

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Peter Joseph Phipps

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

District Judge, United States District Court for the Western District of Pennsylvania

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

Joseph F. Weis Jr. United States Courthouse  
700 Grant Street, Suite 4000  
Pittsburgh, PA 15219

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

1973; Dyess Air Force Base, Abilene, TX

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.

1995 – 1998, Stanford Law School; J.D. 1998

1991 – 1995, University of Dayton; B.S. (Physics), B.A. (History) 1995

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.

2014 – present  
Duquesne University School of Law  
Hanley Hall  
600 Forbes Avenue

Pittsburgh, PA 15282  
Adjunct Professor

2003 – present  
United States Department of Justice  
Civil Division, Federal Programs Branch  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
Senior Trial Counsel (2011 – present)  
Senior Counsel (2009 – 2011)  
Trial Attorney (2003 – 2009)

2001 – 2002  
Honorable R. Guy Cole, Jr.  
United States Court of Appeals for the Sixth Circuit  
United States Courthouse  
85 Marconi Boulevard  
Columbus, OH 43215  
Law Clerk

1998 – 2001  
Jones Day  
325 John H. McConnell Boulevard, Suite 600  
Columbus, OH 43215  
Associate

Summer 1997  
Taft, Stettinius & Hollister  
425 Walnut Street, Suite 1800  
Cincinnati, OH 45202  
Summer Associate

Summer 1997 & Summer 1996  
Jones Day  
325 John H. McConnell Boulevard, Suite 600  
Columbus, OH 43215  
Summer Associate

Fall 1997  
Santa Clara County  
District Attorney's Office  
70 West Hedding Street, West Wing  
San Jose, CA 95110  
Legal Extern

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 the selective service.

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

Top Secret Security Clearance (2004 – present)

Special Commendation, Department of Justice, Civil Division (2006, 2010, 2012)

The Attorney General's Distinguished Service Award (2005)

Distinguished Service Certificate, U.S. Court of Appeals for the Sixth Circuit (2003)

Stanford Law School

Managing Editor of the Stanford Law & Policy Review (1997 – 1998)

University of Dayton

*Summa cum laude* graduation (1995)

Outstanding Senior Majoring in Physics (1995)

Donatelli Award, College of Arts and Science, for the humanities senior with the strongest record in elective science courses (1995)

Winner, national collegiate essay competition for a paper, Abolitionist Activity, the Law, and the People of Southwest Ohio (approximately 1994)

Recipient of an undergraduate research grant from the National Science Foundation to work at the molecular beam epitaxy laboratory at the University of Notre Dame (1994)

Full Tuition Scholarship (1991 – 1995)

Ohio Aerospace Institute Scholarship (1991 – 1995)

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.

Akron Bar Association (2016 – 2017)

Allegheny County Bar Association (2013 – present)

American Bar Association (1998 – 1999, 2007 – 2008, 2012) (to the best of my recollection)

Columbus Bar Association (1998 – 2001)

DC Bar Association (2007 – present)

Administrative Law and Agency Practice Section (2015 – present)

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.

Ohio, 1998

District of Columbia, 2007

Pennsylvania, 2012

There have been no lapses in membership.

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

United States Supreme Court, 2017

United States Court of Appeals for the First Circuit, 2012

United States Court of Appeals for the Third Circuit, 2013

United States Court of Appeals for the Sixth Circuit, 2002

United States Court of Appeals for the Tenth Circuit, 2004

United States District Court for the District of Columbia, 2011

United States District Court for the Southern District of Ohio, 1999

United States District Court for the Western District of Pennsylvania, 2013

United States District Court for the Western District of Washington, 2006

(contingent on federal employment).

To the best of my knowledge, there have been no lapses in my membership to any of these courts.

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.

John Carroll Society of Washington, DC (2010 – 2013)  
Scorer for High School Essay Competition (2010 – 2011)

Knights of Columbus (2011 – present)

Ohio State Society (2010 – 2012)

Pennsylvania State Society (2013)

St. Thomas More Society of Pittsburgh (2012 – present)

West Virginia State Society (2006 – 2013)

- 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.

The Knights of Columbus is a Catholic fraternal organization limited to men, although there is a corresponding organization for women. 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.

