fifth Circuit
18 Greenville Street
Newnan, Georgia 30263
Law Clerk to Judge Lewis R. Morgan

Summer 1974
Troutman Sanders LLP
600 Peachtree Street
Atlanta, Georgia 30308
Summer Associate

Summer 1973
C&S National Bank (now defunct)
Atlanta, Georgia
Clerical work

August 1972 – June 1973
University of Georgia Housing Department
Boggs Hall Dormitory
Athens, Georgia 30602
Resident Assistant

Summer 1972

United States Office of Economic Opportunity (now defunct)

Atlanta, Georgia

Clerical work

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 was not required to register for selective service.

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

Professional:

University of Georgia School of Law Portrait Ceremony (law school commissioned and hung my portrait) (2013)

Atlanta Business Chronicle: Who's Who in Accounting and Law (2009 – 2013)

University of Georgia Law School Distinguished Service Scroll Award (1998)

University of Georgia Law School Dean Selection Committee (1998)

University of Georgia Presidential Selection Committee (1997)

United States Department of Justice, Director's Award for Outstanding Performance as an Assistant United States Attorney (1988)

United States Attorney's Office, Special Achievement Award (1988)

Academic:

University of Georgia School of Law, Bryant T. Castellow Scholar (1972 – 1975)

University of Georgia Law Review, Editorial Board Member (1973 – 1974)

University of Georgia National Merit Scholar (1968 – 1972)

University of Georgia Phi Beta Kappa (1972)

University of Georgia Zodiac Club (top twelve women academically in junior class) (1972)

University of Georgia Honors Program (1968 – 1972)

WAGA-TV College Scholarship (given to the high school senior in the greater Atlanta metropolitan area who had demonstrated outstanding writing ability) (1968)

National Council of Teachers of English Writing Competition (one of ten Georgia winners) (1968)

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.

Atlanta Bar Association
Federal Bar Association
Executive Committee, Honorary Member (2009 – present)
Eleventh Circuit Judicial Council
Executive Committee of Judicial Council (2009 – present)
Eleventh Circuit Pattern Jury Instruction Committee (1996 – 2002)
Eleventh Circuit 2007 Judicial Conference Planning Committee
Chair (2005 – 2007)
Eleventh Circuit 2005 Judicial Conference Planning Committee (2004 – 2005)
Judicial Conference of the United States, Ad Hoc Advisory Committee on
Judiciary Planning, (2008 – 2010)
Judicial Conference of the United States, Ad Hoc Advisory Committee, Staffing
Formula for Death Penalty Law Clerks (2009 – 2010)
Judicial Conference of the United States Committee on Criminal Law (2005 –
2010)
Chair (2007 – 2010)
Lawyers Club of Atlanta
State Bar of Georgia

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.

Georgia, 1975 (inactive)

I took inactive status after my appointment as a federal district court judge.

- 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.

Georgia Superior Courts (1975)
United States District Court, Northern District of Georgia (1978)
United States Court of Appeals for the Fifth Circuit (1978)
United States Court of Appeals for the Eleventh Circuit (1981)
Georgia Supreme Court (1982)
United States Court of Military Appeals (1989)

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.

University of Georgia School of Law Board of Visitors (1991 – 1994)
University of Georgia School of Law Dean Selection Committee (1998)
University of Georgia Lumpkin Inn of Court (1992 – present)
University of Georgia Presidential Selection Committee (1997)

- 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.

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.

I have provided those reports, memoranda, and policy statements that are public.

Strategic Plan for the Federal Judiciary, Judicial Conference of the United States, September 2010. Copy supplied.

Report of the Proceedings of the Judicial Conference of the United States, September 14, 2010. Excerpt of summary of the report provided by the Criminal Law Committee, which I chaired, is supplied.

Report of the Judicial Conference, Committee on Criminal Law, September 2010. Copy supplied.

Report of the Proceedings of the Judicial Conference of the United States, March 16, 2010. Excerpt of summary of the report provided by the Criminal Law Committee, which I chaired, is supplied.

Report of the Judicial Conference, Committee on Criminal Law, March 2010. Copy supplied.

Report of the Proceedings of the Judicial Conference of the United States, September 15, 2009. Excerpt of summary of the report provided by the Criminal Law Committee, which I chaired, is supplied.

Report of the Judicial Conference, Committee on Criminal Law, September 2009. Copy supplied.

Report of the Proceedings of the Judicial Conference of the United States, March 17, 2009. Excerpt of summary of the report provided by the Criminal Law Committee, which I chaired, is supplied.

Report of the Judicial Conference, Committee on Criminal Law, March 2009. Copy supplied.

Report of the Proceedings of the Judicial Conference of the United States, September 16, 2008. Excerpt of summary of the report provided by the Criminal Law Committee, which I chaired, is supplied.

Report of the Judicial Conference, Committee on Criminal Law, September 2008. Copy supplied.

Report of the Proceedings of the Judicial Conference of the United States, March 11, 2008. Excerpt of summary of the report provided by the Criminal Law Committee, which I chaired, is supplied.

Report of the Judicial Conference, Committee on Criminal Law, March 2008. Copy supplied.

Report to the Congress: Sex Offenses Against Children, United States Sentencing Commission, June 1996. Copy supplied.

Report to the Congress: Adequacy of Federal Sentencing Guidelines Penalties for Computer Fraud and Vandalism Offenses, United States Sentencing Commission, June 1996. Copy supplied.

Proceedings of the Second Symposium on Crime and Punishment in the United States: Corporate Crime in America: Strengthening the "Good Citizen" Corporation, United States Sentencing Commission, September 7-8, 1995. Copy supplied.

The Crack/Cocaine Penalty Ratio: Recommendations to Congress by United States Sentencing Commission. Dissent by Judge Deanell R. Tacha, joined by Judge Julie E. Carnes and Commissioner Michael Goldsmith, to Sentencing Commission's vote to recommend that crack and powder cocaine ratios be made equal. Federal Sentencing Reporter: Vol. 7, No. 6, May/June 1995, pp. 315-321. Copy supplied.

Report to the Congress: Adequacy of Penalties for the Intentional Exposure of Others, through Sexual Activity, to the Human Immunodeficiency Virus, United States Sentencing Commission, March 1995. Copy supplied.

Report to the Congress: Adequacy of Penalties for Fraud Offenses Involving Elderly Victims, United States Sentencing Commission, March 1995. Copy supplied.

Report to the Congress: Analysis of Penalties for Federal Rape Cases, United States Sentencing Commission, March 1995. Copy supplied.

Special Report to the Congress: Cocaine and Federal Sentencing Policy, United States Sentencing Commission, February 1995. Copy supplied.

Plea Negotiations Under the Federal Sentencing Guidelines: An Empirical Examination of the Post-*Mistretta* Experience, December 1994. I do not have a copy. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

Report to Congress on the Maximum Utilization of Prison Resources, June 30, 1994. I do not have a copy. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

Analysis of Sentencing-Related Provisions of S. 2305 and H.R. 3371 Conference Report Crime Bills, United States Sentencing Commission, Spring 1992. Copy supplied.

Supplementary Report on Sentencing Guidelines for Organizations, United States Sentencing Commission, August 30, 1991. Copy supplied.

Special Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System, United States Sentencing Commission, August 1991. Copy supplied.

Supplementary Report to the Congress: Statutory Penalty Review Project, February 13, 1991. I do not have a copy. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

Annual Reports, United States Sentencing Commission, 1990 – 1996. Copies of 1990, 1991, 1992, 1995, and 1996 Annual Report are supplied. I do not have copies of the 1993 or 1994 Annual Reports. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

- 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.

August 13, 2013: Letter to Vice-President Joseph R. Biden, Jr., co-signed by eighty-seven chief federal district judges, concerning the impact of sequestration. Copy supplied.

January 10, 2013: Letter to David Hofstetter, General Services Administration, conveying comments of the United States District Court for the Northern District of Georgia on the Multimodal Passenger Terminal (MMPT) Evaluation of Alternatives (EOA) document. Copy supplied.

January 10, 2013: Letter to David Hofstetter, General Services Administration, conveying comments of the United States District Court for the Northern District of Georgia on the environmental impact of the MMPT project. Copy supplied.

August 31, 2012: Letters to Senators Saxby Chambliss and Johnny Isakson concerning the MMPT project. Copy supplied.

May 17, 2012: Letter to David Hofstetter, General Services Administration, conveying comments of the United States District Court for the Northern District of Georgia on the Multimodal Draft Scoping Document. Copy supplied.

September 13, 2010: Letter on behalf of Criminal Law Committee to Honorable William K. Sessions, Chairman, United States Sentencing Commission, opposing giving retroactive effect to Amendment 5. Copy supplied.

August 23, 2010: Letter on behalf of Criminal Law Committee to Judith W. Sheon, Staff Director, United States Sentencing Commission, opposing giving retroactive effect to Amendment 5. Copy supplied.

July 14, 2009: Testimony on behalf of the Criminal Law Committee of the Judicial Conference before the United States House of Representatives, Committee on the Judiciary, Subcommittee on Crime, Terrorism and Homeland Security, concerning mandatory-minimum sentencing statutes. Written statement and transcript of testimony supplied.

I served on the Judicial Conference of the Committee on Criminal Law of the Judicial Conference of the United States from 2005 to 2010, becoming the chair in mid-November 2007. During the period in which I was a member, Judge Paul Cassell served as Chair and likely submitted letters, briefs, and periodic reports on behalf of the Committee. Although I did not personally prepare these documents, I do recall voting as a member to approve the submission of one significant letter to the United States Sentencing Commission, which I have supplied below.

November 2, 2007, Letter to United States Sentencing Commission regarding Comments on Retroactivity of Crack Cocaine Amendments. Copy supplied.

1990 – 1996: While I was a United States Sentencing Commissioner, I attended regular public meetings to discuss the Sentencing Guidelines. Minutes have been supplied where available.

February 19, 1992: United States Senate, Committee on the Judiciary, Confirmation Hearing on Nomination to be a United States District Judge for the Northern District of Georgia. Transcript supplied.

June 15, 1990, United States Senate, Committee on the Judiciary, Confirmation Hearing on Nomination as a United States Sentencing Commissioner. Transcript supplied.

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

This list represents the presentations I have identified through searches of my files and Internet databases. I have tried to list all such events that I can remember, but given the length of my legal career, it is unlikely that I have been able to identify all such presentations.

January 2009 – present: As chief judge of the Northern District of Georgia, I have been called upon to perform ceremonial duties, which have included presiding over numerous judicial and bar investitures and retirement ceremonies, as well as welcoming various visitors and groups to our courthouse and city. I have not listed such ceremonies except for those where I provided substantive remarks.

November 19, 2013: Presided over the investiture of Jere W. Morehead as President of the University of Georgia, Athens, Georgia. Notes supplied.

November 8, 2013: Panelist, “Federal Practice Rules Update: The ‘Ground Rules’ Have Changed,” Federal Bar Association, Atlanta, Georgia. Notes supplied.

April 19, 2013: Portrait ceremony in my honor at the University of Georgia, Athens, Georgia. Video recording of my remarks is available at: http://digitalcommons.law.uga.edu/lectures_pre_arch_lectures_other/73.

April 10, 2013: Panelist, “Women in the Profession: Federal Judicial Panel,” State Bar of Georgia, Young Lawyers Division, Atlanta, Georgia. Although I have no notes, transcripts or recordings, questions asked of the panel are supplied.

May 30, 2012: Opening Remarks, “National Seminar for Federal Defenders,” Federal Defenders Program, Atlanta, Georgia. Notes supplied.

May 2012: I made remarks for a video presentation to the Honorable George Carley, on the occasion of his retirement from the Georgia Supreme Court, Atlanta, Georgia. Remarks supplied.

December 2011: Guest Speaker, Annual Holiday Tea, co-sponsored by The Women in the Profession Committee, Young Lawyers Division, State Bar of Georgia and by the Atlanta Bar Association, Atlanta, Georgia. I offered brief remarks concerning my career and professional background. I have no notes, transcript, or recordings. The address for the Atlanta Bar Association is 229 Peachtree Street, Suite 400, Atlanta, Georgia 30303

July 20, 2011: Welcoming Remarks, Dinner, Annual Convention, Federal Magistrate Judges Association, Atlanta, Georgia. Notes supplied.

July 15, 2010: Speaker concerning current issues being addressed by Criminal Law Committee, Chief United States Probation Officer Conference, Philadelphia, Pennsylvania. Notes supplied.

June 24, 2010: Speaker, Chief United States Probation Officer Advisory Group, Atlanta, Georgia. The presentation concerned the ongoing efforts of the Criminal Law Committee and the Administrative Office of Courts to conduct and implement a work measurement study for probation officers. I have no notes, transcript, or recordings. The address for the Office of Probation and Pretrial Services Office, Administrative Office of the U.S. Courts is One Columbus Circle, Northeast, Room 4-325, Washington, D.C. 20544.

January 22, 2010: Speaker, Investiture of Honorable Beverly B. Martin to the Eleventh Circuit United States Court of Appeals, Atlanta, Georgia. Remarks supplied.

October 30, 2009: Speaker concerning current issues being addressed by Criminal Law Committee, Eleventh Circuit District Court Workshop, Ponte Vedra, Florida. Notes supplied.

August 5, 2009: Speaker concerning current issues being addressed by Criminal Law Committee, Eighth and Tenth Circuit Judicial Conference, Duluth, Minnesota. Notes supplied.

May 28, 2009: Panelist, The Georgia Association of Black Women Attorneys' Annual Judicial Reception, Atlanta, Georgia. The panel, which included a Georgia Court of Appeals judge and me, was asked about our backgrounds and experiences as judges. I have no notes, transcript, or recordings. The address for The Georgia Association of Black Women Attorneys is Post Office Box 4381, Atlanta, Georgia 30302.

June 30, 2008: Speaker concerning current issues being addressed by Criminal Law Committee, Chief United States Probation Officers Conference, Chicago, Illinois. Notes supplied.

June 6, 2008: Speaker, Georgia Bar Association honoring Ed Tolley, Georgia Bar Association, Amelia Island, Florida. Remarks supplied.

February 2008: Guest Speaker, Third Annual Georgia Law Alumnae Evening, Atlanta, Georgia. I spoke about my background and professional experiences. I have no notes, transcript, or recordings. The address for the Office of Alumni Affairs for the University of Georgia Law is 225 Herty Drive, Athens, Georgia 30602.

January 17, 2008: Panelist at conference in Charlotte, North Carolina concerning impact of Sentencing Commission's decision to make its crack cocaine amendment retroactive. Notes and press coverage supplied.

October 2007: Guest Speaker, St. Crispin's Day Criminal Defense Seminar, Atlanta, Georgia. Notes supplied.

February 2007: Speaker, Investiture of the Honorable Judge Dan Pelletier, Atlanta, Georgia. Remarks supplied.

October 3, 2006: Speaker, Atlanta Bar Association Award Luncheon Honoring District Court Judge Orinda Evans, Atlanta Bar Association, Atlanta, Georgia. Remarks supplied.

July 24, 2006: Moderator, Panel Discussion on Legislative Responses to *Booker*, Federal Sentencing Institute, sponsored by the Federal Judicial Center, Washington, DC. Outline supplied.

April 2004: Speaker, Atlanta Bar Award to Judge Charles L. Carnes, Atlanta, Georgia. I introduced the honoree, my father, and offered remarks concerning his personal and professional background. I have no notes, transcript or recordings. The address for the Atlanta Bar Association is 229 Peachtree Street, Suite 400, Atlanta, Georgia 30303.

May 2003: Speaker, Investiture of the Honorable Judge Janis Gordon, Atlanta, Georgia. Remarks supplied.

February 11-12, 2003: Panelist on panel of three federal judges, Duke University School of Law, Durham, North Carolina. The topic was the duties and value of a federal clerkship. I have no notes, transcript, or recordings. The address for the Duke University School of Law is 210 Science Drive, Durham, North Carolina 27708.

November 15, 2002: Panelist, "Problems in Depositions," University of Georgia Conference on Problems in Discovery and Professionalism, Athens, Georgia. I have no notes, transcript, or recordings. The address for the University of Georgia School of Law is 225 Herty Drive, Athens, Georgia 30602.

May 2001: Speaker, Bleckley Award to Judge Charles L. Carnes, Atlanta, Georgia. Notes supplied.

2001: Speaker, Portrait Ceremony for Senior Judge Lewis R. Morgan, United States Court of Appeals for the Eleventh Circuit, Newnan, Georgia. Remarks supplied.

November 14, 2000: Speaker on potential Sentencing Guidelines amendments, Eleventh Circuit district court workshop, Amelia Island, Florida. I have no notes, transcript, or recordings. The address for the Eleventh Circuit is 56 Forsyth Street, Northwest, Atlanta, Georgia 30303.

October 12-13, 2000: U.S. Sentencing Commission Symposium on Federal Sentencing Policy for Economic Crimes and New Technology Offenses, co-sponsored by the U.S. Sentencing Commission, Committee on Criminal Law of the Judicial Conference of the United States, and American Bar Association – White Collar Crime Committee, Arlington, Virginia. I participated as the lead facilitator in a breakout session entitled, “Revising the Definition of Loss,” for which minutes are supplied, and as a panelist in Plenary Session IV, entitled, “Major Issues Related to the Determination of ‘Loss’ as a Measure of Offense Seriousness and Offender Culpability, for which minutes are supplied.

May 1999: Panelist, National Seminar on the Federal Sentencing Guidelines, co-sponsored by the United States Sentencing Commission, Clearwater, Florida. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

1998: Recipient of University of Georgia Law School Distinguished Service Scroll Award, Atlanta, Georgia. I have no notes, transcript, or recordings, but press coverage is supplied. The address for the University of Georgia School of Law is 225 Herty Drive, Athens, Georgia 30602.

1993: Remarks to a local bar group concerning tips to trial attorneys, United States District Court, Atlanta, Georgia. Notes supplied.

May 1992: My investiture as a United States District Court Judge for the Northern District of Georgia, Atlanta, Georgia. Transcript supplied.

February 1992: Panelist, White Collar Crime Seminar, ABA, Section of Criminal Justice, San Francisco, California. The panel engaged in a discussion concerning the Sentencing Guidelines. I have no notes, transcript, or recordings. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

October and December 1991: Outline for Corporate Counsel Institute, United States Sentencing Commission, Chicago, Illinois and San Francisco, California. I have no notes, transcript, or recordings. The topic would likely have involved the new organizational guidelines. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

May 17, 1991: Panelist, ABA National Institute on Federal Sentencing Guidelines, Washington, D.C. The panel engaged in a discussion concerning the Sentencing Guidelines. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

May 2-3, 1991: Speaker at Judicial Conference--Military Law Institute, George Washington University, Washington, D.C., United States Sentencing Commission. Outline supplied.

March 21, 1991: Guest Lecturer, Sentencing Seminar, Georgetown University, Washington, D.C. I likely would have spoken about current issues before the Sentencing Commission. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

November 16, 1990: Panelist, ABA White Collar Crime Seminar, Criminal Justice Section, Washington, D.C. The panel discussion likely would have focused on sentencing issues pertinent to the white collar criminal defense bar, such as the loss guidelines and corporate guidelines. I have no notes, transcript, or recordings. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

October 18, 1990: Speaker and Instructor, Training Session for newly-appointed federal district court judges, Atlanta, Georgia. I likely would have offered suggestions for handling recurring sentencing issues. I have no notes, transcript, or recordings. The address for the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, Northeast, Washington, D.C. 20002-8003.

September 14, 1990: Speech on Proposed Organizational Guidelines, Institute of Continuing Legal Education, Atlanta, Georgia. I likely would have discussed the rationale behind the proposed corporate guidelines. I have no notes, transcript, or recordings. The address for the Institute of Continuing Legal Education is Post Office Box 1885, Athens, Georgia 30603.

September 4-7, 1990: Panelist, Federal Sentencing Institute for Fifth and Eleventh Circuits Judges, Fort Worth, Texas. I likely would have discussed current issues pending before the Sentencing Commission. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

July 1990 – December 1996: As a sentencing commissioner during this period of time, I attended many sentencing institutes and other gatherings at which the Sentencing Guidelines were discussed. I have attempted to list below all such events at which I was a panelist or offered remarks, but it is possible that there may be other similar events that I have not recalled.

February 1, 1990: Panelist, "Impact of the Guidelines," White Collar Crime Seminar, ABA, Section of Criminal Justice, New Orleans, Louisiana. I have no notes, transcript, or recordings. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

1986 – 1989: Guest Lecturer, University of Georgia School of Law, Topic: Preparation of Appellate Brief, Athens, Georgia. I have no notes, transcript, or recordings, but my remarks would have been consistent with those supplied at entry for March 1987: Speech at Federal Appellate Practice Seminar. The address for the University of Georgia School of Law is 225 Herty Drive, Athens, Georgia 30602.

November 13, 1989: Speaker, National Association of Manufacturers' Regional Meeting of General Counsel, Chicago, Illinois. My remarks concerned potential sentencing guidelines for organizations. I have no notes, transcript, or recordings. The address for the National Association of Manufacturers is 733 10th Street, Northwest, Suite 700, Washington, D.C. 20001.

November 1, 1989: Speaker, Department of Justice First Assistant United States Attorneys' Conference, Annapolis, Maryland. My remarks concerned the Sentencing Guidelines. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

July 24, 1989: Speech on Sentencing Guidelines, Department of Justice Trial Advocacy Course for Assistant U.S. Attorneys, Washington, D.C. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

June 19, 1989: Speaker, United States Attorney's Office and Federal Defender's Office, Eastern District of Michigan, Detroit, Michigan. I made remarks concerning current Sentencing Guidelines issues. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

June 1989: Panelist and Training Leader, Department of Justice Seminar on Sentencing Guidelines, Washington, D.C. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

May 31, 1989: Speaker, Meeting of Judges of the Fourth Circuit Court of Appeals, Richmond, Virginia. My remarks concerned current Sentencing

Guidelines issues. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

May 12, 1989: Speaker, Meeting of Judges of the Central District of California, Los Angeles, California. My remarks concerned current Sentencing Guidelines issues. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

May 1-3, 1989: Training Leader, United States Sentencing Commission Regional Seminar, New Orleans, Louisiana. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

April 3-5, 1989: Training Leader, United States Sentencing Commission Regional Seminar, Nashville, Tennessee. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

March 20-23, 1989: Panel Speaker and Training Leader, United States Sentencing Commission Regional Seminar, Phoenix, Arizona. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

March 13-15, 1989: Training Leader, United States Sentencing Commission Regional Seminar for Assistant U.S. Attorneys, Defense Attorneys, Probation Officers and Federal Judges, Washington, D.C. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

May 1988: Lecturer and Teacher, Department of Justice Appellate Advocacy Course, Washington, D.C. I have no notes, transcript, or recordings. The address for the Executive Office for United States Attorneys is United States Department of Justice, 950 Pennsylvania Avenue, NW, Room 2242, Washington, D.C. 20530-0001.

April 1988: Speech to United States Attorney General's Sub-Committee on Public Corruption, "Continuing Ramifications of *McNally* on Federal Prosecutions and Need for Corrective Legislation," Atlanta, Georgia. I have no notes, transcript, or recordings. The address for the Executive Office for United

States Attorneys is United States Department of Justice, 950 Pennsylvania Avenue, NW, Room 2242, Washington, D.C. 20530-0001.

January 1988: Speech to United States Attorney General's Sub-Committee on Public Corruption, "Impact of the Supreme Court's Decision in *United States v. McNally*," New Orleans, Louisiana. I have no notes, transcript, or recordings. The address for the Executive Office for United States Attorneys is United States Department of Justice, 950 Pennsylvania Avenue, NW, Room 2242, Washington, D.C. 20530-0001.

March 1987: Speaker, "Preparation of Federal Appellate Brief," Federal Appellate Practice Seminar, sponsored by the Eleventh Circuit Historical Society and Federal Bar Association, Atlanta, Georgia. Remarks supplied.

February 1987: Panelist at ALI-ABA Regional Seminar on Sentencing Guidelines, Atlanta, Georgia. I have no notes, transcript, or recordings. The address for the United States Sentencing Commission is Office of Legislative and Public Affairs, One Columbus Circle, Northeast, Suite 2-500, Washington, D.C. 20002-8002.

Undated (but sometime in the late 1980's while at the United States Attorney's Office): Emory University Law School- Point/Counterpoint debate between me and a noted defense attorney, Mark Kadish. Notes supplied.

May 1981: Speaker, "Developments in Federal Criminal Law," Georgia Continuing Legal Education Seminar, Augusta, Georgia. I have no notes, transcript, or recordings. The address of the Institute of Continuing Legal Education is Post Office Box 1885, Athens, Georgia 30603.

- 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.

"Daughter, Colleague Remember 'Happy' Carnes," Fulton County Daily Report, October 23, 2013. Copy supplied.

"Colleagues Remember Judge Charles Carnes," Fulton County Daily Report, October 17, 2013. Copy supplied.

"Charles L. Carnes, 86: Judged By His Service To Others," Atlanta Journal-Constitution, October 16, 2013. Copy supplied.

"Athens Welcome New UGA president," Athens Magazine, May 30, 2013. Copy supplied.

“Jere Morehead on Humor & Hobbies,” Athens Magazine, May 29, 2013. Copy supplied.

“This Judge Has Earned His Place at the Table,” Syndicated Columnist, Dick Yarbrough, March 12, 2013. Copy supplied.

“U.S. Senior Judge Retires After A Historic Career,” Fulton County Daily Report, October 12, 2012. Copy supplied.

“Friends And Family Reflect On Judge G. Ernest Tidwell’s Thirty-Two Years On The Federal Bench,” Fulton County Daily Report, August 10, 2011. Copy supplied.

“Judge Jack Camp Arrested On Cocaine Charge,” Fulton Daily Report, October 4, 2010. Copy supplied.

“Friends Remember Judge Moye,” Fulton County Daily Report, July 29, 2010. Copy supplied.

“Study Requested on Reentry Court Programs,” The Third Branch, December 2009. Copy supplied.

“Northern District of Georgia’s New Chief Judge Reflects on Her Career,” Fulton County Daily Report, March 16, 2009. Copy supplied.

“Interview with Judge Julie E. Carnes,” The Third Branch, August 2008. Copy supplied.

“Prosecutor Relishes Sentencing Panel Job,” Atlanta Journal and Constitution, August 16, 1990. Copy supplied.

“Fifth Californian Pleads Innocent to Illegal Plane Sales to Libya,” AP Online, August 11, 1986. Copy supplied.

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

I have served as a United States District Judge in the Northern District of Georgia since 1992, and as Chief Judge since 2009. I was nominated by President George H. W. Bush on August 1, 1991 and confirmed by the Senate on February 6, 1992. The jurisdiction of a federal district judge is general in nature, and extends to all federal criminal cases and all civil cases in which there is federal subject-matter jurisdiction (i.e., federal question cases and diversity cases).

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

I have been assigned approximately 8,600 cases. The Clerk's records reflect the issuance of a judgment in 2,827 cases.

- i. Of these, approximately what percent were:

The Clerk's records indicate that I have presided over 127 trials, including 110 jury and 17 bench trials.

jury trials:	87%
bench trials:	13% [total 100%]
civil proceedings:	42%
criminal proceedings:	58% [total 100%]

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

Case citations supplied in Appendix attached.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Blankenship, et al. v. Clayton County, et al.*, Case No. 1: 91-cv-2286-JEC.

This case involved allegations of pervasive sexual harassment of female employees within the County Sheriff's Office and Jail, brought by several female plaintiffs. This was one of the earliest trials in the district in which allegations of a pervasive hostile work environment, office-wide, was tried. The trial lasted for four weeks, and the jury deliberated for five days, reaching a verdict for the plaintiffs and awarding over \$400,000 in damages.

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2. *United States v. Carter, et al.*, Case No. 1:03-cr-636-JEC.

This criminal indictment charged the five defendants with planning the robbery of an armored Bantec truck by using an insider to disclose the specific route for the date in question and the times and places where the truck would be stopped, after which four other conspirators would lie in wait and ambush the truck, stealing the large quantity of money it contained. These four conspirators, who were charged as defendants in the case, executed this plan. In the course of trying to rob the truck, however, two of the defendants fired shots, injuring one of the guards on the truck and killing the other one. Prior to trial, three of the four entered a guilty plea. The fourth defendant, who fired the shot that killed the guard, went to trial, as did the alleged insider who had disclosed the route and schedule. The latter was acquitted; the defendant who was alleged to have shot the guard, was convicted. I sentenced two of the defendants who had pled guilty to 25 years in prison and the third pleading defendant, who had carried a gun and fired a shot, to 40 years. I sentenced the defendant who went to trial and who had killed the guard to life imprisonment.

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3. *Coalition for the Abolition of Marijuana Prohibition v. City of Atlanta*, Case No. 1:96-cv-407-JEC (copy supplied).

