

**UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY**

**QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES**

**PUBLIC**

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

Randolph John Seiler  
Randy Seiler

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

United States Attorney for the District of South Dakota

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

**Office:**

United States Attorney's Office  
225 South Pierre Street  
Pierre, South Dakota 57501

United States Attorney's Office  
325 South 1<sup>st</sup> Avenue, Suite 300  
Sioux Falls, South Dakota 57104

**Home:**

Fort Pierre, South Dakota

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

1946, Mobridge, South Dakota

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.

University of South Dakota School of Law  
August 1977 – May 1980  
Juris Doctor, Honor Graduate, May 1980

University of South Dakota  
January 1975 – May 1980

I took classes toward my Master's Degree prior to acceptance into law school and while employed full time. I continued working on my Master's Degree while in law school and completed the course work. Thesis remaining – no degree received.

University of Nebraska at Omaha  
September 1970 – May 1973  
Bachelor of Science in Criminal Justice, *cum laude*, May 1973

South Dakota State University  
September 1964 – May 1966  
General Administration classes – no degree received.

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.

United States Department of Justice  
United States Attorney's Office  
District of South Dakota  
325 South 1<sup>st</sup> Avenue, Suite 300  
Sioux Falls, South Dakota 57104  
Acting United States Attorney  
March 2015 – Present

City of Fort Pierre  
City Council, Ward III  
PO Box 700  
Fort Pierre, South Dakota 57532  
Councilmember  
May 2014 – Present

United States Department of Justice  
United States Attorney's Office  
District of South Dakota  
225 South Pierre Street  
Pierre, South Dakota 57501  
First Assistant United States Attorney  
November 2009 – March 2015

United States Department of Justice  
United States Attorney's Office  
District of South Dakota  
225 South Pierre Street  
Pierre, South Dakota 57501  
Assistant United States Attorney  
May 1995 – November 2009

Verendrye Museum, Inc.  
PO Box 665  
4 East Main Street  
Fort Pierre, South Dakota 57532  
Board of Directors – Member  
Approximately January 2005 – October 2009

Community & Youth Involved, Inc.  
19 East Main Street  
Fort Pierre, South Dakota 57532  
Board of Directors – Member  
Approximately January 2004 – October 2009

United States Department of Justice  
Executive Office for United States Attorneys  
950 Pennsylvania Avenue, Northwest  
Washington, DC 20530  
Counsel to the Director – Detail/Temporary Duty Assignment  
January 2000 – October 2000

Seiler & Cain  
Formerly known as Krause & Seiler and Krause, Seiler & Cain  
PO Box 490  
210 East Grand Crossing Boulevard  
Mobridge, South Dakota 57601  
Private Practice of Law – Partner  
June 1981 – May 1995

South Dakota Board of Pardons and Paroles  
3200 East Highway 34  
Pierre, South Dakota 57501  
Parole Board Member  
January 1992 – May 1995

Okiciyapi Tipi  
Habitat for Humanity  
213 Main Street  
Eagle Butte, South Dakota 57625  
Board of Directors – Member  
Approximately January 1994 – May 1995

Mobridge Rodeo Association  
212 North Main Street  
Mobridge, South Dakota 57601  
Secretary/Board of Directors  
October 1990 – May 1995

Campbell County States Attorney's Office  
PO Box 38  
Herreid, South Dakota 57632  
Deputy States Attorney  
January 1988 – December 1994

Cheyenne River Sioux Tribe  
PO Box 590  
Eagle Butte, South Dakota 57625  
Special Judge  
Approximately January 1990 – November 1993

University of South Dakota  
School of Law Foundation  
414 East Clark Street  
Vermillion, South Dakota 57069  
Board of Directors – Member  
June 1989 – June 1993

Mobridge School District  
Board of Education  
1107 1<sup>st</sup> Avenue East  
Mobridge, South Dakota 57601  
Board Member/President  
June 1983 – June 1992

Mobridge Rotary Club  
West Highway 12  
Mobridge, South Dakota 57601  
Board Member: January 1982 – December 1985  
President: January 1990 – December 1991

South Dakota Department of Education  
800 Governors Drive  
Pierre, South Dakota 57501  
Special Investigator  
Approximately January 1989 – December 1990

South Dakota Department of Education  
Board of Educators  
800 Governors Drive  
Pierre, South Dakota 57501  
President/Board Member  
September 1986 – February 1989

Mobridge Country Club  
12631 SD Highway 1804  
Mobridge, South Dakota 57601  
President/Board of Directors  
Approximately March 1983 – March 1986

Mobridge Regional Hospital  
1401 10<sup>th</sup> Avenue West  
Mobridge, South Dakota 57601  
Board of Directors  
Approximately November 1984 – November 1985

Mobridge Community Fund  
114 1<sup>st</sup> Avenue East  
Mobridge, South Dakota 57601  
Chairman/Board of Directors  
June 1983 – December 1985

Mobridge Jaycees  
909 North Main  
Mitchell, South Dakota 57301  
*(No local address available)*  
Board of Directors – Member  
January 1982 – December 1983

United States District Court  
District of South Dakota  
400 South Phillips Avenue  
Sioux Falls, South Dakota 57105  
Law Clerk to Honorable Fred J. Nichol  
June 1980 – June 1981

University of South Dakota School of Law  
414 East Clark Street  
Vermillion, South Dakota 57069  
South Dakota Law Review, Student Bar Association, Client Counseling Board, Dean's  
Advisory Council, Honor Code Committee, Constitutional Revision Committee  
August 1977 – May 1980

Dana, Golden, Moose & Rasmussen  
*(No longer in business)*  
Legal Intern  
May 1979 – August 1979

South Dakota Advocacy Project  
221 South Central Avenue, Suite 38  
Pierre, South Dakota 57501  
Research Assistant  
January 1979 – December 1979

Bogue, Weeks & Rusch  
*(No longer in business)*  
Legal Intern  
May 1978 – September 1978

University of South Dakota School of Law  
414 East Clark Street  
Vermillion, South Dakota 57069  
Research Assistant, Professor Peter J. McGovern  
January 1978 – December 1978

South Dakota Department of Public Safety  
Division of Law Enforcement Assistance  
118 West Capitol Avenue  
Pierre, South Dakota  
Criminal Justice Planner/Division Director  
June 1973 – August 1977

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.

United States Air Force  
Rank – E-4, Sergeant  
AF16984455  
Honorable Discharge  
October 1966 – September 1970, Vietnam 1968 – 1969

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.

Phi Kappa Phi, National Honor Society, 1973  
American Jurisprudence Award, Civil Procedure, 1978  
Edwin J. Hadd Scholarship, 1978  
Alan Bogue Memorial Scholarship, 1979  
Outstanding Young Men of America, 1976, 1980  
University School of Law, Dean's List, 1977 – 1980  
Client Counseling Competition Award, 1979, 1980  
Editor-In-Chief, South Dakota Law Review, 1979 – 1980

West Publishing Company Award, Legal Scholarship, 1979, 1980  
Sterling Honor Graduate, University of South Dakota School of Law, 1980  
Gavel Award, University of South Dakota School of Law, 1980  
Outstanding Young Man, Mobridge Jaycees, 1984  
Air Force Commendation Metal, Vietnam, 1986  
Mobridge Lakota Education, Exemplary Service Award, 1991  
United States Department of Justice, Employee Volunteer Service Award, 1998  
Assistant United States Attorney of the Year, District of South Dakota, 1999  
United States Department of Justice, Attorney General's Award, 2001  
United States Department of Justice, Director's Award, Superior Performance in Indian Country, 2009

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, Agriculture Law Committee, Student Member, 1978 – 1979  
American Bar Association, Committee on Judicial Administration, 1980  
South Dakota State Bar Association

Committee Memberships: Criminal Law, 1980 – Present  
Indian Law, 1980 – Present  
School Law, 1982 – 1992  
Public Law, 1995 – Present

State Bar of South Dakota, 1980 – Present  
South Dakota State Bar, Young Lawyers Division, Board of Directors, 1981 – 1983  
South Dakota Trial Lawyers, 1981 – 1995  
Fifth Judicial Circuit Bar Association, 1981 – 1995  
American Bar Association, Individual & Small Firms Committee, 1982  
South Dakota State Bar, Young Lawyers Division, Secretary, 1982 – 1983  
South Dakota State Bar, Young Lawyers Division, President, 1984  
Cheyenne River Bar Association, 1984 – 1994  
State Bar of South Dakota, Bar Commissioner, 1986 – 1989  
Sixth Judicial Circuit Bar Association, 1995 – 2009  
United States District Court, Magistrate Judge Review & Recommendations Committee, 1999, 2004  
National Association of Assistant United States Attorneys, 2001 – 2009  
South Dakota States Attorneys Association, 2004 – Present  
South Dakota Native American Bar Association, 2012 – 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.

South Dakota State Bar  
1980 – Present  
No lapse 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, 1991 – Present  
United States Court of Appeals for the Eighth Circuit, 1981 – Present  
United States District Court for the District of South Dakota, 1980 – Present  
South Dakota Supreme Court and Circuit Courts, 1980 – Present  
Cheyenne River Sioux Tribal Courts, approximately 1985 – 1995  
Standing Rock Sioux Tribal Courts, approximately 1985 – 1995

I no longer practice in Tribal Courts of Cheyenne River and Standing Rock as I accepted a position as an Assistant United States Attorney in 1995. I have no other lapses in membership.

11. **Memberships:**

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

City of Fort Pierre  
City Council  
Ward III  
Fort Pierre, South Dakota  
Councilman, 2014 – Present

Vintage Square Homeowners Association  
Fort Pierre, South Dakota  
Board of Directors/Member, 2014 – Present

St. John's Catholic Church  
Fort Pierre, South Dakota  
Member, 1995 – Present

Veterans of Foreign Wars  
Post 2741  
Mobridge, South Dakota  
Life Member, 1985 – Present



Verendrye Museum, Inc.  
Fort Pierre, South Dakota  
Board of Directors, 2005 – 2009

Community & Youth Involved, Inc.  
Fort Pierre, South Dakota  
Board of Directors, 2004 – 2009

Korean War Memorial Dedication Committee  
Pierre, South Dakota  
Committee Member, 2004

South Dakota Inaugural Ball Committee  
Pierre, South Dakota  
Committee Member, 2002, 2006

World War II Memorial Dedication Committee  
Pierre, South Dakota  
Committee Member, 2002

Stanley County Booster Club  
Fort Pierre, South Dakota  
Member, 1996 – 2009

Stanley County Parents Association  
Fort Pierre, South Dakota  
Member, 1995 – 1999

Okiciyapi Tipi – Cheyenne River Sioux Tribe  
Habitat for Humanity  
Eagle Butte, South Dakota  
Board of Directors, 1994 – 1995

Mobridge Rodeo Association  
Mobridge, South Dakota  
Board of Directors, 1990 – 1995

Moose Club  
Mobridge, South Dakota  
Member, 1985 – 1995

American Legion  
Mobridge, South Dakota  
Member, 1985 – 1995

Mobridge Country Club  
Mobridge, South Dakota  
President/Board of Directors, 1983 – 1992

Mobridge Community Fund  
Mobridge, South Dakota  
President/Board of Directors, 1983 – 1985

Mobridge Rotary Club  
Mobridge, South Dakota  
President/Board of Directors, 1982 – 1995

Mobridge Chamber of Commerce  
Industrial Development Committee & Ambassadors  
Mobridge, South Dakota  
Committee Member, 1981 – 1995

St. Joseph's Catholic Church, including Knights of Columbus  
Mobridge, South Dakota  
Member, 1981 – 1995

Mobridge Jaycees  
Mobridge, South Dakota  
Board of Directors, 1981 – 1985

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

To my knowledge, none of these organizations have ever discriminated on the basis of race, sex, religion, or national origin.

**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.

I have done my best to identify all books, articles, reports, letters to the editor, editorials and other published material, including a thorough review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find, or remember.

Survey of Recent South Dakota Case Law  
Criminal Law and Procedure  
24 S.D.L. Rev. 288 (1979).  
Copy attached

Guest Editorial, Mobridge Tribune  
I wrote this editorial in my capacity as President of Mobridge School Board on the issue of the South Dakota open meeting law.  
Approximately 1986  
Copy unavailable

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

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

None.

