

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Thomas Ignatius Vanaskie

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

United States Circuit Judge for the Third Circuit

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

Office Address:

William J. Nealon Federal Building & U.S. Courthouse  
Room 401  
235 N. Washington Avenue  
Scranton, PA 18501

Residence: [REDACTED]

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

1953; Shamokin, PA

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.

1975 to 1978; Dickinson School of Law, J.D., Cum Laude, June 1978

1971 to 1975; Lycoming College, B.A., Magna Cum Laude, May, 1975

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.

March 1, 1994 to the Present – United States District Judge, United States District Court for the Middle District of Pennsylvania

March 20, 1992 to February 28, 1994 – Vice-President and Member of the Board of Directors of Elliott, Vanaskie & Riley, a Partnership of Professional Corporations, in charge of its Scranton, PA office

January 1, 1986 through March 19, 1992 – Partner, Dilworth, Paxson, Kalish & Kauffman. (In charge of the firm's Scranton office since January, 1987)

September, 1980 to January, 1986 – Associate in the Scranton office of Dilworth, Paxson, Kalish & Kauffman.

September, 1978 to September, 1980 – Law Clerk to the Honorable William J. Nealon, then Chief Judge of the United States District Court for the Middle District of Pennsylvania.

1977-1978 School Year – Legal Research Consultant to Clarence D. Bell (Delaware County), Minority Chairman of the Consumer Affairs Committee, State Senate, Harrisburg, PA.

Summer of 1977 – Summer Associate at Dilworth, Paxson, Kalish & Kauffman, Philadelphia, PA

1976 to 1977 School Year – Internship in the Law Bureau of the Pennsylvania Public Utility Commission, Harrisburg, PA.

Summer of 1976 – Internship as law clerk to the Honorable Genevieve Blatt, Pennsylvania Commonwealth Court, Harrisburg, PA, and internship at the Dickinson School Law Library, Carlisle, PA.

Summer of 1975 – following the completion of college and prior to the start of law school, I worked as a construction laborer for Tabone & Barbera as well as for George Snyder & Company.

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 had any military service. I had registered for selective service, but was not selected.

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.

M. Vashti Burr Award – Scholarship given annually by the Dickinson School of Law’s faculty to the student deemed to be “most deserving” having in mind his economic needs and excellence of his industry and scholarship.

“Book Award” for highest grade for Torts I.

Member of the Dickinson Law Review Editorial Staff – Selection based upon ranking in the top ten percent of my class after the first year of law school. (Final rank was fourth in class of 140 students.)

Member of the Dickinson Law School Appellate Moot Court Board – Selection based upon performance in legal writing and appellate moot court practice.

Member of the Dickinson School of Law International Law Moot Court Team – Selection based upon academic performance.

Member of the Dickinson School of Law’s Woolsack Society – membership based upon outstanding academic achievement.

Article published in the inaugural edition of the American Students of International Law Society International Law Journal – Selection based upon competitive writing process.

1974 – James A. Finnegan Award – The highest award given by the James A. Finnegan Fellowship Foundation. Selection is based upon a competitive essay contest, academic performance, and personal recommendations. The award provided a six week internship with a state government agency in Harrisburg, PA.

1974-1975 – Member and President of the Lycoming College Chapter of Omicron Delta Epsilon, a National Economic Honor Society.

1975 to present – Member of Phi Kappa Phi Honor Society

1975 – Lycoming College “Chieftain Award” – Given annually to the College Senior who, in the opinion of the students and faculty, had contributed the most to Lycoming College through support of school activities; had exhibited outstanding leadership qualities; had worked efficiently and effectively with the members of the college community; had evidenced a good moral code; and whose academic rank was in the upper half of the senior class. (Graduated Magna Cum Laude with a G.P.A. of 3.87/4.00, majoring in political science with a concentration in economics.)

1975 – Lycoming College “Tomahawk Award” – Given annually to the “outstanding male athlete” at Lycoming College.

1974 – Selected to the First Team of the College Division Academic All-American Football Team; First Team of the Middle Atlantic Conference Football Team; Honorable Mention on the Associated Press All American Football Team, College Division; Honorable Mention on the Associated Press All State Football Team for both colleges and universities; Honorable Mention on the Associated Press All East Football Team in the College Division.

1993 – Inducted into the Shamokin, Pennsylvania Chapter of the Pennsylvania Sports Hall of Fame.

1990 – Selected as a Member of “Who’s Who in Practicing Attorneys.”

1993 – Recipient of the Our Lady of Lourdes Regional High School Alumni Association Board of Governors’ Award for significant contributions to the alumni organization.

1994 – Inducted into the Lycoming College Hall of Fame

2003 – Honorary Master of the Bench of the Herbert B. Cohen Inn of Court, York Pennsylvania.

2005 – President’s Award, Federal Bar Association, Middle District of Pennsylvania Chapter.

2007 – Interdependence Award presented by the Scranton Interdependence Day 2007 Committee.

2007 – Lifetime Honorary Member of the Wilkes-Barre Law & Library Association

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.

October 1, 2003 to September 30, 2005; Member, Judicial Conference of the United States

October 1, 2005 to September 30, 2008, Chair, Committee on Information Technology of the Judicial Conference of the United States

2002 to Present, Chair, Information Technology Committee of the Third Circuit Judicial Council

October 1, 2001 to September 30, 2008, Member, Committee on Information Technology of the Judicial Conference of the United States

September 1, 1999 to August 31, 2006, Member, Judicial Council of the United States Court of Appeals for the Third Circuit

September 1, 1999 to August 31, 2006, Chief Judge, U.S. District Court for the Middle District of Pennsylvania.

1999 to 2006, Member, Space and Facilities Committee of the Third Circuit Judicial Council

March 1, 1998 to November 1, 1999, Co-Chair, Third Circuit Task Force on Libraries.

1998 to 1999, Member, Board of Directors of the Federal Judges Association.

1998 to Present, Member, Library Committee of the Third Circuit Judicial Council

2005 to Present, Third Circuit EDR/EEO Appeals Committee

2009 – Appointed to the Future of District CM/ECF Working Group of the Administrative Office of the United States Court

I am a member of the following bar associations and professional organizations:

Lackawanna Bar Association  
Pennsylvania Bar Association  
Federal Bar Association  
American Judicature Society

I served as Chair of the Continuing Legal Education Committee of the Lackawanna Bar Association from 1991 to 1994.

I was elected a member of the Board of Directors of the Lackawanna Bar Association in 1993.

In 1992, I was appointed as a member of the Board of Directors of the Northeast Pennsylvania Trial Lawyers Association.

In 1992, I was appointed to the Lawyers' Advisory Committee for the United States District Court for the Middle District of Pennsylvania.

In 1993, I was appointed to the Civil Justice Reform Act Committee for the United States District Court for the Middle District of Pennsylvania.

I was previously a member of the American Bar Association, the Pennsylvania Trial Lawyers Association, and the Northeastern Pennsylvania Trial Lawyers Association.

**10. Bar and Court Admission:**

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

November 27, 1978 – Pennsylvania Supreme Court  
There has been 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.

November 3, 1980 – United States District Court for the Middle District of Pennsylvania

March 25, 1982 – United States District Court for the Eastern District of Pennsylvania.

June 16, 1982 – United States Court of Appeals for the Third Circuit

April 18, 1983 – The Supreme Court for the United States

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.

1990 to 1993, President, Our Lady of Lourdes Regional High School Alumni Association.

1993 to 1996, Member Board of Governors of Our Lady of Lourdes Regional High School Alumni Association.

1990 to 1994, Scranton Area Chamber of Commerce

1990 to 1994, Scranton Area Foundation

1990 to 1994, Economic Development Council of Northeastern Pennsylvania

1996 to 1998, Member, Board of Directors of local chapter of the American Heart Association

1997 to 2003, Member, Board of Trustees of the Scranton Preparatory School (Chair – 2001 to 2003).

2003 to 2004, Member, Board of Directors of the Community Medical Center of Scranton, Pennsylvania

2004 to Present, Member, Our Lady of Snows Church Pastoral Council

1984 to Present, Glen Oak Country Club

1987 to 1994 Paupack Hills Golf & Country Club

2004 to Present, Member, University of Scranton Board of Regents

2007 to Present, Member, Board of Counselors of Dickinson School of Law at Penn State University

2008 to Present, Member, Board of Advisors of the Wilkes University Law School Initiative

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of the organizations listed 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.

In college I was a member of Sigma Pi fraternity. I have had no association with this fraternity since college.

## **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 Independence and Responsibility of the Federal Judiciary,” 46 Vill.L.Rev. 745 (2001)

“The United States Courts Case Management Electronic Filing System: Perspective of a District Judge,” E-Filing Reporter, Vol. 8, No. 3 (April, 2007)

“The Use of Hyperlinks in the Electronic Record,” In Camera, Federal Judges Association Newsletter, Vol. 18, No. 2, (June 30, 2008)

Comment, The State Sovereignty Doctrine Since National League of Cities v. Usery: A New Constitutional Interpretation under the Commerce Clause, 81 DICK.L.REV. 599 (1977)

The European Patent Convention: State Sovereignty Surrendered to Establish a Supranational Patent, 1 ASILS INTERNAT’L L.J. 73 (1977)

July 19, 2006 letter to the Editor of the Scranton Times on the Life of the Hon. Genevieve Blatt

- 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.

Report of the Third Circuit Task Force on Libraries (November 1, 1999)

Civil Justice Reform Act Expense and Delay Reduction Plan for the Middle District of Pennsylvania (October 1, 1994)

- 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.

Other than my testimony at my Confirmation Hearing before the Judiciary Committee of the U.S. Senate on January 27, 1994, I have not testified before any congressional committee.

As Chair of the Committee on Information Technology for the Judicial Conference of the United States, I recommended that the Executive Committee of the Judicial Conference approve annual reports to Congress on the Federal



Judiciary's compliance with the E-Government Act of 2002 in accordance with Section 205(g)(2) of that legislation.

- 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.

June 17, 2009, Panelist, Pennsylvania Bar Institute program on Litigation Practice in the Middle District of Pennsylvania, Scranton, PA

May 6, 2009, Moderator for the Trial Courts & Technology Panel at the Third Circuit Judicial Conference in Philadelphia, PA

April 29, 2009, Presentation of Harold Miller Award to Mary D'Andrea, Lackawanna Bar Association, Scranton, PA

April 14, 2009, Electronic Discovery, Berks County Bench-Bar Conference, Reading, PA

March 21, 2009, Remarks on Judicial Independence presented at meeting of the Junior Statesmen of America Club of Scranton Preparatory School, Scranton, PA

March 18, 2009, Guest Lecturer on Electronic Discovery in Trial Advocacy Class at the Dickinson School of Law, Carlisle, PA

December 12, 2008, National District Clerks Conference, Panel of Judicial Conference Committee Chairs, San Diego, CA

December 11, 2008, National District Clerk's Conference, IT Training for Judges, San Diego, CA

December 4, 2008, Federal Bar Association, Middle District of Pennsylvania Chapter, Best Practices for Working with CM/ECF, Scranton, PA

October 11, 2008, Lecture on Electronic Discovery at the Dickinson School of Law Alumni Weekend, Carlisle, PA

September 10, 2008, Remarks as Chair of the Judicial Conference Committee on Information Technology delivered at the Fifth Circuit IT Conference, San Antonio, TX

August 25, 2008, Introductory Remarks as Chair of the Judicial Conference Committee on Information Technology delivered at the CM/ECF Operational Practices Forum, Washington, DC

August 11, 2008, Remarks as Chair of the Judicial Conference Committee on Information Technology delivered at the First, Sixth, Seventh, and Tenth Circuits IT Conference, Indianapolis, IN

July 28, 2008, Remarks as Chair of the Judicial Conference Committee on Information Technology delivered at the Second, Third, and Fourth Circuits IT Conference, Philadelphia, PA

June 6, 2008, Panelist, Juror Questions of Witnesses, Federal Bench-Bar Conference, Philadelphia, PA

May 28, 2008, Remarks as Chair of the Judicial Conference Committee on Information Technology delivered at the Eight and Eleventh Circuits IT Conference, Lake of the Ozarks, MO

May 7, 2008, Labor and Employment CLE, PBA Employment Law Section, Scranton, PA

April 30, 2008, Panelist on Best Practices in Filing Electronically, presented at the Third Circuit Judicial Conference, Cambridge, MD

April 17, 2008, Panelist on Online System for Clerkship Application and Review ("OSCAR"), presented at the NALP Conference, Toronto, Ontario, Canada

April 10, 2008, Panelist on Electronic Discovery Program presented by the Environmental Law Section of the Pennsylvania Bar Association, Harrisburg, PA

February 27, 2008, Guest Lecturer on Electronic Discovery for Trial Advocacy Course at the Dickinson School of Law, Carlisle, PA

November 14, 2007, Remarks on Electronic Discovery, PBI E-Discovery Seminar, Philadelphia, PA

October 24, 2007, Guest Lecturer, U.S. Sentencing Policies for Crack Cocaine Offenders, University of Scranton Adult Education Class, Scranton, PA

October 12, 2007, Remarks on the Tenth Anniversary of the Placement of the Historical Marker re: Erie RR v. Tompkins, Wilkes-Barre Law and Library Association, Wilkes-Barre, PA

October 4, 2007, Panelist on Presentation by Judicial Conference Committee Chairs to the Bankruptcy Court Clerks of Court Meeting, Atlanta, GA

October 2, 2007, Judicial Conference, IT Committee Update, presented at the National Center for State Courts Court Technology Conference, Tampa, FL

September 26, 2007, Lecture on Electronic Discovery at Dickinson School of Law Alumni Meeting, Williamsport, PA

September 19, 2007, Remarks as Chair of the Judicial Conference IT Committee delivered at the Fifth and Eighth Circuits IT Conference, St. Louis, MO

August 21, 2007, Panelist with Members of the Judicial Conference IT Committee, presented at the First, Second and Third Circuits IT Conference, Newport, RI

August 15, 2007, Remarks as Chair of the Judicial Conference IT Committee delivered at the Ninth Circuit IT Conference, Los Angeles, CA

July 23, 2007, Panelist with Members of the Judicial Conference IT Committee, presented at the Seventh and Tenth Circuits IT Conference, Washington, DC

July 9, 2007, Introductory Remarks at the CM/ECF Operational Practices Forum, Washington, DC

May 22, 2007, Remarks as Chair of the Judicial Conference IT Committee delivered at the Federal/State Joint IT Conference, State College, PA

May 5, 2007, Remarks on the Rule of Law presented at the Law Day Services, Temple Israel, Wilkes-Barre, PA

May 1, 2007, Presentation of the Harold Miller Award to Cathy Dolinish, Lackawanna Bar Association, Scranton, PA

March 2, 2007, Remarks as Chair of the Judicial Conference IT Committee delivered at the Ninth Circuit District Chief Judges Conference, San Diego, CA

February 27, 2007, Guest Lecturer on Electronic Discovery via videoconference for Civil Procedure Class of the Dickinson School of Law, delivered from Scranton, PA

February 16, 2007, Remarks on Effective Use of IT for Judges delivered at meeting convened by the Federal Judicial Center and Administrative Office of the United States Courts, Washington, DC

February 8, 2007, Guest Lecturer on Electronic Discovery for Trial Advocacy Course at the Dickinson School of Law, Carlisle, PA

January 24, 2007, Guest Lecturer on the Right to Trial by Jury for University of Scranton Adult Education Class, Scranton, PA

December 12, 2006, Panelist, How E-Filing Has Changed the Way the Federal Courts Work, presented at the National Center for State Courts E-Filing Conference, Las Vegas, NV

November 9, 2006, New Federal Rules of Civil Procedure on Discovery of Electronically Stored Information, presented at the Wilkes-Barre Law and Library Association Annual Meeting, Wilkes-Barre, PA

October 23, 2006, Remarks on the Dedication of the Hon. Max Rosenn Memorial Library, Luzerne County Courthouse, Wilkes-Barre, PA

October 4, 2006, Remarks as Chair of the Judicial Conference IT Committee, National Conference of District Clerks, Denver, CO

September 28, 2006, Trial Practice and Advocacy in the Federal Middle District, Panel Member, presented by the Pennsylvania Bar Institute in Williamsport, PA

September 12, 2006, Remarks on the Exhibition of the Illustrated United States Constitution in the William J. Nealon Federal Building and U.S. Courthouse, Scranton, PA

August 27, 2006, Remarks as Chair of the Judicial Conference IT Committee, Seventh, Eighth, and Tenth Circuits Conference, Minneapolis, MN

August 20, 2006, State of the Middle District, presented to the Middle District of Pennsylvania Chapter of the Federal Bar Association, Scranton, PA

August 9, 2006, Report on the Activities of Judicial Conference IT Committee, Unit Executives Conference, Mystic, CT

August 1, 2006, The Federal Courts in Our Communities, presented for the People's Law School sponsored by the Lackawanna Bar Association, Scranton, PA

April 20, 2006, Panelist on E-Discovery, ABA Tech Show, Chicago, IL

April 10, 2006, Remarks as Chair of the Judicial Conference IT Committee, First, Second, and Third Circuits IT Conference, Newport, RI

March 6, 2006, A Judge's Perspective on Electronic Discovery, presented at the PBI E-Discovery Conference, Philadelphia, PA

January 20, 2006, Panelist, Criminal Trials in High Tech Courtrooms, presented at the Pennsylvania Bar Institute Criminal Law Program, Harrisburg, PA

October 5, 2005, Guest Lecturer on Federalist Paper No. 78 at Adult Education Class conducted by the University of Scranton, Scranton, PA

May 5, 2005, Law Day Remarks on Judicial Independence, Scranton, PA

March 21, 2005, Address to the 2005 Eagle Scout Class, Columbia-Montour Council, Bloomsburg, PA

March 4, 2005, Remarks for Wyoming/Sullivan Counties Bar Association, La Plume, PA

January 13, 2005, Remarks, Federal Bar Association, Middle District of Pennsylvania Chapter Annual Meeting, Scranton, PA

November 12, 2004, Juror Questions of Witnesses, Presented at the Third Circuit Judicial Conference, St. Thomas, VI

September 13, 2004, CM/ECF – A Judge’s Perspective, presented at the Western District of Pennsylvania Judges’ Meeting, Findley Lake, NY

August 26, 2004, Remarks at Meeting of the Rotary Club of the Abingtons, Clarks Summit, PA

December 10, 2003, Practice in the Middle District in the Age of Electronic Filing, Scranton, PA

November 15, 2003, Electronic Case Filing, presented at the 2003 Social Security Practice Update, Dickinson School of Law, Carlisle, PA

November 7, 2003, State of the Middle District of Pennsylvania presented at the Wilkes-Barre Law and Library Association Bench Bar Conference, Wilkes-Barre, PA

October 23, 2003, Remarks at the Federal Bar Association Annual Meeting Middle District of Pennsylvania Chapter, Scranton, PA

May 15, 2003, Remarks at the National Honor Society Convocation at the Scranton Preparatory School, Scranton, PA

May 6, 2003, Tribute to Paul and Naomi Alamar, delivered at Jewish Family Service of Lackawanna County, Scranton, PA

February 12, 2003, Presentation on CM/ECF, Herbert B. Cohen American Inns of Court, York, PA and Courtroom Technology Demonstration in Harrisburg, PA

October 18, 2002, State of the District and the New Electronic Filing System, 2002 Annual Meeting of the Middle District of Pennsylvania Chapter of the Federal Bar Association, Harrisburg, PA

October 9, 2002, Judicial Perspective on Mediation, Fourth Biennial Cumberland County Bench-Bar Conference, Carlisle, PA

September 23, 2002, Pennsylvania Bar Association Labor & Employment Law Section meeting, Wilkes-Barre, PA

July 19, 2002, Giving A National Voice to Local Initiatives, Unit Executive's Conference, Absecon, NJ

July 11, 2002, The Final Step-Using Technology in the Courtroom, Pennsylvania Bar Institute, Philadelphia, PA

June 25, 2002, The Final Step -- Using Technology in the Courtroom, Pennsylvania Bar Institute, Mechanicsburg, PA

June 17, 2002, Remarks to the Fourth Annual Middle District of Pennsylvania Bankruptcy Bar Association Conference, Grantville, PA

May 23, 2002, Remarks at the Dedication of the Law Library in the William J. Nealon Federal Building and U.S. Courthouse in honor of Judge Max Rosenn, Scranton, PA

April 15, 2002, Courtroom Dedication Ceremony-Williamsport's Courtroom No. 3, Middle District of Pennsylvania, Williamsport, PA

October 4, 2001, The Electronic Courtroom -- Commentary on Utilization, United States District Judge's Retreat, Lancaster, PA

September 26, 2001, Technology in the Courtroom; A Primer on the Use of the New Courtroom Technology Available in Federal Court, Middle District Chapter of the Federal Bar Association in conjunction with the Dauphin County Bar Association, Harrisburg, PA

August 29, 2001, Technology in the Courtroom, Commonwealth of Pennsylvania-Governor's Office of General Counsel, Harrisburg, PA

June 8, 2001, Remarks on the Centennial of the Court, Scranton, PA

May 14, 2001, Middle District Roundtable, Third Annual Middle District Bankruptcy Conference, Grantville, PA

April 26, 2001, Remarks to the Graduating Class of Dickinson School of Law Students (this was a dinner gathering hosted by the Dean of the Law School).

April 24, 2001, Middle District Practice and Court Technology Seminar, Pennsylvania Bar Institute, William J. Nealon Federal Building & U.S. Courthouse, Scranton, PA as well as videoconference conducted to Mechanicsburg, PA

April 21, 2001, Pretrial and Trial Issues in the Digital Age -- Discovery of Electronic Information and Metadata, Digital Video Depositions, Web Databases, Experts and Trial Technology, Pennsylvania Bar Association Civil Litigation Retreat, Washington, DC

November 14, 2000, "Middle District Practice," Pennsylvania Bar Association, Harrisburg, PA

November 3, 2000, Year 2000 Amendments to the Federal Rules of Civil Procedure and Evidence, Pennsylvania Bar Institute, Pittsburgh, PA

June 4, 2000, Remarks on Leadership, Northeastern Pennsylvania Council of Boy Scouts of America, Scott Township, PA

May 22, 2000, Bankruptcy Law Conference, Middle District of Pennsylvania Bankruptcy Court, Grantville, PA

May 11, 2000, The Technology Courtroom-CJA Training, Scranton, PA

April 16, 2000, Presentation of the Portrait of the Honorable Max Rosenn, Wilkes Barre, PA

April 10, 2000, Judicial Independence, Lycoming College Professor Larry Strausser Lecture Series, Williamsport, PA

October 22, 1999, Technology in the Courtroom, Federal Bar Association CLE Seminar, Williamsport, PA

June, 1999, Commencement Address at Our Lady of Lourdes Regional High School, Coal Township, PA (my Alma Mater)

July 3, 1998, "New Trial Techniques and Technology in the Courtroom," Pennsylvania Trial Lawyer's Association, Scranton, PA

June 24, 1998, "Recent Developments in Federal Practice," Pennsylvania Bar Institute, Scranton, PA

October 13, 1997, Erie RR v. Tompkins, remarks delivered on the occasion of the placement of an historical marker, Hughestown, PA

October 3, 1997, "Use of Experts in Federal Court," Federal Bar Association Bench/Bar Conference, Scranton, PA

April 4, 1997, "Use and Abuse of Expert Witnesses," Pennsylvania Bar Institute, Valley Forge, PA

April 4, 1997, "Courtroom Courtesy and Other Matters," U.S. Attorney's Office, Hershey, PA

November 15, 1996, "Prosecuting, Defending and Insuring Against Section 1983 Civil Rights Claims," Scranton, PA

September 10-11, 1996, "Successfully Managing Major Design and Construction Projects, II," Administrative Office of the U.S. Courts, Washington, DC

June 21, 1996, "Professionalism and Civility Seminar," Lackawanna/Luzerne Young Lawyers' Division, Scranton, PA

March 25, 1996, "Civil Litigation Update 1996," Pennsylvania Bar Institute, Mechanicsburg, PA

October 27, 1995, "Professionalism - Beyond the Rules of Ethics," Federal Bar Association Bench/Bar Conference, Scranton, PA

July, 1995, "Courthouse Design: An Introduction," Professional Development Program, Harvard University, Graduate School of Architecture, Cambridge, MA

November, 1994, "Amendments to Rule 26 of Federal Rules of Civil Procedure," Scranton, PA

- 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.

February 5, 2007 – Interviewed by Attorney Cliff Rieders for live radio broadcast by Williamsport, PA radio station. I do not have a clip or transcript of this interview.



I have been interviewed for documentaries on the lives of the Hon. Max Rosenn and William J. Nealon, but do not have clips of the interviews. The DVDs of the documentaries can be produced.

My lecture on Federal Courts in Our Communities in the summer of 2007 was broadcast on the local public access television station. I do not have the recording.

I have been interviewed by the Hon. Thomas Munley for a program entitled "Meet the Judges." The program aired on the local access television station. I do not have the recording.

I was interviewed by NBC in connection with the exhibition of Samuel Fink's Illustrated United States Constitution, in the William J. Nealon Federal Building and U.S. Courthouse, Scranton, PA, which was the subject of a weekend broadcast. I do not have the clip of the interview.

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.

After Senate confirmation on February 10, 1994, I was appointed by President Clinton to be United States District Judge for the Middle District of Pennsylvania. I entered duty on March 1, 1994. I served as Chief Judge from 1999 – 2006.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? 132
  - i. Of these, approximately what percent were:
    - jury trials? 81%; bench trials 19% [total 100%]
    - civil proceedings? 83%; criminal proceedings? 17% [total 100%]
- b. Provide citations for all opinions you have written, including concurrences and dissents.

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

1. Khouzam v. Hogan, No. 3:07-cv-00992. This case concerned the question of whether diplomatic assurances that an Egyptian national would not be tortured were insulated from judicial review. Concluding that habeas corpus jurisdiction existed and that the equities weighed in favor of the petitioner, I granted a stay of deportation. See Khouzam v. Hogan, 497 F. Supp. 2d 615 (M.D. Pa. 2007). Following extensive briefing and the submission of a comprehensive factual record, I granted the habeas corpus petition, barring the deportation of petitioner unless the diplomatic assurance was exposed to review of a neutral decision maker. 529 F. Supp. 2d 543 (M.D. Pa. 2008). The Court of Appeals for the Third Circuit concluded that habeas corpus jurisdiction was lacking, and vacated my jurisdictional holding, but agreed with my conclusion that deportation on the basis of an otherwise unreviewable diplomatic assurance denied the petitioner due process. 549 F.3d 235 (3d Cir. 2008). Counsel for petitioner included Alice Clapman, Esq., American Civil Liberties Union, 125 Broad Street, 18th Floor, New York, NY 10004, 212-549-2676, Amrit Singh, Esq., ACLU, 125 Broad Street, 18th Floor, New York, NY 10004, 212-549-2618. Counsel for the respondent was Douglas Ginsburg, Esq., Office of Immigration Litigation, Department of Justice, Civil Division, P.O. Box 878, Ben Franklin Station, Washington, DC 20044, 202-305-3619.
2. Gleeson v. Robson, No. 3:CV-02-1747. This was a civil rights action asserting malicious prosecution claims. After approximately eight trial days, the case settled for \$2 million. Plaintiff was represented by Barry H. Dyller, Esq., 88 North Franklin St., Gettysburg House, Wilkes-Barre, PA 18701, 570-829-4860. Defendants were represented by Attorney Harry Thomas Coleman, 76 North Main Street, Carbondale, PA 18407, 570-282-7440. This Court's decision denying the motion for summary judgment on grounds of qualified immunity, reported at 2005 WL 1210948 (M.D. Pa. May 6, 2005), was affirmed by the Third Circuit, reported at 190 F. App'x 165 (3d Cir. 2006).
3. Blackhawk v. Pennsylvania, No. 3:CV-99-2048. This case raised First Amendment free exercise of religion issues in relation to a Native American's possession of black bears for spiritual purposes. My decision concluding that the Commonwealth's requirement of a permit fee to maintain the bears was not supported by a compelling interest sufficient to overcome the burden on the plaintiff's exercise of religious beliefs is reported at 225 F. Supp. 2d 465 (M.D. Pa. 2002). The Court of Appeals for the Third Circuit affirmed in an Opinion authored by now Justice Samuel Alito. 381 F.3d 202 (3d Cir. 2004). Plaintiff was represented by Attorneys Gary S. Gilden, 150 S. College St., Carlisle, PA 17013, 717-243-4611, and Thomas B. Schmidt, III, Pepper, Hamilton, LLP, Suite 200, 100 Market Streets, P.O. Box 1181, Harrisburg, PA 17108-1181, 717-255-1164. Defendants were represented by Attorney Howard G. Hopkirk, Office of Attorney General – Litigation Section, 15th Floor Strawberry Square, Harrisburg, PA 17120, 717-783-1471.

4. United States v. Serafini, No. 97-CR-225. This case involved a perjury claim against a state legislator. This Court's ruling striking from the indictment one of the six allegedly perjurious statements, reported at 7 F. Supp. 2d 529, was affirmed by the Court of Appeals in a published opinion at 167 F.3d 812 (3d Cir. 1999). Following a two-week trial, Defendant was convicted, and this Court's sentence was affirmed on appeal. Other opinions reported in this matter are found at 57 F. Supp. 2d 108 (M.D. Pa. 1999), and 233 F.3d 758 (3d Cir. 2000), which affirmed Defendant's conviction and sentence. The Government was represented by Bruce D. Brandler, Esq., U.S. Attorney's Office, Room 217, Federal Building, 228 Walnut Street, Harrisburg, PA 17108, 717-221-4482. The Defendant was represented by Attorney Daniel T. Brier, Myers Brier & Kelly, LLP, 425 Spruce Street, Suite 200, Scranton, PA 18503, 570-342-6100, and Attorney Sal Cognetti, Jr., Foley, Cognetti & Comerford, 700 Scranton Electric Building, 507 Linden St., Scranton, PA 18503, 570-346-0745.
5. United States v. Polishan, No. 96-CR-274. This case involved an accounting fraud at a Fortune 500 company. Mr. Polishan was the Chief Financial Officer. Following a non-jury trial that consumed more than thirty (30) trial days, Mr. Polishan was found guilty. This case resulted in a number of published Opinions, including those found at 2001 WL 848583 (M.D. Pa. July 27, 2001), aff'd, 336 F.3d 234 (3d Cir. 2003), cert. denied, 540 U.S. 1220, with post-conviction relief denied by 481 F. Supp. 2d 350 (M.D. Pa. 2007). Defendant was represented by Attorney Michael Berger, 250 Park Avenue, New York, NY 10016, 212-983-6000, Attorney Peter Goldberger, 50 Rittenhouse Place, Ardmore, PA 19003, 610-649-8200, and Attorney Timothy P. Polishan (the Defendant's son), Kelley & Polishan, LLC, 259 South Keyser Avenue, Old Forge, PA 18518, 570-562-4520. The government was represented by Attorneys Bruce D. Brandler, 717-221-4482, and Lorna N. Graham, 570-348-2800, U.S. Attorney's Office, Room 217, Federal Building, 228 Walnut Street, Harrisburg, PA 17108.
6. Hazleton Fuel Management Company v. UGI Corporation, No. 3:95-CV-0093. This case involved the question of whether UGI Utilities, Inc., could use a 15 mile pipeline to transport natural gas to a co-generation facility without first obtaining the express consent of the Hazleton Pipe Line Company. This case raised a number of interesting and complicated issues. Following a several day non-jury trial, I ruled in favor of the Hazleton Pipe Line Company in a 84 page memorandum on May 10, 1996. The parties had agreed that my decision would be final. Representing the Hazleton Fuel Management Company was Paul Michael Pohl, Esq., Jones Day, One Mellon Bank Center, 500 Grant Street, Pittsburgh, PA, 412-391-3939. Representing UGI Corporation was Alan J. Hoffman, Blank, Rome, Comisky & McCauley, Four Penn Center Plaza Philadelphia, PA 19103, 215-569-5665.
7. Patel v. Himalayan International Institute of Yoga, Science and Philosophy, et al., No. 3:CV-94-1118. This case concerned a claim of sexual misconduct of the Himalayan Institute's former "spiritual leader." Following a lengthy trial, the jury

awarded Plaintiff \$275,000 in compensatory damages and \$1.6 million in punitive damages. Plaintiff was represented by John M. Humphrey, Esq., Rieders Travis Humphrey Harris Waters & Waffenschmidt, 161 W. Third St., Williamsport, PA 17701, 570-323-8711. Defense counsel included Irwin Schneider, Esq., 721 South State Street, Clarks Summit, PA 18411, 570-587-2300, and Darryl R. Slimak, Esq., McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., 811 University Dr., State College, PA 16801, 814-238-4926. My opinion denying post-trial motions is found at 1999 WL 337477891 (M.D. Pa. Dec. 9, 1999).

8. United States v. Wiener, No. 3:95-CR-00290. Eric Weiner, an attorney, was prosecuted for wire fraud in connection with his efforts to dispose of a vehicle he had reason to know was stolen. Following a five day jury trial, a jury convicted Defendant on the wire fraud charges. In an unpublished Opinion, the Third Circuit affirmed the judgment of conviction and 15 month sentence, but remanded for reconsideration of the amount of the fine to be imposed. Defendant's Motion to Vacate his conviction was denied in an opinion reported at 127 F. Supp. 2d 645 (M.D. Pa. 2001). The government was represented by Kim Douglas Daniel, Esq., U.S. Attorney's Office, Room 217, Federal Building, 228 Walnut Street, Harrisburg, PA 17108, 717-221-4482. At trial, Defendant was represented by William C. Costopoulos, Esq., Costopoulos, Foster & Fields, 831 Market Street, P.O. Box 222, Lemoyne, PA 17043, 717-761-2121.
9. Habecker v. Clark Equipment Company and Forklifts, Inc., No.1:86-cv-00352. This case was assigned to me shortly after I became a District Judge. The case had been tried several times by the prior presiding Judge, with the Court of Appeals finding reversible error following each trial. Following a two-week trial, a jury returned a verdict in favor of the defendants. While the matter was pending before me on post-trial motions, I convened a settlement conference that ultimately resulted in an amicable resolution of the controversy. Plaintiff was represented by Gerald F. Posner, Esq., Posner, Posner & Posner, 1400 Penobscot Building, Detroit, MI 48226, 313-965-7784. Defense counsel included Richard W. Hollstein, Esq., Hollstein, Keating, Cattell, Johnson & Goldstein, P.C., Eight Penn Center, 1628 John F. Kennedy Boulevard, Suite 2000, Philadelphia, PA 19103, 215-320-3261 and F. Lee Shipman, Esq., Goldberg, Katzman & Shipman, 320 E. Market St., P.O. Box 1268, Harrisburg, PA 17108-1268, 717-234-4161.
10. Homar v. Gilbert, No. 3:93-cv-00852. This case involved the question of whether an employee suspended without pay based upon his arrest on drug related charges was entitled to notice and hearing prior to his suspension. I ruled that a pre-suspension opportunity to be heard was not required. The Court of Appeals reversed in an Opinion reported at 89 F.3d 1009 (3d Cir. 1996). The Supreme Court granted certiorari, and reversed the Court of Appeals in Gilbert v. Homar, 520 U.S. 924 (1997). The case was remanded for a determination of whether plaintiff had received an adequately prompt post-suspension hearing. I ultimately ruled that plaintiff's due process claim with respect to the timeliness of the opportunity to be heard after he was suspended from his position as a campus

police officer was without merit and also rejected his substantive due process claims. My opinion on remand is reported at 63 F. Supp. 2d 559 (M.D. Pa. 1999). A remaining claim pertaining to his demotion to the position of grounds keeper was set for trial, and the case settled shortly prior to trial. Plaintiff was represented by James V. Fareri, Esq., Newman, Williams, Mishkin, Corveleyn, Wolfe & Fareri, 712 Monroe St., P.O. Box 511, Stroudsburg, PA 18360, 570-421-9090. Defendants were represented by Gwendolyn T. Mosley, Esq., Office of Attorney General, 15th Floor, Strawberry Square, Harrisburg, PA 17120, 717-787-1180.

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
1. In re: Pressure Sensitive Label Stock Anti Trust Litigation, No. 03-CV-1556, 2007 WL 4150666 (M.D. Pa. Nov. 19, 2007) (opinion granting motion for class certification in multi-district antitrust litigation). Counsel include Ira Richards, Esq., 1717 Arch Street, Suite 3838, Philadelphia, PA 19103, W. Joseph Bruckner, 100 Washington Avenue, South, Suite 2200, Minneapolis, MN, 55410-2179, 612-339-6900. Attorneys for defendants include Margaret M. Zwisler, Latham & Watkins, 555 11<sup>th</sup> Street, NW, Suite 1000, Washington, DC 20004-1304, Margarete M. Sullivan, Latham & Watkins, 202-637-2200, Patrick J. Ahern, Baker & McKenzie, 1 Prudential Plaza, 130 East Randolph Drive, 35<sup>th</sup> Floor, Chicago, IL 60601, 312-861-8000, George A. Reihner, Wright & Reihner, PC, 148 Adams Avenue, Scranton, PA 18503, Trammell Newton, Jones Day, 1420 Peach Tree Street, NE, Suite 800, Atlanta, GA 30309, 404-521-3939.
  2. Bauer v. Bayer AG, 564 F. Supp. 2d 365 (M.D. Pa. 2008)(granting summary judgment in favor of manufacturer of insecticide against bee keepers' claims that insecticide decimated honey bee population). Counsel for plaintiff included James J. Riley, 1 Mahantongo Street, Pottsville, PA 17910, 570-622-2455, and Joseph Fisher, Provost Umphrey, 490 Park Street, P.O. Box 4905, Beaumont, TX 77704, 800-289-0101. Defense counsel included Joseph G. Petrosinelli, Williams & Connolly, 725 12 Street, NW, Washington, DC 20005, 202-434-5000, and Joseph A. Murphy, 638 Spruce Street, Scranton, PA 18501, 570-344-9444.
  3. Khouzam v. Hogan, 529 F. Supp. 2d 543 (M.D. Pa. 2008) (see description and identification of counsel above).
  4. United States v. D'Elia, No. 3:CR-06-191, 2007 WL 2458487 (M.D. Pa. Aug. 24, 2007)(granting, in part, motion to suppress in prosecution of reputed mafia leader). The government was represented by Gordon A. Zubrod, Esq., U.S. Attorney's Office, 228 Walnut St., Harrisburg, PA 17108, 717-221-4482. The defendant was represented by Attorneys James A. Swetz, Esq., Cramer, Swetz & McManus, 711

Sarah Street, Stroudsburg, PA 18360, 570-421-5568, and Philip Gelso, Esq., Briechele & Gelso, LLC, 63 Pierce Street, Kingston, PA 18704, 570-763-0006.

5. Wolfhawk v. Schuylkill County, No. 3:CV-05-1984, 2005 WL 2810608 (M.D. Pa. Oct. 27, 2005) (denying motion for preliminary injunction that sought to restrain Children and Youth Services from taking custody of Plaintiff's newborn son on the basis of her husband's 22 year old sexual assault conviction on grounds of abstention and absence of evidence of conscience-shocking conduct). Counsel for plaintiff was Paula Kay Knudsen, Esq., American Civil Liberties Union of Pennsylvania, 105 North Front Street, Suite 225, Harrisburg, PA 17101, 717-236-6827, and Mary Catherine Roper, Esq., American Civil Liberties Union of Pennsylvania, P.O. Box 1161, Philadelphia, PA 18105, 215-592-1513, ext 116. Defense counsel was Karen Rismiller, Esq., Union Street Station, 103 East Union Street, Pottsville, PA 17901, 570-628-2333.
6. Leprino Foods Co. v. Gress Poultry, Inc., No. 02-CV-1073, 379 F. Supp. 2d 659 (M.D. Pa. 2005) (denying summary judgment in favor of bailee of eight million pounds of mozzarella on the ground that genuine issue of material fact existed as to the condition of the cheese when it was manufactured, packaged and then transported to the bailee's warehouse). Counsel for plaintiff included Benson K. Friedman, Esq., McDermott, Will & Emery, 227 West Monroe Street, Suite 4400, Chicago, IL 60606, 312-984-7654, and James R. Carroll, Carroll & Carroll, 100 Center Street, Athens, PA 18810, 570-882-8683. Defendants were represented by Jean M. Gardner, Schindel, Farman & Lipsius LLP, 14 Penn Plaza, Suite 500, New York, NY 10122, 212-563-1710, and Joseph O'Brien, Esq., Oliver Price & Rhodes, 1212 South Abington Road, Clarks Summit, PA 18411, 570-585-1200.
7. Lawson v. Gerlinski, No. 3:CV-02-02366, 332 F. Supp. 2d 735 (M.D. Pa. 2004) (granting habeas corpus relief in favor of an alien subject to deportation who had presented evidence of a substantial risk of retaliation due to his cooperation with United States law enforcement authorities). Petitioner was represented by Federal Public Defender Melinda C. Ghilardi, Esq., 116 N. Washington Avenue, Suite 2-C, Scranton, PA 18503, 570-343-6285. Respondent was represented by Daryl F. Bloom, United States Attorney's Office, 228 Walnut Street, Suite 220, Harrisburg, PA 17108, 717-221-4482.
8. Santana Products, Inc. v. Bobrick Washroom Equipment, Inc., No. 3:CV-96-1794, 249 F. Supp. 2d 463 (M.D. Pa. 2003) (in an antitrust and false advertising action, I ruled that the Noerr/Pennigton Doctrine barred all claims arising out of defendant's contacts with public entity buyers; the defendant's sales campaign was not an unreasonable restraint of trade; the plaintiff's "shared monopoly" claim was not cognizable under section 2 of the Sherman Act; and fact issues existed as to whether some of competitor's advertisements were literally false), aff'd. in part, vacated in part and remanded, 401 F.3d 123 (3d Cir. 2005) (the Court of Appeals affirmed the grant of summary judgment in favor of the defendant on the Section 1 Sherman Act Claim and tortious interference with prospective contract claim, but found that the

false advertising claims were barred by the doctrine of laches, thus warranting entry of summary judgment in favor of the defendant). Counsel for the plaintiff included William E. Jackson, Esq., Stites & Harbison, PLLC, 1199 North Fairfax St., Suite 900, Alexandria, VA 22314, 703-739-4900, and Gerald J. Butler, Esq., 142 N. Washington Avenue, Suite 800, Scranton, PA 18503, 570-961-5824. Defendants were represented by Carl W. Hittinger, Esq., DLA Piper US LLP, 49th Floor, 1650 Market St., Philadelphia, PA 19103, 215-656-2449, and Walter F. Casper, Jr., Esq., P.O. Box 513, Carbondale, PA 18407, 570-282-6910.

9. New Dana Perfumes Corp. v. The Disney Store, Inc., No. 3:CV-00-1345, 131 F. Supp. 2d 616 (M.D. Pa. 2001) (denying motion for preliminary injunction to restrain defendant from use of “Tinkerbell” character on grounds of undue delay in seeking injunctive relief and the absence of evidence supporting the dilution claim). Plaintiff was represented by James H. Heller, Esq., Cozen O'Connor, 1900 Market Street, The Atrium, Philadelphia, PA 19103, 215-665-2189. Defendant was represented by Bonnie B. Plosker, Esq., Fitzpatrick Cella Harper & Scinto, 38th Floor, 30 Rockefeller Plaza, New York, NY 10112, 212- 218-2100. Defendant was also represented by Pasquale A. Razzano at the same address and telephone number.
10. Mariani v. United States, No. 3:CV-98-1701, 80 F. Supp. 2d 352 (M.D. Pa. 1999) (certifying to the Court of Appeals the question of whether bans on corporate and conduit political contributions violated the First Amendment, with the Court of Appeals determining that the challenge to the ban on corporate contributions was not frivolous but answering the questions in the negative). 212 F.3d 761 (3d Cir. 2000) cert. denied, 531 U.S. 1010 (2000). Plaintiff was represented by Floyd Abrams, Esq., Cahill, Gordon & Reindel, 80 Pine St., New York, NY 10005, 212-701-3000, and Mark E. Cedrone, Esq., Cedrone & Pinto, P.C., 123 South Broad Street, Suite 810, Philadelphia, PA 19109, 215-925-2500. The Government was represented by Martha E. Rubio, Esq., U.S. Department of Justice, Civil Division, P.O. Box 883, Washington, DC 20044, 202-616-0680, along with Theodore C. Hirt, Esq., U.S. Department of Justice, Room 7106, 20 Massachusetts Avenue, Washington, DC 20530, 202-514-4785. Intervenor, Federal Election Commission was represented by David Kolker, Esq., Federal Election Commission, 999 E Street, N.W., Washington, DC 20463, 202-219-3400.

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

Writ of Certiorari Granted (2)

Coss v. Lackawanna County District Attorney, No. 1:CV-94-1481, 2000 WL 1372871 (M.D. Pa. Aug. 23, 2000), cert. granted, 531 U.S. 923 (2000), opinion rendered at, 532 U.S. 394 (2001).

Homar v. Gilbert, No. 3:93-cv-00852 (M.D. Pa. filed Mar. 17, 1995), cert. granted, 519 U.S. 1052 (1997), opinion rendered at, 520 U.S. 924 (1997).

Writ of Certiorari Denied (26)

United States v. Perdomo, No. 06-cr-00073-2 (M.D. Pa. filed June 27, 2007), aff'd, 298 F. App'x 185 (3d Cir. 2008), cert. denied, No. 08-9575, 2009 WL 899625 (U.S. May 4, 2009).

United States v. Miranda, No. 06-cr-00052-7 (M.D. Pa. filed Oct. 11, 2007), aff'd, No. 07-4103, 2008 WL 4649385 (3d Cir. 2008), cert. denied, 129 S. Ct. 664 (2008).

Alexander v. Forr, No. 3:CV-04-0370, 2006 WL 2796412 (M.D. Pa. Sept. 27, 2006), aff'd, 297 F. App'x 102 (3d Cir. 2008), cert. denied, 129 S. Ct. 937 (2009).

Lewis v. Romine, No. 3:CV-00-1291, 2001 WL 1555273 (M.D. Pa. Oct. 18, 2001), aff'd, 85 F. App'x 871 (3d Cir. 2003), cert. denied, 541 U.S. 1003 (2004).

United States v. Smith, No. 3:03-cr-0045 (M.D. Pa. filed June 30, 2006), aff'd, 250 F. App'x 522 (3d Cir. 2007), cert. denied, 128 S. Ct. 2103 (2008).

Phippen v. Nish, No. 05-cv-1446 (M.D. Pa. filed Oct. 6, 2006), appeal dismissed, 223 F. App'x 191 (3d Cir. 2007), cert. denied, 128 S. Ct. 1234 (2008).

Michael v. Horn, No. 3:CV-96-1554, 2004 WL 438678 (M.D. Pa. Mar. 10, 2004), remanded, 459 F.3d 411 (3d Cir. 2006), cert. denied, Beard v. Michael, 549 U.S. 1260 (2007).

United States v. Gorko, No. 00-CR-00259 (M.D. Pa. filed Oct. 26, 2004), aff'd, 169 F. App'x 745 (3d Cir. 2006), cert. denied, 549 U.S. 946 (2006).

Santana Products, Inc. v. Bobrick Washroom Equipment, Inc., 249 F. Supp. 2d 463 (M.D. Pa. 2003), aff'd in part, vacated in part, and remanded, 401 F.3d 123 (3d Cir. 2005), cert. denied, 546 U.S. 1031 (2005).

United States v. Fulani, 277 F. Supp. 2d 454 (M.D. Pa. 2003), rev'd and remanded, 368 F.3d 351 (3d Cir. 2004), cert. denied, 543 U.S. 1091 (2005).

United States v. Polishan, No. 3:CR-96-274, 2001 WL 848583 (M.D. Pa. July 27, 2001), aff'd, 336 F.3d 234 (3d Cir. 2003), cert. denied, 540 U.S. 1220 (2004).

Garcia v. Romine, No. 01-cv-02143 (M.D. Pa. filed May 13, 2002), aff'd, 65 F. App'x 873 (3d Cir. 2003), cert. denied, 540 U.S. 929 (2003).

United States v. Chambers, No. 01-cr-369 (M.D. Pa. filed June 27, 2002), aff'd, 66 F. App'x 281 (3d Cir. 2003), cert. denied, 538 U.S. 1006 (2003).



United States v. Yocum, No. 99-cr-00217 (M.D. Pa. filed May 23, 2001), aff'd, 281 F.3d 226 (3d Cir. 2001), cert. denied, 537 U.S. 855 (2002).

Katyle v. Hospital Ass'n of Northeastern Pennsylvania, No. 99-cv-0656 (M.D. Pa. filed Oct. 30, 2000), aff'd, 276 F.3d 577 (3d Cir. 2001), cert. denied, 535 U.S. 1040 (2002).

Fessler v. Karis, 99-cv-1324 (M.D. Pa. filed Apr. 19, 2008), aff'd, 275 F.3d 34 (3d Cir. 2001), cert. denied, Fessler v. Collins, 537 U.S. 815 (2002).

Mariani v. United States, 80 F. Supp. 2d 352 (M.D. Pa. 1999), aff'd, 212 F.3d 761 (3d Cir. 2000), cert. denied, 531 U.S. 1010 (2000).

United States v. Sweeting, No. 3:98-cr-00189 (M.D. Pa. filed April 17, 2001), vacated and remanded, 213 F.3d 95 (3d Cir. 2000), cert. denied, 531 U.S. 906 (2000).

United States v. Graves, No. 94-cr-00108 (M.D. Pa. filed Sept. 27, 2009), aff'd, 124 F.3d 189 (3d Cir. 1997), cert. denied, 522 U.S. 989 (1997).

Colelli v. Sandt, No. 95-cv-0422 (M.D. Pa. filed Sept. 20, 1996), aff'd, 118 F.3d 1574 (3d Cir. 1997), cert. denied, 522 U.S. 982 (1997).

Durko v. OI-Neg TV Products, Inc., 870 F. Supp. 1278 (M.D. Pa. 1994), aff'd, 103 F.3d 112 (3d Cir. 1996), cert. denied, 520 U.S. 1167 (1997).

United States v. Prado, No. 3:CR-94-155-01 (M.D. Pa. filed Jan. 29, 1996), aff'd, 96 F.3d 1436 (3d Cir. 1996), cert. denied, 519 U.S. 955 (1996).

United States v. Alcan Aluminum Corp., 892 F. Supp. 648 (M.D. Pa. 1995), aff'd, 96 F.3d 1434 (3d Cir. 1996), cert. denied, 521 U.S. 1103 (1997).

United States v. Jefferson, No. 94-cr-00258 (M.D. Pa. filed Dec. 7, 2005), aff'd, 88 F.3d 240 (3d Cir. 1996), cert. denied, 519 U.S. 1019 (1996).

Kalwaytis v. Preferred Meal Systems, Inc., No. 93-cv-00371, aff'd and remanded, 78 F.3d 117 (3d Cir. 1996), cert. denied, 519 U.S. 819 (1996).

Writ of Certiorari Dismissed (2)

Rodenbaugh v. Ciavarella, Jr., No. 01-cv-1228 (M.D. Pa. filed Dec. 27, 2001), appeal dismissed, 52 F. App'x 189 (3d Cir. 2002), cert. dismissed, 538 U.S. 942 (2003).

Weaver v. Frank, No. 96-cv-01761 (M.D. Pa. filed Nov. 30, 1999), aff'd, 36 F. App'x 693 (3d Cir. 2002), cert. dismissed, 538 U.S. 942 (2003).

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
1. Homar v. Gilbert, No. 3:93-cv-00852. By Memorandum and Order filed on March 17, 1995, I granted defendants' motion for summary judgment in this procedural and substantive due process case concerning the suspension and ultimate demotion of the plaintiff, a security guard who was arrested for drug trafficking. The Court of Appeals, in an opinion published at 89 F.3d 1009 (3d Cir. 1996), held that the plaintiff was entitled to notice and an opportunity to be heard prior to suspension without pay, and that fact issues existed concerning the employee's demotion and whether officials were motivated by bad faith such as to violate the employee's substantive due process rights. The Supreme Court reversed the Court of Appeals in Gilbert v. Homar, 520 U.S. 924 (1999), concluding that a suspension without pay based upon a drug trafficking arrest need not be preceded by notice and an opportunity to be heard. The matter was remanded for consideration of the timeliness of post-suspension process. On remand, I found that the plaintiff was afforded a timely opportunity to be heard following his suspension and that he did not have a property interest in his employment sufficient to support a substantive due process claim. The issue pertaining to his demotion was ultimately settled. My opinion on remand is at 63 F. Supp. 2d 559 (M.D.Pa. 1999).
  2. Khouzam v. Attorney General, 529 F. Supp. 2d 543 (M.D. Pa. 2008), vacated, 549 F.3d 235 (3d Cir. 2008). The Court of Appeals vacated my determination that there was habeas corpus jurisdiction over the petitioner's challenge to his removal on the strength of diplomatic assurances of non-torture, but agreed with my conclusion that removal without an opportunity to challenge the validity of the diplomatic assurance denied due process.
  3. Nunez v. Lindsay, No. 07-3307, 2007 WL 1875797 (M.D. Pa. June 27, 2007), rev'd, 284 F. App'x 938 (3d Cir. 2008). I ruled that the federal inmate did not have a cognizable claim arising out of his request for a transfer to a Residential Re-entry Center, concluding that the Bureau of Prisons had wide discretion to determine the place of confinement prior to an inmate's pre-release eligibility date. The Court of Appeals held that an inmate was entitled to have the Bureau of Prisons give meaningful consideration to a request for a transfer to a Residential Re-Entry Center, finding that Nunez's request had been denied on the basis of a regulation the Court of Appeals had invalidated in Woodall v. Federal Bureau of Prisons, 432 F.3d 235 (3d Cir. 2005). On remand, the petition was dismissed as moot.

4. Allen v. American Federal of Government Employees, No. 3:06-CV-02213. On November 15, 2006, I dismissed this pro se action as frivolous. Plaintiff had alleged an elaborate conspiracy of torture and abuse throughout the Bureau of Prisons system by numerous alleged prison collective bargaining unit employees. On appeal, the Court of Appeals agreed that the conspiracy claim was obviously frivolous, but found that the claims of retaliation and denial of access to the courts were not so incredible to warrant dismissal. 276 F. App'x 197 (3d Cir. 2008). On remand, I dismissed the action when the pro se plaintiff failed to comply with an Order calling for an amended complaint. On appeal after remand, the Court of Appeals affirmed the dismissal of the action. 317 F. App'x 180 (3d Cir. 2009).
5. Michael v. Horn, No. 3:CV-96-1554. In this habeas corpus challenge to the death penalty imposed following Hubert Michael's plea of guilty to murder, I was called upon to determine whether the petitioner knowingly, rationally and voluntarily chose to waive pursuit of a collateral challenge to his state court conviction and sentence. Based upon the report and corroborating testimony of a court-appointed psychiatrist, I concluded in an Opinion dated March 10, 2004, reported at 2004 WL 438678, that petitioner was competent to do so. On appeal, the court held that post appeal letters from the expert raising doubts about prisoner's competency warranted a remand to determine whether the prisoner was competent to dismiss his appeal. 459 F.3d 411 (3d Cir. 2006). The Court of Appeals remanded the matter for the limited purpose of determining Petitioner's competence to dismiss his appeal, and if found competent, to determine whether he still wanted to dismiss his appeal. In an Order dated December 11, 2007, and after considering a supplemental report of the court-appointed expert, I determined that the Petitioner was competent and that he did not wish to dismiss the appeal he had taken in his case. The matter is now pending a decision from the Court of Appeals.
6. Citi Financial v. Gimbi, No. 3:05-CV-01230. Defendant sought to remove the state court action to federal court after judgment had been entered against her. Concluding that removal was improper so that subject matter jurisdiction was lacking, I dismissed the action in an Order dated November 8, 2005. The Court of Appeals, at 183 F. App'x 232 (3d Cir. 2006), agreed that removal was improper, but held that the better course was to remand the case rather than to dismiss it.
7. Chimenti v. Kimber, No. 3:CV-01-0273. I dismissed the pro se inmate's deliberate indifference to serious medical needs claim in unpublished opinions dated March 15, 2002 and March 19, 2003. The Court of Appeals affirmed in part and reversed in part, 133 F. App'x 833 (3d Cir. 2005), holding that allegations against the former Secretary of the Department of Corrections that he was personally involved in the denial of treatment for the Plaintiff's hepatitis C condition were sufficient to withstand a motion to dismiss, and that plaintiff had adequately exhausted administrative remedies to pursue an action against the medical director.

8. Santana Products, Inc. v. Bobrick Washroom Equipment, Inc., No. 3:CV-96-1794. As noted above, I granted the defense motion for summary judgment in substantial part. 249 F. Supp. 2d 463 (M.D. Pa. 2003). On appeal, a majority of the Court of Appeals affirmed the decision to grant summary judgment in favor of the defendant on the Plaintiff's Sherman Act Section 1 claim, but found that the false advertising claims brought under the Lanham Act were barred by the doctrine of laches. 401 F.3d 123 (3d Cir. 2005). As a result of the Third Circuit's ruling, Defendants were entitled to judgment in their favor.
9. Zelinski v. Pennsylvania State Police, No. 3:CV-01-1979. I granted summary judgment in favor of defendants on the plaintiff's sexual harassment and retaliation claims in an opinion reported at 282 F. Supp. 2d 251 (M.D. Pa. 2003). The Court of Appeals affirmed in part, reversed in part, and remanded. 108 F. App'x 700 (3d Cir. 2004). Specifically, while agreeing that there was no evidence that the plaintiff's superior engaged in alleged acts of sexual harassment and that plaintiff had not engaged in speech protected by the First Amendment, it found that genuine issues of material fact existed as to whether harassment suffered at the hands of a co-worker were sufficiently severe or pervasive to create a hostile work environment and as to whether the plaintiff had engaged in conduct protected by the anti-retaliation provisions of Title VII of the Civil Rights Act of 1964. On remand, the case settled.
10. Spruill v. Gillis, No. 3:01-CV-01625. On May 29, 2002, I had granted defendants' motions to dismiss, reasoning that the pro se plaintiff's failure to seek money damages in his prison grievances constituted a failure to exhaust administrative remedies and that his averments did not sustain a claim of deliberate indifference to serious medical needs in light of the fact that he had received medical treatment. On appeal, the Court of Appeals affirmed in part and reversed in part. The appellate court concluded that the plaintiff had not failed to exhaust administrative remedies with respect to his claim for money damages and that the allegations were sufficient to support an Eighth Amendment deliberate indifference claim, but that dismissal of the non-medical prison official was appropriate. 372 F.3d 218 (3d Cir. 2004). On remand, I found that Defendants were entitled to summary judgment on the merits of Plaintiff's claim, and the Court of Appeals, on May 22, 2009, affirmed. 2009 WL 1470397 (3d Cir. May 22, 2009).
11. United States v. Fulani, No. 3:02-CR-049. By opinion dated August 20, 2003, I had suppressed evidence obtained during a search of luggage removed from a bus, finding that the passenger had not manifested an intention to abandon the bag when he failed to respond to officers' questions as to who claimed the bag. 277 F. Supp. 2d 454 (M.D. Pa. 2003). The Court of Appeals disagreed, and reversed the decision to grant the motion to suppress evidence. 368 F.3d 351 (3d Cir. 2004). On remand, the government moved to dismiss the original indictment and defendant plead guilty to an information charging interstate travel in aid of a

racketeering enterprise, a charge that carried a five year maximum prison term. He was sentenced on October 14, 2005, to a prison term of 52 months.

12. United States v. Lamplugh, No. 4:95-CR-00169. Defendant Theresa Lamplugh was convicted of failure to file an income tax return. On appeal, the Court of Appeals remanded the matter to this Court to determine whether her counsel had been ineffective in producing records without having read them. On remand, I determined that counsel had been ineffective and granted a new trial in an opinion dated March 12, 2002. On appeal, the Court of Appeals reversed, concluding that the defendant could not claim that her counsel was ineffective in failing to discover her attempts to deceive the court with the records in question. 334 F.3d 294 (3d Cir. 2003).
13. Lyons v. Mendez, No. 3:98-CV-01828. In an opinion filed on September 6, 2000, I concluded that Section 235(b)(3) of the Sentencing Reform Act did not take effect until after the petitioner had committed his crime. The Court of Appeals disagreed as to the effective date of this provision of the Sentencing Reform Act, and reversed my decision with a direction to issue a writ of habeas corpus. 303 F.3d 285 (3d Cir. 2002).
14. Montrose Medical Group Participating Savings Plan v. Bulger, No. 3:94-CV-2141. I had granted summary judgment on the basis of judicial estoppel, finding that representations plaintiffs had made in a related prior litigation that the benefits plan in question was not covered by ERISA precluded plaintiffs from taking a contrary position in this litigation. 2000 WL 33775290 (M.D. Pa. Mar. 20, 2000). The Court of Appeals disagreed with the application of the doctrine of judicial estoppel, and reversed the matter. 243 F.3d 773 (3d Cir. 2001). On remand, the case was settled as to certain defendants and a default judgment was entered against the remaining defendant.
15. United States v. Watson, No. 3:98-CR-00147. The appeals court reversed Defendant's conviction following a jury trial, finding that I had erred in allowing a law enforcement officer to express an opinion concerning the Defendant's intent to distribute narcotics. 260 F.3d 301 (3d Cir. 2001). Defendant was re-tried, and found guilty a second time. The Court of Appeals affirmed the conviction. 80 F. App'x 765 (3d Cir. 2003).
16. Steele v. Blackman, No. 3:99-CV-01256. By Memorandum and Order dated January 14, 2000, I had concluded that the petitioner was ineligible to apply for a waiver of inadmissibility because he qualified as an "aggravated felon." The Court of Appeals determined that his state court convictions for criminal sale of marijuana did not qualify as aggravated felonies because they were classified as misdemeanors under state law. 236 F.3d 130 (3d Cir. 2001).
17. State Farm Mutual Automobile Insurance Company v. Coviello, No. 3:99-CV-00585. In a decision issued on November 22, 1999, I had concluded that an

arbitration clause in an underinsured motorist policy was binding and encompassed the dispute. Accordingly, I dismissed the insurance company's declaratory judgment action. The Court of Appeals disagreed with this conclusion. 233 F.3d 710 (3d Cir. 2000). On remand, I found that the "family vehicle exclusion" in the underinsured motorist policy was applicable, comported with public policy, and precluded recovery in this case. 220 F. Supp. 2d 401 (M.D. Pa. 2002). No appeal was taken from this ruling.

18. United States v. Sweeting, No. 3:98-CR-00189. I had sentenced this single mother of five who plead guilty to a drug trafficking charge to five years probation with home confinement of twelve months. The Court of Appeals reversed, finding the sentence to be an unwarranted departure from the pre-Booker guidelines range. 213 F.3d 95 (3d Cir. 2000). On remand, I sentenced the defendant to a prison term of 27 months with a recommendation that she participate in the intensive confinement program. She successfully completed the intensive confinement program, thereby shortening her prison term. Thereafter, a motion for early termination of her supervised release was granted on the grounds that she had complied with all of the requirements of supervised release and was no longer in need of supervision.
19. Coss v. Lackawanna County District Attorney, No. 1:94-CV-1481. I had denied habeas corpus relief, finding that the ineffective assistance of counsel did not prejudice Petitioner's defense. A divided Court of Appeals reversed. 204 F.3d 453 (3d Cir. 2000). The Supreme Court granted certiorari, and, in turn, reversed the court of appeals, concluding that the petitioner's claim was not cognizable. 532 U.S. 394 (2001). Specifically, the Court overturned Third Circuit precedent which had indicated that a habeas corpus petition could be used to challenge a conviction for which the sentence had been served if the conviction was used to enhance the sentence then being served by the petitioner.
20. Duffey v. Lehman, No. 3:94-CV-1947. I held that the death-sentenced state inmate was not entitled to a stay of execution because he had inexcusably ignored available post-conviction processes for a period of more than six years, and denied a certificate of probable cause to appeal. 880 F. Supp. 303 (M.D. Pa. 1995). The stay, however, had effectively nullified the writ of execution that had been issued by the Governor of Pennsylvania. The Third Circuit, in an opinion dated May 22, 1996, vacated this Court's denial of the stay of execution, finding that the matter had been rendered moot in light of the expiration of the writ of execution. 84 F.3d 668 (3d Cir. 1996)
21. Kalwaytis v. Preferred Meal Systems, Inc., No. 3:93-CV-00371. I had granted summary judgment in favor of former employees on their Worker Adjustment and Retraining Notification Act claim and awarded damages. The Court of Appeals affirmed the liability determination, but remanded for a re-calculation of damages. 78 F.3d 117 (3d Cir. 1996), cert. denied, 519 U.S. 819 (1996). On remand, the parties stipulated to the amount of damages.

22. Lewis v. Taylor, No. 3:CV99-0303. The court of appeals vacated my March 8, 1999 dismissal of the action, finding that the fact that plaintiff named me as a defendant in an amended pleading mandated my disqualification, even though his joinder of me was frivolous. The court of appeals ruling is not published.
23. United States v. Tucker, No. 3:CR 02-00249-001. The Court of Appeals reversed my determination that a crack cocaine offender who was sentenced within the guidelines range pursuant to Rule 11(c)(1)(C) plea agreement was eligible for a sentence reduction under the retroactive amended guidelines provision dealing with crack cocaine offenses.
- 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.

I do not make determinations as to whether my opinions are to be published, deferring to the judgment of the publishers. I estimate that approximately 30% of my opinions can be found in Federal Supplement, Federal Rules Decision, or Westlaw. Since March 1, 2003, all my opinions are available through the federal courts Public Access to Court Electronic Records (PACER) system. In addition, I have been placing my opinions on CourtWeb, a publically-accessible internet site, at <http://www.nysd.uscourts.gov/courtweb/public.htm>.

- 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.

Puifory v. Reilly, No. 3:08-CV-982, 2009 WL 839354 (M.D. Pa. Mar. 30, 2009).

Gardner v. Luzerne County, No. 3:CV-07-1947, 2009 WL 224699 (M.D. Pa. Jan. 28, 2009).

Jaslar v. Zavada, No. 3:CV-05-2080, 2009 WL 82553 (M.D. Pa. Jan. 12, 2009).

Smith v. Kyler, No. 1:CV-03-0898, 2008 WL 474252 (M.D. Pa. Feb. 20, 2008).

Khouzam v. Hogan, 529 F. Supp. 2d 543 (M.D. Pa. 2008).

Khouzam v. Attorney General of U.S., 549 F.3d 235 (3d Cir. 2008).  
(Decision Vacated)

Deluzio v. Monroe County, No. 3:CV-00-1220, 2006 WL 3098033 (M.D. Pa. Oct. 30, 2006).

Deluzio v. Monroe County, 271 Fed App'x 193 (3d Cir. 2006).  
(Decision Affirmed)

Hall v. Pennsylvania Dept. of Corrections, No. 3:CV-02-1255, 2006 WL 2772551 (M.D. Pa. Sept. 25, 2006).

Wolfhawk v. Schuylkill County, No. 3:CV-05-1984, 2005 WL 2810608 (M.D. Pa. Oct. 27, 2005).

Adkins v. Luzerne County Children & Youth Services of Luzerne County, No. 3:CV-01-0470, 2005 WL 2129921 (M.D. Pa. Sept. 02, 2005).

Haynes v. Department of Homeland Sec., No. 3:CV-05-0339, 2005 WL 1606321 (M.D. Pa. July 08, 2005).

Gleeson v. Robson, Nos. 3:CV-02-1747, 3:CV-03-0552, 2005 WL 1210948 (M.D. Pa. May 06, 2005).

Gleeson v. Prevoznik, 190 F. App'x 165 (3d Cir. 2006).  
(Decision Affirmed)

Lawson v. Gerlinski, 332 F. Supp. 2d 735 (M.D. Pa. 2004).

Black Hawk v. Pennsylvania, 225 F. Supp. 2d 465 (M.D. Pa. 2002).

Blackhawk v. Pennsylvania, 381 F.3d 202 (3d Cir. 2004).  
(Decision Affirmed)

Brozusky ex rel. Brozusky v. Hanover Tp., 222 F. Supp. 2d 606 (M.D. Pa. 2002).

S.M. v. Lakeland School Dist., 148 F. Supp. 2d 542 (M.D. Pa. 2001).

S.M. ex rel. L.G. v. Lakeland Sch. Dist., 33 F. App'x 635 (3d Cir. 2002).  
(Decision Affirmed)

Padilla v. Miller, 143 F. Supp. 2d 479 (M.D. Pa. 2001).

Black Hawk v. Pennsylvania, 114 F. Supp. 2d 327 (M.D. Pa. 2000).

Chukwuezi v. Reno, No. CIV. A. 3:CV-99-2020, 2000 WL 1372883 (M.D. Pa. May 16, 2000).

Mariani v. United States, 80 F. Supp. 2d 352 (M.D. Pa.1999).

Mariani v. United States, 212 F.3d 761 (3d Cir. 2000).  
(Certifying Question Answered)

Mariani v. United States, 531 U.S. 1010 (2000).  
(Denying Cert.)

Homar v. Gilbert, 63 F. Supp. 2d 559 (M.D. Pa. 1999).

Homar v. Gilbert, 89 F.3d 1009 (3d Cir. 1996).  
Gilbert v. Homar, 520 U.S. 924 (1997).



*On Remand to*  
Homar v. Gilbert, 149 F.3d 1164 (3d Cir. 1998).

Kurilla v. Callahan, 68 F. Supp. 2d 556 (M.D. Pa. 1999).

Williams v. Fedor, 69 F. Supp. 2d 649 (M.D. Pa. 1999).

Williams v. Fedor, 211 F.3d 1263 (3d Cir. 2000).

(Decision Affirmed)

- 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.

Jama v. Esmor Correctional Services, Inc., No. 08-2500, \_\_\_ F.3d \_\_\_, 2009 WL 2449604 (3d Cir. Aug. 12, 2009).

United States v. Kesting, No. 08-2148, 2009 WL 2371845 (3d Cir. Aug. 4, 2009).

United States v. Thielemann, No. 08-2335, 2009 WL 2357026 (3d Cir. Aug. 3, 2009).

In re Bayside Prison Litigation, No. 07-3739, 2009 WL 2170417 (3d Cir. July 22, 2009).

Araoz v. United States, No. 08-2248, 2009 WL 1886011 (3d Cir. June 29, 2009).

In re Bayside Prison Litigation, No. 08-2777, 2009 WL 1803271 (3d Cir. June 25, 2009).

United States v. Jones, No. 08-2638, 2009 WL 1783991 (3d Cir. June 24, 2009). I authored the non-precedential opinion that affirmed the District Judge's determinations concerning the amount of loss attributable to the defendant in this counterfeit credit card prosecution; defendant's obstruction of justice by providing materially false information about his financial condition; and use of sophisticated means to perpetrate the crime.

In re Bayside Prison Litigation, No. 07-3913, 2009 WL 1653893 (3d Cir. June 15, 2009).

United States v. Reina, No. 08-2417, 2009 WL 1448340 (3d Cir. May 22, 2009).

Junaidi v. Attorney General of U.S., 262 F. App'x 363 (3d Cir. 2008). I authored the non-precedential opinion that rejected the petitioner's challenge to his Order of Removal, finding that his allegation of prior counsel's ineffectiveness did not

provide an adequate basis for tolling the period within which to move to reopen his application for cancellation of removal.

Krensavage v. Bayer Corp., No. 06-4302, 2008 WL 177802 (3d Cir. