

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Leonard Philip Stark

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

United States District Judge for the District of Delaware

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 District of Delaware  
J. Caleb Boggs Federal Building  
844 King Street  
Room 6100  
Wilmington, Delaware 19801

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

1969; Detroit, Michigan

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.

1993 to 1996, Yale Law School; J.D., 1996

1991 to 1993, Magdalen College, University of Oxford; D.Phil., 1993

1987 to 1991, University of Delaware; M.A. & B.S. & B.A. (*summa cum laude*), 1991

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.

2007 to Present

United States District Court for the District of Delaware  
J. Caleb Boggs Federal Building  
844 King Street, Room 6100  
Wilmington, Delaware 19801  
United States Magistrate Judge

2002 to 2007

United States Attorney's Office for the District of Delaware  
1007 North Orange Street  
Wilmington, Delaware 19801  
Assistant United States Attorney

1998 to 1999

University of Delaware  
Department of Political Science and International Relations  
347 Smith Hall  
Newark, Delaware 19716  
Adjunct Professor (fall semesters)

1996 to 2001

Skadden, Arps, Slate, Meagher & Flom LLP  
One Rodney Square  
Wilmington, Delaware 19801  
Associate (1997 to 2001)  
Summer Associate (1996)

1996 to 1997

United States Court of Appeals for the Third Circuit  
J. Caleb Boggs Federal Building  
844 King Street, Room 5323  
Wilmington, Delaware 19801  
Law Clerk to the Honorable Walter K. Stapleton

1995

Shea & Gardner (now merged with Goodwin Procter LLP)  
901 New York Avenue, N.W. (current address)  
Washington, D.C. 20001  
Summer Associate

1994

Morris James  
500 Delaware Avenue # 1500 (current address)  
Wilmington, Delaware 19801  
Summer Associate

1994  
Office of Governor Thomas R. Carper  
Carvel State Office Building  
820 North French Street, 12<sup>th</sup> Floor  
Wilmington, Delaware 19801  
Summer Law Clerk to Governor's Legal Counsel

1991  
Bryan Cave  
211 North Broadway, Suite 3600  
St. Louis, Missouri 63102  
Summer Legal Assistant

Other Affiliations (uncompensated)

2000 to 2007  
University of Delaware Alumni Association  
Alumni Hall  
24 East Main Street  
Newark, Delaware 19702  
Board Member (2000 to Present)  
President (2006 to 2007)

2000 to 2002  
Brandywine Gateway Neighbors  
1300 French Street  
Wilmington, Delaware 19801  
Director and Secretary

2001  
Supreme Court of Delaware Board of Bar Examiners  
Carvel State Office Building  
820 North French Street  
Wilmington, Delaware 19801  
Associate Member

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

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

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.

University of Delaware, Outstanding Alumni Award (2009)  
FBI, Award for Dedicated Service as an Assistant United States Attorney (2007)  
University of Delaware, Presidential Citation for Outstanding Achievement (2004)  
*Yale Law Journal*: Editor (1994 to 1995), Senior Editor (1995 to 1996)  
Yale Law School, Potter Stewart Prize for Best Overall Moot Court Argument (1995)  
Rhodes Scholarship (1991)  
University of Delaware, Taylor Award for Outstanding Senior Male (1991)  
*USA-Today* All-USA College Academic First Team (1990)  
University of Delaware Eugene du Pont Memorial Distinguished Scholarship (1987)

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

American Bar Association  
Delaware State Bar Association  
Federal Bar Association, Delaware Chapter  
Supreme Court of Delaware Board of Bar Examiners  
Associate Member (2001)  
Third Circuit Bar Association

10. **Bar and Court Admission:**

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

Delaware, 1997

There has been no lapse in my membership.

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

United States Court of Appeals for the Third Circuit, 1997  
United States District Court for the District of Delaware, 1997

There has been no lapse in my 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.

Brandywine Gateway Neighbors (2000 to 2002)  
Director and Secretary (2000 to 2002)  
Delaware Advisory Committee to Institute for Women's Policy Research (2000)  
Delaware Rhodes Scholarship Selection Committee (1996 to 2004)  
Secretary (1997 to 2004)  
Federal Magistrate Judges Association (2007 to Present)  
Richard S. Rodney Inn of Court (2007 to 2008)  
Oxford Union Society (1991 to Present)  
University of Delaware Alumni Association (1991 to Present)  
President (2006 to 2007)  
Board of Directors (2000 to Present)  
Scholarship Committees (2000 to Present)  
Walter Stark Scholarship Selection Committee (2004 to Present)

- 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.

None of the organizations listed above currently discriminates or has discriminated during my membership on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies. I am unaware of any former discrimination by these organizations.

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.

“United States Magistrate Judges: 1995 – 2008,” in *The Delaware Bar in the Twentieth Century*, Delaware State Bar Association (Delaware) (2d ed. Forthcoming 2011) (co-author).

“Judge ‘The Game by the Rules’: An Appreciation of the Judicial Philosophy and Method of Walter K. Stapleton,” 6 *Delaware Law Review* 223 (2003) (co-author).

“Fiduciary Duties Derailed? Appropriation of Fiduciary Duties in the Battle for Control of Conrail,” 24 *Journal of Corporate Law* 30 (1998) (co-author).

“Review: *Mutual Contempt – Lyndon Johnson, Robert Kennedy, and the Feud that Defined a Decade*,” 85 *The American Oxonian* 210 (Spring 1998).

“You Gotta Be On It To Be In It: State Ballot Access Laws and Presidential Primaries,” 5 *George Mason Law Review* 137 (1997).

“‘There He Goes Again’: The Consistent Style of President, Governor and Candidate Reagan,” in *Proceedings of the Ronald Reagan Presidential Conference* at p. 547, Greenwood Press (Westport, Connecticut 1997).

Note, “The Presidential Primary and Caucus Schedule: A Role for Federal Regulation?” 15 *Yale Law and Policy Review* 327 (1996).

*Choosing A Leader: Party Leadership Contests in Britain from Macmillan to Blair*, St. Martin’s Press (New York) and Macmillan Press (London) (1996).

“Letter from Oxford: What We Think About All This,” 80 *The American Oxonian* 133 (Spring 1993).

“Place to Do So Many Things,” *Newsday* (February 18, 1993).

“Letter from Oxford: Exclusive? – The Social Challenge of Not Only Oxford,” 80 *The American Oxonian* 24 (Winter 1993).

“Letter from Oxford: Speaking of Politics 1992 – Off the Record,” 79 *The American Oxonian* 267 (Fall 1992).

“So, why Oxford?” *UHP Report* (May 1992).

“Review: Naomi Wolf’s *The Beauty Myth*,” 79 *The American Oxonian* (Spring 1992).

“Predicting Presidential Performance from Campaign Conduct: A Character Analysis of the 1988 Election,” 22 *Presidential Studies Quarterly* 295 (1992).

Letter to the editor, *International Herald Tribune* (January 28, 1992).

“President Bush: Good for Four, Not for More,” *The Zimbabwe Bird* (1991).

“Traditional Gender Role Beliefs and Individual Outcomes: An Exploratory Analysis,” 24 *Sex Roles: A Journal of Research* 639 (1991).

“Character and Experience: Predicting Presidential Performance,” 13 *Michigan Journal of Political Science* 69 (1991).

“Examining the Effects of Gender Roles,” 10 *Enquiry: Research at the University of Delaware* 8 (1989).

- 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.

University of Delaware Alumni Association, *Ad Hoc Report* to the Incoming University President on Accomplishments and Future Goals of the Alumni Association.

I served on the Delaware Advisory Committee to the Institute for Women’s Policy Research (IWPR) in 2000. The IWPR was preparing reports on indicators relating to the status of women in all 50 states. On or about November 15, 2000, the IWPR published these reports, including one entitled *The Status of Women in Delaware: Politics, Economics, Health, Demographics*. As a member of the Delaware Advisory Committee, I reviewed and discussed with other members of the Committee portions of a draft of the report.

- 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.

Democratic National Committee Rules & Bylaws Committee, “Beyond 2000” Hearing on Primary Scheduling for 2004 (Nov. 20, 1999).

- 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.

Claymont Elementary School, Wilmington, Delaware (Dec. 11, 2009). I spoke about patents to my child's fifth grade class.

University of Delaware, Homecoming Reception, Newark, Delaware (Oct. 31, 2009). In connection with receiving a UD Outstanding Alumni Award, I made brief remarks thanking the University President. (I did not use notes and have been advised there is no recording.)

"*Markman* Judges' Panel: A Symposium on the Practice, Procedure and Perspectives of the Judiciary and on Bigger *Markman* Issues" (panelist) at the Practising Law Institute's (PLI) continuing legal education program entitled "*Markman* Hearings and Claim Construction in Patent Litigation 2009," New York, New York (July 8, 2009).

University of Delaware, The Democracy Project Institute for Teachers, Newark Delaware (June 26, 2009).

University of Delaware, Naturalization Ceremony, Newark, Delaware (June 4, 2009).

"Acts, Character, Prejudices, and Witness Impeachment (Judges' Panel)" (panelist) at the Delaware Federal Bar Association, Wilmington, Delaware (May 19, 2009).

University of Pennsylvania Law School, Philadelphia, Pennsylvania (Mar. 26, 2009) (panelist).

"Ethical Issues in the Practice of Law (Judges' Panel)" (panelist) at the Delaware Federal Bar Association, Wilmington, Delaware (Mar. 11, 2009).