As an undergraduate, I wrote a paper entitled Abolitionist Activity, the Law, and the People of Southwest Ohio, and entered it in a historical writing competition in approximately 1994; the paper was selected as a winner, and I believe it was published in some form. I am unable to locate the paper or the publication.

- 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 am not aware of any materials responsive to this request.

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

I am not aware of any materials responsive to this request.

- 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.

August 18, 2016: Speaker, "An Approach to Preparing Fact Witnesses for Deposition Testimony," Presentation and Webinar, Office of the Solicitor, U.S. Department of the Interior, Washington, DC. I have no notes, transcript, or recording. The address is Department of the Interior, 1849 C Street NW, Washington, DC 20240. Copy of the handout supplied.

April 10, 2014: Panelist, "The Federal Practice: Meet Attorneys of the DOJ/AUSA," University of Pittsburgh Law School. I have no notes, transcripts, or recordings. The address is University of Pittsburgh School of Law, 3900 Forbes Avenue, Pittsburgh, PA 15260. Announcement supplied.

August 13, 2012: Moderator, panel discussion regarding discovery motions, National Advocacy Center, Columbia, SC. I have no notes, transcripts, or recordings. The address is National Advocacy Center, 1620 Pendleton Street, Columbia, SC 29201.

August 13, 2012: Speaker, "Requests for Admission," National Advocacy Center, Columbia, SC. Presentation with annotated notes supplied.

Outside of wholly personal speeches or talks I may have given – for example, toasts, eulogies, and religious instruction or commentary – the above represents my best recollection of all speeches or talks I have delivered since high school.

- 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.

In the Spring of 1996, while in law school, I was selected at random for a biographical interview by the Stanford Daily Newspaper. I am unable to locate the publication.

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 not served as a judge.

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

- i. Of these, approximately what percent were:

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

- b. Provide citations for all opinions you have written, including concurrences and dissents.
    - c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
    - d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
    - e. Provide a list of all cases in which certiorari was requested or granted.
    - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

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

I have not served as a judge.

- 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.

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 not held any public office. I have not been an unsuccessful candidate for elected office or an unsuccessful nominee for public office.

- b. List all memberships and offices held in and services rendered, whether



compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not been a member of, or held office in, any political party, election committee or political campaign. To the best of my recollection, in approximately 2001, I distributed leaflets door-to-door for a couple of hours on a weekend for Stu Harris for Columbus City Council. To the best of my recollection, in approximately 2000, I distributed leaflets door-to-door for a couple of hours on a weekend for Geoff Smith for Ohio State Representative.

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;

From 2002 to 2003, I served as a law clerk to the Honorable R. Guy Cole, Jr., Circuit Judge on the United States Court of Appeals for the Sixth Circuit.

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

I have not 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.

1998 – 2001  
Jones Day  
325 John H. McConnell Boulevard, Suite 600  
Columbus, OH 43215  
Associate

2003 – present  
United States Department of Justice  
Civil Division, Federal Programs Branch  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
Trial Attorney (2003 – 2009)  
Senior Counsel (2009 – 2011)  
Senior Trial Counsel (2011 – present)

Since 2012, I have worked in an office at the United States Attorney's Office for the Western District of Pennsylvania, 700 Grant Street, Suite 4000, Pittsburgh, PA 15219.

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

I have not served as a mediator or arbitrator.

b. Describe:

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

From 1998 to 2001, as an associate at Jones Day, the focus of my practice was on corporate civil litigation involving cases in federal and state courts at the trial and appellate levels. I provided legal assistance in connection with a significant jury trial, oversaw the resolution of hundreds of proofs of claims in a bankruptcy proceeding, served and responded to written discovery, took depositions, prepared pleadings, motions, and briefs, and engaged in occasional client counseling.

My practice at the Federal Programs Branch from 2003 until present has focused primarily on defending the constitutionality and administration of federal statutes, regulations, and programs against challenges brought in federal courts throughout the nation. Several of my cases have involved pure questions of law and/or appellate issues, and it is common for me to brief and engage in oral argument on those matters. A number of my cases also have required substantial factual investigation and development. In those instances, I have engaged in all facets of pretrial and trial practice, including fact and expert depositions, written discovery, motion practice, opening and closing statements, direct examination, and cross examination. I have also counseled client agencies on the litigation risks associated with proposed rules, regulations, policies, and agency decisions.

