

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Brett Joseph Talley

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

United States District Judge for the Middle District of Alabama

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: 950 Pennsylvania Avenue, NW  
Room 4240  
Washington, D.C. 20530

Residence: Springfield, VA

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

1981; Birmingham, Alabama

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.

2004 – 2007, Harvard Law School; J.D., 2007

2000 – 2004, University of Alabama, B.A. (*summa cum laude*), 2004

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

January 2017 – Present  
U.S. Department of Justice  
Office of Legal Policy

950 Pennsylvania Avenue, NW  
Washington, D.C. 20530  
Deputy Assistant Attorney General

April 2015 – January 2017  
Office of the Alabama Attorney General  
501 Washington Avenue  
Montgomery, AL 36130  
Deputy Solicitor General

April 2013 – April 2015  
Office of Senator Rob Portman  
448 Russell Senate Office Building  
Washington, D.C. 20510  
Speechwriter

January 2012 – December 2012  
Romney for President Campaign  
c/o Red Curve Solutions  
138 Conant Street  
Beverly, MA 01915  
Senior Writer and Researcher

August 2010 – January 2012  
Eleventh Circuit Court of Appeals  
Honorable Joel Dubina  
One Church Street  
Montgomery, AL 36104  
Law Clerk

September 2008 – August 2010  
United States District Court, Northern District of Alabama  
Honorable L. Scott Coogler  
1118 Greensboro Avenue  
Tuscaloosa, AL 35401  
Law Clerk

October 2007 – September 2008  
Gibson, Dunn & Crutcher  
1050 Connecticut Avenue, NW  
Washington, D.C. 20036  
Associate

July 2006 – August 2006  
Maynard, Cooper & Gale  
1901 Sixth Avenue North

Birmingham, AL 35203  
Summer Associate

June 2006 – July 2006  
Gibson, Dunn & Crutcher  
1050 Connecticut Avenue, NW  
Washington, D.C. 20036  
Summer Associate

January 2006  
U.S. Department of Justice  
Office of Legal Policy  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530  
Law Clerk

June 2005 – August 2005  
U.S. Department of Justice  
Office of Legal Policy  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530  
Law Clerk

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 upon turning 18.

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.

Bram Stoker Awards – Nominee for Superior Achievement in an Anthology for *Limbus, Inc. II*. (2014); Nominee for Superior Achievement in a First Novel for *That Which Should Not Be* (2011)

Goodreads Choice Awards – Nominee for Best in Horror for *The Void* (2012); Nominee for Best in Horror for *That Which Should Not Be* (2011)

Absent Willow Review Best Short Story for “The Substance of Shadow” (2011)

*Harvard Journal of Law & Public Policy* – Editor (2004 – 2005), Senior Editor (2005 – 2006), and Assistant Articles Editor (2006 – 2007)

University of Alabama – Graduated *summa cum laude*, Phi Beta Kappa  
Dean’s List – Fall 2000, Fall 2001, Fall 2003  
President’s List – Spring 2001, Fall 2002, Spring 2003  
University of Alabama Drummond Company Scholar  
Robert Byrd Scholar  
Iredell Jenkins Endowed Memorial Scholarship recipient  
Additional Honor Societies: Alpha Lambda Delta, Golden Key, Phi Alpha Theta  
(History Honor Society), National Society of Collegiate Scholars

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 (2007 – 2008)

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.

Alabama, 2007

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 Court of Appeals for the Eleventh Circuit, 2015

United States District Court for the Middle District of Alabama, 2016

United States District Court for the Southern District of Alabama, 2016

There have been no lapses in membership.

11. **Memberships:**

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

To my recollection:

Federalist Society for Law and Public Policy Studies (2004 – Present)

Harvard Law School Association (2007 – Present)

Horror Writers Association (2010 – Present)

Chairman, Grievance Committee (2015 – Present)

International Thriller Writers (2010 – Present)

National Rifle Association (2016 – Present)

The Harvard Lodge A.F. & A.M. (2006 – Present)

Capital City Club (2016 – 2017)

The Tuscaloosa Paranormal Research Group (2009 – 2010)

- 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 Harvard Lodge is a masonic, fraternal organization limited to men, although there is a corresponding organization for women. To my knowledge, none of the other organizations listed above 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.

*The Fiddle is the Devil's Instrument and Other Forbidden Knowledge*,  
Journalstone, LLC, April 21, 2017. Copy supplied.