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

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

Herreid High School, Commencement Speaker  
Herreid, South Dakota  
May 1986  
Copy unavailable

American Legion, Memorial Day Speaker  
Herreid, South Dakota  
May 1987  
Copy unavailable

South Dakota Law Review, Keynote Speaker at the Volume 50 Law Review  
Banquet  
Sioux Falls, South Dakota  
April 2005  
Copy unavailable

Todd County High School, National “Meth” Awareness Day  
Mission, South Dakota  
2006  
Copy unavailable

Presentation to Lions Club, Overview of the U.S. Marshal position, nomination,  
and confirmation process  
Fort Pierre, South Dakota  
March 23, 2009  
Copy unavailable

I have given many presentations as part of my responsibilities as First Assistant  
United States Attorney on various topics relating to mission of the United States  
Attorney’s Office, including: Domestic Violence in Indian Country;  
Implementation of Sex Offender Registration Requirements; Violence Against  
Women Act Implementation; Tribal Law and Order Act; and Implementation of  
Indian Country Listening Conferences.  
Various locations in South Dakota  
November 2009 – March 11, 2015  
Copies unavailable

Tribal Implementation of the Violence Against Women Act Conference, Opening  
Remarks  
Rapid City, South Dakota  
March 31, 2015  
Copy unavailable

National Crime Victims’ Rights Week Luncheon, Presenter and Award Recipient  
Rapid City, South Dakota  
April 20, 2015  
Copy unavailable

Crime Victims’ Rights Week Ceremony, Presenter  
Rapid City, South Dakota  
April 20, 2015  
Copy unavailable

Sheriffs/Police Chiefs Conference, Guest Speaker  
Deadwood, South Dakota  
April 22, 2015  
Copy unavailable

Crime Victims' Rights Week Ceremony, Presenter  
Sioux Falls, South Dakota  
April 23, 2015  
Copy unavailable

Call to Freedom Press Conference  
Sioux Falls, South Dakota  
April 30, 2015  
Copy unavailable

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

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

Aberdeen News, Interview regarding my role as Acting United States Attorney,  
Aberdeen, South Dakota  
March 29, 2015  
Copy attached

KEVN TV, Interview regarding Tribal Implementation of the Violence Against  
Women Act, Rapid City, South Dakota  
March 31, 2015  
Copy unavailable

Keloland TV, Interview regarding Tribal Implementation of the Violence Against  
Women Act, Rapid City, South Dakota  
March 31, 2015  
Copy unavailable

KCCR Radio, Interview regarding recommendation of Senator Tim Johnson to be  
U.S. Marshal for the District of South Dakota, Pierre, South Dakota  
February 20, 2009  
Copy unavailable

Mobridge Tribune, Various interviews as President of the Mobridge School Board, Mobridge, South Dakota  
1988 – 1992  
Copies unavailable

KOLY Radio, Various interviews as President of the Mobridge School Board, Mobridge, South Dakota  
1988 – 1992  
Copies unavailable

Keloland TV, Interview as Chairman of Governor's Committee on Special Education, Sioux Falls, South Dakota  
1986  
Copy unavailable

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

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

Director, South Dakota Division of Law Enforcement Assistance  
Appointed – Governor, State of South Dakota, Richard F. Kneip  
1974 – 1977

Governor's Task Force on Special Education  
Appointed – Governor, State of South Dakota, William J. Janklow  
1986

South Dakota Board of Education  
Appointed – Governor, State of South Dakota, William J. Janklow  
1986 – 1989

South Dakota Board of Pardons and Paroles  
Appointed – South Dakota Supreme Court  
1992 – 1995

City of Fort Pierre  
City Council  
Ward III  
2014 – Present

- 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.

McGovern for President, Volunteer  
1972

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

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

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

United States District Court  
Honorable Fred J. Nichol  
Judicial Law Clerk  
June 1980 – June 1981

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

I have not practiced alone.

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

Seiler & Cain  
Formerly known as Krause, Seiler & Cain and Krause & Seiler  
Partner  
PO Box 490  
210 East Grand Crossing Boulevard  
Mobridge, South Dakota 57601  
1981 – 1995

Campbell County States Attorney's Office  
PO Box 38  
Herreid, South Dakota 57632  
Deputy States Attorney  
1988 – 1994

Cheyenne River Sioux Tribe  
PO Box 590  
Eagle Butte, South Dakota 57625  
Special Judge  
1990 – 1993

United States Department of Justice  
United States Attorney's Office  
District of South Dakota  
225 South Pierre Street  
Pierre, South Dakota 57501  
Assistant United States Attorney  
May 1995 – November 2009

United States Department of Justice  
United States Attorney's Office  
District of South Dakota  
225 South Pierre Street  
Pierre, South Dakota 57501  
First Assistant United States Attorney  
November 2009 – March 2015

United States Department of Justice  
United States Attorney's Office  
District of South Dakota  
325 South 1<sup>st</sup> Avenue, Suite 300  
Sioux Falls, South Dakota 57104  
Acting United States Attorney  
March 2015 – Present

- 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.

I am currently a federal prosecutor involved in the prosecution of violent federal felony offenses occurring primarily in Indian Country. When I changed jobs in 1995, the character of my practice changed from a general practice in a small town to a federal prosecutor dealing exclusively with criminal offenses. In 2009 I was appointed to be First Assistant United States Attorney for the South Dakota U.S. Attorney's Office. I became Acting United States Attorney on March 12, 2015.

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

My current client is the United States in all criminal offenses. I specialize



in criminal law. When I was in private practice from 1981 to 1995, I had a general, small town practice and my clients were people who lived or worked in north central South Dakota.

- 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.

- i. Indicate the percentage of your practice in:

1. federal courts;
2. state courts of record;
3. other courts;
4. administrative agencies

	<u>1995 – Present</u>	<u>1981 – 1995</u>
federal courts	100%	5%
state court of record	0%	75%
other courts	0%	15%
administrative agencies	0%	5%

- ii. Indicate the percentage of your practice in:

1. civil proceedings;
2. criminal proceedings.

	<u>1995 – Present</u>	<u>1981 – 1995</u>
civil proceedings	0%	60%
criminal proceedings	100%	40%

- 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.

In all jury trials and court trials while I was in private practice, I was sole counsel. As an Assistant United States Attorney, I was sole counsel in all but two of approximately 70 federal criminal jury trials. Of those two trials, I was chief counsel in one and co-counsel in the other.

- i. What percentage of these trials were:

1. jury trials – 43%
2. non-jury – 57%

Since 1995 I have represented the United States Government in approximately 70 federal criminal jury trials, prosecuting defendants charged with murder, manslaughter, child sexual abuse, forcible rape, assaults, and white collar crime. In private practice I had seven jury trials and approximately 100 court trials.