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

From 1998 to 2001, in private practice at Jones Day, my clients were typically corporations engaged in civil litigation.

Since 2003, as a trial attorney at the Federal Programs Branch, my clients have been federal agencies and officials. I have not specialized in any

particular area of the law, but my practice has required a solid grounding in administrative law, constitutional law, evidence, and federal civil procedure.

- 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.

The near entirety of my practice involves litigation or relates to litigation.

From 1998 to 2001, in private practice at Jones Day, I focused on civil litigation in state and federal courts. I appeared in court infrequently.

Since 2003, at Federal Programs, I have focused on civil litigation in federal courts. I appear in court frequently.

- i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 95% |
| 2. state courts of record:  | 5%  |
| 3. other courts:            | 0%  |
| 4. administrative agencies: | 0%  |

- ii. Indicate the percentage of your practice in:

- |                          |     |
|--------------------------|-----|
| 1. civil proceedings:    | 95% |
| 2. criminal proceedings: | 5%  |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have been counsel of record in three civil trials (lasting four weeks, three weeks, and two weeks). In two of the trials – both in *Thompson v. Department of Housing and Urban Development*, No. 95-309 (D. Md.) (Garbis, J.), one in the liability phase, the other in the remedy phase – I served as associate counsel with responsibilities for an opening statement and for the direct and cross examination of several lay and expert witnesses, including two former Deputy Assistant HUD Secretaries. At the third trial, in *Witt v. United States Air Force*, No. 06-5195 (W.D. Wash.) (Leighton, J.), I served as lead counsel for a trial team of four lawyers and five support staff. I presented the opening and closing statements, and I conducted the direct and cross examinations of several lay and expert witnesses, including the plaintiff and a Lieutenant General who was the Chief of the Air Force Reserves.

As an associate at Jones Day, I provided substantial assistance to the counsel of record during a jury trial in *Iron Workers Local Union No. 17 Insurance Fund v.*

*Philip Morris, Inc.*, No. 1:97-cv-1422 (N.D. Ohio) (Gwin, J.).

- i. What percentage of these trials were:
  1. jury: 10%
  2. non-jury: 90%
- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I drafted briefs on the constitutionality of the Professional and Amateur Sports Protection Act and its applicability to New Jersey's efforts to legalize sports wagering. Those briefs include an opposition to certiorari petitions in *Christie v. NCAA*, Nos. 13-967, 13-979, and 13-980 (available at 2014 WL 1989100), as well as an opposition to certiorari petitions and an amicus brief in *Christie v. NCAA*, Nos. 16-476 and 16-477 (available at 2017 WL 2275823 and 2017 WL 4805228).

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. *Thompson v. HUD*, No. 95-309 (D. Md.) (Garbis, J.) (Grimm, J.).

This class action by African-American public housing residents was prompted by the demolition of several high-rise public housing projects in Baltimore in 1995. As counsel of record, I defended HUD and other federal defendants against claims of racial discrimination in the administration of federal housing programs. My initial responsibilities related to pretrial discovery, depositions and motion practice. During the trials, I assumed responsibilities for approximately twenty lay witness examinations, seven expert witness examinations, and an opening statement. After the conclusion of two trials, which reduced the liability of the federal defendants, I worked with senior leadership at HUD to negotiate a settlement of this long-standing case.

I worked on this case from 2003 until 2013.

The following citations pertain to the case during my involvement in the litigation:  
2006 WL 581260 (D. Md. Jan. 10, 2006); 348 F. Supp. 2d 398 (D. Md. 2005); 2004 WL  
1058100 (D. Md. Jan. 29, 2004); and 219 F.R.D. 93 (D. Md. 2003).

Plaintiffs' Counsel

Andrew Freeman  
Brown Goldstein & Levy, LLP  
120 East Baltimore Street, Suite 1700  
Baltimore, MD 21202  
(410) 962-1030

Barbara Samuels  
ACLU of Maryland  
3600 Clipper Mill Road, Suite 350  
Baltimore, MD 21211  
(410) 889-8555

Counsel for the Local Defendants

William Ryan  
Whiteford Taylor Preston, LLP  
Seven Saint Paul Street  
Baltimore, MD 21202  
(410) 347-8741

Co-Counsel for the Federal Defendants

Christopher Hall  
Judry Subar  
Daniel Schwei  
Diane Kelleher  
U.S. Department of Justice  
Civil Division, Federal Programs Branch  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
(202) 514-2000

2. *Cavanaugh v. Saul*, No. 03-111 (D.D.C.) (Kessler, J.) (Robinson, M.J.).