*What the Pundits get Wrong About Luther Strange*, AL.com, Feb. 22, 2017. Copy supplied.

*NeverTrump Republicans, Come on Home*, CNN, January 11, 2017. Copy

supplied.

*If Democrats Delay Action on Trump Nominees, America Suffers*, CNN, January 4, 2017. Copy supplied.

*Supernaturalism and H.P. Lovecraft*, Dark Discoveries, Winter 2017. Copy supplied.

*The EPA Went Rogue and Trump's Pick Will Rein It In*, CNN, December 15, 2016. Copy supplied.

*An Eldritch Christmas Carol*, Amazon Digital Services LLC, December 8, 2016. Copy supplied.

*Democrats, the Party Who Cried Racist*, CNN, December 1, 2016. Copy supplied.

*Thanksgiving Wars: 11 Takes to Bring You Peace*, CNN, November 24, 2016. Copy supplied.

*Who Donald Trump Should Appoint to the Supreme Court*, CNN, November 15, 2016. Copy supplied.

*Trump's Shocking Victory: What it Means*, CNN, November 9, 2016. Copy supplied.

*Who Won the Debate?*, CNN, October 20, 2016. Copy supplied.

*Limbus, Inc. – Book III*, Journalstone, LLC, July 29, 2016. Copy supplied.

*Big Night or Big Fail?*, CNN, July 29, 2016. Copy supplied.

*What Donald Trump Needs to Do Thursday*, CNN, July 20, 2016. Copy supplied.

*Don't Let 'Never Trump' Become 'Ready for Hillary'*, CNN, May 7, 2016. Copy supplied.

*As Long as Conservatives Mock the Concerns of the Working Class, Trump is Going to Keep Winning*, Independent Journal Review, March 16, 2016. Copy supplied.

*The Apotheosis of a Rodeo Clown*, Journalstone, LLC, December 11, 2015. Copy supplied in *The Fiddle is the Devil's Instrument and Other Forbidden Knowledge*.

*The Piper in Yellow*, Wanderer's Haven Publications, November 10, 2015. Copy supplied in *The Fiddle is the Devil's Instrument and Other Forbidden Knowledge*.

*He Who Walks in Shadow*, Journalstone, LLC, May 22, 2015. Copy supplied.

*Workman's Wages*, Dark Hall Press, November 8, 2014. Copy supplied.

*Limbus, Inc. – Book II*, Journalstone, LLC, October 24, 2014. Copy supplied.

*What You Were Born to Be*, Journalstone, LLC, July 31, 2014. Copy supplied.

*The Reborn*, Journalstone, LLC, April 11, 2014. Copy supplied.

*Haunted Alabama Black Belt*, The History Press, August 20, 2013. Copy supplied.

*Limbus, Inc.*, Journalstone, LLC, April 26, 2013. Copy supplied.

*Drone Attacks on American Soil Against American Citizens?*, Government in Exile, March 8, 2013. Copy supplied.

*Penny Wise and Pound Foolish*, Government in Exile, March 7, 2013. Copy supplied.

*Practicality and The Right to Bear Arms*, Government in Exile, February 9, 2013. Copy supplied.

*Gun Control and Japanese Internment*, Government in Exile, February 5, 2013. Copy supplied.

*Immigration Reform, The Bitter Pill Republicans Must Swallow*, Government in Exile, February 1, 2013. Copy supplied.

*The Failed Obama Presidency: The Economy Shrinks Again*, Government in Exile, January 31, 2013. Copy supplied.

*A Lesson on Guns from Timbuktu*, Government in Exile, January 29, 2013. Copy supplied.

*A Call to Arms: It's Time to Join the National Rifle Association*, Government in Exile, January 26, 2013. Copy supplied.

*The Wrong Lessons from Newtown: Part 2*, Government in Exile, January 18, 2013. Copy supplied.

*Are Any Restrictions on Gun Ownership Legitimate?*, Government in Exile, January 15, 2013. Copy supplied.

*Are We Learning the Wrong Lesson from Newtown?*, Government in Exile,

January 14, 2013. Copy supplied.

*Should Republicans Have Taken More of a Stand on the Fiscal Cliff?*, Government in Exile, January 10, 2013. Copy supplied.

*Read My Article on Executive Caprice in the Weekly Standard*, Government in Exile, January 7, 2013. Copy supplied.

*There's No Economic Salvation in Higher Taxes*, Government in Exile, January 7, 2013. Copy supplied.