This case involved an ongoing dispute between the City of Atlanta and the plaintiff (CAMP), an organization that each year sponsored a marijuana festival at a downtown Atlanta park. Having been denied a permit by the City of Atlanta in 1995 to hold its festival, in 1996, CAMP filed a federal action seeking an injunction declaring unconstitutional the City's Festival Ordinance. CAMP argued, among other things, that the City's ordinance was unduly vague and that it constituted an improper prior restraint on First Amendment activity. I analyzed exhaustively each part of the ordinance at issue and concluded that, while some sections were unconstitutionally vague, much of the ordinance was constitutional. Specifically, it was constitutional for the City to charge a fee, based on anticipated attendance, at all large outdoor festival events, even those events that might include political speech, in order for the City to recoup its costs of providing additional City services. As to those parts of the ordinance that had been struck,

the Order set out specifically the shortcomings of those provisions. The Eleventh Circuit affirmed my decision on appeal.

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4. *Columbus Drywall & Insulation, Inc., et al. v. Masco Corp., et al.*, Case No. 1:04-cv-3066-JEC, 2009 WL 856306 (N.D. Ga. Feb. 9, 2009).

This case was a protracted and complex class action antitrust action that impacted the entire American fiberglass insulation industry. The 377 independent fiberglass insulation contractors who brought the case relied on a novel "price spread" theory. They alleged that Masco, one of the largest insulation contractors in the country, had orchestrated an agreement among the major insulation suppliers to maintain a price advantage in favor of Masco in exchange for Masco's agreement to support industry-wide price increases. I granted class certification and, based on documentary evidence of an illegal parallel pricing strategy, I also denied summary judgment. I issued several orders in the case touching on the numerous and complex legal and factual issues that are set out in the 948 docket entries in the file. After presiding over an intensive and interactive week-long pretrial proceeding, which included my review of hearsay objections on hundreds of statements, the parties settled on the eve of trial, for 75 million dollars, which when added to the previous 37-million dollar settlement with the insulation suppliers, made this one of the largest antitrust settlements in the State of Georgia.

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5. *United States v. Feng*, Case No. 1:03-cr-276-JEC.

This was a two-week criminal trial in which the two defendants were convicted of assisting in the smuggling and harboring of illegal aliens. Over a seven-year period of time, the Fengs, a husband-and-wife team who ran an employment agency, processed over 7,230 illegal aliens who had recently arrived from Mexico. They arranged for the transportation of these individuals across the Eastern seaboard to various Chinese restaurants where they were forced to work for little pay and under conditions that sometimes resembled involuntary servitude. Moreover, many of these illegal immigrants suffered from diseases, such as Hepatitis C, endangering the patrons of the restaurants, many of which reportedly did not follow hygienic practices. I upwardly departed, sentencing

Mrs. Feng, who was the leader of the operation, to 96-months imprisonment and Mr. Feng to 5-years imprisonment.

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6. *United States v. Junnier, et al.*, Case No. 1:07-cr-129-JEC and *United States v. Tesler*, Case No. 1:08-cr-424-JEC.

This criminal case arose out of the shooting of a 90-year old African-American woman by white police officers, while the woman was sleeping in her bed. The officers obtained a warrant to search the address at which the woman, Ms. Johnson, lived. As they entered at night her home, which was in a high-crime area, she did not know that they were the police, and, thinking that her home was being invaded, she pulled out a gun and fired a shot. The officers, thinking that they were under attack, shot back, killing her. In responding to questions about what happened, the officers initially were not honest and instead attempted to cover up the misconduct that had led to the killing of Ms. Johnson. Subsequent investigation revealed that these officers had obtained a search warrant by falsely stating that a reliable informant had given them the tip. In addition, these officers, from time to time, had been obtaining search warrants based on affidavits that contained untrue assertions. Ultimately, all three officers entered guilty pleas to civil rights violations. The sentencing lasted two days, and I imposed a ten-year sentence on the officer who fired the shot, and five years each on the other two officers.

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7. *A.M. v. Martin*, Case No. 1: 96-cv-2316-JEC. Decision supplied.

A Georgia statute provided that an initial detention hearing must be held for a juvenile who has been detained for delinquency within 72 hours, but if that deadline expires on a weekend or holiday, then the hearing can be held the next day after that. The ACLU filed suit, arguing that the statute should be struck down because it violates Supreme Court precedent requiring a prompt hearing after a warrantless arrest. The Supreme Court precedent in question had not specified a particular time period by which a hearing must be held, but indicated

that a hearing within 48 hours, including weekends and holidays, is presumptively timely; further, the government must demonstrate extraordinary circumstances to detain someone on a warrantless arrest for more than 48 hours without a probable cause hearing. The County defendant argued that such a deadline would be impracticable in dealing with juveniles. I ruled for the plaintiff and struck down the Georgia law. Thereafter, it was necessary for juvenile courts throughout the state to revamp their procedures regarding the timing of probable cause hearings.

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8. *United States v. Mach*, Case No. 1:05-cr-543-JEC.

This criminal case involved the lengthy investigation of a large-scale ecstasy drug distribution ring originating in Canada, with distribution activities in the Eastern part of the United States, including Atlanta. Of the thirty-two defendants indicted, only one defendant, Mr. Ong, ultimately went to trial. He was convicted following a jury trial. The consolidated sentencing hearings for these thirty-plus defendants took almost a week to conclude, involving complex calculations of drug quantities attributed to each defendant.

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9. *United States v. Perkins*, Case No. 1:10-cr-97-JEC, 2013 WL 3820716 (N.D. Ga. July 23, 2013).

This was a criminal case in which the defendant was charged with having executed a lucrative fraud scheme in which, among other things, he persuaded bank employees to provide him with information regarding high-dollar business bank accounts for the purpose of withdrawing the funds from these accounts. The defendant also executed a credit card fraud scheme in which he posed as a merchant and caused credit card companies to funnel large amounts of money to him to which he was not entitled. Although the criminal offense, by itself, would have made this case significant, its greater significance lies in the extraordinarily disruptive behavior of the defendant and the need to fashion procedures to address this behavior. Specifically, the defendant refused to come to the courtroom and I determined that forcibly bringing him could result in injury to him or others, as well as creating prejudice before the jury, as he would have had to be heavily manacled and restrained. Accordingly, I held initial trial proceedings in the Marshal's lock-up with counsel and a court reporter present. Given the defendant's violent reaction to that proceeding and his continuing refusal to be brought to the courtroom, I deemed him to have waived his presence at trial. The defendant was able to observe the trial in his cell, and the jury ultimately convicted him. I sentenced him to a thirty-year term of imprisonment.

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10. *Wolf v. Ramsey*, Case No. 1:00-cv-1187-JEC, 253 F. Supp. 2d 1323 (N.D. Ga. 2003).

This was a civil case arising out of the widely-publicized and unsolved murder of six-year old JonBenet Ramsey, whose body was found in the basement of her parent's home in Boulder, Colorado. The plaintiff, Mr. Wolf, sued the Ramsey parents based on allegedly defamatory statements that they had made indicating their belief that he should be considered a suspect. The plaintiff contended that the Ramseys necessarily knew that he should not be a suspect because they knew that they had murdered their own child or, at least, knew that someone, other than the plaintiff, was responsible for the murder. I granted summary judgment for the Ramseys as the material evidence presented by them, and not disputed by the plaintiff, could not, as a matter of law, give rise to an inference that they had killed their child. My decision was based only on the civil record before me, which did not include the police investigative reports. The plaintiff had made little to no effort to adduce any facts in support of his contentions and my Order did not profess to answer definitively the question of who had murdered the child.

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- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *Bullard v. MRA Holding, LLC*, Case No. 1:04-cv-02407-JEC, 890 F. Supp. 2d 1323 (N.D. Ga. 2012), *question certified*, 292 Ga. 748 (2013).

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2. *Coalition for the Abolition of Marijuana Prohibition v. City of Atlanta*, Case No. 1:96-cv-407-JEC. Decision previously supplied in response to 13c.

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3. *Conklin v. Thomas*, Case No. 1:95-cv-914-JEC (copies supplied), *aff'd*,
Conklin v. Schofield, 366 F.3d 1191 (11th Cir. 2004), *cert. denied*, 544 U.S. 952
(2005).

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4. *A.M. v. Martin*, Case No. 1:96-cv-2316-JEC, Order Granting Summary Judgment, January 26, 1998. Decision previously supplied in response to 13c.

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5. *Mauldin v. Wal-Mart Stores*, Case No. 1:01-cv-2755-JEC, Order Granting Class Certification, 2002 WL 2022334 (N.D. Ga. Aug. 23, 2002) and Order Denying Reconsideration (copy supplied).

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6. *United States v. Perkins*, Case No. 1:10-cr-97-JEC, 2013 WL 3820716 (N.D. Ga. July 23, 2013).

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7. *United States v. Pressley*, Case No. 1:95-cr-189-JEC, 473 F. Supp. 2d 1303 (N.D. Ga. 2006).

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8. *Smith v. Cobb County Board of Elections*, Case No. 1:02-cv-1093-JEC, 314 F. Supp. 2d 1274 (N.D. Ga. 2002) and *Perry v. Cobb County Board of Elections and Registrations*, Case No. 1:02-cv-1206-JEC, 314 F. Supp. 2d 1332 (N.D. Ga. 2003).

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9. *Thomas, et al. v. Clayton Cnty. Bd. of Educ., et al.*, Case No. 1:97-cv-1517-JEC, 94 F. Supp. 2d 1290 (N.D. Ga. 1999), *aff'd sub nom. Thomas ex rel. Thomas v. Roberts*, 261 F.3d 1160 (11th Cir. 2001), *cert. granted*, 122 S. Ct. 2653 (2002), *reinstated upon reconsideration*, 323 F.3d 950 (11th Cir. 2003).

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10. *Weyerhaeuser Co. v. Lambert*, Case No. 1:05-cv-1144-JEC, 2007 WL 2826957 (N.D. Ga., Sept. 26, 2007), *aff'd sub nom.*, *In re Paragon Trade Brands, Inc.*, 278 Fed. App'x 1000 (11th Cir. 2008).

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

A district court is not always informed whether certiorari has been requested or granted. Nevertheless, I have included all cases I was able to identify. Case citations are supplied in Appendix attached.

- 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.

During my tenure as a district court judge, I have been assigned over 8,600 cases. The Clerk's records indicate that a judgment was issued in 2,827 cases and that 1,052 appeals of my decisions have been filed. Through a review of my own records and the Clerk's Office search of my case assignments list, using query language devised for this purpose, I have identified, below, 40 cases in which I have been reversed by the Eleventh Circuit. Of those 40 cases, four were remanded for further factual findings or for a clarification of my reasoning, and were affirmed on the second appeal that followed issuance of my order on remand; three were reversed because of an intervening change in the law; reversals in two cases were effectively vacated by the Circuit upon further appeals of that same case; three cases were reversed following certification of a

controlling issue of unsettled Georgia law to the Georgia Supreme Court; and one case was remanded to correct a clerical error in the judgment.

Civil Cases

Akins v. Fulton Cnty., Case No. 1:00-cv-2212-JEC, Orders Granting Summary Judgment (copies supplied), *aff'd in part and rev'd in part*, *Akins v. Fulton Cnty.*, 420 F.3d 1293 (11th Cir. 2005). Plaintiffs, who were Fulton County employees, brought a §1983 action alleging retaliation by county officials because the employees had criticized the conduct of these officials. My second substantive order granting summary judgment assumed that the retaliatory acts complained of were adverse enough to be actionable, but concluded that the supervising officials were entitled to qualified immunity because plaintiffs failed to show that their speech related to matters of public concern and was therefore protected under the First Amendment. The Eleventh Circuit reversed in part, concluding that the speech did relate to matters of public concern and that the defendants should have been on notice of this. After remand, however, the Supreme Court issued its decision in *Garcetti v. Ceballos*, 126 S. Ct. 1951 (2006), holding that statements made pursuant to an employee's official job duties, as were the plaintiffs' statements in this case, are not protected speech. Acting on defendants' motion, I reinstated my grant of summary judgment to the defendants. *Akins v. Gates*, 2007 WL 2729006 (N.D. Ga., Sept. 14, 2007). The plaintiffs appealed and the Eleventh Circuit affirmed, although the Circuit did note its disagreement with my decision to strike affidavits of the plaintiffs that were inconsistent with their prior deposition testimony. *Akins v. Fulton Cnty.*, 278 Fed. App'x 964 (11th Cir. 2008).

Akinwale v. Reno, Case No. 1:99-cv-324-JEC, Order Adopting Magistrate Judge's Report and Recommendation recommending dismissal (copies supplied), *rev'd*, 216 F.3d 1273 (11th Cir. 2000). The petitioner filed a habeas corpus petition to block deportation. The magistrate judge concluded that, given certain provisions of the Antiterrorism and Effective Death Penalty Act of 1996, the district court lacked jurisdiction to consider the petitioner's habeas petition. I concurred, but granted a certificate of appealability for the Eleventh Circuit to resolve the question. Relying on precedent issued since the dismissal in the district court, the appellate court concluded that a district court would have subject matter jurisdiction, and remanded.

Albert-Aluya v. Burlington Coat Factory Warehouse Co., Case No. 1:09-cv-2111-JEC, Order Adopting Magistrate Judge's Report and Recommendation recommending grant of summary judgment (copies supplied), *aff'd in part, rev'd in part, and remanded*, 470 Fed. App'x 847 (11th Cir. 2012). Plaintiff, who was represented by counsel, asserted that her termination violated §1981 and Title VII. The magistrate judge's report and recommendation ("R&R") recommended granting summary judgment to the defendant. Although plaintiff had asserted that the defendant had discharged her based in part on her accent, she had explicitly

disavowed a national origin claim in her pleadings. Accordingly, the magistrate judge recommended dismissal of any accent discrimination claim based on national origin under Title VII, and then considered, and ultimately rejected, an accent claim under §1981. Plaintiff filed objections to the R&R, but did not dispute the magistrate judge's conclusion that she was not seeking to assert a Title VII national origin claim based on her accent. I adopted the R&R. On appeal, the Eleventh Circuit held that neither plaintiff's "waiver" nor her counsel's failure to object to the magistrate judge's finding of a "waiver," precluded the claim, and the court remanded. It affirmed the dismissal of all other claims.

Ameritrust Co., N.A. v. White, Case No. 1:90-cv-2691-JEC, 848 F. Supp. 1001 (N.D. Ga. 1994), *aff'd in part and rev'd in part*, 73 F.3d 1553 (11th Cir. 1996). This was a complex commercial dispute concerning the validity of a promissory note. After a bench trial, I ruled that the plaintiff could not collect from the defendant on the note because a put-option agreement relieved him of liability. The Eleventh Circuit disagreed that the put-option provided a valid defense, but remanded for me to determine whether other potential defenses not ruled on were available to defendant. I ruled that those defenses were valid and again ruled for the defendant. On appeal, the Eleventh Circuit affirmed without opinion, based on my Order.