This class action was brought by one of the most numerous classes ever: the three-million-plus participants and beneficiaries in the Thrift Savings Plan (“TSP”), which is the federally-operated, defined-contribution, retirement savings plan for federal employees. The complaint alleged that due to political motives, certain board members, the Executive Director, and the General Counsel breached fiduciary duties in managing the TSP. As counsel of record, I represented those six defendants in their individual and official capacities, and I defended several of their depositions, as well as the deposition of a former White House Official, the President’s Deputy Assistant, during which I

preserved the presidential communications privilege. I also briefed and argued several discovery motions, often involving novel issues, such as the conditions under which the attorney-client privilege and the work-product doctrine are subject to fiduciary exceptions. I negotiated a settlement in which the case was dismissed for an attorney's fees payment.

I worked on this case from 2003 until 2010. The following citations pertain to the case: 2007 WL 1601743 (D.D.C. June 4, 2007) and 233 F.R.D. 21 (D.D.C. 2005).

Plaintiffs' Counsel

Hon. Roger Mehle (now an Administrative Law Judge)  
Office of Medicare Hearings and Appeals  
Department of Health and Human Services  
Richard Bolling Federal Office Building  
601 East 12th Street  
Kansas City, MO 64106  
(816) 321-7325

Co-Counsel for Defendants

Rachel Hines (formerly at the Federal Programs Branch, moved abroad)  
No current contact information

3. *Merida Delgado v. Ashcroft*, No. 04-32 (W.D. Okla.) (Leonard, J.); No. 04-6309 (10th Cir.) (Henry, J.; Anderson, J.; Tymkovich, J.).

This case challenged the Attorney General's determination that a foreign national who had associations with Zacarias Moussaoui before September 11, 2001, should not receive flight training in the United States for certain airplanes (those with a maximum certificated takeoff weight of 12,500 pounds or more). As counsel of record, I represented the Attorney General in his official capacity. The plaintiff alleged several constitutional violations, and I obtained the dismissal of this case in district court and the affirmance of that dismissal on appeal.

I worked on this case from 2004 until 2005. The following citation pertains to the case: 428 F.3d 916 (10th Cir. 2005).

Plaintiff's Counsel

David J. Batton  
David Batton Law  
330 West Gray, Suite 304  
Norman, OK 73069  
(405) 310-3432

4. *Witt v. United States Air Force*, No. 06-5195 (W.D. Wash.) (Leighton, J.).

In this case, a flight nurse was honorably discharged from the Air Force Reserves for

“homosexual conduct.” She challenged the constitutionality of the military’s former “Don’t Ask, Don’t Tell” statute and implementing regulations. As counsel of record for the Air Force, I defeated a preliminary injunction motion and successfully moved to dismiss the case. After a partial reversal on appeal and remand, I oversaw all discovery and the depositions of several lay and expert witnesses. As lead counsel at trial, I gave the opening and closing statements, conducted the direct examination of the Commander of the Air Force Reserves (a lieutenant general), and cross-examined several witnesses, including the plaintiff herself. After the Air Force appealed a partially adverse trial judgment, I worked with senior officials to negotiate a settlement, which was completed shortly before the policy was statutorily repealed.

I worked on this case from 2006 through 2012. The following citations pertain to the case during my involvement in the district court litigation: 2012 WL 1747974 (W.D. Wash. May 16, 2012); 739 F. Supp. 2d 1308 (W.D. Wash. 2010); 2010 WL 3814010 (W.D. Wash. Sept. 24, 2010); 2010 WL 3522519 (W.D. Wash. Sept. 7, 2010); and 444 F. Supp. 2d 1138 (W.D. Wash. 2006). The Ninth Circuit also issued opinions in this case on two occasions: 548 F.3d 1264 (9th Cir. 2008); and 527 F.3d 806 (9th Cir. 2008).