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

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

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

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

**State of South Dakota v. Spotted Horse**

462 N.W.2d 463 (S.D. 1990), certiorari denied, 111 S. Ct. 2041 (1991)

The Honorable Leland J. Berndt, Circuit Court, State of South Dakota

Dates of Representation: April 1988 – October 1990

Opposing Counsel: Dan Todd, 700 Governors Drive, Pierre, South Dakota, 605-773-3305

Spotted Horse, a member of the Standing Rock Sioux Tribe was driving in Mobridge, South Dakota. He did not have valid 1988 license plate stickers. A Mobridge City police officer subsequently arrested him for driving under the influence (DUI), signaled Spotted Horse to stop by flashing his patrol lights, and then engaged in hot pursuit when Spotted Horse fled back to the reservation. On the outskirts of Wakpala, Spotted Horse stopped at a private residence, and before he could flee again, the officer ran to Spotted Horse's vehicle, reached inside and shut off the ignition. The officer then physically struggled to extract Spotted Horse for five to fifteen minutes, striking him repeatedly with his nightstick. After removing Spotted Horse from the car, the officer then took him back to Mobridge. There, the officer detected alcohol on Spotted Horse's breath, and after Spotted Horse failed a field sobriety test, the officer arrested him for DUI.

The trial court convicted Spotted Horse of driving under the influence and for failure to display current registration. Spotted Horse appealed, arguing (1) that the trial court lacked jurisdiction over an Indian who committed a misdemeanor

off the reservation, and (2) that the trial court erred in not suppressing evidence related to the DUI and unrelated crimes where the defendant allegedly used excessive force in making the arrest. Although the Court first determined that South Dakota lacked jurisdiction on the reservation, the trial court possessed jurisdiction over Spotted Horse to try him on the charges, citing *State v. Winckler*, 260 N.W.2d 356 (S.D. 1977), which made irrelevant the manner in which a defendant is brought in for offenses occurring within the court's jurisdiction when brought in from another jurisdiction. Because the arresting officer, however, did not follow proper procedure in making the arrest, the Court held that evidence collected pursuant to the DUI should have been suppressed. Spotted Horse further contended that an illegal arrest provided a defense to *all* charges, but the Court upheld the conviction for failure to display current registration, noting that the offense occurred off the reservation and was observed prior to the arrest.

The case's significance arises out of its admonishment of arrests made following a pursuit into a reservation, but simultaneous refusal to extend the defense of improper arrest to unrelated charges arising out of observations made prior to.

**State of South Dakota v. Volk**

331 N.W.2d 67 (S.D. 1983)

The Honorable Leland J. Berndt, Circuit Court, State of South Dakota

Dates of Representation: October 1981 – March 1983

Opposing Counsel: Robert Slocum (retired), PO Box 575, Mobridge, South Dakota, 605-845-2980

A teachers' smoking lounge in Mobridge, South Dakota caught on fire, and an investigation led to the arrest of Volk, then 19 years old. A search warrant executed on his premises yielded a high school cheerleading skirt. On the third day of trial, one of the jurors revealed independent knowledge of a fact in issue, namely, the whereabouts of the skirt, which had been issued to her daughter. The judge refused to grant a motion for mistrial, saying it would not affect her judgment. Later, the prosecution had a friend of Volk's testify. This witness had been pulled over by an officer for drinking and driving, and was told that if he did not talk about the fire, he would be thrown in jail. The witness testified that he and Volk had spoken of starting a bonfire on top of the school. The judge precluded defense's attempt to impeach the witness with his juvenile record.

Volk appealed and the Court summarized the issues as (1) whether a juror's revelation of prior knowledge warranted a mistrial; (2) whether the court erred in failing to grant defendant's motion for an evidentiary hearing as to the voluntariness of statements he made to law enforcement; and (3) whether the defense should have been permitted to cross-examine a key witness of the prosecution concerning matters in the witness's juvenile record. On each issue, the Court ruled in favor of the defendant. First, the cheerleading skirt provided tangible evidence that linked the defendant to the crime. By possessing knowledge of the whereabouts of the skirt, the juror had "imbedded in her mind ...

a crucial fact derived outside the arena of justice.” Second, the trial court determined the voluntariness of the defendant’s statements at booking only by reading a portion of the preliminary hearing transcript, which could not establish beyond a reasonable doubt that the statement was given knowingly, intelligently, and voluntarily. Third, cross-examination of a witness’s juvenile record, per *Davis v. Alaska*, 415 U.S. 308 (1974), is not only permissible, but a constitutional right, outweighing whatever interest in secrecy the State may have.

The decision reaffirms the importance of querying jurors for any information that could connect them with the defendant and facts about the case. Additionally, it highlights that neither a defendant nor a witness should expect one’s juvenile record to be forever sealed, whereas a strong enough governmental interest (the bar being set rather low) can compel testimony relating thereto.

**United States v. Mound**

149 F.3d 799 (8th Cir. 1998)

The Honorable Charles B. Kornmann, U.S. District Court, District of South Dakota

Date of Representation: April 1997 – February 2000

Opposing Counsel: Stan Whiting (deceased)

Mound allegedly abused his daughter physically and sexually from 1993 to 1997, involving forced touching, intercourse, and beating with an axe handle. At trial, the government sought to introduce evidence that Mound sexually abused two girls, ages 12 and 16, in 1987. Mound pleaded guilty to the first offense in return for the government dropping the investigation into the second. The District Court admitted the conviction under Rule 413 (which permits the introduction of evidence of other offenses or offenses of sexual assault when the defendant is accused of sexual assault), but excluded evidence of the uncharged offense. The jury convicted Mound of sexual abuse and assault, and he was sentenced to life imprisonment. Mound appealed, claiming Rule 413 unconstitutional.

The Court of Appeals held Rule 413 constitutional. According to the court, Rule 413 does not violate the Due Process Clause, whereas Rule 413—subject to Rule 403, which enables a court to exclude relevant evidence for a variety of reasons—does not run afoul “fundamental fairness.” While acknowledging that the practice of excluding prior bad acts is ancient, that does not mean, says the Eighth Circuit, that it is embodied in the Constitution, and Congress can create exceptions. Rule 413, the Court of Appeals held, does not violate Equal Protection, because it neither burdens a fundamental right, nor targets a suspect class. Moreover, it promotes effective prosecutions of sex offenses, a legitimate governmental objective that satisfies the rational basis test. Finally, the District Court’s application of Rule 413 to admit evidence of a prior conviction was not an abuse of discretion, as it recognized Rule 403 and even applied it in excluding some testimony. Additionally, the prior conviction qualified as evidence applicable to Rule 413.