"Evidence and Expert Testimony in Federal Court (Judges' Panel)" (panelist) at the National Business Institute, Newark, Delaware (Feb. 20, 2009).

Claymont Elementary School, Wilmington, Delaware (Feb. 20, 2009). I spoke about being a lawyer to my child's fourth grade class. (I did not use notes and the discussion was not recorded.)

Dinner for United States Attorney for the District of Delaware, Wilmington, Delaware (Jan. 23, 2009).

University of Delaware, Alumni Career Panel (panelist), Newark, Delaware (Sept. 2008). (I did not use notes and have been advised that no recording is available.)



“General Thoughts from the Bench” at the Delaware State Bar Association Intellectual Property Section Annual Meeting, Wilmington, Delaware (June 25, 2008).

Delaware State Bar Association New Lawyers Section, Summer Associates Program (panelist), Wilmington, Delaware (June 17, 2008). (I did not use notes and have been advised that no recording is available.)

“The Art of Direct and Cross Examinations (Judges’ Panel)” (panelist) at the Delaware Federal Bar Association, Wilmington, Delaware (June 12, 2008).

University of Delaware, Naturalization Ceremony, Newark, Delaware (June 5, 2008).

“Openings, Closings, and Case Themes (Judges’ Panel)” (panelist) at the Delaware Federal Bar Association, Wilmington, Delaware (Mar. 18, 2008).

Delaware Federal Bar Association (panelist), Wilmington, Delaware (Jan. 11, 2008). I was a luncheon speaker along with Magistrate Judge Mary Pat Thyng. (I did not use notes and have been advised no recording is available.)

“Bridging the Gap: Mediation Best Practices” (panelist) at the Delaware State Bar Association, Wilmington, Delaware (Oct. 25, 2007).

Swearing-in ceremony, Wilmington, Delaware (Sept. 14, 2007).

Commencement, University of Delaware, Newark, Delaware (May 26, 2007).

Alumni Wall of Fame Ceremony, University of Delaware, Newark, Delaware (May 4, 2007).

Commencement Address at University of Delaware, Newark, Delaware (Jan. 6, 2007). (remarks provided; recording available at <http://www.ums.udel.edu/podcast/detail?e=40> (last accessed Mar. 15, 2010)).

Kendal-Crosslands Retirement Community, Kennett Square, Pennsylvania (Sept. 27, 2005). I was invited to speak to a group of retirees at this residential retirement community about the Supreme Court.

Keynote Speech at the Undergraduate Research Symposium, University of Delaware, Newark, Delaware (May 2003).

Commencement Address at University of Delaware, Newark, Delaware (Jan. 8, 2000).

Convocation Speech at the Women's Studies Department Convocation, University of Delaware, Newark, Delaware (May 31, 1997).

On at least two occasions in the 1990s, while I was an associate at Skadden Arps, I spoke to high school students about law-related topics as part of the Law Day activities sponsored by the Delaware State Bar Association. I do not recall the actual topics about which I spoke. It is likely that I used notes but I do not have a copy. The talks were neither recorded nor transcribed.

"The Reagan Administrative Style" (panelist) at the Hofstra University Ronald Reagan Presidential Conference, Hempstead, New York (Apr. 1993).

Democrats Abroad Presidential Caucus at the Oxford Union Society, Oxford, England (March or April 1992). I made a speech in support of candidate Bill Clinton. I spoke from notes, which I no longer have.

Longsands Community College, Huntingdon, England (Mar. 26, 1992).

Commencement Address at John H. Glenn High School, East Northport, New York (June 23, 1991).

Convocation Speech at the College of Arts & Sciences Convocation, University of Delaware, Newark, Delaware (June 1, 1991).

"Did We Choose the Right President in 1988?" at the University of Delaware Undergraduate Research Symposium, Newark, Delaware (May 13, 1991).

Student Research on Women Conference, University of Delaware, Newark, Delaware (Apr. 27, 1989). I believe I spoke from notes, but I do not have a copy. The substance of my talk was the research I later published in a 1991 article, copies of which are provided. I have been advised that there is no recording.

1988 to 2009: I have spoken on multiple occasions on panels or in classrooms at the University of Delaware, usually in front of students, or prospective students, or parents. The topics have typically focused on my experiences as a student at UD and my career. I do not believe I ever used notes for these appearances; if I did, I no longer have a copy. On each occasion I am sure I also answered questions. I am not aware of any recording or transcript of any of these sessions.

Emphasis on Women Lecture Series, University of Delaware, Newark, Delaware (Sept. 28, 1988). I believe I spoke from notes, but I do not have a copy. The substance of my talk was the research I later published in a 1991 article, copies of which are provided. I have been advised that there is no recording.

Student Research on Women Conference, University of Delaware, Newark, Delaware (Apr. 28, 1988). I believe I spoke from notes, but I do not have a copy.

The substance of my talk was the research I later published in a 1991 article, copies of which are provided. I have been advised that there is no recording.

Commencement Address at John H. Glenn High School, East Northport, New York (June 1987). I was one of two student speakers at my high school graduation. I spoke from notes, but I no longer have them. I do not have a recording.

- 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.

The following list includes every such interview I can recall as well as those that I have found reflected in publications identified by searches I conducted on Westlaw, Lexis, and the Internet.

Sean O'Sullivan, *After a year on the bench, judge weighs pros and cons*, The News Journal, Aug. 31, 2008. Portions of the interview for this story were videotaped by the newspaper. Some of these portions have appeared on The News Journal's website. See <http://www.delawareonline.com/video#/Being%20a%20Judge/34362591001> (last accessed Mar. 15, 2010).

Sean O'Sullivan, *Prosecutor Stark sworn in as magistrate judge*, The News Journal, Aug. 7, 2007.

Elizabeth Bennett, *Leonard Stark to Join Federal District Court as Magistrate Judge*, Delaware Law Weekly, Aug. 1, 2007.

Sean O'Sullivan, *Magistrate Judge position will be filled by deputy to Connolly*, The News Journal, May 24, 2007.

*What people are saying*, The News Journal, Dec. 2, 2006.

As an Assistant United States Attorney from 2002 to 2007, I occasionally spoke to reporters about a case I was litigating. The published items I have identified based on those interviews are listed below.

Sean O'Sullivan, *Ex-NCCo officials appeal ruling*, The News Journal (June 23, 2006).

Sean O'Sullivan, *Ruling on Gordon, Freebery challenged; Federal prosecutors seek to have charges reinstated*, The News Journal (Aug. 20, 2005).

As the U.S. Attorney's Office's District Elections Officer, I was interviewed by a local radio station (WDEL) about the availability of law enforcement on Election Day to take complaints about access to the polls and voting fraud. I believe this interview occurred the day before the 2004 general election. The radio station has told me that it does not have a transcript or a copy of the radio broadcast; nor do I.

I was interviewed (along with other award recipients) by the University of Delaware for a brochure UD published in connection with its October 1, 2004 ceremony bestowing the Presidential Citation for Outstanding Achievement.

Mary Allen, *Gordon lawyers won't testify for grand jury*, The News Journal (June 15, 2004).

In approximately the summer of 2003, I was asked by the Yale Law School Career Development Office (CDO) to provide a statement about my experience working in a U.S. Attorney's Office for a CDO publication.

*Man gets 5 months in rifle purchase*, The News Journal, Mar. 26, 2003.

Joseph A. Slobodzian, *Probation officers can use lie detectors*, The Philadelphia Inquirer (Jan. 8, 2003).

Tom Eldred, *Smyrna man pleads in firearm sting*, Delaware State News (Dec. 20, 2002).

Brian P. Knestout, *Baccalaureate Bargains*, Kiplinger's Personal Finance (Oct. 2002).

At some date around 2002, I was asked by a reporter working for the University of Delaware to provide a quote about my experiences at UD that could be used in connection with certain promotional materials. My statement appears on UD's Alumni Relations website. See <http://www.udconnection.com/Spotlight/Leonard-Stark> (last accessed on March 15, 2010). The same statement has appeared elsewhere on earlier occasions.

Susan Jacobs, *New Rhodes Scholar Using Studies to Understand the World*, Pittsburgh Post-Gazette (Dec. 20, 2000).

Chris Emanuelli, *UD Rhodes Scholar to give Winter Commencement Address*, The Review (approximately Dec. 1999).

Marylee Sauder, *Rhodes Scholar continues his quest*, University of Delaware Messenger (1994).

In August 1993, I was interviewed by authors Thomas J. Schaeper and Kathleen Schaeper as they were researching their book, *Cowboys into Gentlemen: Rhodes*

*Scholars, Oxford, and the Creation of an American Elite*, which was published in 1998 (Berghahn Books, New York). I am mentioned in the acknowledgements, along with all of the others who provided interviews. However, based on my review of the book, including particularly the endnotes and index, I do not believe I am quoted anywhere in it.

In December 1992, I was interviewed by C-SPAN, in Oxford, England, as part of a series of interviews with students about their reaction to the election of Rhodes Scholar Bill Clinton as President. The interview was played on C-SPAN (as part of many hours of similar coverage) on January 9, 1993. It is available from C-SPAN's on-line video library. See <http://www.c-spanvideo.org/program/49250-1> (last accessed on March 15, 2010).

Charles T. Powers, *'Rhodies' Eye Wider Network*, Los Angeles Times, Dec. 1, 1992.