Plaintiff’s Counsel

James Lobsenz  
Carney Badley Spellman  
701 Fifth Avenue, Suite 3600  
Seattle, WA 98104  
(206) 622-8020

Sarah Dunne  
ACLU of Washington  
901 5th Avenue #630  
Seattle, WA 98164  
(206) 624-2184

Co-Counsel for the Air Force

Bryan R. Diederich (formerly at the Federal Programs Branch)  
Office of the General Counsel  
NASA  
300 E Street, SW  
Washington, DC 20546  
(202) 358-0216

Stephen Buckingham (formerly at the Federal Programs Branch)  
Cohen Milstein  
1100 New York Avenue, NW, Fifth Floor  
Washington, DC 20005  
(202) 408-4600

5. *United States v. Prime Time Int’l*, No. 12-910 (D.D.C.) (Lamberth, J.) (Roberts, J.),

consolidated with *Prime Time Int'l v. Vilsack*, No. 06-1077 (D.D.C.).

These consolidated cases originated with a challenge by a cigar manufacturer to the United States Department of Agriculture's method for calculating approximately \$1 billion in aggregate annual assessments from manufacturers and importers of tobacco products under the Tobacco Transition Payment Program. The cigar manufacturer claimed that USDA's method for calculating each manufacturer and importer's assessment was inconsistent with multiple statutory directives. As counsel of record, I represented the USDA and the United States in successfully defending the USDA's calculation method for the assessments and in obtaining a judgment of over \$11 million (plus unpaid assessments and interest valued at several million dollars) against the cigar manufacturer.

I worked on these related cases from 2006 until 2013. The following citations pertain to the district court litigation that I handled: 930 F. Supp. 2d 240 (D.D.C. 2013) and 601 F. Supp. 2d 307 (D.D.C. 2009). The citations to the appellate opinions are 753 F.3d 1339 (D.C. Cir. 2015), and 599 F.3d 678 (D.C. Cir. 2010).

Plaintiff's Counsel

Jerry Stouck  
Greenberg Traurig  
2101 L Street, NW  
Washington, DC 20037  
(202) 331-3100

Reed Rubinstein (formerly at Dinsmore)  
Office of Legal Policy  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
(202) 514-4601

6. *Kelley v. FBI*, No. 13-825 (D.D.C.) (A. Jackson, J.).

This civil suit originated from alleged leaks of information regarding an affair between former CIA Director General David Petraeus and Paula Broadwell. Through several news cycles, major media outlets identified Jill Kelley as having reported a cyberstalking incident that led to the discovery of the Petraeus-Broadwell affair, and the media also reported that Jill Kelley had exchanged a high number of emails with Marine General John Allen. Jill Kelley and her husband, Scott Kelley, subsequently filed a fourteen-count invasion of privacy lawsuit against the FBI, the Department of Defense, the State Department, and federal officials, including Leon Panetta, in their individual capacities. As counsel of record for the defendants, I successfully argued for dismissal of thirteen of the fourteen counts, including claims under the Privacy Act and the Electronic Communications Privacy Act as well as state law tort claims and *Bivens* claims. In discovery, I personally counseled the Secretary of Homeland Security and successfully engaged in motion practice to prevent him from testifying at deposition, and I defended



the depositions of several high-level officials, including Leon Panetta, General John Allen, and the former Pentagon Press Secretary. In March 2015, plaintiffs voluntarily dismissed their remaining claim.

I worked on this case from June 2013 until March 2016. The following citation pertains to the case: 67 F. Supp. 3d 240 (D.D.C. 2014).

Plaintiffs' Counsel

Alan Charles Raul  
Sidley Austin, LLP  
1501 K Street, NW  
Washington, DC 20005  
(202) 736-8477

Guy Neal (formerly at Sidley Austin, no longer practicing law)

Co-Counsel for the FBI, the Department of Defense, and the Department of State

Lisa Marcus  
U.S. Department of Justice  
Civil Division, Federal Programs Branch  
950 Pennsylvania Avenue, NW  
Washington, DC 20044  
(202) 514-3336

Stephen Buckingham (formerly at the Federal Programs Branch)  
Cohen Milstein  
1100 New York Avenue, NW, Fifth Floor  
Washington, DC 20005  
(202) 408-4600

Counsel for General John Allen

John M. Dowd  
1150 18th Street, NW, Suite 500  
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7. *NCAA v. Christie*, Nos. 3:12-4947, 3:14-6450 (D.N.J.) (Shipp, J.); Nos. 13-1713, -1714, -1715 (3d Cir.) (Fuentes, J.; Fisher, J.; Vanaskie, J.); Nos. 14-4546, -4568, -4569 (3d Cir.) (Rendell, J.; Fuentes, J.; Barry, J.) (subsequently *en banc*); Nos. 13-967, -979, 980, Nos. 16-476, -477 (U.S.).