As Eighth Circuit precedent defending the constitutionality of Rule 413, the case provides the government a significant resource in enabling prosecutors to introduce evidence of prior sexual assault and abuse cases.

**United States v. Jorgensen, et al.**

144 F.3d 550 (8th Cir. 1998).

The Honorable Charles B. Kornmann, U.S. District Court, District of South Dakota

Dates of Representation: August 1993 – May 1998

Co-Counsel: Assistant U.S. Attorney John Ulrich (retired), Sioux Falls, South Dakota, 605-339-4616

Opposing Counsel: Rick Johnson (deceased)

Opposing Counsel: Dave Gienapp, PO Box 14, Madison, South Dakota, 605-256-6240

Gregory Jorgensen and his father incorporated Dakota Lean, Inc., in South Dakota and began slaughtering cattle raised by them and their neighbors. They focused on “heart healthy” meat products, and brochures accompanied their product making various claims, e.g., that the cattle were “genetically selected” and featured “no additives.” When demand outstripped supply, the Jorgensen’s purchased commercial beef trim from outside suppliers, blending this product with their own. Following a jury trial, the Jorgensens were convicted of conspiracy in violation of 18 U.S.C. § 371 (1994), and of several counts charging fraudulent sale of misbranded meat. Additionally, Gregory and Deborah Jorgensen and the corporation were convicted of two counts of mail fraud and three counts of wire fraud.

The defendants appealed on various grounds, and the government cross-appealed, claiming error in sentencing. The Eighth Circuit affirmed the District Court’s rulings. First, the evidence was sufficient, as it supported a finding that the brochures’ descriptions contradicted the content of the bought-in product. Additionally, there existed evidence of an intent to defraud: The Jorgensen’s hid the boxes of bought-in beef during tours and told employees that the outside beef was the company’s own. The evidence also suggested a conspiracy, even if tacit. As to the jury instructions, the defendants argued that, absent a material false or misleading statement in the *labeling*, the meat was not “misbranded.” In interpreting the statute, however, the Eighth Circuit did not find in the language a materiality requirement, consistent with the statute’s public policy rationale. The Eighth Circuit also rejected defendants’ due process argument that the statute was overly broad and vague. With respect to abuse of discretion in refusing to give a proposed jury instruction concerning when a corporate officer may be held criminally liable, the court found that a jury could convict an officer if it found (a) intent to defraud and (b) personal participation in the misbranding *or* because he held a reasonable relationship within the company regarding misbranding, which

the proposed jury instruction did not comprehend. The defendants also suffered no prejudice arising out of the District Court's alleged failure to cite certain findings necessary to establish corporate liability. The proposed "theory of defense" instructions, which would have required governmental notice of violations of the Federal Meat Inspection Act, were also inadequate and incomplete, and could not be submitted to a jury anyway. Defendants additionally could not, in citing inadmissible hearsay, identify any particulars of such statements. The defendants claimed improper introduction of a policy memo, which could have caused the jury to convict because of a violation of it, rather than the statute. However, the Eighth Circuit rejected this argument, finding (1) the District Court cautioned the jury against doing so, and (2) because the memo was relevant. The defendants also claimed error in the submission of an un-redacted indictment to the jury, but the Eighth Circuit found that the District Court properly admonished the jury about its lack of evidentiary value and a lack of prejudicial effect. Finally, with respect to sentencing, the Eighth Circuit affirmed, finding that the calculations made were consistent with the USSG, albeit using a "somewhat novel approach" that nonetheless was not clearly erroneous.

The case, involving statutory language that read narrowly and might have dictated a different outcome, provides insight into the Eighth Circuit's jurisprudence. More practically, it broadly condemns false advertisement, and reduces the safeguards incorporation provides to officers engaging in illegal conduct.

**United States v. Bad Wound**

203 F.3d 1072 (8th Cir. 2000)

The Honorable Richard Battey, U.S. District Court, District of South Dakota  
Dates of Representation: December 1997 – February 2000

Opposing Counsel: Crisman Palmer, PO Box 8045, Rapid City, South Dakota,  
605-342-1078

From 1990 to 1996, Bad Wound was professionally associated with the Oglala Lakota College in various capacities. Between 1990 and 1991, Bad Wound periodically performed financial consulting work. Between January of 1992 and March of 1995, Bad Wound managed the accounting department. Bad Wound was then promoted to vice-president of business affairs, a position held until his departure in 1996. At some point during his association with the College, Bad Wound became involved in a fraudulent scheme started in 1991 by an official of the college. The official, Bad Wound, his wife, Minko-Bad Wound and others formed nine phony phone supply companies. These companies billed the College for supplies never received. The College, through its official, issued checks deposited in bank accounts for the phony businesses. From 1991 to 1995, the College paid \$2,657,032.06. In October of 1991, Bad Wound personally received \$174,488.92. In 1997, the deceit was discovered, and Bad Wound was charged with conspiracy, theft from an Indian tribal organization, theft of federal funds, transportation of stolen money, money laundering, transacting in property derived

from unlawful activity, tax evasion, and criminal forfeiture. A jury convicted on all counts, and Bad Wound appealed.

First, Bad Wound argued that the District Court erred in admitting testimony of his wife in violation of spousal privilege, and for failure to allow him to question her out of the jury's presence about her awareness of the privilege and her desire to assert it. Minko-Bad Wound had entered a plea agreement following her indictment which required she testify at trial. The Eighth Circuit found this to be a voluntary waiver of her testimonial privilege, even if the plea agreement was broadly phrased. With respect to its voluntariness, Minko-Bad Wound enjoyed counsel throughout all negotiations, and the agreement itself admonished her of the loss of her rights. Second, as to his sentence, Bad Wound contended that the court's attribution of \$2,657,032.06 was erroneous, because the loss caused by six of the phony companies was distinct from the loss brought on by the three he personally created, which only amounted to \$174,488.92, thus affecting the proper level of enhancement under the sentencing guidelines. The Eighth Circuit, however, found a defendant is responsible for the foreseeable acts of others taken in furtherance of a joint activity, and so could be held liable for all the losses created by others in advancing the conspiracy. Additionally, Bad Wound oversaw much more than the activities of the three companies he personally established. The Eighth Circuit also likened the case to *United States v. Atkins*, finding the elements in that case were present, namely, that the acts of a co-conspirator were reasonably foreseeable to the defendant because the defendant and the co-conspirators shared a close working relationship and because the acts of fraud committed by each individual were remarkably similar. Bad Wound lastly argued that even if the losses he created were indistinct from those caused by others, a substantial portion of the combined loss occurred prior to his joining the scheme. The court acknowledged case law advancing the rule that latecomers could not be held liable for actions taken prior to admittance to the scheme, and thus vacated the sentence and remanded for additional proceedings.