I may have participated in other interviews, with American or British press, between Election Day in November 1992 and Inauguration Day in January 1993, as there were many reporters in Oxford asking American Rhodes Scholars for their reaction to the election of a Rhodes Scholar as President.

Skip Cook, *Duo earns special place in Class of '91*, University of Delaware Messenger (Fall 1991).

Ed Okonowicz, *A Rhodes wends way from Delaware*, University of Delaware Messenger (Fall 1991).

Tom Curley, *Rhodes scholar's academic career just starting*, The News Journal (June 1, 1991).

Jen Podos, *Honors Day 1991: Outstanding senior man and woman named*, UpDate (May 16, 1991).

Ed Okonowicz, *After three decades, 'Rhodes' returns to Newark*, UpDate (Feb. 14, 1991).

*Taking the High Rhodes to Success*, Delaware Times (Mar. 1991).

Faye Duffy, *Taking the High Rhodes to Success*, The College Digest (Spring 1991).

University of Delaware Honors Program brochure (Spring 1991).

*U.D. Student Selected as Rhodes Scholar*, The EYE Magazine (Feb. 1991).

Julie Van Dyke, *The long and winding Rhodes*, UHP Report (Feb. 1991).

*UD student to study in Oxford as Rhodes Scholar*, Newark Post (Dec. 27, 1990).

Esther Crain, *UD scholar on the road to Oxford, England*, The Review (Dec. 14, 1990).

Nan Clements, *UD student a Rhodes scholar*, The News Journal (Dec. 10, 1990).

Robert Kelly & Safir Ahmed, *Rhodes Awards To 2 In Area*, St. Louis Post-Dispatch (Dec. 10, 1990).

Bill Swayze, *Junior honor student makes 'USA Today' team*, UpDate (May 17, 1990).

*Len Stark makes USA TODAY's 1990 All-USA Academic Team*, UHP Report (Feb. 1990).

Eugene du Pont Memorial Distinguished Scholars brochure (1987).

New York State YMCA Youth and Government brochure (1986).

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.

On August 6, 2007, I was appointed by the United States District Court for the District of Delaware to an eight-year term as United States Magistrate Judge.

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

As a magistrate judge, I may only preside over a case to judgment with the unanimous consent of all the parties. Through March 15, 2010, nineteen of my consent cases have gone to judgment (e.g., on motions to dismiss or for summary judgment or due to stipulations of dismissal following settlement) and are now closed. One of my consent cases has gone to trial and is presently in post-trial briefing.

- i. Of these, approximately what percent were:

jury trials:

bench trials:

civil proceedings: 100%

criminal proceedings:

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

See attached list of opinions.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Anello v. Indian River Sch. Dist.*, C.A. No. 07-668-LPS.

The parties in this *pro se* challenge to a public school district's handling of a child's learning disabilities consented to my jurisdiction. They filed cross-motions for summary judgment on the plaintiffs' claims that the district had violated the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.*, by not identifying the plaintiffs' child as learning-disabled in a timely manner (the "child find claim") and by formulating an individualized education plan ("IEP") that was inadequate for the child. I held that the district was too slow in identifying the child as eligible for special education and ordered, as relief on this child find claim, that the district reimburse the plaintiffs for certain private tutoring they had arranged for their child. I also held that the IEP eventually put in place was appropriate for the child. Accordingly, I granted in part and denied in part both parties' motions. *See* 2009 WL 304124 (D. Del. Feb. 6, 2009). The Court of Appeals affirmed. 2009 WL 4755714 (3d Cir. Dec. 14, 2009).

Plaintiffs were *pro se*. Defendant's Counsel was James H. McMackin, III, Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19899, (302) 888-6800.

2. *Eames v. Nationwide Mutual Ins. Co.*, C.A. No. 04-1324-JJF-LPS.

This purported class action for alleged misrepresentations in connection with the limits of liability for automobile insurance was referred to me for purposes of ruling on non-dispositive pretrial motions and making recommendations as to the proper disposition of case-dispositive motions. Following briefing and a hearing, I concluded that the pleadings and documents on which the Court was permitted to rely showed that there was no material misrepresentation or omission. I recommended that defendant's motion to dismiss be granted. *See Eames, et al. v. Nationwide Mutual Ins. Co.*, C.A. 04-1324-JJF-LPS (D. Del. Mar. 31, 2008) (appears as pages \*1-10 to 2008 WL 4455743). After reviewing plaintiffs' objections to my Report & Recommendation ("R&R"), District Judge

Joseph J. Farnan, Jr., adopted my R&R and dismissed the case. *See* 2008 WL 4455743 (D. Del. Sept. 30, 2008). The Court of Appeals affirmed. *See* 2009 WL 3041997 (3d Cir. Sept. 24, 2009). The plaintiffs filed a petition for a writ of certiorari on January 5, 2010 (No. 09-809).

Plaintiff's Counsel was John S. Spadaro, John Sheehan Spadaro, LLC, 724 Yorklyn Road, Suite 375, Hockessin, Delaware 19707, (302) 235-7745. Defendant's Counsel was Nicholas E. Skiles, Swartz Campbell LLC, 300 Delaware Avenue, Suite 1130, Wilmington, Delaware 19899, (302) 656-5935.

3. *Esquire Deposition Servs. LLC v. Bd. on Certified Court Reporters*, C.A. No. 09-206-JJF-LPS.

The plaintiff in this case provided national court reporting services and the defendant Delaware Board on Certified Court Reporters ("Board") supervised certification and conduct of court reporters in Delaware Courts. The Board was investigating the plaintiff firm for violating a Board order that prohibited court reporting firms operating in Delaware from entering into contracts covering multiple cases or providing special terms or services that are not offered at the same time and on the same terms to all other parties in the litigation. The plaintiff brought this action seeking a declaratory judgment that the directive was unconstitutional under the Commerce Clause, Contract Clause, and Due Process Clause of the United States Constitution. The district judge referred the case to me to handle discovery disputes, make a recommendation as to the disposition of the plaintiff's motion for a preliminary injunction, and to attempt alternative dispute resolution. After I conducted several mediation conferences and ordered expedited discovery, *see* 2009 WL 1220539 (D. Del. Apr. 29, 2009), the Delaware Supreme Court revoked the directive, leading to dismissal of the federal court action.

Plaintiff's Counsel was Thomas P. Preston, Blank Rome LLP, 1201 North Market Street, Suite 800, Wilmington, Delaware 19801, (302) 425-6438 & L. Lin Wood, Bryan Cave LLP, 1201 West Peachtree Street, 14th Floor, Atlanta, Georgia 30309, (404) 572-6786. Defendant's Counsel was Richard D. Allen, Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, Wilmington, Delaware 19801, (302) 658-9200.

4. *Gonzalez v. Astrue*, C.A. No. 06-76-LPS.

The parties consented to my jurisdiction in the plaintiff's challenge to the Social Security Administration's ("SSA") denial of her application for disability insurance benefits. On the parties' cross-motions for summary judgment, I found that the administrative law judge did not adequately justify the decision to give almost no weight to the plaintiff's treating



physicians and nearly controlling weight to the opinions of the non-treating physicians. I remanded the case to the SSA for further proceedings. *See* 537 F. Supp. 2d 644 (D. Del. 2008).

Plaintiff's Counsel was John S. Grady, Grady & Hampton, 6 North Bradford Street Dover, Delaware 19901, (302) 678-1265. Defendant's Counsel was David F. Chermol, Special Assistant United States Attorney, Now at Chermol & Fishman, LLC, 11450 Bustleton Avenue, Philadelphia, PA 19116, (215) 464-7224.

5. *Infineon Techs. AG v. Fairchild Semiconductor Int'l Inc.*, C.A. No. 08-887-SLR-LPS.

District Judge Sue L. Robinson referred this patent infringement action to me for purposes including handling pre-trial motions. The parties were competitors in the semiconductor business. The plaintiffs filed suit in Delaware alleging infringement of five of their patents and seeking declaratory judgments of noninfringement and invalidity of six of defendants' patents. On the same day the defendants answered and raised counterclaims with respect to the eleven patents placed in-suit by plaintiffs, the defendants also filed suit in the District of Maine for infringement of two additional patents. Thereafter, the plaintiffs sought to amend the Delaware complaint to include claims relating to the two additional patents involved in the Maine suit. The defendants opposed the motion. Shortly after I granted the plaintiffs leave to amend the Delaware complaint, *see* 2009 WL 3150986 (D. Del. Sept. 30, 2009), the parties filed a joint stipulation of dismissal with prejudice, which was granted by Judge Robinson.

Plaintiff's Counsel were William J. Marsden, Jr., Fish & Richardson, P.C., 222 Delaware Avenue, 17th Floor, Wilmington, Delaware 19899, (302) 652-5070 & Alan D. Smith, Fish & Richardson, P.C., 225 Franklin Street, Boston, Massachusetts 02110, (617) 542-5070. Defendant's Counsel were Philip A. Rovner, Potter Anderson & Corroon LLP, Hercules Plaza, Wilmington, Delaware 19899, (302) 984-6000 & Eric P. Jacobs, Townsend and Townsend and Crew LLP, Two Embarcadero Center, 8th Floor, San Francisco, California 94111 (415) 576-0200.

6. *Innovative Therapies Inc. v. Kinetic Concepts Inc.*, C.A. No. 07-589-SLR-LPS.