Aschbacher v. The Delta Pilots, Case No. 1:00-cv-2127-JEC, Orders ruling on motion for voluntary dismissal, motion for dismissal with prejudice, and motion for summary judgment (copies supplied), *vacated and remanded*, App. No. 01-14071 (11th Cir. 2001) (copy supplied). This action was one of multiple actions in which retired Delta pilots sued their retirement plan for benefit payments that they argued were due them. Plaintiff Marshall moved to dismiss all claims with prejudice, except for Count II, on which the defendant had moved for summary judgment. I granted the motion for summary judgment and dismissed the remaining counts with prejudice. On appeal, the parties argued the merits of the grant of summary judgment: specifically, whether exhaustion of administrative remedies was required. The Eleventh Circuit did not reach the merits of any of my rulings, but instead held that because the plaintiff had already received the benefits that were the subject of Count II, the claim became moot and should have been dismissed for lack of jurisdiction. While the appellate court vacated my order as to summary judgment on Count II and remanded for me to dismiss the complaint, it noted that I could consider on remand the imposition of attorney's fees against plaintiff even without a formal grant of summary judgment.

AT&T Wireless PCS, Inc. v. City of Atlanta, Case No. 1:98-cv-962-JEC, 50 F. Supp. 2d 1352 (N.D. Ga. 1999), *rev'd*, 210 F.3d 1322 (11th Cir. 2000), *vacated*, 260 F.3d 1320 (2001). AT&T had sued the City of Atlanta for its alleged non-compliance with the Telecommunications Act of 1996, and I granted its requested writ of mandamus for the City to grant its application. AT&T had also raised these same claims pursuant to 28 U.S.C. §1983, which would have entitled it to attorney's fees if successful. I ruled that the §1983 claim could not be made

because, by enacting a comprehensive remedial scheme in the Telecommunications Act, Congress intended to supplant §1983 for such claims. A panel of the Eleventh Circuit, noting that this issue presented a case of first impression in the circuit courts, reversed, finding that a claimant could sue under both the Telecommunications Act and §1983 based on the same allegations. Subsequently, the Eleventh Circuit voted to hear the case en banc, and vacated the panel decision. *AT&T Wireless v. City of Atlanta*, 260 F.3d 1320 (11th Cir. 2001). While the en banc proceeding was pending, AT&T dismissed its appeal, 264 F.3d 1314 (11th Cir. 2001), and accordingly my original opinion remains the law of the case. Subsequently, the Supreme Court held, as to the specific provision of the Telecommunications Act before it, that the plaintiff could not enforce the Act through use of a § 1983 action, as my original Order had held. *City of Rancho Palos Verdes, Cal. v. Abrams*, 544 U.S. 113 (2005).

Bourff v. Rubin Lublin, LLC, Case No. 1:09-cv-2437-JEC, Order Granting Motion to Dismiss (copy supplied), *vacated and remanded*, 674 F.3d 1238 (11th Cir. 2012). In this case of first impression in the circuit, the plaintiff debtor had claimed that a law firm's foreclosure notice violated the Fair Debt Collection Practices Act. I rejected the magistrate judge's conclusion that the law firm was not covered by the Act, holding that in appropriate circumstances an attorney can be considered a debt collector. I ruled that the law firm had not violated the Act by falsely identifying the creditor, and that in any event the claimed misidentification of the creditor was harmless. The Eleventh Circuit agreed that a law firm could be covered as a debt collector, but disagreed that the creditor was correctly identified and implicitly disagreed that this was necessarily harmless.

As a result of the holding in *Bourff*, a similar ruling by me in another case was vacated. *Shoup v. McCurdy & Candler, LLC*, 465 Fed. App'x 882 (11th Cir. 2012).

Bright v. Apfel, Case No. 1:97-cv-3509-JEC, Order Adopting Magistrate Judge's Report and Recommendation (copy supplied), *vacated and remanded*, App. No. 99-11732 (11th Cir. Apr. 11, 2000) (copy supplied). I adopted the magistrate judge's R&R affirming the Commissioner's Decision to deny plaintiff disability benefits on the grounds it was supported by substantial evidence. The Eleventh Circuit reversed, concluding that the Administrative Law Judge had failed to give the proper weight to the treating physician and to other evidence.

Doyle v. Volkswagenwerk, Case No. 1:91-cv-1926-JEC, Order Granting Partial Summary Judgment Motion (copy supplied), *question certified*, 81 F.3d 139 (11th Cir. 1996), *rev'd in part*, *Doyle v. Volkswagenwerk Aktiengesellschaft*, 114 F.3d 1134 (11th Cir. 1997). In this product liability case, I concluded that the automobile manufacturer's seat belt system complied with federal standards and, relying on a Georgia Court of Appeals decision, also concluded that Georgia law did not hold manufacturers to a higher standard than required by federal law. The Eleventh Circuit affirmed as to the ruling on federal standards, but certified the

question of state law to the Georgia Supreme Court to determine whether the latter agreed with the lower state appellate court decision. Based on the answer by the Georgia Supreme Court that held that Georgia law permits a claim even where the manufacturer has satisfied federal standards, the Eleventh Circuit reversed in part.

Estes v. Chapman, Case No. 1:02-cv-1131-JEC, Order Adopting Magistrate Judge's Report and Recommendation (copies supplied), *rev'd*, 382 F.3d 1237 (11th Cir. 2004). I adopted the magistrate judge's R&R that the state habeas corpus petition was untimely because the petitioner's motion in state court to vacate an illegally-imposed sentence was not "properly filed," as required by 28 U.S.C. §2244(d)(2), and therefore the time running during the pendency of that motion was not tolled under §2244. The Eleventh Circuit disagreed, noting that whether or not the state-court motion was timely-filed in that forum, the state court had jurisdiction to hear the motion and therefore the time while that motion was pending in state court could be properly tolled.

Frederick v. Sprint United Mgmt. Co., Case No. 1:96-cv-2170-JEC, Orders Denying Summary Judgment (copies supplied), *rev'd in part*, 246 F.3d 1305 (11th Cir. 2001). Plaintiff alleged that her former supervisor created a hostile sexual work environment and that she did not receive a promotion due to sexual harassment. On plaintiff's appeal of my first order granting summary judgment to the employer, the Eleventh Circuit remanded for me to determine whether the Supreme Court's recent *Faragher* and *Ellerth* decisions would affect my decision. On remand, the employer asserted the *Faragher/Ellerth* affirmative defense, as plaintiff had never complained during the two years the conduct was ongoing, and her supervisor had been fired under the employer's sexual harassment policy because of inappropriate behavior toward another employee. I concluded that the employer should prevail on its affirmative defense as it had taken reasonable steps to prevent and correct harassing conduct, and again granted summary judgment. The Eleventh Circuit affirmed my conclusion, albeit for different reasons, that plaintiff could not prevail on the promotion claim. The Eleventh Circuit reversed on the affirmative defense finding, stating that there were factual disputes about the adequacy of certain company policies. On remand, after a trial date was set, the plaintiff declined to proceed, and the case was therefore dismissed with plaintiff's consent.

Gordon v. Stock, Case No. 1:95-cv-2852-JEC, Order Dismissing Plaintiff's Claim (copy supplied), *aff'd in part and rev'd in part*, App. No. 95-9589 (copy supplied). The plaintiff, a federal prisoner, had sued multiple defendants based on an injury he received from a fellow inmate and plaintiff's subsequent placement in administrative segregation. I found that the plaintiff had failed to state a claim and dismissed. The Eleventh Circuit affirmed this dismissal, except for the claim against the case manager who had sent plaintiff to retrieve his property.

Grant v. Noltina, Case No. 1:92-cv-103-JEC, Order Granting Defendant's Motion to Dismiss, *Escareno v. Noltina Crucible & Refractory Corp.*, 152 F.R.D. 661 (N.D. Ga. 1993), *vacated and remanded*, 77 F.3d 407 (11th Cir. 1996), *granting motion to dismiss*, *Escareno v. Noltina Crucible & Refractory Corp.*, 172 F.R.D. 522 (N.D. Ga. 1997), *question certified to Georgia Supreme Court and vacated*, 163 F.3d 1257 (11th Cir. 1998). While his personal injury case was pending before me, the plaintiff, who was a foreign national living in Mexico, died. Plaintiff's counsel was appointed as the temporary administrator of the case and sought to substitute himself as plaintiff. Relying on Georgia law, defendant argued that the attorney was not a proper party. I agreed and granted the motion to dismiss. On appeal, the Eleventh Circuit remanded to give plaintiff's counsel an opportunity to reappear before the Georgia probate court to resolve the uncertain Georgia law questions at issue and to sort out any errors in its initial appointment of counsel as a representative of plaintiff's estate. Thereafter, a newly-appointed representative for plaintiff appeared before me, but he had not dealt with the difficult issues identified by the Circuit panel, and I dismissed again. The Eleventh Circuit then certified the question at issue to the Georgia Supreme Court, which answered the question favorably to plaintiff and again remanded the case to me. The action ultimately settled.

Haynes v. W.C. Caye & Co., Inc., Case No. 1:91-cv-2844-JEC, Order Adopting Magistrate Judge's Report and Recommendation Entering Judgment for Defendant (copies supplied), *rev'd*, 52 F.3d 928 (11th Cir. 1995). In this sex and age discrimination case, the magistrate judge had conducted a bench trial, issued findings of fact and conclusions of law, and ruled for the defendant. I adopted the R&R. The Eleventh Circuit affirmed the decision as to the age claim, but remanded because the magistrate judge had incorrectly considered a supervisor's statement to be circumstantial rather than direct evidence of intent. On remand, the magistrate judge again found in favor of defendant. I determined that I could not make a credibility determination based on sharply-disputed evidence, and ordered a new non-jury trial before me. The case ultimately settled.

Int'l Fin. Grp. v. Barsk, Case No. 1:98-cv-3333-JEC, Orders Granting Motions to Dismiss (copies supplied), *rev'd*, 31 Fed. App'x 200 (11th Cir. 2001). I found that plaintiff failed to state a claim for breach of contract and that the fraud claim was barred by the statute of limitations. The Eleventh Circuit disagreed on both points and remanded.

Jairath v. Dyer, Case No. 1:96-cv-1987-JEC, Order Denying Motion to Remand, 961 F. Supp. 277 (N.D. Ga. 1996) and Order Granting Motion for Summary Judgment (copy supplied), *rev'd*, 154 F.3d 1280 (11th Cir. 1998). Plaintiff alleged that a doctor had refused to perform a surgical procedure because the plaintiff was HIV-positive. Thereafter, he filed a claim in state court relying on a catch-all Georgia statute that permits a cause of action based on any law that requires a person to perform an act for the benefit of another, even though that law may not expressly provide for a cause of action. The law that he alleged to

have created the duty in his case was the Americans with Disabilities Act (ADA). After removal by the defendant, I denied plaintiff's motion for remand, holding that removal was proper because a federal question was presented through the plaintiff's allegation of a duty under the ADA, which provided for a private injunctive remedy. In a subsequent order, I granted the defendant's motion for summary judgment. On appeal, the Eleventh Circuit did not reach the merits of the summary judgment ruling, but it reversed based on my earlier decision not to remand the case to state court, holding that because the plaintiff could not have sued for damages under the ADA, nor did he have standing to seek an injunction under the ADA, the state claim contained elements not present in a federal ADA action.

Marbut v. State Ct. of DeKalb Cnty., Case No. 1:01-cv-371-JEC, Order Granting Summary Judgment (copy supplied), *aff'd in part and rev'd in part*, App. No. 03-15259 (11th Cir. May 19, 2004) (copy supplied). Plaintiff had claimed sex discrimination when she was not awarded a promotion within the county probation office. I granted summary judgment to the defendant. The Eleventh Circuit upheld the ruling as to the retaliation claim but concluded that there were material issues of fact as to the other claims.

Miller v. Harco Nat'l Ins. Co., Case No. 1:99-cv-417-JEC, Order Ruling on Motions For Summary Judgment (copy supplied), *question certified*, 241 F.3d 1331 (11th Cir. 2001), *rev'd*, 280 F.3d 1353 (11th Cir. 2002). The plaintiffs had been injured in an automobile accident with a commercial truck and had sued the trucking company, its owner, and the insurance carrier for the owner. I granted summary judgment to plaintiff as to the first two entities, and the Eleventh Circuit affirmed, adopting my analysis. I also held that, under Georgia law, the insurance coverage did not extend to the trucking company. The Eleventh Circuit certified this question to the Georgia Supreme Court, which held that an insured party can be found liable based on a theory of piercing the corporate veil and that motor carrier coverage is more broadly construed than is ordinary motor vehicle coverage. Accordingly, the Eleventh Circuit reversed the earlier grant of summary judgment in favor of the insurer.

Morgan v. United States, Case No. 97-cv-604-JEC, Order Affirming Order of Bankruptcy Judge (copy supplied), *remanded*, 182 F.3d 775 (11th Cir. 1999). The IRS has priority status as to taxes owed during tax years no more than three years before the filing of a bankruptcy petition. Here, however, the debtors had filed successive bankruptcy petitions, thereby complicating the proper calculation of this three-year period and preventing the IRS from collecting back taxes during the overlapping automatic stay periods. Relying on two separate statutes, the bankruptcy court followed the majority position, which calls for a tolling of the limitations period to allow the IRS to collect for a period of time greater than the three years preceding the filing of the latest bankruptcy petition. On appeal to the district court, I affirmed. The Eleventh Circuit agreed that the bankruptcy court had the equitable power to toll the running of the limitations period, but remanded

because the bankruptcy court should not have considered the tolling to be legally mandated.

Owen Mumford USA, Inc. v. Surgilance, Inc., Case No. 1:01-cv-588-JEC, Summary Judgment Orders (copies supplied), *rev'd*, 137 Fed. App'x 342 (Fed. Cir. 2005). In this patent infringement claim, I ruled for the plaintiff, who had argued that the defendant's product, used to prick a patient to obtain blood, infringed the plaintiff's patent. In a 2-1 decision, the Federal Circuit held that I had erred in interpreting the pivotal claim term, "relaxed condition of the spring," to mean that the spring be only less energized than at the time immediately prior to firing. Instead, the proper construction should have defined that term as meaning that the spring initially has no potential energy.

Oduok v. Cobb Cnty. Bd. of Comm'rs, Case No. 1:00-cv-2046-JEC, Order Granting Summary Judgment (copies supplied), *aff'd in part and rev'd in part*, App. No. 02-12141 (11th Cir. 2003) (copy supplied). In response to a domestic disturbance call by plaintiff's estranged wife, police arrived and asked the plaintiff to leave. When he refused to do so, the officers arrested him. Based on this incident, plaintiff filed multiple claims against several parties. I granted summary judgment for the defendant on all claims. The Eleventh Circuit affirmed as to all claims, except for the excessive force claim. The case was ultimately tried to a jury, which returned a verdict for the defendant officers. The Eleventh Circuit affirmed.