The case strengthens the effect of plea agreements, enabling the government to condition a lower sentence on a defendant's cooperation in even sensitive, constitutionally important matters, such as spousal privilege.

**United States v. Waldman**

310 F.3d 1074 (8th Cir. 2002)

The Honorable William Wilson, U.S. District Court, District of South Dakota

Dates of Representation: December 2000 – November 2002

Opposing Counsel: Carl Haberstick, 239 Wisconsin Avenue, Southwest, #203, Huron, South Dakota, 605-352-0702

Joshua Waldman was pulled over for failing to yield at an intersection and was arrested for driving after having consumed alcohol under the age of 21. While being driven to jail, Waldman drew a concealed gun and threatened the officer, ordering him to drive to a gravel pit outside of town. Once there, Waldman

ordered the officer to stop behind a pit of gravel and press his head to the barrel of the gun. The officer managed to open his door, however, and roll out onto the ground. He drew his weapon and fired at the backseat. Waldman threw his gun out of the car and surrendered. A state jury found him guilty of driving under the influence, consumption of alcohol by a minor, and not guilty by reason of insanity of the remaining charges, including but not limited to, aggravated assault and kidnapping. A federal grand jury indicted Waldman for carjacking and using a firearm in relation to a crime of violence. At federal trial, the government presented witnesses who testified Waldman had expressed dislike for police officers and a desire to kill one. Waldman again raised insanity as a defense, but government witnesses found him sane. Waldman was convicted on both counts. Waldman appealed.

Waldman contended insufficient evidence to prove the requisite state of mind for carjacking. According to the Eighth Circuit, the element in question, “intent to cause death or serious bodily harm,” can be inferred from circumstantial evidence. Because the government presented a great deal of evidence, such as the threats Waldman made to the officer, and the testimony of a passenger in Waldman’s car at the time of the stop, a reasonable jury could find that Waldman possessed the requisite intent. Waldman further argued that a mistrial should have been declared after a witness volunteered that Waldman had “no intent to kill a policeman.” Waldman argued that the witness was testifying as an expert, and thus, per Rule 704(b), could not state an opinion as to whether the defendant had the mental state constituting an element of the crime. But unlike *United States v. Boyd*, 55 F.3d 667 (D.C. Cir. 1995), where an expert who testified to intent did so in response to a hypothetical question from a prosecutor designed to elicit such an opinion, where the court gave no corrective instruction, and where the government’s other evidence was “questionable,” here the statement was unsolicited, and the District Court immediately sustained an objection and struck the remark from the record, giving the jurors an instruction that only they could determine intent. Moreover, given the substantial weight of other evidence the jury could have relied on, Waldman’s substantial rights were not prejudiced. As to the application of the official victim enhancement, Waldman argued he did not create a substantial risk of bodily injury, but enough evidence existed to lead to a contrary finding. Finally, Waldman’s argument that the District Court erred in not granting a reduction for acceptance of responsibility was rejected, since the defendant failed to demonstrate he was entitled to it.

**United States v. Peneaux**

432 F.3d 882 (8th Cir. 2005)

The Honorable Andrew Bogue, U.S. District Court, District of South Dakota

Dates of Representation: June 2002 – December 2005

Opposing Counsel: Bernie Duffy, PO Box 70, Fort Pierre, South Dakota,  
605-223-2527

In 2002, the South Dakota Department of Social Services removed T.P., then



three years old, and her siblings, N.P., then two, and Fianna, from the custody of their parents, Sherman Peneaux and Juanita Swalley, based on allegations Peneaux abused Fianna. T.P. subsequently reported that Peneaux had sexually abused her and extinguished a cigarette on her body. T.P. made statements to various officials. In 2003, Peneaux was indicted on four counts of aggravated sexual abuse of a child under twelve, one count of assault with a dangerous weapon, and one count of assault resulting in serious bodily injury. At trial in 2004, T.P. testified, making statements inconsistent with the testimony of the investigator who interviewed her, and on direct examination, T.P. denied Peneaux abused her, though acknowledged she'd said otherwise. When asked about the burn mark on her stomach, T.P. told the prosecution Peneaux had burned her with a lit cigarette, but denied being burned when questioned by defense counsel. Other individuals testified to what T.P. had told her or things she had done suggesting that Peneaux molested and burned her, though none said they ever saw Peneaux sexually or physical abuse T.P. Peneaux, convicted on all counts, appealed on insufficiency of the evidence, and that the trial court abused its discretion by admitting statements which were hearsay and which violated his right to confrontation.

As to insufficiency of evidence, Peneaux pointed to the lack of evidence showing sexual trauma. The Eighth Circuit, however, noted the government's logical explanation for the lack of trauma provided by a doctor's testimony. Peneaux also challenged the credibility of the witnesses. Though conflicting testimony existed, the Eighth Circuit determined that a jury could reasonably determine Peneaux was guilty. Peneaux contended that the government did not prove a cigarette qualified for assault with a dangerous weapon, but the Eighth Circuit found that even innocuous items may function as such, and that such questions are for the jury to decide. With respect to assault resulting in serious bodily injury, Peneaux argued that the alleged burn was not *serious*, but rather, only qualified as a "bodily injury." Given the evidence, however, the court found it entirely reasonable for a jury to conclude otherwise. With respect to whether Peneaux actually inflicted any burn, the Eighth Circuit held that photographs and other evidence in addition to testimony enabled a jury to convict. Peneaux also made numerous arguments respecting the admittance of hearsay. In response, the Eighth Circuit first noted that they previously upheld admission of residual hearsay statements where the child victim testified at trial but then recanted earlier accusations. Furthermore, although exceptions to the hearsay rules are narrow, Congress comprehended certain extraordinary circumstances such as these in enacting Rules 803(24) and 807. Finding that the government supplied requisite notice and that the statements were trustworthy, material, and more probative than T.P.'s hesitant testimony, the Eighth Circuit found no error. As to Peneaux's Confrontation Clause argument involving testimony by two witnesses relaying statements made by N.P. (who did not testify), the Eighth Circuit found that the present case was distinguishable from *United States v. Bordeaux*, 400 F.3d 548 (8th Cir. 2005), finding the statements relayed here nontestimonial. Here, N.P.'s statements were solicited by a doctor during a medical examination not arising out of law enforcement proceedings, and which thus lacked the formality of

questioning, substantial government involvement, and a law enforcement purpose. “Where statements are made to a physician seeking to give medical aid . . . they are presumptively nontestimonial.” Additionally, N.P.’s statements were held to be merely cumulative to other testimony. Meanwhile, another witness who testified to statements made by N.P. was found not to be an agent of the state. The Eighth Circuit therefore affirmed the judgment of the District Court.