In this patent infringement action, the plaintiff sought a declaratory judgment that its wound treatment device would not infringe the defendant's patents and that those patents are invalid. I agreed with the defendant that the Court lacked subject matter jurisdiction because there was no "actual controversy" between the parties, as is required for

constitutional standing, at the time the plaintiff filed the suit. *See* 2008 WL 2746960 (D. Del. July 14, 2008). District Judge Sue L. Robinson, who had referred the case to me, overruled the plaintiff's objections to my recommendation and granted the defendant's motion to dismiss. *See* 2008 WL 4809104 (D. Del. Nov. 5, 2008).

Plaintiff's Counsel were Thomas H. Kovach, Parkowski, Guerke & Swayze, P.A., 800 King Street, Suite 203, Wilmington, Delaware 19801, (302) 594-3313 & Justin P.D. Wilcox, Cooley Godward Kronish LLP, One Freedom Square, Reston Town Center, 11951 Freedom Drive, Reston, Virginia 20190, (703) 456-8073. Defendant's Counsel were Steven J. Balick, Ashby & Geddes, 500 Delaware Avenue, 8th Floor, Wilmington, Delaware 19801, (302) 654-1888 & R. Laurence Macon, Akin Gump Strauss Hauer & Feld LLP, 300 Convent Street, Suite 1500, San Antonio, TX 78205, (210) 281-7222.

7. *In re: Rosuvastatin Calcium Patent Litig.*, C.A. No. 08-MD-1949-JJF-LPS.

This is a patent infringement action brought by a branded drug company, AstraZeneca, against multiple generic drug companies. It arises from the generics' filings of Abbreviated New Drug Applications (ANDAs) with the Food and Drug Administration (FDA) to market generic versions of AstraZeneca's Crestor (rosuvastatin calcium) anti-cholesterol drug, which has been publicly reported to have annual sales of more than \$3 billion. In June 2008, the Judicial Panel on Multi-District Litigation ("JPML") consolidated all of the rosuvastatin calcium cases for pre-trial purposes and sent them to the District of Delaware. District Judge Joseph J. Farnan, Jr., referred all of these related cases to me for all pretrial purposes. Among the matters I handled in these cases were: setting a schedule to get the cases to trial by February 2010, twenty-six months after the December 2007 filing of the first complaint; recommending disposition of various defense motions to dismiss, objections to which were overruled by Judge Farnan, *see* 2009 WL 483131 (D. Del. Feb. 25, 2009), *adopting* 2008 WL 5046424 (D. Del. Nov. 24, 2008); recommending appropriate constructions of disputed patent claim terms, which were also adopted by Judge Farnan, *see* 2009 WL 3378602 (D. Del. Oct. 20, 2009), *adopting* 2009 WL 1220542 (D. Del. May 4, 2009); and recommending resolution of additional motions, including to exclude expert testimony, *see* 2009 WL 4800702 (D. Del. Dec. 11, 2009). Judge Farnan held a final pre-trial conference in December 2009 and closed the reference to me on February 1, 2010. Trial in front of Judge Farnan was held in February 2010.

Plaintiff's Counsel were Mary W. Bourke, Connolly Bove Lodge & Hutz, 1007 North Orange Street, Wilmington, Delaware 19801, (302) 658-9141; Ford F. Farabow, Jr., Finnegan, Henderson, Farabow, Garrett & Dunner,

LLP, 901 New York Avenue, NW, Washington, DC 20001, (202) 408-4000 & Charles E. Lipsey and Kenneth M. Frankel, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, Two Freedom Square, 11955 Freedom Drive, Reston, Virginia 20190, (571) 203-2700. Defendants' Counsel were Steven A. Maddox, Knobbe Martens Olson & Bear, 1776 Eye Street, NW, Washington, DC 20006, (202) 640-6400; Thomas P. Heneghan and Shane A. Brunner, Merchant & Gould, 10 East Doty Street, Madison, Wisconsin 53703, (608) 280-6750; Robert B. Breisblatt, Katten Muchin Rosenman, 525 West Monroe Street, Chicago, Illinois 60661, (312) 902-5480; and Deanne M. Mazzochi, Rakoczy Molino Mazzochi Siwik, 6 West Hubbard Street, Chicago, Illinois 60610, (312) 222-6305.

8. *Power Integrations Inc. v. BCD Semiconductor Corp.*, C.A. No. 07-633-JJF-LPS.

The patents-in-suit in this action related to power supply chips incorporated into electronic devices such as cellular telephone chargers. The plaintiff-patentee sought a preliminary injunction to enjoin the defendant from manufacturing the accused power supply chips. I recommended denial of the defendant's motion to dismiss for lack of personal jurisdiction, finding that personal jurisdiction may exist in Delaware over the defendant – a Chinese company manufacturing integrated circuit chips that end up in cell phone chargers sold in Delaware – under a “stream of commerce” theory of jurisdiction. *See* 2008 WL 3850871 (D. Del. Aug. 12, 2008); 547 F. Supp. 2d 365 (D. Del. 2008). I later recommended that the plaintiff's preliminary injunction motion be denied, in part because the defendant had raised a substantial question regarding the validity of the patent claim on which the motion was predicated, particularly given that a pending reexamination of that claim by the U.S.P.T.O. had resulted in rejection of the claim. *See* 2008 WL 5069784 (D. Del. Nov. 19, 2008), *adopted by* 2008 WL 5101352 (D. Del. Dec. 3, 2008). Judge Farnan entered the parties' proposed consent judgment shortly thereafter.

Plaintiff's Counsel were William J. Marsden, Jr., Fish & Richardson P.C., 222 Delaware Avenue, Wilmington, Delaware 19801, (302) 652-5070; Frank Scherkenbach, Fish & Richardson P.C., 225 Franklin Street, Boston, Massachusetts 02110, (617) 542-5070; and Howard G. Pollack and Michael R. Headley, Fish & Richardson P.C., 500 Arguello Street, Suite 500, Redwood City, California 94063, (650) 839-5070. Defendant's Counsel were Steven J. Balick, Ashby & Geddes, 500 Delaware Avenue, Wilmington, Delaware 19801, (302) 654-1888 & Erik R. Puknys, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, Stanford Research Park, 3300 Hillview Avenue, Palo Alto, California 94304-1203, (650) 849-6600.

9. *Segen v. OptionsXpress Holdings, Inc.*, C.A. No. 08-456-LPS.

The plaintiff was a shareholder of the defendant, OptionsXpress (“Options”), and brought to the defendant’s attention allegations that several of Options’ senior officers had violated Section 16(b) of the Securities Exchange Act, 15 U.S.C. § 78p(b), by engaging in short-swing transactions of Options’ stock. The defendant concluded that the plaintiff’s allegations were correct and then obtained disgorgement of 100% of the officers’ short-swing profits, which amounted to more than \$1 million. After consenting to my jurisdiction, the parties asked me to determine how much of this recovery should be awarded to the plaintiff’s attorneys. The attorneys sought an award of 25% of the defendant’s recovery, while the defendant argued that a reasonable award should not exceed 4% of the recovered funds. I held that the appropriate fee under the unique circumstances of the case was 8% of the company’s recovery, an amount equal to about \$88,000. *See* 631 F. Supp. 2d 465 (D. Del. 2009). The parties reached an agreement to settle the case shortly after I issued my opinion.

Plaintiff’s Counsel were Paul D. Wexler, Bragar Wexler Eigel & Squire, 885 Third Avenue, New York, New York 10022, (212) 308-5858 & Glenn F. Ostrager, Ostrager Chong Flaherty & Broitman, 570 Lexington Avenue, New York, New York 10022, (212) 681-0600. Defendant’s Counsel were Lewis H. Lazarus & Katherine J. Neikerk, Morris James, 500 Delaware Avenue, Wilmington, Delaware 19801, (302) 888-6800.

10. *Zwanenberg Food Group (USA) v. Tyson Refrigerated Processed Meats Inc.*, C.A. No. 08-329-LPS.

This was a contract dispute arising from the plaintiff’s purchase of the defendant’s inventory and equipment used to manufacture canned luncheon meat for private label customers. The defendant’s largest such customer had been Wal-Mart, but, after the sale of the business from the defendant to the plaintiff, Wal-Mart decided it would not use the plaintiff to fill its orders for private label brands of canned meat products. The plaintiff claimed, among other things, that the defendant had breached the implied covenant of good faith and fair dealing by not taking actions to ensure that Wal-Mart did business with the plaintiff. Shortly after I denied the defendant’s motion for a partial judgment on the pleadings, *see* 2009 WL 528700 (D. Del. Feb. 27, 2009), the parties filed a joint stipulation of dismissal.

Plaintiff’s Counsel were Peter B. Ladig, Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, Delaware 19801, (302) 429-4232 & Edward P. Gilbert, Morrison Cohen LLP, 909 Third Avenue, New York, New York 10022, (212) 735-8675. Defendant’s Counsel was W. Harding

Drane, Jr., Potter Anderson & Corroon, LLP, 1313 North Market Street, Hercules Plaza, 6th Floor, Wilmington, Delaware 19899 (302) 984-6000.