Powles v. Baker, Case No. 1:06-cv-2853-JEC, Order Adopting Magistrate Judge's Report and Recommendation (copies supplied), *rev'd*, *Powles v. Thompson*, 282 Fed. App'x 804 (11th Cir. 2008). Both I and the magistrate judge concluded that the state prisoner's petition for habeas corpus relief was filed more than one-year after his state conviction had been final, and that, because it was untimely, the petition had to be dismissed. After my ruling, the Eleventh Circuit issued its opinion in *Taylor v. Williams*, 528 F.3d 847 (11th Cir. 2008), holding that the "mailbox rule" applies to state prisoners. With that new rule, petitioner's habeas petition was deemed timely.

Reyes v. Clayton Cnty., Case No. 1:98-cv-1230-JEC, Order Denying Qualified Immunity (copy supplied), *rev'd*, App. No. 00-11884 (11th Cir. 2002) (copy supplied). Plaintiffs had been subjected to an intrusive search and seizure, during which they were handcuffed and their apartment searched pursuant to a warrant. The residents of the apartment had no drugs and the police officers applying for the warrant had likely entered the wrong apartment number, based on a vague description of the apartment by a confidential informant. I granted qualified immunity for all defendants, except for the two officers who obtained the warrant, concluding that they were on clear notice that the information provided by the informant was too unspecific to justify obtaining a warrant for the apartment in question. The Eleventh Circuit disagreed, concluding that the information

supplied by the informant was specific enough to confer immunity for the officers in their execution of the search.

Russell v. Reno, Case No. 1:98-cv-142-JEC, Order of March 9, 1999 dismissing habeas corpus petition of deportable immigrant on jurisdictional grounds (copy supplied), *aff'd*, App. No. 99-10084 (11th Cir. May 9, 2000) (copy supplied), remand to the Board of Immigration Appeals (11th Cir. Dec. 27, 2001) (copy supplied), remand to district court (11th Cir. Aug. 11, 2003) (copy supplied). As explained in the Eleventh Circuit's unpublished May 9, 2000 opinion affirming my decision, I had initially dismissed the habeas petition for lack of jurisdiction. The Eleventh Circuit indicated that in doing so, I "correctly followed the precedent of this Circuit," and it affirmed. Thereafter, in 2001, the Supreme Court granted certiorari and, in light of its recent decision in *I.N.S. v. St. Cyr*, 121 S. Ct. 2271 (2001), it remanded the case back to the Eleventh Circuit for further consideration. As explained in its 2001 decision, the Eleventh Circuit received a consent motion from the petitioner and the Government to certify the question whether he was entitled to relief under *St. Cyr* to the Board of Immigration Appeals; the Eleventh Circuit granted the motion. Following the Board's subsequent determination that the petitioner was entitled to relief, the Eleventh Circuit then remanded the case back to me to decide the Section 2241 habeas petition on its merits. I ultimately denied the petition on the merits. No appeal was taken.

Schwier v. Cox, Case No. 1:00-cv-2820-JEC, Order Granting Motion for Summary Judgment (copy supplied), *rev'd and remanded*, 340 F.3d 1284 (11th Cir. 2003). The plaintiffs had sued the State of Georgia, arguing that Georgia's law requiring that citizens provide their social security numbers when registering to vote violated the federal Privacy Act. Relying in part upon a Ninth Circuit decision, *Dittman v. California*, 191 F.3d 1020 (9th Cir. 1999), I held that the plaintiffs could not file a private cause of action seeking to vindicate the provision of the Privacy Act in question. The Eleventh Circuit disagreed with the Ninth Circuit, and reversed, holding that a private cause of action was permissible. On remand, I ruled for the plaintiffs as to the State's alternate defenses, and was later affirmed.

Solomon v. Sullivan, Case No. 1:92-cv-511-JEC, Orders Adopting Magistrate Judge's Reports and Recommendation Affirming the Commissioner's Decision (copies supplied), *aff'd in part and remanded in part*, App. No. 93-8550 (11th Cir. Dec. 23, 1993) (copy supplied). In this social security disability appeal, the magistrate judge recommended that I affirm the Commissioner's decision that the plaintiff's disability had ceased, and I adopted his recommendation. The Eleventh Circuit affirmed in part, but remanded for the court to determine whether the plaintiff was disabled based on an age-based Medical Vocational grid. The magistrate judge referred to this grid and again determined that the Commissioner's determination was correct, and I adopted the magistrate judge's report. The Eleventh Circuit affirmed.

St. Charles Foods, Inc. v. America's Favorite Chicken Co., Case No. 1:96-cv-1466-JEC, Order Granting Summary Judgment (copy supplied), *rev'd*, *St. Charles Foods, Inc., v. America's Favorite Chicken Co.*, 198 F.3d 815 (11th Cir. 1999).

In a contract dispute between a franchisee and a franchisor concerning an exclusivity term, I found ambiguity as to the scope of the right of first refusal and, applying Georgia rules of contract construction, resolved that ambiguity in the franchisor's favor. The Eleventh Circuit remanded, concluding that even after application of these rules of construction, the intent of the parties could be disputed and thus a jury should resolve the dispute.

Tippitt v. Reliance Standard Life Ins. Co., Case No. 1:02-cv-1140-JEC, Order Following Bench Trial For Defendant (copy supplied), *remanded for further findings of fact*, 457 F.3d 1227 (11th Cir. 2006). The plaintiff had sued under ERISA, arguing that the defendant insurance company had improperly denied his request for disability benefits. I concluded that, as plaintiff was able to complete up to three hours of sedentary work, he was not totally disabled. On appeal, the Eleventh Circuit articulated standards for total versus partial disability, and remanded for further findings of fact. I decided again that the plaintiff should be considered partially disabled, and the Eleventh Circuit affirmed.

Watson v. Dep't of Human Res., Case No. 1:98-cv-253-JEC, Order Adopting Magistrate Judge's Report and Recommendation Denying Individual Defendant's Motion for Summary Judgment (copies supplied), *rev'd*, App. No. 00-11668 (11th Cir. 2000) (copies supplied). The plaintiff had filed a Title VII suit charging racial discrimination against the state agency for which he worked, as well as a §1983 action against the supervisor who disciplined him. The magistrate judge had recommended denying qualified immunity to his supervisor, and I agreed. The Eleventh Circuit disagreed and held that the supervisor was not on notice that his actions violated the plaintiff's constitutional rights.

West v. Dikoku, Case No. 1:96-cv-2036-JEC, Order Dismissing Plaintiff's Complaint for Failure to State A Claim (no copy can be located), *rev'd*, App. No. 97-9191 (11th Cir. Nov. 12, 1998) (copy supplied). The plaintiff prisoner brought a §1983 claim arguing that a jail doctor had acted with deliberate indifference to the plaintiff's medical condition. On a frivolity review, I dismissed because the plaintiff's allegations did not rise above an allegation of negligence, which is not actionable as a constitutional tort. The Eleventh Circuit disagreed and concluded that the allegations were sufficient to permit the plaintiff to proceed. Ultimately, I granted summary judgment to the defendant and plaintiff's subsequent appeal was dismissed by the Eleventh Circuit.

Yu v. Reno, Case No. 1:97-cv-2984-JEC, Order Adopting Magistrate Judge's Report and Recommendation Dismissing Petitioner's Habeas Corpus Petition (copies supplied), *rev'd*, Order of July 7, 1999 (11th Cir.) (copy supplied). The petitioner filed a habeas corpus action, seeking to vacate his order of deportation.

The magistrate judge concluded that a provision of the Antiterrorism and Effective Death Penalty Act restricting criminal aliens' eligibility for waiver of deportation applied retroactively and therefore the petitioner was not eligible for a waiver of deportation. I adopted the R&R. Thereafter, the Eleventh Circuit issued its decision in *Mayers v. United States Dep't of I.N.S.*, 175 F.3d 1289 (11th Cir. 1999), holding that the provision was not retroactive. Consistent with the court's direction, I remanded the waiver question at issue to the Board of Immigration Appeals.

Criminal Cases

United States v. Cornelius, Case Nos. 1:05-cr-411-JEC and 1:05-cr-295-JEC, *aff'd in part and remanded in part*, App. No. 06-10727 (11th Cir. Oct. 30, 2006) (copy supplied). The Eleventh Circuit affirmed my sentence of 84 months for defendant's fraud conviction, but remanded as to the felon-in-possession of a firearm conviction so that I could correct a clerical error that showed the sentence for the latter conviction to have been 84 months, when the sentence imposed was actually 24 months.

United States v. Galindo-Lara, Case No. 1:07-cr-171-JEC, Sentencing Order (copy supplied), *remanded*, App. No. 07-15363 (11th Cir. May 19, 2008) (copy supplied). In this illegal-reentry case, I had departed upward based on the inadequacy of the defendant's criminal history score, and imposed a 37-month sentence. Although I had earlier issued a 7-page Order explaining my reasons for the upward departure, the Eleventh Circuit remanded because I had not discussed each criminal history category that I had passed over en route to the category that I decided properly reflected the defendant's future dangerousness. On remand, I reiterated my earlier reasons for departing from a Category II to an overlapping range in Categories III and IV, including the fact that the defendant had been deported seven times, but had continued to reenter the country illegally and had already been convicted two other times for illegal reentry. The Eleventh Circuit affirmed.

United States v. Gallo, Case No. 1:96-cr-296-JEC, *remanded*, App. No. 96-9478 (11th Cir. Oct. 30, 1997) (copy supplied). This defendant had been convicted of illegal reentry. I sentenced him to 15-months imprisonment, and further ordered, as a condition of his supervised release, that he be deported. In an earlier *en banc* opinion, the Eleventh Circuit had held that a district court may set such a condition for a defendant who is subject to deportation. After the sentencing, Congress changed the immigration law to provide that only an immigration judge may order deportation. Given this statutory change, and its subsequent adherence to that change in *United States v. Romeo*, 122 F.3d 941 (11th Cir. 1997), the Eleventh Circuit remanded for me to remove the deportation condition from the terms of supervised release.

United States v. Hardaway, Case Nos. 1:94-cr-59-JEC and 1:94-cr-146-JEC, *remanded*, App. No. 00-16010 (11th Cir. July 3, 2001) (copy supplied). The defendant was sentenced and, upon release from prison, began his term of supervised release. He violated the conditions of his supervision, after which I sentenced him for that violation and reimposed supervised release. The Eleventh Circuit affirmed as to the revocation decision and the accompanying sentence of imprisonment, but noted that, because I had sentenced the defendant to the maximum term of imprisonment available, I could not impose an additional term of release. It remanded, directing me to correct the judgment accordingly.

United States v. Jimenez-Pineda, Case No. 1:99-cr-558-JEC, *aff'd in part and rev'd in part*, App. No. 00-14108 (11th Cir. Oct. 10, 2001) (copy supplied). I originally sentenced the defendants to a 60-month term of imprisonment. The Eleventh Circuit agreed that the defendants should have received a 2-level enhancement for possession of a firearm, but disagreed that this enhancement, under the particular facts of this case, should deprive the defendant of eligibility for a 2-level reduction under the safety valve provision of the Sentencing Guidelines. Therefore, the court remanded for me to reassess whether the safety valve was unavailable to the defendant based on other disqualifying factors. At resentencing, I concluded that the safety valve should apply and imposed a sentence of 46 months, which was the low end of the newly-calculated Guidelines.

United States v. McLellan, Case No. 1:91-cr-326-JEC. Prior to my appointment to the bench in 1992, I had been appointed as a member of the United States Sentencing Commission in 1990, with my term set to end in 1996. I therefore remained on the Commission after my appointment as a judge. The Sentencing Reform Act required that the Commission include at least three federal judges, and three other judges on the Commission had continued to perform their judicial duties while also performing their duties as Sentencing Commissioners.

Shortly after I became a federal district judge, the Federal Defenders Program in my district filed motions contending that as long as I was a Sentencing Commissioner, I could not impose a sentence on any criminal defendant and that I should recuse from deciding the motions. I denied the motion to recuse and denied, on the merits, the motion seeking to remove me from all criminal cases, as well as its challenges to the constitutionality of the Commission, whose constitutionality had been decided in *Mistretta v. United States*, 488 U.S. 361 (1989).

In an unpublished decision, *United States v. McClellan* (copy supplied), the Eleventh Circuit ruled that because, as a Commissioner, I was paid a salary equivalent to that of a circuit judge, which salary is higher than that of a district judge, I had a direct pecuniary interest in the outcome of the litigation, and should have granted the motion to recuse. The panel did not rule on the merits of the defendants' constitutional challenges, which it said "could affect the continued

existence of the Guideline system,” but stated that they were not frivolous even in light of *Mistretta*.

At that time, the cases challenging my ability to sentence criminal defendants were transferred to another judge for sentencing, as was the motion challenging the constitutionality of the Commission. During the course of litigating that challenge, defense counsel sought discovery from the Commission and other agencies and officials. The presiding district court judge denied the Government’s motion to quash these subpoenas and the Government sought a writ of mandamus in the Eleventh Circuit.

The Eleventh Circuit issued a published decision granting the Government’s motion. *In re United States*, 60 F.3d 729 (11th Cir. 1995). It noted that, separating out the dictum found in the earlier panel decision, the only holding of that prior panel opinion was that I should have recused, albeit the present panel “emphatically disavowe[ed]...any intention to adopt” that holding. As to the motion to quash before it, the panel concluded that the subpoenas sought immaterial evidence, as the Supreme Court had already decided the constitutionality of the Commission and the Guidelines in *Mistretta*, and only the Supreme Court could overturn that ruling. As to the specific challenge contesting the propriety of an Article III Judge-Commissioner’s presiding over a sentencing hearing, the panel concluded that the defendant lacked standing. No further such challenges were brought.

The following list shows the cases that were remanded to be assigned to a new judge during the interim between the first Eleventh Circuit unpublished ruling and the published decision: *United States v. Ansong*, Case No. 1:92-cr-193-JOF-JMF; *United States v. Bozza*, Case No. 1:92-cr-186-JOF-ALC; *United States v. McLellan*, Case No. 1:92-cr-326-JOF-JMF; *United States v. Millwood*, Case No. 1:92-cr-267-JOF-JRS; *United States v. Roark*, Case No. 1:92-cr-62-JMF; *United States v. Smith*, Case No. 1:93-cr-67-3-JEC-JRS; *United States v. Tullos*, Case No. 1:92-cr-355-JOF-JRS.