The case’s significance arises out its approval of testimony offered by a victim even if, on cross-examination, he or she may recant. Although it’s important to offer substantial evidence in conjunction with such testimony, the Eighth Circuit will at least not condemn a witness for being fearful. Additionally, it provides grounds for introducing hearsay by young defendants even when the law would normally preclude the admission thereof.

**United States v. Youngman**

481 F.3d 1015 (8th Cir. 2007)

The Honorable Patrick Conmy, U.S. District Court, District of South Dakota

Dates of Representation: November 2004 – April 2007

Opposing Counsel: Al Arendt, PO Box 1077, Pierre, South Dakota,  
605-224-7700

Darren Youngman was convicted of two counts of aggravated sexual abuse and five counts of assault with a dangerous weapon, all taking place on the Rosebud Sioux Indian Reservation. Youngman appealed, arguing that the District Court erred in denying his motion for writs of *habeaus corpus ad testificandum*, commenting about a government witness, declining a proposed jury instruction, and denying a judgment of acquittal.

As to the first argument, four days before trial, Youngman requested the production of three federal prisoners as witnesses, though did not give any indication as to their necessity for an adequate defense. Because the right to compulsory process is discretionary and not absolute, the Eighth Circuit affirmed the District Court’s refusal. Second, during trial, the judge commented, “It’s a difficult witness, and I’ll give him [the prosecutor] some latitude. But eventually it may be that you can’t help people that don’t want to be helped.” Youngman argued that this statement, made after Youngman objected to the prosecutor’s commentary that he knew it would be difficult for the witness to testify and apologized for making her do so, insinuated that the witness was a victim in need of help, and only by testifying can the jury or judge do anything for her. The court, however, found that any prejudice stemming from the comment was remedied when the District Court dismissed all charges relating to the witness and when it provided multiple clarifying instructions. As to Youngman’s proposed jury instruction, which required the government prove with exact certainty as to the date the offense occurred, the court found “on or about” language sufficient, whereas time is not a material element unless otherwise provided by the statute (not the case here). Finally, Youngman argued there should have been an

acquittal, given that the only evidence proffered was uncorroborated testimony of the victims, and which Youngman contended was not credible, given the victims' failure to report immediately and one victim's lack of clarity as to whether an assault happened before or after her hospital visit. But the Eighth Circuit found, given the victims' fears that a jury could nonetheless reasonably conclude that such abuse and assaults took place.

**United States v. Two Elk**

536 F.3d 890 (8th Cir. 2008)

The Honorable Charles B. Kornmann, U.S. District Court, District of South Dakota

Dates of Representation: November 2005 – October 2008

Opposing Counsel: Ed Albright, PO Box 1258, Pierre, South Dakota, 605-224-0009

Pascal Two Elk was convicted of two counts of aggravated sexual abuse of A.R., a child under twelve, and appealed. First, he argued that the two-count indictment was multiplicitous because both counts charged the same conduct, and second, he challenged a series of evidentiary decisions, namely, admission of four hearsay statements and failure to ensure medical testimony was reliable and relevant. Third, he took issue with comments made by the prosecutor in the closing argument and a line of questioning taken up with one of the defense witnesses. Finally and in the alternative, Two Elk claimed the District Court erred in applying a four level enhancement for use of force during the sexual act, whereas the court overreached in finding the factual predicates necessary for the enhancements, and even given their presence, that the enhancement was unwarranted.

First, as to the multiplicitous count assertion, the court scrutinized whether Congress intended the facts underlying each count to make up a separate unit of prosecution. Here, the counts treated contact with A.R.'s vulva and anus separately. Finding that 18 U.S.C. § 2241(c) constitutes a "separate-act" offense, whereas the statutory language did not refer to "sexual act *or acts*" or "sexual course of conduct," the Eighth Circuit ruled that multiple violations of the statute could constitute separate counts. As to the admission of hearsay, Two Elk argued that the prosecution solicited hearsay from a testifying agent about statements made by A.R.'s caretaker. Two Elk further complained that the court improperly admitted hearsay relating to Ben Sr., Francine's husband, and his assertion that he had not assaulted A.R. The Eighth Circuit noted that unlike in *United States v. Malik*, 345 F.3d 999 (8th Cir. 2003), no instruction was given to consider the evidence only for the purpose of elucidating why the government chose not to more thoroughly investigate another individual. But although denial of culpability by a potential suspect could arguably have had an effect on the jury, the weight of the evidence against Two Elk, combined with the reason for Ben Sr.'s denial (he was in jail at the time), led the court to hold that the erroneous admission did not influence the verdict. All other hearsay statements Two Elk

cited were also held not to have any prejudicial effect, as they did not add anything to the unimpeached testimony that Two Elk had confessed and were thus cumulative. Two Elk challenged certain aspects of expert testimony as well as challenged statements made by prosecutors during the trial in the presence of the jury. The Eighth Circuit rejected these arguments and other arguments.

**United States v. Wright**

540 F.3d 833 (8th Cir. 2008)

The Honorable Karen Schreier, U.S. District Court, District of South Dakota

Dates of Representation: March 2006 – August 2008

Opposing Counsel: Jana Miner, PO Box 1258, Pierre, South Dakota,  
605-224-0009

Wright lived with his mother, three other biological children of his mother, and several other children of whom his mother was the guardian. When Wright was 28 years old, he was indicted for sexually abusing three children (T.L.C., J.L.C., and J.L.W.) that were living with his mother.