- 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. *Eames v. Nationwide Mutual Ins. Co.*, C.A. No. 04-1324-JJF-LPS, 2008 WL 4455743 at \*1-10 (D. Del. Mar. 31, 2008), *adopted by* 2008 WL 4455743 at \*11 (D. Del. Sept. 30, 2008). Counsel for Eames was John S. Spadaro, John Sheehan Spadaro, LLC, 724 Yorklyn Road, Suite 375, Hockessin, Delaware 19707, (302) 235-7745. Counsel for Nationwide was Nicholas E. Skiles, Swartz Campbell LLC, 300 Delaware Avenue, Suite 1130, Wilmington, Delaware 19899, (302) 656-5935.
  2. *Gonzalez v. Astrue*, C.A. No. 06-76-LPS, 537 F. Supp. 2d 644 (D. Del. 2008). Counsel for Gonzalez was John S. Grady, Grady & Hampton, 6 North Bradford Street, Dover, Delaware 19901, (302) 678-1265. Counsel for the Commissioner was David F. Chermol, Special Assistant United States Attorney, U.S. Attorney's Office, District of Delaware, now at Chermol & Fishman, LLC, 11450 Bustleton Avenue, Philadelphia, PA 19116, (215) 464-7224.
  3. *Hutchins v. Bayer Corp.*, C.A. No. 08-640-JJF-LPS, 2009 WL 192468 (D. Del. Jan. 23, 2009). Counsel for Hutchins were Edward T. Ciconte, Ciconte, Roseman & Wasserman, 1300 King St., Wilmington, Delaware 19899, (302) 658-7101 & Jason A. Itkin, Arnold & Itkin, 1401 McKinney Street, Suite 2550, Houston, Texas 77010, (713) 222-3800. Counsel for Bayer were Michael P. Kelly, McCarter & English, 405 North King Street, Wilmington, Delaware 19801, (302) 984-6301 & Eugene Schoon, Sidley Austin, 1 South Dearborn Street, Chicago, Illinois 60603, (312) 853-7000.
  4. *Infineon Technologies AG v. Fairchild Semiconductor International Inc.*, C.A. No. 08-887-SLR-LPS, 2009 WL 3150986 (D. Del. Sept. 30, 2009). Counsel for Infineon were William J. Marsden, Jr., Fish & Richardson, P.C., 222 Delaware Avenue, 17th Floor, Wilmington, Delaware 19899, (302) 652-5070 & Alan D. Smith, Fish & Richardson, P.C., 225 Franklin Street, Boston, Massachusetts 02110, (617) 542-5070. Counsel for Fairchild were Philip A. Rovner, Potter Anderson & Corroon LLP, Hercules Plaza, Wilmington, Delaware 19899, (302) 984-6000 & Eric P. Jacobs, Townsend and Townsend and Crew LLP, Two Embarcadero Center, 8th Floor, San Francisco, California 94111 (415) 576-0200.
  5. *Innovative Therapies Inc. v. Kinetic Concepts Inc.*, C.A. No. 07-589-SLR-LPS, 2008 WL 2746960 (D. Del. July 14, 2008), *adopted by* 2008 WL

- 4809104 (D. Del. Nov. 5, 2008). Counsel for Innovative was Justin P.D. Wilcox, Cooley Godward Kronish LLP, One Freedom Square, Reston Town Center, 11951 Freedom Drive, Reston, Virginia 20190, (703) 456-8073. Counsel for Kinetic were Steven J. Balick, Ashby & Geddes, 500 Delaware Avenue, 8th Floor, Wilmington, Delaware 19801, (302) 654-1888 & R. Laurence Macon, Akin Gump Strauss Hauer & Feld LLP, 300 Convent Street, Suite 1500, San Antonio, Texas 78205, (210) 281-7222.
6. *In re Rosuvastatin Calcium Patent Litigation*, MDL No. 08-1949-JJF-LPS, 2009 WL 1220542 (D. Del. May 4, 2009), *adopted by* 2009 WL 3378602 (D. Del. Oct 20, 2009). Plaintiff's counsel were Mary W. Bourke, Connolly Bove Lodge & Hutz, 1007 North Orange Street, Wilmington, Delaware 19801, (302) 658-9141; Ford F. Farabow, Jr., Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, 901 New York Avenue, NW, Washington, DC 20001, (202) 408-4000; Charles E. Lipsey and Kenneth M. Frankel, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, Two Freedom Square, 11955 Freedom Drive, Reston, Virginia 20190, (571) 203-2700. Defendants' counsel were Steven A. Maddox, Knobbe Martens Olson & Bear, 1776 Eye Street, NW, Washington, DC 20006, (202) 640-6400; Thomas P. Heneghan and Shane A. Brunner, Merchant & Gould, 10 East Doty Street, Madison, Wisconsin 53703, (608) 280-6750; Robert B. Breisblatt, Katten Muchin Rosenman, 525 West Monroe Street, Chicago, Illinois 60661, (312) 902-5480; and Deanne M. Mazzochi, Rakoczy Molino Mazzochi Siwik, 6 West Hubbard Street, Chicago, Illinois 60610, (312) 222-6305.
7. *Madukwe v. Delaware State Univ.*, 552 F. Supp. 2d 452 (D. Del. 2008). Counsel for Madukwe was Noel E. Primos, Schmittinger & Rodriguez, 414 South State Street, Dover, Delaware 19903, (302) 674-0140. Counsel for DSU was Kathleen F. McDonough, Potter Anderson & Corroon, 1313 N. Market St., Hercules Plaza, Wilmington, Delaware 19801, (302) 984-6000.
8. *Power Integrations, Inc. v. BCD Semiconductor Corp.*, C.A. No. 07-633-JJF-LPS, 547 F. Supp. 2d 365 (D. Del. 2008). Counsel for Power was Frank Scherkenbach, Fish & Richardson P.C., 225 Franklin Street, Boston, Massachusetts 02110, (617) 542-5070. Counsel for BCD was Erik R. Puknys, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, Stanford Research Park, 3300 Hillview Avenue, Palo Alto, California 94304-1203, (650) 849-6600.
9. *Segen v. OptionsXpress Holdings, Inc.*, C.A. No. 08-456-LPS, 631 F. Supp. 2d 465 (D. Del. 2009). Counsel for Segen were Paul D. Wexler, Bragar Wexler Eigel & Squire, 885 Third Avenue, New York, New York 10022, (212) 308-5858 & Glenn F. Ostrager, Ostrager Chong Flaherty & Broitman, 570 Lexington Avenue, New York, New York 10022, (212)

681-0600. Counsel for Options were Lewis H. Lazarus & Katherine J. Neikerk, Morris James, 500 Delaware Avenue, Wilmington, Delaware 19801, (302) 888-6800.

10. *U.S. Life Ins. Co. in City of New York v. Withrow*, C.A. No. 07-511-LPS, 2008 WL 281029 (D. Del. Jan. 31, 2008). Counsel for U.S. Life was Carolyn Shelly Hake, Ashby & Geddes, 500 Delaware Avenue, Wilmington, Delaware 19801, (302) 654-1888. Counsel for Withrow was Kevin A. Guerke, Seitz, Van Ogtrop & Green, 222 Delaware Avenue, Wilmington, Delaware 19801, (302) 888-0600. Counsel for Legro was Seth Andrew Niederman, Fox Rothschild, 919 North Market Street, Wilmington, Delaware 19801, (302) 654-7444.

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

To the best of my knowledge, a petition for a writ of certiorari has been filed in only one case I have handled: *Eames v. Nationwide Mutual Insurance Co.*, C.A. No. 04-1324-JJF-LPS (D. Del.), No. 08-4125 (3d Cir.), No. 09-89 (U.S. S. Ct. Jan. 5, 2010).

- 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.

- 1) *Dougherty v. Blize*, C.A. No. 07-674-SLR-LPS (D. Del. Oct. 7, 2008) (unpublished order; copy provided), *adopting in part* my Report and Recommendation, 2008 WL 2543430 (D. Del. June 25, 2008). The district judge adopted only part of my recommendation, finding that plaintiff's Fair Labor Standards Act claim was sufficient to survive dismissal.
- 2) *Sea Star Line, LLC v. Emerald Equip. Leasing, Inc.*, C.A. No. 05-245-JJF-LPS, 2008 WL 5272745 (D. Del. Dec. 17, 2008), *vacating* my order imposing sanctions, 2008 WL 4107582 (D. Del. Aug. 27, 2008) & 2009 WL 3200657 (D. Del. Oct. 6, 2009), *vacating* my order regarding sanctions, 2009 WL 1491401 (D. Del. May 26, 2009). The district judge vacated my sanctions order against an attorney for discovery violations "in order to erase any ambiguity" as to whether the attorney had adequate notice he was subject to sanctions personally. On remand, I reimposed sanctions to be paid by either the party or its attorney; the district judge vacated these new sanctions on the basis of an intervening Third Circuit opinion.