United States v. Njanja, Case No. 1:04-cr-283-JEC, *vacated and remanded*, App. No. 04-15961 (11th Cir. May 24, 2005) (copy supplied). I sentenced the defendant at a time when the federal sentencing Guidelines were mandatory. By the time the Eleventh Circuit heard the defendant’s appeal, the Supreme Court had ruled that the Guidelines were advisory. The Eleventh Circuit therefore vacated the sentence and remanded for resentencing.

United States v. Pressley, Case No. 1:95-cr-189-JEC, *Sentencing aff’d in part and rev’d in part*, App. No. 99-112731 (11th Cir. July 24, 2000) (copy supplied). Second Sentencing, *rev’d*, *United States v. Pressley*, 345 F.3d 1205 (11th Cir. 2003). Following trial and conviction of the defendant, at his first sentencing hearing I sentenced him to 292 months imprisonment. While the defendant was eligible for a 2-level enhancement for brandishing a gun and another 2-level

enhancement for restraint of a victim, I determined not to impose both enhancements as that would result in double counting under the circumstances. On appeal, the Circuit affirmed as to all grounds, except the Government's contention that I had erred by failing to impose the additional 2-level enhancement. That error meant that the defendant was subject to a minimum 360-month sentence. At the second hearing, I calculated the Guidelines as requiring a minimum sentence of 360 months. The defendant requested a downward departure because he had been in 23-hour lock-down for over five years during the protracted sentencing litigation in his case. I indicated that I would consider such a departure, had I the power to do so, but concluded that I lacked this power. I therefore imposed a 360-month sentence. On appeal, the Eleventh Circuit reversed, holding that I did have the power to depart on this ground, and it remanded for me to consider whether to do so. By the time of the third sentencing hearing, the Supreme Court had issued its decision in *Booker*, and the parties agreed that, on resentencing of the defendant, the Guidelines were now only advisory. I imposed a 16-year sentence. Neither party appealed.

United States v. Thomas, Case No. 1:00-cr-281-JEC, Order Denying Motion to Vacate Sentence (copy supplied), *rev'd*, *Thomas v. United States*, 572 F.3d 1300 (11th Cir. 2009). The defendant pled guilty to a drug and firearms charge, and was sentenced to a 192-month sentence as a career offender. On appeal, defendant's attorney filed an *Anders* brief, indicating that there were no meritorious issues to be presented on appeal; the Eleventh Circuit concurred and the judgment was affirmed. Defendant subsequently filed a §2255 petition to vacate his sentence, arguing ineffectiveness of his counsel for failure to challenge one of his predicate convictions. I denied that ground, noting that the defendant, in his *pro se* appellate brief, had raised that issue and that the original Eleventh Circuit decision had indicated that defendant's appellate grounds were without merit. On appeal of the denial of the §2255 motion, the appellate court remanded, ruling that it had not determined these claims, as defendant's claim on direct appeal had not been specific enough to suggest the argument that he later made in his §2255 motion. On remand, the Government agreed to defendant's request for a new sentencing because, while the appeal was pending, one of his predicate convictions had been vacated by the state sentencing court. I granted the joint motion and sentenced defendant to a time-served sentence.

- 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.

For the most part, I have requested that very few of my opinions be published. All of my unpublished orders and opinions issued since the federal court's CM/ECF system began docketing these documents can now be found on that system, which can be accessed by Pacer users. In addition, many of my opinions are available in Westlaw and LexisNexis.

- 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.

Coalition for the Abolition of Marijuana Prohibition v. City of Atlanta, Case No. 1:96-cv-407-JEC (copy previously supplied in response to 13c), *aff'd*, 219 F.3d 1301 (11th Cir. 2000)

Conklin v. Thomas, Case No. 1:95-cv-914-JEC (copy previously supplied in response to 13d), *aff'd*, *Conklin v. Schofield*, 366 F.3d 1191 (11th Cir. 2004), *cert. denied*, 544 U.S. 952 (2005)

Hein v. Kimbrough, Case No. 1:09-cv-1791-JEC (copy supplied) and 942 F. Supp. 2d 1308 (N.D. Ga. 2013), *aff'd*, ___ Fed. App'x ___, 2013 WL 6163636 (N.D. Ga. Nov. 21, 2013)

Jackson v. City of Stone Mountain, 232 F. Supp. 2d 1337 (N.D. Ga. 2002)

Johnson v. Miller, 929 F. Supp. 1529 (S.D. Ga. 1996)(*per curiam*)(three-judge panel)

Jordan v. Cobb County, 227 F. Supp. 2d 1322 (N.D. Ga. 2001)

Kennedy v. Avondale Estates, 414 F. Supp. 2d 1184 (N.D. Ga. 2005)

A.M. v. Martin, Case No. 1:96-cv-2316-JEC (copy previously supplied in response to 13c)

Payne v. Dekalb County, 414 F. Supp. 2d 1158 (N.D. Ga. 2004)

Smith v. Cobb County, Case No. 1:02-cv-1093-JEC, 314 F. Supp. 2d 1274 (N.D. Ga. 2002) and *Perry v. Cobb County*, Case No. 1:02-cv-1206-JEC, 314 F. Supp. 2d 1332 (N.D. Ga. 2003)

Thomas v. Clayton County, 94 F. Supp. 2d 1290 (N.D. Ga. 1999), *aff'd*, 261 F.3d 1160 (11th Cir. 2001), *vacated*, 536 U.S. 953 (2002), *reinstated*, 323 F.3d 950 (11th Cir. 2003)

Walden v. Centers for Disease Control and Prevention, Case No. 1:08-cv-2278-JEC (copy supplied), *aff'd*, 669 F.3d 1277 (11th Cir. 2012)

- 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.

Estate of Kosow v. Comm'r of Internal Revenue, 45 F.3d 1524 (11th Cir. 1995) (Carnes, Dist. J.). The IRS had attempted to deny an estate a deduction for the

four million dollars it had paid to the sons of the decedent pursuant to an agreement the latter had made thirty years before in a divorce settlement with his then-wife, who was the mother of the sons. The sons' mother had given up her right to request greater child support in return for the decedent's agreement to leave a certain portion of his estate to the two sons. Reversing the tax court's decision, the opinion holds that the agreement between the decedent and his ex-wife was made in good faith for value, and was supported by adequate and full consideration. Accordingly, a deduction was proper.

Jaques v. Kendrick, 43 F.3d 628 (11th Cir. 1995) (Carnes, Dist. J.). The opinion affirms the decision of the district court that a convenience store whose employee had sold alcoholic beverages to one individual, was not liable under Georgia law for that individual's later transfer of the alcohol to a minor who later caused a serious automobile accident, absent evidence that the employee had actual or constructive knowledge that the alcohol would be transferred to that minor. As there was no such evidence, the panel opinion affirmed the district court's grant of summary judgment to the defendant.

Birmingham Steel Corp. v. Tennessee Valley Auth., 353 F.3d 1331 (11th Cir. 2003) (Carnes, Dist. J.). The opinion reversed a district court that had decertified a class based on the inadequacy of the existing class representative, but without allowing class counsel and the class a reasonable time to find a new class representative.

Southeast Paving v. Jackson Cnty., App. No. 93-3052 (11th Cir. 1994)

Lykes Bros, Inc. v. United States Army Corps of Eng'rs, 64 F.3d 630 (11th Cir. 1995)

Honeycutt v. Birge, App. No. 93-3462 (11th Cir. 1994)

Barnett Bank of Marion Cnty., N.A. v. Gallagher, 43 F.3d 631 (11th Cir. 1995), overruled *sub nom*, *Barnett Bank of Mariona County, N.A. v. Nelson*, 517 U.S. 25 (1996)

Electro-Wire Prod., Inc. v. Sirote & Permutt, P.C., 40 F.3d 356 (11th Cir. 1994)

Rowland v. Vermont Mutual Ins. Co., App. No. 93-9504 (11th Cir. 1994)

Wrenn v. Am. Cast Iron Pipe, 40 F.3d 1162 (11th Cir. 1994)

McCoy v. Webster, 47 F.3d 404 (11th Cir. 1995)

USA v. Antelmo Marquez-Lopez, App. No. 01-16809 (N.D. Ga. 2003)

Reynolds v. McInnes, 338 F.3d 1221 (11th Cir. 2003)

Anders v. Hometown Mortg., Servs., Inc., 346 F.3d 1024 (11th Cir. 2003)

Doe v. Pryor, 344 F.3d 1282 (11th Cir. 2003)

Miller v. Tyson Foods, Inc., App. No. 02-15709 (11th Cir. 2003)

Gayfer Montgomery Fair v. Pinkey, App. No. 02-15964 (11th Cir. 2003)

In Re: Ford Motor Co., 345 F.3d 1315 (11th Cir. 2003)

Levine v. Bellsouth, App. No. 04-10819 (11th Cir. 2005)

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.

Automatic Recusals:

I have informed the Clerk of Court that I must recuse from all cases in which a party is represented by King & Spalding, LLP, or in which the latter is a party, as my husband is a partner at that firm. Accordingly, if King & Spalding appears at the time a case is initially filed, the Clerk of Court does not assign that case to me, but instead assigns the case to the next judge on our court's random rotation list. If, however, King & Spalding makes an appearance after a case has been assigned to me, I must then recuse from that case.

Cases In Which I Have Recused *Sua Sponte*:

Neither I nor the Clerk's Office generate or maintain a report containing a list of cases in which I have recused *sua sponte*. The Clerk's Office has assisted me in attempting to find all such cases and has provided me with the following list. While I have tried to identify all of the cases on which I have recused *sua sponte*, I cannot ensure that this list has captured all such cases.

(i) Cases where the law firm of King & Spalding, LLP, has appeared:

American European Insurance Company v. Suntrust Bank, Inc., Case No. 1:09-cv-1310 (N.D. Ga.)

Bleier v. The Coca-Cola Company, Case No. 1:06-cv-697 (N.D. Ga.)

Bulthaup Corporation v. French, Case No. 1:09-cv-320 (N.D. Ga.)

Carpenter v. Airborne, Inc., Case No. 1:04-cv-3076 (N.D. Ga.)

CCH Associates, LLC v. Datascope Corp., Case No. 1:08-cv-3313 (N.D. Ga.)

Coffell v. Equifax Information Services, LLC, Case No. 1:12-cv-2693 (N.D. Ga.)

Cole v. Daimler AG, Case No. 1:09-cv-2509 (N.D. Ga.)

Collier v. The Coca-Cola Company, Case No. 1:06-cv-194 (N.D. Ga.)

Cooper v. Daimler AG, Case No. 1:09-cv-2507 (N.D. Ga.)

Cooper v. Daimler AG, Case No. 1:09-cv-2510 (N.D. Ga.)

Cowe v. Equifax Credit Reporting, Case No. 1:09-cv-991 (N.D. Ga.)

Creasy v. Massachusetts Mutual Life Insurance Company, Case No. 1:04-cv-2151 (N.D. Ga.)

I kept no notes as to my reason for recusal. I suspect that the reason for recusal was because one of the attorneys for the defendant had been a partner at King & Spalding, the firm in which my husband was a partner. At the time this case was filed, this person had recently left King & Spalding for a new law firm, but often our docket sheets are not updated simultaneously with such address changes and it is probable that this lawyer was still listed at that time on the cover of the docket sheet as a lawyer with King & Spalding.

Cua v. Corsolutions Medical, Inc., Case No. 1:05-cv-1286 (N.D. Ga.)

Dang v. XLHealth Corporation, Case No. 1:09-cv-1076 (N.D. Ga.)

Doe v. Wooten, Case No. 1:07-cv-2764 (N.D. Ga.)

Dosa v. Equifax Information Services, LLC, Case No. 1:11-cv-2857 (N.D. Ga.)

Electronic Claims Processing, Inc. v. Emdeon Corporation, Case No. 1:06-cv-1813 (N.D. Ga.)

Everson v. The Coca-Cola Company, Case No. 1:05-cv-2301 (N.D. Ga.)

Federal Deposit Insurance Corporation v. Skow, Case No. 1:11-cv-111 (N.D. Ga.)

Fuller v. Home Depot Services, LLC, Case No. 1:06-cv-1490 (N.D. Ga.)

Functional Products Trading, S.A. v. JITC, LLC, Case No. 1:12-cv-355 (N.D. Ga.)

Gentle v. Equifax Information Services, LLC, Case No. 1:13-cv-102 (N.D. Ga.)

Gianfagna v. SmithKline Beecham Corporation, Case No. 1:11-cv-950 (N.D. Ga.)

Gold Kist Inc. v. Pilgrim's Pride Corporation, Case No. 1:06-cv-2441 (N.D. Ga.)

Grubbs v. SmithKline Beecham Corporation, Case No. 1:04-cv-3433 (N.D. Ga.)

Haines v. International Management Associates, LLC, Case No. 1:08-cv-1937 (N.D. Ga.)

Harry P. Kuniansky Limited Partnership v. Flint Group North America Corporation, Case No. 1:09-cv-2606 (N.D. Ga.)

Hiwassee College, Inc. v. The Southern Association of Colleges and Schools, Inc., Case No. 1:05-cv-951 (N.D. Ga.)

Hoque v. Toyota Motor Sales, USA, Inc., Case No. 1:09-cv-2360 (N.D. Ga.)

Hughes v. Kia Motors Corporation, Case No. 1:11-cv-2733 (N.D. Ga.)

ITT Corporation v. Xylem Group, LLC, Case No. 1:11-cv-3669 (N.D. Ga.)

Jackson v. Organon USA, Inc., Case No. 1:13-cv-820 (N.D. Ga.)

Lowry v. Toyota Motor Corporation, Case No. 1:10-cv-2165 (N.D. Ga.)

Lucas v. Scana Energy Marketing, Inc., Case No. 1:12-cv-2356 (N.D. Ga.)

Mack v. Organon USA, Inc., Case No. 1:13-cv-1278 (N.D. Ga.)

McKesson Information Solutions LLC v. Epic Systems Corporation, Case No. 1:06-cv-2695 (N.D. Ga.)

Miller v. Daimler AG, Case No. 1:09-cv-2506 (N.D. Ga.)

Monk v. Daimler AG, Case No. 1:09-cv-2511 (N.D. Ga.)

OFS Brightwave Solutions, Inc. v. Preferred Real Estate Investments, Inc., Case No. 1:06-cv-2017 (N.D. Ga.)

Pedraza v. The Coca-Cola Company, Case No. 1:05-cv-1256 (N.D. Ga.)

Perkins v. Megaloni Limited Liability, Company, Case No. 1:07-cv-1557 (N.D. Ga.) and *Perkins v. Chingros*, Case No. 1:07-cv-1558 (N.D. Ga.)