*Dispensing with the Constitution*, The Weekly Standard, January 7, 2013. Copy supplied.

*A Conservative Blog with Libertarian Flavor*, Government in Exile, January 6, 2013. Copy supplied.

*Thrice the Brinded Cat Hath Mewed*, Smashwords, February 15, 2012. Copy Supplied.

*Haunted Tuscaloosa*, The History Press, August 21, 2012. Copy supplied.

*The Void*, Journalstone, LLC, July 13, 2012. Copy supplied.

*The Spaces Between Space*, Lovecraft eZine, January 2012. Copy supplied in *The Fiddle is the Devil's Instrument and Other Forbidden Knowledge*.

*Last Year's Egnog*, CreateSpace, November 24, 2011. Copy supplied.

*Helpful Devils – Commentary on the HWA*, Horror Writers Association Blog, October 7, 2011. Copy supplied.

*That Which Should Not Be*, Journalstone, LLC, October 7, 2011. Copy supplied.

*The Substance of Shadow*, Absent Willow Review, August 7, 2011. Copy supplied in *The Fiddle is the Devil's Instrument and Other Forbidden Knowledge*.

*The Wind Passes Like a Fire*, Absent Willow Review, June 15, 2011. Copy supplied in *The Fiddle is the Devil's Instrument and Other Forbidden Knowledge*.

*Latimer's Candle*, Absent Willow Review, November 15, 2010. Copy supplied.

*The Chamber*, Absent Willow Review, May 15, 2010. Copy supplied.

*Mitt Romney: Proven Conservative Leadership*, The Harvard Law Record, Feb. 8, 2007. Copy supplied.

*Conservative Values Triumph In Spite of Democratic Inroads*, The Harvard Law Record, Nov. 9, 2006. Copy supplied.

*Letter to the Editor*, The Harvard Law Record, Sept. 14, 2006. Copy supplied.

*Letter to the Editor, Statewide Voucher Program Needed*, Birmingham News, Aug. 12, 2005. Copy supplied.

*Restraining Eminent Domain Through Just Compensation: Kelo v. City of New London*, 29 Harvard Journal of Law & Public Policy 759 (2005). Copy supplied.

As a fiction author, I maintain a horror-related blog that discusses developments in the horror genre. This blog can be found at [www.brettjtalley.com](http://www.brettjtalley.com).

In addition to the writing I have done on my own behalf, I was also a writer for the Romney for President Campaign, Senator Rob Portman, and then-Alabama Attorney General (now Senator) Luther Strange. Because those writings did not reflect my own beliefs and were in the form of drafts often substantially edited by the principal, I have not included them here.

- 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.

Brief Amicus Curiae of Law Professors and Law Students in Support of Petitioners, *Rumsfeld v. Forum for Academic and Institutional Right*, 547 U.S. 47 (2006). Copy supplied.

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

If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

May 5, 2017: Speaker, "Cooperative Federalism: Working with the Administration," Rule of Law Defense Fund, Charleston, South Carolina. Notes supplied.

November 18, 2015: Speaker, "Remarks to Manufacture Alabama Environmental Conference," Montgomery, Alabama. Notes supplied.

May 7, 2015: Panelist, "Weird South: Voices of the Mountains: Manly Wade Wellman and Karl Edward Wagner," Horror Writers Association, Atlanta, Georgia. The panel discussed the influential writings of authors Manly Wade Wellman and Karl Edward Wagner, two pioneers of Southern Horror. I have no notes, transcript, or recording. The address of the Horror Writers Association is P.O. Box 56687, Sherman Oaks, CA 91413.

May 18, 2013: Panelist, "Running a Winning Campaign," BYU Political Affairs Society, Washington, D.C. The panel focused on lessons learned from the losing Romney for President Campaign. I have no notes, transcript, or recording. The address of the BYU Political Affairs Society is Brigham Young University, 745 Kimball Tower, Provo, UT 84602.

- 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.

J.R. Hamantaschen & Derek Sotak, *Brett Talley, Alabama's Favorite Son*, The Horror of Nachos & Hamantaschen, April 13, 2016. Available at <http://nachonomics.com/hnh/2016/4/13/episode-7-brett-talley-alabamas-favorite-son>.

*Hangout with AL Deputy Solicitor General Brett Talley*, Liberty Day Institute, December 15, 2015. Available at <https://www.youtube.com/watch?v=gSBQf78z0GQ>

Becky Spratford, *31 Days of Horror: Day 24—Gods of Lovecraft Brett Talley Interview*, RA For All: Horror, October 23, 2015. Copy supplied.