- 3) *Symbol Techs., Inc. v. Janam Techs. LLC*, C.A. No. 08-340-JJF-LPS, 605 F. Supp. 2d 618 (D. Del. 2009), *adopting in part* my Report & Recommendation, 2008 WL 5070462 (D. Del. Dec. 1, 2008). In this patent infringement action, I recommended constructions of seven disputed claim terms. The district judge adopted my recommendations on six of the claim terms.
  - 4) *Collins & Aikman Corp. v. Stockman*, C.A. No. 07-265-JJF-LPS, 2009 WL 3153633 (D. Del. Sept. 30, 2009), *adopting in part* my Report and Recommendation, 2009 WL 1530120 (D. Del. May 20, 2009). The district judge adopted my recommendation on 12 of 13 motions to dismiss in this securities action against a defunct company; the judge declined to adopt my recommendation to dismiss the action against the company's auditors.
  - 5) *Forest Labs. Inc. v. Cobalt Labs. Inc.*, C.A. No. 08-21-GMS-LPS (consolidated), 2009 WL 3010837 (D. Del. Sept. 21, 2009), *adopting in part* my Report and Recommendation, 2009 WL 1916935 (D. Del. July 2, 2009). In this patent infringement action, I recommended constructions of multiple disputed claim terms. The district judge adopted my recommendations on all of the claim terms except one.
  - 6) *McKesson Automation, Inc. v. Swisslog Italia*, C.A. No. 06-28-SLR-LPS, 2008 WL 4820506 (D. Del. Nov. 5, 2008), *declining to adopt* my Report and Recommendation, 2008 WL 4057306 (D. Del. Aug. 28, 2008). The district judge did not adopt my recommendation that plaintiff had met its burden to establish that it owned 100% of the patent rights at issue.
  - 7) *Brookins v. Red Clay Consol. Sch. Dist.*, C.A. No. 08-11-GMS-LPS, 2009 WL 4730726 (Dec. 11, 2009), *declining to adopt* my Report & Recommendation, 2009 WL 2160566 (D. Del. Jul. 17, 2009). The district judge found equitable tolling in this employment discrimination case for a *pro se* plaintiff who the district judge recognized had missed the statute of limitations deadline.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

In civil cases, all of the opinions, and any order in which I say anything I believe to be of potential interest or importance to parties other than those involved in the case before me, are made available on the District Court's website (<http://www.ded.uscourts.gov/LPSmain.htm>). Westlaw, LEXIS and publishers of reporters make decisions independent of me as to whether any of these opinions are to be published or made available in a database. Any "unpublished" order I



have issued is available through CM/ECF, which provides public access to the docket entries of cases in our Court.

- 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.
  - 1) *Warren v. New Castle County*, C.A. No. 07-725-SLR-LPS, 2008 WL 2566847 (D. Del. June 26, 2008).
  - 2) *Power Integrations, Inc. v. BCD Semiconductor Corp.*, C.A. No. 07-633-JJF-LPS, 2008 WL 3850871 (D. Del. Aug. 12, 2008).
- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I screen cases as they are referred to me for any potential conflicts of interest. I will also soon be using our Court's automatic recusal system. My practice has been to recuse myself if I have a close relationship with any of the parties, identified witnesses, or counsel that would interfere with my neutrality or compromise the appearance of justice. Early in my tenure, when new cases were being automatically referred to the Magistrate Judges on the basis of a formula (i.e., without any initial review by a District Judge), at least two matters in which the University of Delaware (UD) was a party were assigned to

me. I recused myself because I had recently finished my term as President of the University's Alumni Association (UDAA) and I had close relationships with many of UD's senior administrators. I no longer automatically recuse myself in UD cases, but only in UDAA cases, as there has been a great deal of turnover among UD's senior administrators and I do not know most of them.

In no case has any party requested my recusal.

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

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

I have held no public offices other than judicial office. I have had no unsuccessful candidacies for elective office and no unsuccessful nominations for appointed office.

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

In 1998, I assisted with a fundraiser for John Dorsey, then a candidate for Attorney General of Delaware.

In March or April 1992, I stood as a candidate in the Oxford, England Democratic presidential caucus, in hopes that I would be elected a delegate to the Democratic Party's Americans Abroad presidential caucus (to be held in Brussels, Belgium I believe). I pledged to support Bill Clinton. I was named an alternate delegate but did not attend the Americans Abroad caucus.

In 1988, at the University of Delaware, I was campus co-coordinator for the Michael Dukakis presidential campaign. In this capacity I helped plan events in support of the candidate on UD's Newark campus. I also recruited volunteers, and participated myself, in leafleting, canvassing, and making phone calls for Dukakis and other Democratic candidates in Wilmington, Delaware.

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

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

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

I served as a law clerk to the Honorable Walter K. Stapleton, United States Court of Appeals for the Third Circuit, from 1996 to 1997.

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

I have never practiced law alone.

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

1997 to 2001  
Skadden, Arps, Slate, Meagher & Flom LLP  
One Rodney Square  
Wilmington, Delaware 19801  
Associate

2002 to 2007  
United States Attorney's Office for the District of Delaware  
1007 North Orange Street  
Wilmington, Delaware 19801  
Assistant United States Attorney

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

As a Magistrate Judge, a significant percentage of my time is spent providing alternative dispute resolution services to parties involved in cases pending in our Court. At any given time, approximately 100 cases are pending on my ADR calendar. Through March 15, 2010, I have held 100 mediation conferences.

General descriptions of ten of the most significant matters I have mediated are provided below:

- 1) Mediated to settlement a trademark dispute between two financial services companies with nearly identical names.
- 2) Mediated to settlement an environmental clean-up action brought by the United States Environmental Protection Agency for recovery of millions of dollars expended to clean up the site of a former rubber house manufacturer.

- 3) Mediated to settlement a personal injury action brought on behalf of minor and his mother who were injured during labor and delivery in a federal facility.
- 4) Mediated to settlement a sexual harassment lawsuit brought by female firefighter against her employer and supervisor.
- 5) Mediated to settlement a prisoner civil rights action alleging deprivation of constitutional right to adequate medical treatment.
- 6) Mediated to settlement an age discrimination action brought by former partner of major accounting firm.
- 7) Mediated to settlement a patent infringement action involving dermatological products.
- 8) Mediated to settlement an automobile accident case arising from a collision between plaintiff's car and defendant's tractor trailer.
- 9) Mediated to settlement a breach of contract action between public university and private entity it had hired to operate student residential buildings.
- 10) Mediated to settlement a civil rights action brought by person subjected to warrantless search in her home as result of mistaken belief by probation officers that a probation violator lived there.

b. Describe:

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

I began my law career (after my clerkship) as a litigation associate in the Delaware office of Skadden, Arps, Slate, Meagher & Flom LLP. From 1997 through 2001, I practiced primarily in the Delaware state courts, mostly the Delaware Court of Chancery and Delaware Supreme Court. I also worked on securities fraud cases in federal court and helped conduct an internal corporate investigation of allegations of insider trading. In January 2002, I became an Assistant United States Attorney for the District of Delaware. I was assigned to both the criminal and civil divisions. As an AUSA, I was responsible for investigating and prosecuting a wide variety of felonies (e.g., racketeering; mail, wire, and health care fraud; narcotics; and firearms offenses). I also handled civil health care fraud, veterans' benefits, and Freedom of Information Act

cases. In August 2007, I was appointed a United States Magistrate Judge for the District of Delaware.

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

At Skadden Arps, our typical clients were Fortune 500 corporations or other business entities or the officers and directors of such entities. As an AUSA, I represented the United States and its law enforcement agencies (primarily FBI, DEA, BATF, and HHS).

- 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.

Essentially all of my practice at Skadden Arps and the U.S. Attorney's Office consisted of litigation. At Skadden Arps (1997 to 2001), I appeared in court only occasionally. As an AUSA (2002 to 2007), I appeared in court frequently.

- i. Indicate the percentage of your practice in:

- 1. federal courts: 70%
- 2. state courts of record: 30%
- 3. other courts:
- 4. administrative agencies:

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 50%
- 2. criminal proceedings: 50%

- 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.

At Skadden Arps (1997 to 2001), I assisted in the trial of two cases to verdict in the Delaware Court of Chancery. Both were non-jury trials. In one case, I was second chair. The other case was a 40-plus day trial with a team of approximately 10 attorneys. I was primarily responsible for observing trial proceedings and writing briefs. At the U.S. Attorney's Office (2002 to 2007), I tried two cases. Both were jury trials. In one case, I was the only attorney for the government. In the other case (a fraud trial which ended in a hung jury) I was second chair.

- i. What percentage of these trials were:

- 1. jury: 50%
- 2. non-jury: 50%

- 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.

In 1998, while I was an associate at Skadden Arps, I and two other associates drafted an amicus curiae brief on behalf of the National Association of Criminal Defense Lawyers, in support of a petition for a writ of certiorari filed by Lisa Lambert. *See Lambert v. Blackwell*, No. 97-8812. Our brief was filed on May 26, 1998. Lambert's petition for a writ of certiorari was eventually denied on March 19, 2001. *See Lambert v. Blackwell*, 532 U.S. 919 (2001).

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

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

1. *United States v. Faines*, No. 05-4006 (3d Cir.).

In 2006 and 2007, as an AUSA, I represented the United States in this appeal from defendant's bank robbery conviction. I had sole responsibility for the appeal, including drafting the government's appellate brief and making the oral argument in the Court of Appeals. The defendant argued that his conviction should be reversed because the District Court limited his attorney's redirect examination of his expert in the area of fingerprint methodology and the accuracy of fingerprint analysis. Following oral argument in January 2007, in February 2007 the Court of Appeals affirmed the defendant's conviction and sentence. *See* 216 Fed. Appx. 227 (3d Cir. Feb. 14, 2007). In an opinion by Chief Judge Scirica, the Court held that the District Court did not limit the defendant's expert's testimony about matters for which she was qualified and did not abuse its discretion.

The Third Circuit Panel was composed of Chief Circuit Judge Anthony J. Scirica, Circuit Judge Julio Fuentes, and Circuit Judge Michael Chagares. Counsel for Faines was Eleni Kousoulis, Office of Federal Public

Defender, 715 North King Street, Wilmington, Delaware 19801, (302) 573-6010.

2. *United States v. Gordon*, Misc. No. 03-08-MPT (D. Del.), Misc. No. 03-166-KAJ (D. Del.), Crim. Act. No. 04-63-KAJ (D. Del.), Crim. Act. No. 04-63-JPF (D. Del.), Crim. Act. No. 05-541-JPF (E.D. Pa.), No. 04-1211 (3d Cir.), No. 05-3927 (3d Cir.), No. 06-1556 (3d Cir.), No. 07-1054 (3d Cir.).

Between 2002 and 2007, I represented the United States in this public corruption, racketeering, and fraud investigation and prosecution, along with the U.S. Attorney and (over several years) three other AUSAs. The grand jury charged three high-ranking officials of the government of New Castle County, Delaware ("County"). My responsibilities included: examining witnesses in the grand jury; assisting in the drafting of the 47-page, 11-count racketeering and fraud indictment; coordinating with various entities of the U.S. Department of Justice for necessary approvals and assistance (including the Public Integrity Section; Organized Crime and Racketeering Section; Criminal Appeals; Office of Enforcement Operations; and the Office of the Solicitor General); second-chairing the one trial in the matter and assisting with outlining and preparing for the anticipated multi-week second trial; briefing and arguing approximately 40 motions; briefing and arguing appeals (the case reached the Third Circuit four times); and participating in plea negotiations.

There was extensive litigation at every point in the case, almost all of which I was heavily involved with and much of which I handled personally. Some of the opinions issued in the case are: *In re Search Warrant*, Civ. Act. No. 03-008-MPT, 2003 WL 22095662 (D. Del. Sept. 9, 2003) (denying defendant's motion for return of property seized during execution of search warrant); *United States v. Gordon*, 334 F. Supp. 2d 581 (D. Del. 2004) (disqualifying defense attorney due to conflict of interest); *United States v. Gordon*, No. 05-3927, 183 Fed. Appx. 202 (3d Cir. June 8, 2006) (reversing district court's dismissal of portion of indictment); and *United States v. Gordon*, 2007 WL 1437692 (E.D. Pa. May 15, 2007) (denying defense motion for leave to serve subpoenas on White House Counsel and Attorney General).

In June 2007, Freebery pled guilty to felony Making a False Statement to a Bank, a violation of 18 U.S.C. § 1014; Gordon pled guilty to two misdemeanors of Willful Failure to Keep and Supply Information, violations of 26 U.S.C. § 7203; and Smith pled guilty to misdemeanor Tampering with a Witness, a violation of 18 U.S.C. § 1512(d)(2). In September 2007, all three defendants were sentenced to probation.

The Third Circuit Panels included Circuit Judge Mary Trump Barry, Circuit Judge Michael Fisher, Senior Circuit Judge Morton Greenberg, Circuit Judge Theodore A. McKee, Senior Circuit Judge Leonard I. Garth, Senior District Judge John C. Lifland (D.N.J., by designation), Circuit Judge Julio Fuentes, Circuit Judge D. Brooks Smith, and Circuit Judge John R. Gibson (8th Cir., by designation). The judges in District Courts were Senior District Judge John P. Fullam, Jr. (E.D. Pa.), then-District Judge Kent A. Jordan (D. Del.), and Magistrate Judge Mary Pat Thyng (D. Del.). Counsel for Gordon was Ronald H. Levine, Post & Schell, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103, (215) 587-1071. Counsel for Freebery were William W. Taylor, III & Elizabeth G. Taylor, Zuckerman Spaeder, 1800 M Street, NW, Suite 1000, Washington, DC 20036, (202) 778-1800. Counsel for Smith was Joseph A. Hurley, 1215 King Street, Wilmington, Delaware 19801, (302) 658-8980. My co-counsel were Colm F. Connolly, Morgan Lewis, 1701 Market Street, Philadelphia, Pennsylvania 19103, (215) 963-4841; Ferris W. Wharton, Office of the Public Defender, Carvel State Office Building, 820 North French Street, 3rd Floor, Wilmington, Delaware 19801, (302) 577-5200; and David L. Hall & Christopher J. Burke, U.S. Attorney's Office, District of Delaware, 1007 North Orange Street, Wilmington, Delaware 19801, (302) 573-6277.

3. *United States. v. Lee*, 315 F.3d 206 (3d Cir. 2003).

Defendant had pled guilty to travel for purposes of having sex with a minor, transportation and possession of child pornography, and enticing a minor by a computer to engage in sex. He appealed from the portion of his sentence requiring that, during his term of supervised release following incarceration, he submit to random polygraph examinations. In 2002 and 2003, I represented the government, drafting the government's brief and doing the oral argument. In January 2003, the Court of Appeals issued an opinion permitting the random polygraph release condition, rejecting defendant's contention that the condition violated his Fifth Amendment right to be free from self-incrimination.

The Third Circuit Panel was composed of Circuit Judge Jane R. Roth, Senior Circuit Judge Morton I. Greenberg, and Senior District Judge Robert J. Ward (S.D.N.Y., by designation). Counsel for Lee was Christopher S. Koyste, 800 North King Street, Wilmington, Delaware 19801, (302) 419-6529. My co-counsel was Edmond Falgowski, U.S. Attorney's Office, District of Delaware, 1007 North Orange Street, Wilmington, Delaware 19801, (302) 573-6277.



4. *United States v. Watson*, Crim. Act. No. 02-63-GMS-2 (D. Del.).

In 2002 and 2003, I was sole counsel for the United States in this criminal prosecution. I presented the indictment to the grand jury against two brothers charged with being felons in possession of firearms. After one defendant pled guilty, the other chose to go to trial, which took place in July 2003. The jury acquitted the second defendant.

The District Judge was Gregory M. Sleet. Counsel for E. Watson was Jan A.T. van Amerongen, Jr., Jan A.T. van Amerongen LLC, 1225 King Street, Suite 301, Wilmington, Delaware 19801, (302) 656-8007.

5. *United States v. Hubbard*, Crim. Act. No. 03-04-KAJ (D. Del.).

In 2003, I represented the United States in this criminal prosecution, beginning with the investigation and indictment of the defendant on a charge of being a felon in possession of a firearm, a violation of 18 U.S.C. § 922(g)(1). During an administrative search of his residence, state officers found a firearm under the defendant's mattress. After reading the defendant his rights (as set out in *Miranda v. Arizona*, 384 U.S. 436 (1966)), the defendant explained how he had acquired the firearm. I handled the subsequent suppression hearing, after which the Court denied defendant's motion. *See United States v. Hubbard*, 269 F. Supp.2d 474 (D. Del. 2003). The defendant later pled guilty. *See United States v. Hubbard*, 2006 WL 3511381 (D. Del. Dec. 6, 2006).

The District Judge was Kent A. Jordan. Counsel for Hubbard was Penny Marshall, Former Federal Public Defender, District of Delaware, (302) 283-0521.

6. *United States v. Behmanshah*, No. 00-3556 (3d Cir.).

The defendant had been convicted at trial of health care fraud, mail fraud, and money laundering. It had been a complex trial and, in her appeal, she raised approximately one dozen issues challenging her conviction and sentence. The AUSA who had tried the case had since left the office, so I was asked to handle the appeal and, in 2002, I did so. I wrote the government's brief and did the oral argument. In a per curiam opinion, the Court of Appeals affirmed defendant's conviction and sentence in all respects. *See* 49 Fed. Appx. 372 (Oct. 1, 2002).

The Third Circuit Panel was composed of Circuit Judge Theodore A. McKee, Circuit Judge Joseph F. Weis, Jr., and Circuit Judge John M. Duhe, Jr. (4th Cir., by designation). Counsel for Behmanshah was Kimberly Homan, 20 Park Plaza, Boston, Massachusetts 02116, (617) 227-8616.

7. *In re Emerging Commc'ns, Inc. Shareholders Litig.*, Del. Ch. No. 16415.

I was the senior associate on this appraisal and fiduciary duty action from its inception, in 1999, until I left Skadden Arps at the end of 2001. Our client was Greenlight Capital, a former minority shareholder of Emerging Communications, Inc. In 1998, Emerging was acquired by its former-controlling shareholder. Greenlight dissented from the merger, rejecting the deal price of \$10.25 per share, even though Emerging's stock had never traded at more than \$10 per share on the stock market. Greenlight also eventually filed a complaint alleging that the controlling shareholder and Emerging's other directors had breached their fiduciary duties in connection with approving the transaction with the controlling shareholder. My responsibilities included drafting the appraisal petition and the complaint; taking and defending depositions; arguing a motion to compel; drafting pre-trial and post-trial briefs; and serving as second-chair during the two-week trial. The Court appraised the fair value of Emerging as being \$38.05 per share and found that a majority of the Emerging board had breached its fiduciary duties in connection with the transaction. *See* 2004 WL 1305745 (Del. Ch. Ct. June 4, 2004).

Then-Vice Chancellor Jack B. Jacobs presided in the Delaware Court of Chancery. Counsel for Emerging were Thomas A. Beck & Raymond J. DiCamillo, Richards, Layton & Finger, One Rodney Square, Wilmington, Delaware 19801, (302) 651-7700. Counsel for the Board Defendants were David C. McBride, Young Conaway Stargatt & Taylor, 1000 West Street, Wilmington, Delaware 19801, (302) 571-6639 & Kevin C. Logue, Paul, Hastings, Janofsky & Walker, Park Avenue Tower, 75 East 55th Street, New York, New York 10022, (212) 318-6039. Counsel for the Shareholder Class was Norman M. Monhait, Rosenthal, Monhait & Goddess, 919 Market Street, Suite 1401, Wilmington, Delaware 19801, (302) 656-4433. My co-counsel was Thomas J. Allingham II, Skadden Arps Slate Meagher & Flom, One Rodney Square, Wilmington, Delaware 19801, (302) 573-3070.

8. *Cantor Fitzgerald Inc. v. Lutnick*, 99-CIV-4008 LAP (S.D.N.Y.), No. 01-7291 (2d Cir.).

Between 2000 and 2002, I was one of two or three associates who helped draft the briefs in this diversity action against our clients, who were partners of Cantor Fitzgerald Limited Partnership ("CFLP"), and were alleged to have breached their fiduciary duties by authorizing the CFLP partnership agreement to be amended to preclude competition by the plaintiff, Cantor Fitzgerald, Inc. ("CFI"), which was CFLP's former general managing partner. (A related case, in which I was also involved, was pending in the Delaware courts. *See* below.) The United States

District Court for the Southern District of New York granted our clients' motion to dismiss based on statute of limitations. *See* 2001 WL 111200 (S.D.N.Y. Feb. 8, 2001). After CFI appealed, I helped draft our clients' appellate brief. In December 2002, the Court of Appeals affirmed the District Court's dismissal of the case. *See* 313 F.3d 704 (2d Cir. 2002).

The Second Circuit Panel was composed of Chief Circuit Judge John W. Walker, Jr., Circuit Judge Dennis Jacobs, and Circuit Judge Robert D. Sack. The District Judge was Loretta A. Preska. Counsel for CFI were Barry I. Slotnick, Buchanan Ingersoll & Rooney, 620 Eighth Avenue, 23rd Floor, New York, New York 10018, (212) 440-4444 & Michael Shapiro, Carter Ledyard & Milburn, 2 Wall Street, New York, New York 10005, (212) 238-8676. My co-counsel were Karen L. Valihura & Jennifer C. Voss, Skadden Arps Slate Meagher & Flom, One Rodney Square, Wilmington, Delaware 19801, (302) 651-3000.

9. *Cantor Fitzgerald, L.P. v. Cantor*, Del. Ch. No. 16297.

I was one of a team of associates and partners that worked on this case from 1998 through 2001. Our client, Cantor Fitzgerald LP ("CFLP"), sued several of its partners for breaching the CFLP partnership agreement by competing with CFLP in its core business of brokering government bonds. Among other things, I assisted with researching and writing preliminary injunction, summary judgment, and post-trial briefs; helped prepare more senior attorneys for depositions and attended depositions; and worked on the massive discovery that was sought and produced. Following an approximately forty-day trial, the Court ruled in favor of our client, finding that CFLP had proven "an egregious breach of the partnership agreement" and was entitled to declaratory relief and attorney's fees. *See* 2000 WL 307370 (Del. Ch. Mar. 13, 2000).

Then-Vice Chancellor Myron T. Steele presided in the Delaware Court of Chancery. Counsel for Cantor were Stephen E. Jenkins & Richard I.G. Jones, Jr., Ashby & Geddes, 500 Delaware Avenue, Wilmington, Delaware 19801, (302) 654-1888; Barry I. Slotnick, Buchanan Ingersoll & Rooney, 620 Eighth Avenue, 23rd Floor, New York, New York 10018, (212) 440-4444; and Michael Shapiro, Carter Ledyard & Milburn, 2 Wall Street, New York, New York 10005, (212) 238-8676. My-counsel were Rodman Ward, Jr., Thomas J. Allingham II, and Karen L. Valihura, Skadden Arps Slate Meagher & Flom, One Rodney Square, Wilmington, Delaware 19801, (302) 651-3000.

10. *Cede & Co. v. Technicolor, Inc.*, Del. Ch. No. 7129.

From approximately late 1998 to late 2001, I was the sole associate on this long-running appraisal and breach of fiduciary duty case. The case had

begun in 1983. By the time of my involvement, there already had been a 47-day trial and three appeals to the Delaware Supreme Court. My responsibilities included helping write briefs that argued a new trial was not necessary, a position with which the Court of Chancery agreed. *See Cede & Co. v. Technicolor, Inc.*, 1999 WL 65042 (Del. Ch. Jan. 29, 1999). Following another appeal – in which I helped write the briefs – the Delaware Supreme Court disagreed, and remanded the case with directions that the Court of Chancery conduct a new trial. *See Cede & Co. v. Technicolor, Inc.*, 758 A.2d 485 (Del. 2000). Thereafter, until the time I left Skadden Arps at the end of 2001, I assisted with various matters, including successfully opposing the plaintiff's request that the Court of Chancery certify yet another interlocutory appeal to the Delaware Supreme Court. *See Cede & Co. v. Technicolor, Inc.*, 2001 WL 515106 (Del. Ch. May 7, 2001). I was not involved in the new trial or the subsequent appeal. *See Cede & Co. v. Technicolor, Inc.*, 884 A.2d 26 (Del. 2005).

The Delaware Supreme Court Panel was composed of Justice Joseph T. Walsh, Justice Randy J. Holland, and Retired Justice Maurice A. Hartnett, III. Chancellor William B. Chandler, III, presided in the Delaware Court of Chancery. Counsel for Cede & Co. were Robert K. Payson & Arthur L. Dent, Potter Anderson & Corroon, 1313 North Market Street, Hercules Plaza, Wilmington, Delaware 19801, (302) 984-6000 and Gary J. Greenberg, 12 West 57th Street, New York, New York 10019, (212) 246-1222. My co-counsel was Thomas J. Allingham II, Skadden Arps Slate Meagher & Flom, One Rodney Square, Wilmington, Delaware 19801, (302) 651-3070.

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.)

While an associate at Skadden Arps and as an Assistant United States Attorney, I worked almost exclusively on litigation.

As an associate at Skadden Arps, I was given substantial responsibility in representing a publicly-traded company and many of its employees and former employees in connection with a confidential SEC investigation of insider trading. I prepared approximately two dozen witnesses for SEC depositions and defended those depositions. Among my witnesses were the company's former CEO and CFO, other senior and mid-level officers, and executive assistants.

As part of a celebration that was held in February 2010 in honor of Third Circuit Judge Walter K. Stapleton's forty years on the federal bench, I helped produce a video entitled, "The Jury Is In: A Tribute to the Honorable Walter K. Stapleton." My primary role was to conduct interviews with approximately thirty of Judge Stapleton's current and former colleagues, former law clerks, and family and friends.

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.

In the fall semesters of 1998 and 1999, I taught "Constitutional Law I" to upper-level undergraduates at the University of Delaware. The course focused on separation of powers and federalism.

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

None.

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

I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

If confirmed, I would continue to follow the relevant statutory provisions and canons governing recusal, as I have while serving as a United States Magistrate Judge. I also would continue to automatically recuse myself in any cases involving the University of Delaware Alumni Association, so long as I sit on its board of directors. I do not foresee other likely potential conflicts-of-interest.

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

If confirmed, I will continue to handle all matters involving actual or potential conflicts of interest through the careful and diligent application of Canon 3 of the Code of Conduct for United States Judges as well as other relevant Canons and statutory provisions, including 28 U.S.C. §§ 144 and 455.

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.

At Yale Law School, I participated in the Prison Legal Services Clinic, and served as a Supervising Student during my second semester in the Clinic. In this capacity, I provided pro bono representation to a federal inmate in connection with a parole hearing and state inmates in their efforts to obtain necessary medical treatment.

As a summer associate at Shea & Gardner, I provided pro bono representation to an individual who was appealing an administrative decision to deny his application for Social Security Disability Insurance benefits.

As an associate in private practice, I devoted more than 200 hours to helping research and draft an amicus curiae brief in support of a petition for writ of certiorari in the Supreme Court of the United States, on behalf of the National Association of Criminal Defense Lawyers. I provided additional pro bono assistance to an organization seeking to establish a charter school in Delaware. I also served on the District of Delaware's Criminal Justice Act Panel as an associate member to a more senior member of the firm, making me eligible to assist with the defense of indigent federal criminal defendants. I recall receiving only one case assignment in this capacity.

I also have been a volunteer for law-related education activities, including serving as a judge or juror for the Delaware and (when Delaware hosted it) National High School Mock Trial Competitions, serving as a judge for a trial advocacy course at Widener University Law School, helping judge students participating in Widener University Law School's Ruby Vale Moot Court Competition, judging a mock trial competition at Temple Law School, and speaking to high school students as part of the Delaware State Bar Association's Law Day activities.

**26. Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

There is no selection commission in my jurisdiction to recommend candidates for nomination to the federal courts. Knowing that there was a vacancy on our District Court, on January 29, 2009, I sent my resume to the Office of the Vice President, expressing my interest in being considered for the position. On February 15, 2009, The News Journal reported that Senator Thomas R. Carper was soliciting applications from individuals interested in being considered for the judicial vacancy. In response, on February 25, 2009, I submitted my materials to Senator Carper's office. I have had intermittent contact with Senator Carper's office since that time. On March 12, 2009, I was interviewed by a senior member of Senator Carper's staff. On April 20, 2009, I was interviewed by Senator Carper. On April 24, 2009, Senator Carper informed me that he was submitting my name and two others to the White House for consideration for a possible nomination. On November 25, 2009, I was contacted by the United States Department of Justice Office of Legal Policy. Since then I have been in contact with pre-nomination officials at the Department of Justice. On February 2, 2010, I was interviewed at the Department of Justice by attorneys from the Department and from the Office of White House Counsel. On March 17, 2010, the President submitted my nomination to the Senate.

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

No.