Siemens Industry, Inc. v. SIPCO, LLC, Case No. 1:10-cv-2478 (N.D. Ga.)

At the time of assignment to me, the automatic conflict checking report indicated that King & Spalding had appeared in the case. Upon looking at the docket now, I do not see King & Spalding on the docket. Further research on Google indicates that one of the attorneys on the case had been an associate with King & Spalding, presumably at the time this case was filed. This individual later left King & Spalding to go with the law firm now listed on the docket: Kilpatrick Townsend & Stockton.

Romala Stone, Inc. v. The Home Depot U.S.A., Inc., Case No. 1:04-cv-2307 (N.D. Ga.)

Rosinek v. The Home Depot, Inc., Case No. 1:07-cv-2972 (N.D. Ga.)

Stroman v. Bank of America Corporation, Case No. 1:10-cv-4080 (N.D. Ga.)

United States v. Apria Healthcare, Case No. 1:95-cv-2142 (N.D. Ga.)

Wal-Mart Stores, Inc. v. Sun Construction Group, Inc., Case No. 1:11-cv-3632 (N.D. Ga.)

Whisby v. Suntrust Bank, Inc., Case No. 1:09-cv-1493 (N.D. Ga.)

Williams v. Just Blinds, L.P., Case No. 1:10-cv-1570 (N.D. Ga.)

(ii) Cases In Which My Husband Had A Financial Interest In One Of The Parties:

Head v. Home Depot, Inc., Case No. 1:04-cv-1913 (N.D. Ga.)

Johnson v. AT&T, Case No. 1:04-cv-3111 (N.D. Ga.)

Lang v. Depuy Orthopaedics, Inc., Case No. 1:05-cv-700 (N.D. Ga.)

Lightsey v. John Crane, Inc., Case No. 1:02-cv-3391 (N.D. Ga.)

Leathers v. Pfizer, Inc., Case No. 1:04-cv-615 (N.D. Ga.)

Miller v. The St. Paul Companies, Inc., Case No. 1:04-cv-1678 (N.D. Ga.)

Mozee v. Atchley, Case No. 1:04-cv-2771 (N.D. Ga.)

Reed v. Home Depot 0160, Case No. 1:05-cv-173 (N.D. Ga.)

SED International Holding, Inc. v. Employers Insurance, Case No. 1:04-cv-906 (N.D. Ga.)

The HBS Group, Inc. v. Home Depot U.S.A., Inc., Case No. 1:04-cv-2563 (N.D. Ga.)

Top Docs, Inc. v. St. Alexius Medical Center, Case No. 1:04-cv-2871 (N.D. Ga.)

Travelers Property v. Allen-Bradley Co LLC, Case No. 1:04-cv-1181 (N.D. Ga.)

United States for the Use and Benefit of Quantum Construction Company v. McCarthy Building Companies, Inc., Case No. 1:05-cv-880 (N.D. Ga.)

(iii) Cases Where I Was Listed As A Defendant:

Barber v. Carnes, Case No. 1:07-cv-285 (N.D. Ga.)

Green v. Carnes, Case No. 1:04-cv-2067 (N.D. Ga.)

(iv) Miscellaneous Reasons:

Bogart & Bogart, P.C. v. Wachovia Bank, National Association, Case No. 1:10-cv-1553 (N.D. Ga.). I had known one of the parties for many years.

Braswell v. Board of Regents of the University System of Georgia, Case No. 1:04-cv-2583 (N.D. Ga.). One of the defendants was Dr. Michael Adams, president of the University of Georgia. I had been a member of the selection committee that

recommended Dr. Adams as a finalist for this position a few years before this action was filed.

Carecentric National, LLC v. AdvantaCare Health, Inc., Case No. 1:10-cv-959 (N.D. Ga.). At the time, a family member was dating one of the attorneys on the case.

Emory University v. Nova Biogenetics, Inc., Case No. 1:06-cv-141 (N.D. Ga.). One of the defendants was my neighbor.

Faus Group Inc. v. Berry Floor N.V., Case No. 1:08-cv-315 (N.D. Ga.). My husband was representing the owner of one of the corporate parties in another matter.

Federal Deposit Insurance Corporation v. Flack, Case No. 1:12-cv-2594 (N.D. Ga.). I recused *sua sponte* for a period of time from cases involving a law firm representing one of the parties listed above, following the employment of a family member at that law firm.

Federal Deposit Insurance Corporation v. Van D. Jackson, Case No. 1:12-cv-1725 (N.D. Ga.). I recused *sua sponte* for a period of time from cases involving a law firm representing one of the parties listed above, following the employment of a family member at that law firm.

Federal Deposit Insurance Corporation v. Patel, Case No. 1:12-cv-2521 (N.D. Ga.). I recused *sua sponte* for a period of time from cases involving a law firm representing one of the parties listed above, following the employment of a family member at that law firm.

Matthews-Washington v. Wells Fargo Bank NA, Case No. 1:10-cv-1262 (N.D. Ga.). I recused because I thought that my husband had a financial interest in one of the parties, which appears now to be incorrect, as I cannot confirm that he had an interest requiring recusal at that time.

Mays v. Grayer, Case No. 1:09-cv-1037 (N.D. Ga.). Following enactment of the Second Chance Act, which gave the Bureau of Prisons authority to release inmates to halfway houses earlier than had previously been permitted, the defendant requested that I write a letter to the Bureau supporting his request. The defendant had been a model prisoner and had comported himself in an exemplary manner during his incarceration, and I did so. When the Bureau did not accede to the defendant's request, he sued them based on their denial. Given my involvement in the matter at issue, I recused on this particular case.

Miller v. State Farm Fire and Casualty Insurance Company, Case No. 1:04-cv-1777 (N.D. Ga.). I recused because I thought that my husband had a financial

interest in one of the parties, which appears now to be incorrect, as I cannot confirm that he had an interest requiring recusal at that time.

SP Acquisition Corp. v. Beaulieu Group, LLC, Case No. 1:11-cv-4536 (N.D. Ga.). My husband was representing the owner of one of the corporate parties in another matter.

Tucker v. GTKB Marketing, LLC, Case No. 1:11-cv-4481 (N.D. Ga.). I recused *sua sponte* for a period of time from cases involving a law firm representing one of the parties listed above, following the employment of a family member at that law firm.

United States v. Moses, Case No. 1:04-cr-508 (N.D. Ga.). The defendant was a neighbor of mine and my husband.

United States v. Udogu, Case No. 1:06-cr-290 (N.D. Ga.). I had been assigned the case and was notified that the defendant wished to enter a plea of guilty. At the hearing to accept his plea of guilty, the prosecutor recounted the factual basis for the plea. As a result of that recitation, it became clear that I knew the victim of the identity theft and fraud and that she was a relative of a very good friend. For that reason, I recused and the case was reassigned to a new judge for plea and sentencing.

Vollmer v. Wachovia Bank, N.A., Case No. 1:09-cv-560 (N.D. Ga.). An attorney for one of the parties was a former law clerk with whom I had maintained a personal relationship.

Cases In Which I Have Denied Motions For Recusal

(i) *McClellan Cases*

As explained in greater detail in my response to Question 13f, shortly after I became a district judge, and as part of their challenge to the constitutionality of the Sentencing Guidelines, the Federal Defender's Program in my district sought to disqualify me from all criminal cases in which they represented clients because of my service on the United States Sentencing Commission. I denied their motion for my recusal and disqualification in all such cases. Subsequently, the Eleventh Circuit ruled that I should have recused from deciding whether I was disqualified to hear criminal cases. A later Eleventh Circuit decision determined that, because the Supreme Court had previously found the Sentencing Guidelines to be constitutional, the defendants' challenges to the constitutionality of the Sentencing Commission were without merit. No further motions to recuse were filed, and I again began sentencing defendants.

The list below shows cases in which I denied motions to recuse based on *McClellan* arguments. There may be additional such cases that the Clerk's Office was not able to identify with the query search that was devised for this purpose. Some of these cases

were subsequently reassigned to another judge during the period between the issuance of the first Eleventh Circuit opinion and the second Eleventh Circuit opinion.

United States v. Alexander, Case No. 1:92-cr-428 (N.D. Ga.)

United States v. Ambroise, Case No. 1:94-cr-444 (N.D. Ga.)

United States v. Ambroise, Case No. 1:95-cr-54 (N.D. Ga.)

United States v. Ansong, Case No. 1:92-cr-193 (N.D. Ga.)

United States v. Awolola, Case No. 1:94-cr-117 (N.D. Ga.)

United States v. Baldeon, Case No. 1:93-cr-78 (N.D. Ga.)

United States v. Bozza, Case No. 1:92-cr-187 (N.D. Ga.)

United States v. Charlton, Case No. 1:94-cr-103 (N.D. Ga.)

United States v. Herreras, Case No. 1:92-cr-404-02 (N.D. Ga.)

United States v. Hunter, Case No. 1:94-cr-446 (N.D. Ga.)

United States v. Johnson, Case No. 1:93-cr-369 (N.D. Ga.)

United States v. Kekereekun, Case No. 1:93-cr-434 (N.D. Ga.)

United States v. Lamotte, Case No. 1:94-cr-173 (N.D. Ga.)

United States v. Lowe, Case No. 1:93-cr-327 (N.D. Ga.)

United States v. Curt McLellan, Case No. 1:91-cr-326 (N.D. Ga.)

United States v. Miller, Case No. 1:93-cr-504 (N.D. Ga.)

United States v. Millwood, Case No. 1:92-cr-267 (N.D. Ga.)

United States v. O'Neal, Case No. 1:93-cr-519 (N.D. Ga.)

United States v. Onokpachere, Case No. 1:92-cr-392 (N.D. Ga.)

United States v. Reed, Case No. 1:92-cr-406 (N.D. Ga.)

United States v. Sadie, Case No. 1:92-cr-307-03 (N.D. Ga.)

United States v. Sazon, Case No. 1:93-cr-67-05 (N.D. Ga.)

United States v. Lael Small, Case No. 1:96-cr-417-06 (N.D. Ga.)

United States v. Smith, Case No. 1:93-cr-67-03 (N.D. Ga.)

United States v. Stafford, Case No. 1:94-cr-14-01 (N.D. Ga.)

United States v. Tullos, Case No. 1:92-cr-355 (N.D. Ga.)

United States v. Williams, Case No. 1:93-cr-466 (N.D. Ga.)

United States v. Willis, Case No. 1:93-cr-206-02 (N.D. Ga.)

United States v. Woods, Case No. 1:93-cr-370 (N.D. Ga.)

(ii) Other Denials of Motions to Recuse

Neither I nor the Clerk's Office generate or maintain a report containing a list of cases in which motions to recuse have been filed. The Clerk's Office has been able to identify the following cases in which motions were filed by using a standard query language search recently created specifically for this purpose. However, as most motions to recuse are filed by *pro se* litigants and as the Northern District of Georgia has a high volume of *pro se* litigation, it is possible that additional motions have been filed that were not identified by the Clerk's Office due to the use of unconventional terminology or language in the title and text of the motion.

Barber v. Director of FBI, Case No. 1:02-cv-203 (N.D. Ga.)

Cartman v. United States, Case No. 1:13-cv-1650 (N.D. Ga.)

Cox v. Kahn, Case No. 1:10-cv-653 (N.D. Ga.)

Cuylar v. Ley, Case No. 1:12-cv-3066 (N.D. Ga.)

Danenberg v. Kugler, Case No. 1:94-cv-489 (N.D. Ga.)

Dean v. Homecomings Financial Services, Case No. 1:07-cv-1521 (N.D. Ga.)

Dean v. Law Firm of Morris, Schneider & Prior, Case No. 1:07-cv-1706 (N.D. Ga.)

Dean v. Homecomings Financial Network Incorporated, Case No. 1:08-cv-550 (N.D. Ga.)

Green v. Wetherington, Case No. 1:01-cv-420 (N.D. Ga.)

Harrison v. Board of Regents of The University System of Georgia, Case No. 1:11-cv-1312 (N.D. Ga.)

Hinojosa v. Wachovia Bank of GA, Case No. 1:01-cv-3470 (N.D. Ga.)

Kante v. Countrywide Home Loans, Case No. 1:09-cv-1233 (N.D. Ga.)

Kante v. McCurdy & Candler L.L.C., Case No. 1:10-cv-1972 (N.D. Ga.)

McWeay v. Citibank, N.A., Case No. 1:11-cv-2875 (N.D. Ga.)

Odouk v. Saint Leo University, Inc., Case No. 1:09-cv-1647 (N.D. Ga.)

Odouk v. Solicitor General, Case No. 1:00-cv-249 (N.D. Ga.)

Odouk v. Cobb County Board, Case No. 1:00-cv-2046 (N.D. Ga.)

Taylor v. Teledyne Tech, et al., Case No. 1:00-cv-1741 (N.D. Ga.)

United States v. Jean-Daniel Perkins, Case No. 1:10-cr-97-01 (N.D. Ga.)

Winter v. Cotton, Case No. 1:04-cv-2723 (N.D. Ga.)

Winter v. Cotton, Case No. 1:04-cv-2724 (N.D. Ga.)

Granting Of Motions To Recuse

Following the Eleventh Circuit's initial decision in *McClellan*, in which a defendant sought my recusal based on my membership on the United States Sentencing Commission, I granted a motion to recuse in the following case. There are likely other cases, not identified by the query search utilized by the Clerk's Office, in which I granted a motion to recuse on the same ground.

United States v. Wilson, Case No. 1:93-cr-133 (N.D. Ga.), granted on December 14, 1993.

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.

None.

- 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.

In 1964, my father, Charles L. Carnes, ran for a seat in the Georgia House of Representatives. I was 14 years old at the time and my mother, father, and I spent the summer handing out campaign flyers in our district.

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;

1975 – 1977

United States Court of Appeals for the Fifth Circuit

18 Greenville Street

Newnan, GA

Law Clerk to Judge Lewis R. Morgan

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

No.

- 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.

1978 – 1990

United States Attorney's Office for the Northern District of Georgia

75 Spring Street, Suite 600

Atlanta, GA 30303

Appellate Chief, Deputy Chief, and Assistant United States Attorney

February – July 1989

United States Sentencing Commission

One Columbus Circle, Northeast, Suite 2-500

Washington, D.C. 20002-8002

Special Counsel

1990 – 1996

United States Sentencing Commission

One Columbus Circle, Northeast, Suite 2-500
Washington, D.C. 20002-8002
United States Sentencing Commissioner

- 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.