*Alumni Notes*, Agora: Newsletter of the Department of Philosophy, Fall 2015. Copy supplied.

Mike Davis, *In Which we Talk with Authors Brett Talley, Joe Pulver, and Jeff Thomas*, Lovecraft eZine, May 31, 2015. Available at <https://www.youtube.com/watch?v=EswH7eta2RI>.

Doug Murano, *Know a Nominee, Part 11*, Horror Writers Association Blog, May 2, 2015. Copy supplied.

Ben Terris, *Meet the Ghost Hunter and Horror Novelist who Writes Sen. Rob Portman's Speeches*, The Washington Post, December 8, 2014. Copy supplied.

Tara Massouleh, "*Haunted Alabama Black Belt*" *Chronicles Hauntings*, The Crimson White, October 13, 2013. Copy supplied.

*We are StoryBundle Authors Hugh Howey, Scott Nicholson, Michaelbrent Collings, Jack Wallen, Martin Kee, and More! Ask Us Anything!*, Reddit.com, August 11, 2014. Available at [https://www.reddit.com/r/horror/comments/2d9j9i/we\\_are\\_storybundle\\_authors\\_hugh\\_howey\\_scott/](https://www.reddit.com/r/horror/comments/2d9j9i/we_are_storybundle_authors_hugh_howey_scott/).

Gef Fox, *When Harry Met Talley: An Interview with Brett J. Talley, Author of "The Reborn"*, Wagging the Fox, August 1, 2014. Copy supplied.

Carl Alves, *10 Questions with Brett J. Talley*, CarlAlves.com, June 1, 2014. Copy supplied.

Douglas Wynne, *Brett J. Talley Limbus, Inc. Interview*, YouTube, May 29, 2013. Available at <https://www.youtube.com/watch?v=u2fkySrNodI>.

Becky Spratford, *31 Days of Horror: Day 22—Guest Post by Brett J. Talley*, RA For All: Horror, October 31, 2012. Copy supplied.

Cassie McCown, *Something Wicked Comes!*, Gathering Leaves, October 4, 2012. Copy supplied.

Amy Eye, *Brett Talley has Everything You are Looking For!*, Journal Jabber, September 5, 2012. Available at <http://www.blogtalkradio.com/journaljabber/2012/09/05/brett-talley-has-everything-you-are-looking-for>.

L Dean Murphy, *The Void by Brett J. Talley*, The Big Thrill, July 31, 2012. Copy supplied.

Carl Alves, *10 Questions with Brett Talley*, CarlAlves.com, July 18, 2012. Copy supplied.

*Q and A with Author Brett J. Talley*, Goodreads.com, December 16, 2011. Available at <https://www.goodreads.com/topic/show/740176-q-and-a-with-author-brett-j-talley>.

Dana Granger, *That Which Should Not Be* by Brett J. Talley, The Big Thrill, November 30, 2011. Copy supplied.

Jennifer Cohron, *Author's New Novel Pays Tribute to Classic Gothic Horrors*, Daily Mountain Eagle, October 29, 2011. Copy supplied.

Meghan Overdeep, *From Lovable Serial Killers to Sparkling Vampires: How America and I Came to Love Being Scared*, Huffington Post, October 21, 2011. Copy supplied.

Amy Eye, "Brett" is Back and Talking YA/Kids Books With Us!, Journal Jabber, September 28, 2011. Available at <http://www.blogtalkradio.com/journaljabber/2011/09/28/bretty-is-back-and-talking-yakids-books-with-us>.

Amy Eye, *Really Fun Guest Interview and Free Stuff*, The Unlocked Diary, September 28, 2011. Copy supplied.

Nora Weston, *Brett Talley Visits The Noracast/Interview/Giveaway!*, Noracast, September 23, 2011. Copy supplied.

Cassie McCown, *Feature: Author Interview with Brett J. Talley, Author of That Which Should Not Be*, Gathering Leaves, September 13, 2011. Copy supplied.

Amy Eye, *The Deep, Dark Terrifying Myths of the Unknown*, August 31, 2011. Available at <http://www.blogtalkradio.com/journaljabber/2011/08/31/the-deep-dark-terrifying-myths-of-the-unknown>.

*From Sipsey to Harvard Law*, Daily Mountain Eagle, July 1, 2007. Copy supplied.