T.L.C. was about six years old and was placed with Wright's mother after the child's mother passed away. T.L.C. lived with Wright's mother for approximately 11 years. Wright sexually abused T.L.C. during this time. T.L.C. ultimately reported the abuse to a school counselor and the government began investigating. At the time of the trial, T.L.C. was 18 years of age and testified that Wright began abusing her when she was about six or seven and that the sexual abuse continued until she was about 12. Wright was convicted of three counts of aggravated sexual abuse of T.L.C., each count covering a one year period.

During the course of the investigation regarding Wright's abuse of T.L.C., T.L.C.'s brother, J.L.C., disclosed sexual abuse to the FBI Agent. J.L.C. was about five years old when Wright began abusing him. Wright was convicted of three counts of aggravated sexual abuse of J.L.C. for conduct between 1994 and 2001.

Wright was also convicted of attempted aggravated sexual abuse of J.L.W., for conduct that occurred when the victim was about six years old. Wright was sentenced to concurrent life terms for each count. Wright appealed numerous issues from his trial and sentence. The Eighth Circuit Court of Appeals affirmed the conviction and sentence.

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

by the attorney-client privilege.)

The most significant legal activities I have pursued included the disposition of approximately 500-600 cases in which guilty pleas were entered without going to trial. The criminal defendants in these cases entered a plea of guilty and were sentenced. The cases involved deaths of children, child sexual abuse, assaults, murders, child abuse, forcible rapes, white collar crime and other federal criminal offenses. My involvement included all matters regarding the case from the investigation to charging decisions, plea agreement decisions, and ultimately, representing the United States at sentencing.

I have been a lawyer for over 30 years. During my time in private practice as a small town lawyer, I shared both the greatest and worst of times in the lives of the people I represented. I practiced in the courts of both the Standing Rock and Cheyenne River Sioux Nations. I was appointed by the South Dakota Supreme Court to the Board of Pardons and Paroles and served as a Special Judge for the Cheyenne River Sioux Tribe.

For the past 20 years, I have represented the United States in the prosecution of Federal felonies – mostly violent crimes. As an Assistant United States Attorney, I have witnessed some of the worst of humanity – the rape of a child, the murder of an infant, and the corruption of public officials. I have been lead counsel in over 70 jury trials, prosecuted 500-600 defendants for various violations of law, and defended their convictions before the Eighth Circuit Court of Appeals. It has been the greatest job I have ever had. I take great pride in my work and it is this pride, enthusiasm, advocacy for victims and commitment to justice that I would bring to the position of the United States Attorney. I also take pride in the relationships I have established with tribal officials, law enforcement officials, victim advocates, judges and other court officials, the Federal Bureau of Investigation, and the United States Attorney's Office.

I have diverse management experience with the Division of Law Enforcement Assistance supervising a staff of approximately 12 from 1975 to 1977. My management experience with the United States Attorney's Office includes supervision of a staff of approximately 60 from 2009 to present. This work also includes coordinating with law enforcement agencies at the federal, state, local and tribal levels. I have been involved in managing and coordinating the investigation of hundreds of matters referred to the United States Attorney's Office. I have chaired and organized the Rosebud Multi-Disciplinary Team regarding the investigation and prosecution of child sexual abuse and child physical abuse cases. In addition, I was the Civil Rights contact for the United States Attorney's Office and have been part of the Hate Crimes and Church Burning Task Forces. I have taught at various law enforcement training seminars on diverse topics such as child death cases, domestic violence, medical evidence and sexual assault.

In 2009, I became the First Assistant United States Attorney. I was responsible for special projects and the day-to-day operation of the United States Attorney's Office. I also served as the Supervisor of the Pierre Branch Office of the United States Attorney's Office and as the Tribal Liaison during this period. On March 12, 2015, I became Acting United States Attorney and have continued in that role to the present time.

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

I have not taught any courses, but have been involved in making several presentations at various seminars and courses at the National Advocacy Center.

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

None.

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

None.

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

See my SF-278, Executive Branch Personnel Public Financial Disclosure Statement, as provided by the Office of Government Ethics.

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

See attached Net Worth Statement.

22. **Potential Conflicts of Interest**:

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics

official to identify potential conflicts of interest. Any potential conflict of interest will be resolved in accordance with the terms of an ethics agreement that I have entered with the Department's designated agency ethics official.

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

In the event of potential conflict, I will consult with ethics officials in the Department of Justice and follow their guidance.

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

I have been a member of, served as, and/or participated in the following:

Vintage Square Homeowner's Association Board of Directors

Verendrye Museum Board of Directors

Community & Youth Involved, Inc.

Legal Counsel, Okiciyapi Tipi, Habitat for Humanity

Legal Counsel, St. Joseph Catholic Church Resettlement Program

Foster parent for physically and sexually abused children

Legal Counsel, Mobridge Jaycees

Jimmy Carter Work Project, Habitat for Humanity

Wakanyeya Owayanke Tipi, Rosebud Sioux Tribe Day Care Centers

Judicare Panel Attorney, East River Legal Services

Dakota Plains Legal Services, Private Bar Involvement Program

Youth Basketball Coach

Cub Scout Leader

I am currently serving as a member of the Board of Directors of Vintage Square Home Owner's Association. I also organize an annual Fort Pierre Road Race in conjunction with our town's annual Fourth of July Rodeo and Celebration.

I served as a member of the Verendrye Museum Board of Directors. The museum is dedicated to the preservation of local history. I also served on the Community & Youth Involved Board of Directors which sponsors programs for children in the community and operates a community youth center.

While in private practice, I provided pro bono legal services to St. Joseph's Catholic Church in the resettlement of a family to the Mobridge, South Dakota area. I also provided legal counsel to Habitat for Humanity and served on its Board of Directors on the Cheyenne River Indian Reservation. I also volunteered during the Jimmy Carter work project to support and provide organizational assistance to the construction of 30

homes for members of the Cheyenne River Sioux Tribe.

During the same period of time, while living in Mobridge, South Dakota, my wife and I served as foster parents for physically and sexually abused children. This involved working with social services and others to develop appropriate treatment programs and to serve as an advocate for the child.

I have also assisted in the establishment of day care centers on the Rosebud Sioux Reservation. This service involved assistance in the cleaning, construction and maintenance of the day care centers.

While in private practice, I also offered pro bono legal services through East River and Dakota Plains Legal Services.

Lastly, I served as a youth basketball coach for fifth and sixth grade girls and as a Cub Scout Leader.