None.

b. Describe:

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

After my Fifth Circuit Clerkship, I became an Assistant United States Attorney in 1978. In addition, for almost six months in 1989, I was on detail assignment as Special Counsel to the United States Sentencing Commission in Washington, D.C. From 1978 to 1981, as an Assistant United States Attorney, I handled a mixed caseload including general crimes from 1978 to 1979, economic crimes from 1980 to 1981, and some appellate work throughout that entire time period. Beginning in 1982, my practice was predominately appellate in nature, although I still made frequent appearances in district court and magistrate's court to handle arraignments, motions, sentences, probation revocations, and other similar duties. From 1987 to 1990, in addition to serving as Appellate Chief, I also acted as Deputy Chief of the Criminal Division, supervising division court trial attorneys and sentencing guidelines' matters.

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

My client was the United States and my employer was the Department of Justice. I specialized in federal criminal law.

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

100% of my practice was in litigation, and almost all of that litigation was appellate litigation. From 1979 to 1981, I appeared in district court frequently and occasionally in appellate court. From 1982 to 1986, I appeared in appellate court frequently, and I continued to appear occasionally in district court for bench trials. From 1987 to 1990, my appearances consisted almost entirely of my frequent appearances in appellate court. I also continued to supervise trial attorneys but only appeared in district court infrequently. Over the course of my

appellate career, I handled 47 cases that resulted in a published decision, as well as an approximately equal number of cases that did not result in a published opinion.

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: | 0% |
| 2. criminal proceedings: | 100% |

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 tried three cases to a jury, two as sole counsel and one as co-counsel. In addition, as a supervisor and appellate chief, I assisted trial attorneys on particularly significant or complex cases. In addition, I have had several § 2255 motions, which resembled short non-jury matters, that were heard by a judge.

i. What percentage of these trials were:

- | | |
|--------------|------|
| 1. jury: | 100% |
| 2. non-jury: | 0% |

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.

None.

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

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

- 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. Benton*, 637 F.2d 1052 (5th Cir. 1981)

Co-counsel at trial - July-August 1979. Judge Newell Edenfield, NDGA.

At the time of the offense, defendant, a major narcotics figure in the Miami area, was incarcerated at the Atlanta Penitentiary. He was convicted of killing a fellow inmate, Zambito, a co-conspirator who had become a Government informant, within 16 hours of the latter's arrival at the Atlanta Penitentiary. The case was one of a rash of murders at the penitentiary. It was particularly significant because evidence at the trial focused on some of the security problems at the prison, inasmuch as Zambito was a potential witness and had been mistakenly transferred to the penitentiary where the person who had threatened to kill him was incarcerated. Defendant was convicted of conspiracy to commit murder and sentenced to life imprisonment. The conviction was affirmed.

Co-counsel:

Honorable Gerrilyn G. Brill
Currently a United States Magistrate Judge
United States District Court
For the Northern District of Georgia
75 Spring Street, Southwest
Atlanta, GA 30303
(404) 215-1365

Opposing Counsel:

Roger Thompson (deceased)

2. *United States v. Spiegel*, No. 83-8289 (11th Cir. 1984) (unpublished).

NDGA, § 2255 proceeding in district court. August 1980 to March 1983.

Judge Charles Moye.

Defendant had been convicted of mail fraud in 1974 in one of the largest fraud cases prosecuted in the Northern District of Georgia at that time. In 1981, I became involved in the § 2255 motion that defendant, who still had not begun service of his sentence, had filed. I was co-counsel during the hearings, which took two years to complete, and sole counsel on appeal. In February of 1984, less than a week after oral argument, the Eleventh Circuit affirmed the denial of the § 2255 and ordered the mandate to issue immediately, meaning that after ten years, the defendant was required to begin serving his sentence.

Co-counsel:

William P. Gaffney (deceased)

Opposing Counsel:

John Martin
Martin Brothers
44 Broad Street, Suite 202
Atlanta, GA 30303
(404) 522-0400

3. *United States v. Holmes*, 680 F.2d 1372 (11th Cir. 1982).

The defendant was convicted after a jury trial on one charge and after the entry of a plea of guilty on another charge, but failed to appear at his consolidated sentencing hearing. In a case of apparent first impression in federal appellate courts, the Government prevailed in its argument that a defendant who flees after conviction, but before sentencing, waives his right to appeal from the conviction. I both briefed and argued the case on appeal for the Government.

Opposing Counsel:

John William Hammond
241 Lemon Street, Northeast, Suite D
Marietta, GA 30060
(770) 422-3883

4. *United States v. Mers*, 701 F.2d 1321 (11th Cir. 1983).

In another case involving issues of first impression, the Government prevailed in its argument that an attorney's representation of four co-defendants who asserted conflicting defenses was not an actual conflict of interest. In addition, the court accepted the Government's interpretation of an important area of excludable time under the Speedy Trial Act. This case has been frequently relied on in criminal trials and on appeals. I both briefed and argued the case on appeal.

Opposing Counsel:

Mark J. Kadish
(no current business contact information available)

Mike K. McIntyre
965 Virginia Avenue, Northeast
Atlanta, GA 30306
(404) 879-1515

5. *United States v. Howard*, 655 F. Supp. 392 (N.D. Ga. 1987), 855 F.2d 832 (11th Cir. 1988).

I represented the Government in post-trial proceedings, including a motion for a new trial, and on appeal in the Eleventh Circuit. The defendant, an Atlanta City councilman, was convicted of filing false tax returns. The Government prevailed in an appeal presenting two complex appellate questions: the admissibility of expert testimony before a jury concerning the taxability of certain monies and the defendant's intent and the extent to which the jury can determine the taxability of monies. I both briefed and argued the case on appeal for the Government.

Opposing Counsel:

Richard H. Sinkfield
2700 International Tower
229 Peachtree Street, Northeast
Atlanta, GA 30303
(404) 420-4605

Tony L. Axam
Axamlaw
62 Moreland Avenue, Northeast
Atlanta, GA 30306
(404) 524-2233

Trial Counsel for Government:

Stephen S. Cowen
Currently at King & Spalding, LLP
1180 Peachtree Street, Northeast
Atlanta, GA 30309
(404) 572-4688

6. *United States v. Anderson*, 782 F.2d 908 (11th Cir. 1986).

In a case of first impression in appellate courts, arising out of a RICO prosecution of an owner of a night club who had committed arson on competitors, the Eleventh Circuit accepted the Government's argument concerning a jury's role in determining the applicability of state law, where a state violation is a predicate act of the RICO charge. The appeal also raised important evidentiary questions. I both briefed and argued the case on appeal for the Government.

Opposing Counsel:

Mark J. Kadish
(no current business contact information available)

7. *United States v. Espinosa-Guerra*, 805 F.2d 1502 (11th Cir. 1986).

In the 1980s, the DEA had set up interdiction programs in large airports, such as Atlanta's, in an effort to apprehend drug couriers. The novelty of this kind of program at the time initially gave rise to new legal questions concerning the propriety of the stop and search of suspected drug couriers. I participated in the preparation of, or wrote, several appellate briefs for the Government in this area, of which the above case is an example. In this case, the district court had suppressed the evidence obtained after the stop and search of an arriving passenger at the Atlanta airport. The Eleventh Circuit reversed the district court, holding that the seizure of the non-English speaking defendant based on reasonable suspicion did not ripen into an arrest requiring probable cause merely because the agent required the suspect to follow him to an office and await an interpreter. This case was significant for multiple reasons, including the appellate court's holding that each stop and search should be considered based on the entirety of the circumstances, and not on bright-line tests. I both briefed and argued the case on appeal for the Government.

Opposing Counsel:

Stephanie Kearns
Federal Public Defender's Office
101 Marietta Tower, Suite 1500
Atlanta, GA 30303
(404) 688-7530

8. *United States v. Hernandez-Cano*, 808 F.2d 779 (11th Cir. 1987).

I represented the Government on the appeal of the district court's suppression of evidence in this case. The district court had suppressed evidence obtained through the search of luggage at the Atlanta airport. The Eleventh Circuit reversed the district court and held that the search was lawful. Here, an airline employee had observed a passenger move a bundle that appeared to contain white powder from his carry-on to his checked luggage. The luggage was pulled off the checked area and held. Eventually, airline employees notified police, and the former initiated a search of the luggage, during which a police officer assisted her. A search by a non-Governmental agent is not subject to the Fourth Amendment. A search by such an agent is, and here there was no probable cause to support the search. The Eleventh Circuit accepted the Government's argument that the "inevitable discovery rule" should apply, as but for the unrequested participation

by the officer, the private employee would have soon thereafter found the contraband drugs in what would have been a legal search.

Opposing Counsel:

Paul Kish
Kish & Lietz P.C.
1700 South Tower
225 Peachtree Street, Northeast
Atlanta, GA 30303
(404) 588-3991

9. *United States v. Hammock*, 860 F.2d 390 (11th Cir. 1988).

In this search arising out of a drug interdiction program at bus stations, the officers entered a bus that had just arrived and approached seated passengers, requesting permission to search their bags. Finding a bag that no one would claim, the officers searched and found cocaine. That search led to a search of the defendant, on whose person the officers found the claim check for the bag. The Eleventh Circuit affirmed the conviction and approved the search, concluding that the property was abandoned and that defendant's response to questions was consensual. I briefed and argued the case on appeal for the Government.

Opposing Counsel:

Frederic W. Tokars
(no current business contact information available)

10. *United States v. Roper*, 702 F.2d 984 (11th Cir. 1983).

Preparing both the brief and arguing the case, I represented the Government on the appeal of the district court's suppression of evidence in this case. This case addressed the impact of the fact that an apprehending officer has brandished a weapon in determining whether the encounter constitutes a seizure or an arrest, as well as an expansion of the authority of an officer to make an arrest based on the imputed collective knowledge of other officers. A police officer had observed a flyer seeking the apprehension of a defendant who had jumped bail. Later, observing an automobile that matched the description and tag number on the flyer, the officer stopped the car and approached the driver's side with his pistol drawn, directing him to exit. The driver turned out to be the bail-jumper and the district court suppressed the evidence (a gun discovered on the driver's person), concluding that the officers had arrested the driver on less than probable cause. The Eleventh Circuit accepted the Government's argument that the drawing of a gun does not, necessarily, transform an investigative stop into a full-blown arrest. As there was reasonable suspicion to support the latter, the appellate court indicated that the evidence discovered during the encounter should not be

suppressed in the defendant's subsequent prosecution for being a felon in possession of a firearm.

Opposing Counsel:

Darrell Greene (deceased)

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

As a prosecutor, most of my district court cases did not proceed to trial. The most significant cases in this category were the cases of *United States v. Wamburg* and *United States v. Hathaway*. Wamburg was a C&S bank official who was indicted for a very complex scheme to defraud the bank and to enrich Mr. Wamburg. C&S lost several million dollars as a result of the scheme. Mr. Wamburg pleaded guilty and was sentenced to three years' incarceration. The court ultimately reduced the sentence to one-year incarceration. Mr. Hathaway had been a respected and well-known bankruptcy auctioneer in the Atlanta area. An FBI investigation revealed that he had been skimming money for a period of years from the estates whose assets he was entrusted with liquidating. Mr. Hathaway pled guilty and received a term of incarceration.

I was active on the Attorney General's Subcommittee on Sentencing Guidelines since its inception in 1988 to 1990. Except for me, that committee was composed entirely of United States Attorneys from around the country and was very active in monitoring the implementation of the guidelines and making recommendations to the Attorney General and the field concerning use of those guidelines.

I was also involved in the Attorney General's Subcommittee on Public Corruption in 1988. That subcommittee, which was chaired at that time by my United States Attorney, was active in seeking legislation, which was ultimately passed by Congress and signed into law, to amend statutes affected by the Supreme Court's decision in *United States v. McNally*, which had held that the mail fraud statute did not cover schemes to defraud a victim of an individual's "honest and faithful services."

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.

Adjunct Professor – George Washington School of Law, Fall 1991, Litigation Practice. I was one of four adjunct teachers conducting break-out groups in a class overseen and

taught by Professor Stephen Saltzburg. The role of the adjunct professor was to critique the students as the latter engaged in mock trial scenarios, such as cross-examination, the making of objections, or closing argument. I have no syllabus.

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

None.

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

No.

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.

My husband remains a partner at King & Spalding, and I will recuse on any case in which that firm appears. My daughter is an Assistant Attorney General for the State of Georgia, and I will recuse on any case on which she has worked. As my husband ceased purchasing stock several years ago, in large part because of the recusal difficulties that such transactions created, I foresee no category of cases involving a financial interest that should arise.

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

I will have the Clerk of Court flag cases involving King & Spalding and the State Attorney General's Office. I will recuse on the former and, as to the latter, recuse on any cases on which my daughter has worked. To the extent that there are any practices established by the Eleventh Circuit concerning the need for a newly-appointed judge to recuse on the cases of recent former colleagues on the district court bench, I will follow those practices. Of course, I would recuse on any case over which I presided as a district court judge.

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.

My entire career has been in public service, and I have therefore been precluded from taking pro bono representations. As Chief Judge, however, I have worked with the Federal Defender Program here in an effort to ensure that adequate resources are provided for the criminal defense of indigents in our district. I also support educational programs for federal defenders and appointed criminal counsel, by appearing at such programs.

As Chief Judge, I have focused on outreach to members of our bar and to those who aspire to a legal career. Our court has several times hosted middle-school or high school students who aspire to be attorneys. In the spring of 2000, I was one of the judges for the "Do the Write Thing Challenge" Program, in Atlanta. Sponsored by the National Campaign to Stop Violence and focusing on disadvantaged students, this program holds an annual essay competition for middle-school students.

Each year, our court hosts a gathering of younger attorneys within the state to explain to them our federal system, and I have been active in that effort. I am a member of an Inn of Court that includes law school students and younger lawyers. This Inn strives not only to provide substantive instruction, but also to inculcate high ethical standards. As Chief Judge, with the support of my court and the co-sponsorship of the local chapter of the Federal Bar Association, I have also begun an annual CLE program that pays particular attention to the development of less-experienced lawyers. In 2012, the program focused on changes in the federal rules of civil procedure. In 2013, the Court and FBA sponsored two sessions on legal writing, with one of these sessions focused on younger lawyers, in an effort to help improve their written advocacy skills.

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 late February 2013, I was contacted by my state's two senators, Senator Saxby Chambliss and Senator Johnny Isakson, who inquired whether I would be willing to be recommended to the White House for the open Eleventh Circuit position. I agreed that they could submit my name. Since September 5, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On November 21, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On December 19, 2013, the President submitted my nomination to the Senate. That nomination was resubmitted on January 6, 2014.

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

No.

AFFIDAVIT

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

January 6, 2014
(DATE)

Julie E. Carnes
(NAME)

Susan J. Garner
(NOTARY)