Kevin Parker, *GOP Makes Annual Washington Trip*, March 15, 2007. Copy supplied.

Kelly Pao, *No Inferiority Complex in Cambridge: Students Rank HLS First in The Record's Study*, Nov. 4, 2005. The Harvard Law Record. Copy supplied.

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

I have never held judicial office.

- 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 never held judicial office.

- 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 never been a candidate for or held an elective public office. Since law school, I have held the following appointed positions:

Deputy Assistant Attorney General, United States Department of Justice, 2017-present. Appointed in January 2017 by President Donald J. Trump.

Deputy Solicitor General, State of Alabama, 2015-2017. Appointed in April 2015 by then-Alabama Attorney General (now Senator) Luther Strange.

Alabama Judicial System Study Commission, State of Alabama, 2015-2017. Appointed in October 2015 by then-Alabama Attorney General (now Senator) Luther Strange.

Law Clerk, Hon. Joel F. Dubina, United States Court of Appeals for the Eleventh Circuit, (2010-2011). Appointed by Judge Dubina.

Law Clerk, Hon. L. Scott Coogler, United States District Court for the Northern District of Alabama, (2008-2010). Appointed by Judge Coogler.

- 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.

Senior Writer and Researcher, Romney for President Campaign (January 2012 – December 2012). I provided research on legal topics and political issues, and I had primary responsibility for drafting op-eds for campaign surrogates and the candidate.

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

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

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

I served as a clerk for the Honorable L. Scott Coogler of the Northern District of Alabama from September 2008 to August 2010.

I also served as a clerk for the Honorable Joel Dubina, chief judge of the Eleventh Circuit Court of Appeals from August 2010 to January 2012.

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

I have never 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.

October 2007 – September 2008  
Gibson, Dunn & Crutcher  
1050 Connecticut Avenue NW  
Washington, D.C. 20036  
Associate

April 2013 – April 2015  
Office of Senator Rob Portman  
448 Russell Senate Office Building  
Washington, D.C. 20510  
Speechwriter

April 2015 – January 2017  
Office of the Alabama Attorney General  
501 Washington Avenue

Montgomery, AL 36130  
Deputy Solicitor General

January 2017 – Present  
U.S. Department of Justice  
Office of Legal Policy  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530  
Deputy Assistant Attorney General

- 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 never 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.

Generally speaking, my law practice has involved litigation in federal district and appeals courts, primarily involving regulatory and constitutional issues. I have argued three cases in the United States Court of Appeals for the Eleventh Circuit and one case before the Alabama Court of Criminal Appeals. I have written briefs, both as an amicus and representing the state of Alabama, for the United States Supreme Court. I have also led multi-state efforts in district and appellate courts around the country on issues of import to the states. Finally, I have been involved in one capacity or another—from taking depositions to briefing to consulting to moot-courting—in many additional cases.

After graduating from law school in 2007, I spent a year as an associate with Gibson, Dunn & Crutcher in Washington, D.C. During this period, my practice was divided into three parts. First, I represented a United States Congressman in a public corruption investigation that was resolved favorably for the client. I also represented, pro bono, a class of plaintiffs harmed by a D.C. landlord. This was a complex litigation, with many defendants and plaintiffs and a lengthy paper trail, resulting in a dozen or more depositions I either took or second chaired. Finally, I represented international corporations facing investigations under the Foreign Corrupt Practices Act.

For two years from 2008 to 2010, I served as a law clerk to Judge L. Scott Coogler of the United States District Court for the Northern District of Alabama. In that capacity, I drafted bench memoranda, helped to prepare

Judge Coogler for trials and motions arguments, and assisted in the preparation of draft opinions.

From August 2010 to the end of 2011, I served as a law clerk to Chief Judge Joel Dubina of the United States Court of Appeals for the Eleventh Circuit. In that capacity, I drafted bench memoranda, helped to prepare Judge Dubina for arguments, and assisted in the preparation of draft opinions.

Following my clerkships, I was hired by the Romney for President Campaign to work with the legal and communications teams, providing legal advice, research, and written products. By the end of the campaign, I was managing a writing team responsible for producing all the op-eds for surrogates and the candidate.

From 2013 to the present, I have served in the public sector. In April 2013, I joined the office of Senator Rob Portman as an advisor and speechwriter. In that role, I worked with the policy teams to produce columns, op-eds, and speeches that reflected the Senator's political positions. I also provided advice on policy matters, particularly those that had a legal policy aspect.

In April 2015, I was appointed Deputy Solicitor General of Alabama. In that role, I directed and managed litigation in the federal district courts related to defending challenges to Alabama laws and advancing state challenges to federal rule-making. I also handled a number of appeals in the United State Court of Appeals, and drafted briefs for filing in the United States Supreme Court on a variety of criminal and civil matters. In addition, I advised the Attorney General on matters of legal policy and drafted statements for the Alabama Attorney General.

In January 2017, I was appointed Deputy Assistant Attorney General for the Office of Legal Policy in the Department of Justice, where I have managed the nominations unit and assisted with matters of public policy.

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

While at Gibson Dunn, my typical clients were international corporations. As part of my *pro bono* work, I also represented a class of indigent immigrants seeking to vindicate their rights to safe housing against a landlord.

As Alabama's Deputy Solicitor General, my sole client was the State of Alabama, and my caseload during that time was split roughly evenly between civil and criminal matters.

As Deputy Assistant Attorney General, my sole client is the United States.

- 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.

As Alabama's Deputy Solicitor General, I appeared in court occasionally.

- i. Indicate the percentage of your practice in:

- |                             |      |
|-----------------------------|------|
| 1. federal courts:          | 80%  |
| 2. state courts of record:  | 20%  |
| 3. other courts:            | ___% |
| 4. administrative agencies: | ___% |

- ii. Indicate the percentage of your practice in:

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

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

I have not tried a case. Because my practice has largely involved constitutional and regulatory matters, most of my work in the district court was resolved on the briefs rather than in trial. I did, however, participate as an advisor during a state prosecution of the sitting Alabama Speaker of the House. That trial was before a jury.

- i. What percentage of these trials were:

- |              |      |
|--------------|------|
| 1. jury:     | ___% |
| 2. non-jury: | ___% |

- 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.

As Alabama's Deputy Solicitor General, I often had occasion to write amicus briefs and briefs in opposition on behalf of the state before the Supreme Court of the United States.

I have written briefs in opposition on behalf of the state of Alabama in three cases at the certiorari stage in the Supreme Court.

*Brooker v. State of Alabama*, 2016 WL 1056625 (March 14, 2016).  
*Luong v. State of Alabama*, 2016 WL 4254323 (February 22, 2016).  
*Shanklin v. State of Alabama*, 2016 WL 626727 (February 11, 2016).

I have filed a brief on behalf of the state of Alabama as an *amicus curiae* in one case resulting in summary reversal from the Supreme Court without separate merits briefing and argument:

*Johnson v. Lee*, 136 S. Ct. 1802 (2016).

I have filed briefs on behalf of the state of Alabama as an *amicus curiae* in two cases at the merits stage in the Supreme Court:

*Wittman v. Personhuballah*, 136 S. Ct. 1732 (2016).  
*Spokeo Inc. v. Robins*, 136 S. Ct. 1540 (2015).

I have filed briefs on behalf of the state of Alabama as an *amicus curiae* in four cases at the certiorari stage in the Supreme Court:

*Alaska Oil & Gas v. Jewell*, 2016 WL 7190378 (December 7, 2016).  
*Brohl v. The Direct Marketing Ass'n*, 2016 WL 6648841 (November 7, 2016).  
*Bldg. Industry Ass'n of the Bay Area v. United States Dept. of Commerce*, 2016 WL 3136680 (June 2, 2016).  
*McWane, Inc. v. F.T.C.*, 2015 WL 9612217 (December 30, 2015).

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) *Madison v. Comm'r, Alabama Dep't of Corr.*, 851 F.3d 1173 (11th Cir. 2017).

This case arose from a stay of execution granted to a death row inmate, Vernon Madison, due to his claim that he was mentally incompetent to be executed. This

claim, while recognized by the Supreme Court, has only rarely been raised by petitioners and presented novel and groundbreaking questions about its application.

I briefed and argued this case before the Eleventh Circuit on an expedited, emergency basis. Over a dissent by Judge Jordan, the panel of Judge Martin and Judge Wilson found that Madison was incompetent to be executed and refused to lift the stay.

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- (2) *Alabama, et al. v. National Marine Fisheries Service, et al.*, No. CV 16-00593 (S.D. Ala. Nov. 29, 2016).

In this case, Alabama led an 18-state coalition challenging new regulations promulgated under the Endangered Species Act that significantly expanded the definition of “critical habitat” and “adverse modification” of habitat. The State of Alabama believed that these new regulations would have allowed the federal government to declare areas generally unsuitable for a species to nevertheless qualify as critical habitat, with all the regulations and limitations such a designation would entail. The lawsuit, filed in the Southern District of Alabama before Judge Grenade, followed on a number of amicus briefs we filed in federal appeals courts challenging similar perceived abuses of the Endangered Species Act.

I developed the strategy for challenging these regulations and drafted the complaint filed in federal district court. The case is still pending, though the change of administrations in Washington resulted in a stay that is still in place.

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(3) *Johnson v. Lee*, 136 S. Ct. 1802 (2016).

In this case, the Ninth Circuit found that California's procedural bar against claims raised for the first time in a habeas petition was inadequate to bar habeas review of those claims. This rule would have made it much more difficult for the states to enforce procedural bars on habeas review. In my capacity as deputy solicitor general, I represented Alabama and 23 states—including all of the states in the Ninth Circuit—as amicus curiae in support petitioner California. In a per curiam opinion, the Supreme Court summarily reversed the decision of the Ninth Circuit, citing our brief in the opinion.

Counsel for Petitioner

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- (4) *Brooker v. State of Alabama*, 192 So. 3d 1 (Ala. 2015), cert. denied, 136 S. Ct. 1659 (2016). Brief in opposition to certiorari available at 2016 WL 1056625.

*Brooker* involved a challenge to Alabama's Habitual Felony Offender Act. Brooker was arrested for growing marijuana plants on his property. Due to his previous convictions for drug trafficking and multiple counts of armed robbery, Brooker's marijuana charge resulted in a mandatory life-in-prison sentence. Because the case involved an elderly man receiving such a high sentence and because the triggering offense involved marijuana, the case received international attention, with the New York Times calling on the Supreme Court to invalidate the sentence.

I represented the state of Alabama, drafting the brief in opposition to Brooker's petition for certiorari. The brief argued that Brooker's history of violent crime and not the ultimate conviction for marijuana possession triggered the life sentence. The Supreme Court declined to take Brooker's case.

Co-counsel for Respondent

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- (5) *Peruta v. Cty. of San Diego*, 824 F.3d 919 (9th Cir. 2016) (en banc), cert. denied, 137 S. Ct. 1995 (2017).

*Peruta* was an en banc case in the Ninth Circuit challenging San Diego's system of issuing concealed carry permits. A panel of the Ninth Circuit had struck down the law for violating the right of citizens to bear arms, protected by the Second Amendment of the Constitution. California bans open carry of firearms altogether, and San Diego only permits the concealed carry of firearms if the applicant can demonstrate some special need. Thus, the average citizen of California is banned from bearing arms.

I represented the state of Alabama and twenty other states, arguing that the San Diego law was inconsistent with the Supreme Court's rulings in *Heller* and *McDonald* and violated the Second Amendment of the Constitution. The en banc court, in a 7-4 ruling, reversed the panel's decision and upheld the ban (Judges W. Fletcher, Thomas, Pregerson, Graber, McKeown, Paez, and Owens in majority; Judges Callahan, Silverman, Bea, N. R. Smith, dissenting.)

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- (6) *State v. McCarthy*, No. CV 215-79, 2015 WL 5092568 (S.D. Ga. Aug. 27, 2015), *appeal held in abeyance sub nom. Georgia ex. rel. Olens v. McCarthy*, 833 F.3d 1317 (11th Cir. 2016).

This litigation represented one of several challenges by groups of states to rules seeking to define the phrase “waters of the United States.” The states argued that the new definition was inappropriately overbroad, sweeping under federal jurisdiction minor rivers, streams, bodies of water, and even areas that may not contain water for years at a time. The states felt this new regulation was incompatible with the both the Clean Water Act and Supreme Court jurisprudence interpreting it.

I led Alabama’s efforts in this area, coordinating both with the states involved in the Georgia litigation as well as states in other district courts around the country. This included helping to prepare Georgia’s solicitor general for a jurisdictional argument before the Eleventh Circuit Court of Appeals. The states’ efforts resulted in a stay of the rule, and the Trump administration recently announced plans to rescind and replace it. The case was before Judge Wood in the district court and Judges E. Carnes, J. Pryor, and Reeves on appeal.

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- (7) *Largin v. State*, No. CR-09-0439, 2015 WL 9263783, at \*1 (Ala. Crim. App. Dec. 18, 2015).

This case was a direct appeal of Largin's double homicide conviction in which he was found guilty of murdering his parents for drug money. The case presented a number of interesting evidentiary questions, including the admission of a confession and prior bad acts. Moreover, because of the brutality of the crime, the case had drawn considerable attention from the Alabama press.

Following the resignation of the lead attorney for the state, I was assigned the task of arguing the case before the Alabama Court of Criminal Appeals less than two weeks before the argument. The court unanimously upheld Largin's conviction.

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- (8) *Samra v. Warden, Donaldson Corr. Facility*, 626 F. App'x 227 (11th Cir. 2015).

Samra was convicted of taking part in an infamous quadruple murder in which he helped another man, Mark Duke, murder his father, stepmother, and her two children. Samra argued that he was under Duke's sway at the time of the murder, and claimed that his attorney inadequately represented him during trial.

I handled Samra's habeas appeal to the Eleventh Circuit following the denial of federal habeas relief. After oral argument, the court, Judges E. Carnes, Hull, and Rosenbaum, unanimously upheld the denial of habeas relief.

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(9) *Waldrop v. Thomas*, Case No. 15-10881 (11th Cir. Mar. 2, 2015).

Waldrop and his wife murdered Waldrop's grandparents during a robbery for drug money. Waldrop was convicted of the murder, and the jury recommended he receive life in prison. At the time, however, Alabama allowed the judge to override the jury's recommendation and impose a death sentence, which the judge did. On appeal, in addition to claiming that his attorney was ineffective at trial, Waldrop made the cutting-edge argument that Alabama's override system was unconstitutional in light of two Supreme Court cases: *Ring v. Arizona* and *Hurst v. Florida*.

I handled the appeal on behalf of the state, drafting the brief and arguing the case before Judges Marcus, Martin, and Jordan of the Eleventh Circuit Court of Appeals. As of this writing, the court has yet to decide the case.

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(10) *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2015).

*Spokeo* raised a key question in civil litigation: does a litigant who has suffered no actual harm nevertheless have standing to sue for and recover statutory damages? This question arises in the context of statutory schemes created by Congress to protect consumers from certain types of activity, standardizing damages where they are often difficult to quantify.

I represented Alabama and seven states as *amicus curiae* in support of *Spokeo* arguing that a consequence of no-harm standing would be to allow substantial, enterprise-killing class actions by thousands of individuals who have suffered no injury but nevertheless can collect millions of dollars in damages. The Supreme Court in a 6-2 ruling vacated and remanded the case to the lower court, reiterating the need for a plaintiff to show a concrete injury before standing can be established.

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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.)

As Deputy Solicitor General for Alabama, I helped draft a comprehensive reform of Alabama's ethics law, based on interviews I conducted with representatives of the regulated community. The legislation did not pass the Alabama legislature.

I have never acted or registered as a lobbyist.

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 not taught any classes.

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 do not anticipate any deferred income or future benefits of this nature.

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 an author of several novels, anthologies, and short stories in the horror genre. If I am fortunate enough to be confirmed, I intend to continue writing fiction.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

If confirmed, I will recuse in any litigation where I have ever played a role. I will also recuse in any case that was handled by the Solicitor General's Office during my time with the Alabama Attorney General. I will evaluate any other real or potential conflict, or relationships 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.

During my tenure in private practice at Gibson, Dunn & Crutcher, I devoted a large portion of my time to a pro bono matter seeking to vindicate the rights of indigent immigrants to safe housing against a landlord who was taking advantage of their vulnerabilities, violating D.C. housing codes, and attempting to illegally evict tenants from their homes. Shortly after I left the firm to begin a clerkship, the team won Gibson Dunn's Frank Wheat Pro Bono Award for our efforts on behalf of these clients.

The remainder of my career has been devoted to public service in state and federal government with the exception of a political campaign.

In my non-legal career, I have twice contributed to the *Christmas Lites* anthology, all sales of which benefit the National Coalition Against Domestic Violence.

26. **Selection Process:**

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

In June 2017, I received a telephone call from Katie Boyd Britt, chief of staff to Senator Richard Shelby, inquiring about a vacancy in the Middle District of Alabama. On June 28, 2017, I met with both Senator Shelby and Senator Strange. On July 12, 2017, I interviewed with attorneys from the White House Counsel's Office and the Office of Legal Policy. Since then I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy. On September 7, 2017, the President submitted my nomination to the Senate.

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

No.