These related cases were initiated by the National Collegiate Athletic Association and four professional sports leagues, the National Football League, the National Basketball Association, the National Hockey League, and Major League Baseball, to enjoin the State of New Jersey from legalizing gambling on sporting events as prohibited by the Professional and Amateur Sports Protection Act of 1992 ("PASPA").

In the initial litigation, the State of New Jersey argued that PASPA was unconstitutional, specifically that PASPA violated the Tenth Amendment's commandeering prohibition, that it offended principles of state sovereignty, and that it was an impermissible exercise of the Commerce Power. As counsel of record, I represented the United States, which intervened in the case to defend PASPA's constitutionality, which the District Court upheld. On appeal to the Third Circuit, I briefed the constitutionality of PASPA, which was sustained. I also drafted an opposition to certiorari petitions, and the United States Supreme Court did not grant certiorari.

In subsequent related litigation, New Jersey sought to allow sports betting through a partial repeal of its prohibitions on sports wagering. As counsel of record, I briefed and argued in district court and in the Third Circuit for the position that New Jersey's efforts remained PASPA non-compliant. Both courts agreed with that result, which was reaffirmed on *en banc* review. Before the Supreme Court, I drafted two briefs: an opposition to the certiorari petitions, and an amicus brief at the merits stage.

I have worked on this litigation from 2012 until present. The following citations pertain to the litigation during my involvement in the litigation. First Challenge: 134 S. Ct. 286 (2014); 730 F.3d 209 (3d Cir. 2013); 926 F. Supp. 2d 551 (D.N.J. 2013); Second Challenge: 137 S. Ct. 2326, 2327 (2017); 832 F.3d 389 (3d Cir. 2016) (*en banc*); 799 F.3d 259 (3d Cir. 2015); 61 F. Supp. 3d 488 (D.N.J. 2014).

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8. *Miami-Luken, Inc. v. U.S. Dep't of Justice*, No. 16-mc-0012 (S.D. Ohio) (Dlott, J.)  
(Bowman, M.J.), No. 17-3614 (6th Cir.).

These cases are collateral to an administrative adjudication in which the United States Drug Enforcement Administration (“DEA”) seeks to revoke the registration of a distributor of controlled substances for illegally distributing millions of dosage units of oxycodone. As part of that administrative action, the distributor requested, and the Administrative Law Judge issued, a subpoena for discovery of certain information in DEA’s possession. DEA refused to comply with that subpoena because, as averred by the DEA’s Chief of Operations, if discovery were permitted in these types of administrative proceedings, it would “significantly compromise DEA’s efforts to combat diversion and ultimately pose an enhanced public health and safety risk.” The distributor commenced this action to enforce the subpoena in federal court. As counsel of record for DEA, I briefed and orally argued in district court, and I am handling the related litigation in the Sixth Circuit.

I have worked on this case from 2016 to present. The following citations pertain to the case: 2017 WL 3261777 (S.D. Ohio Aug. 1, 2017), 2016 WL 3855205 (S.D. Ohio July 15, 2016).

Counsel for Miami-Luken, Inc.

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9. *American Civil Liberties Union of Northern California v. Hargan*, No. 16-3539 (N.D. Cal.) (Beeler, M.J.).

This case involves a constitutional challenge to grants provided by the Department of Health and Human Services to faith-based organizations to provide for care and services to unaccompanied alien children and to victims of foreign human trafficking. Certain grantees, for religious reasons, do not use grant funds for abortion or contraception, and the ACLU seeks injunctive relief on the theory that such a ‘conscience clause’ violates the Establishment Clause. As counsel of record for HHS, I have defended the constitutionality of the grants through pre-trial motion practice, and I am currently managing the case through discovery.

I have worked on this case from 2016 until present. The following citations pertain to the case: 2017 WL 4551492 (N.D. Cal. Oct. 11, 2017); 2017 WL 1540606 (N.D. Cal. Apr. 28, 2017); 2017 WL 492833 (N.D. Cal. Feb. 7, 2017); 2016 WL 6962871 (N.D. Cal. Nov. 29, 2016).

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10. *Project on Predatory Student Lending of the Legal Svcs. Ctr. of Harvard Law School v. U.S. Dep't of Justice*, No. 2:17-cv-00210 (W.D. Pa.) (Fischer, J.).

This case is collateral to a lawsuit under the False Claims Act, *United States ex rel. Washington v. Educ. Mgmt. LLC*, No. 2:07-cv-461 (W.D. Pa.), a case that settled for approximately \$95.5 million. During the course of discovery in that case, the defendant, EDMC, produced terabytes of data – approximately 145 million pages of documents – to the United States. Plaintiff in this case submitted requests under the Freedom of Information Act (“FOIA”) for the materials received by the United States in discovery in the EDMC litigation. As counsel of record, I am defending the non-production of the requested documents under FOIA, a position that implicates the novel issue of whether documents produced by a private party to a federal agency in civil discovery constitute “agency records” subject to disclosure under FOIA.

I have worked on this case from 2017 until present.

Plaintiff's Counsel

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18. **Legal Activities:** Describe the most significant legal activities you have pursued,

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

My most significant legal activities have involved litigation or the preparation for litigation – ranging from pre-suit client counseling to discovery, oral argument, trial, and appeal. My cases commonly involve complex or novel questions of administrative or constitutional law. For instance, I have been entrusted with defending federal statutes, regulations, programs, and policies against constitutional challenges. I have also personally defended several heads of federal agencies when they have been sued in their individual capacities.

I have not performed lobbying activities.

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

I have taught a three credit-hour administrative law survey course at Duquesne University School of Law in Spring 2014, Fall 2014, Spring 2016, and Spring 2017. I am currently teaching Administrative Law for the Spring 2018 semester. A copy of each syllabus is supplied.

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

I have no arrangements to receive deferred income or other future benefits from previous business relationships professional services, firm memberships, former employers, clients or customers.

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

I am teaching Administrative Law at Duquesne University School of Law for the Spring 2018 semester. I do not have any other plans, commitments, or agreements to pursue outside employment.

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 Financial Disclosure Report.

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

See Financial 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, and a potential conflict of interest were to arise, I would apply conflict rules and ethical standards to assess whether a recusal is required or would be beneficial to the integrity of the judiciary. For instance, I would recuse myself from any case in which I have participated as an attorney. I will evaluate any other real or potential conflict, or relationship that could give rise to appearance of conflict, on a case-by-case basis and determine appropriate action with the advice of parties and their counsel including recusal where necessary.

- 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 carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

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.

From approximately 2004 until 2008, I was actively involved with several pro bono matters related to landlord-tenant disputes in Washington, DC. This work involved intake assessments, initial client counseling, representation of clients, and the supervision of other pro bono attorneys' efforts. I estimate that I worked over one hundred hours on

such projects. In addition, before law school, I taught English at a rural Honduran high school for two terms; that school was established by a Franciscan priest, originally from Kansas, and from time to time, I have helped him, such as by assisting him in receiving reimbursement for medical expenses under his health insurance policy.

I have also volunteered at the University of Pittsburgh Law School to serve as a judge for the moot court competition in 2015 and 2016 and as a judge for the mock trial competition in 2016.

**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 a bipartisan selection committee for the position of District Judge for District Court for the Western District of Pennsylvania. In April 2017, I submitted application materials to that committee, and I was subsequently interviewed by the committee, which recommended my nomination. In June 2017, I met with Senator Pat Toomey and members of his staff. In July 2017, I met with Senator Bob Casey Jr. and members of his staff.

Attorneys from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice interviewed me, and, in September 2017, contacted me regarding my potential nomination for this position. I have communicated regularly with the Office of Legal Policy in the preparation of my answers to this questionnaire and the completion of other related materials.

On February 15, 2018, President Trump 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.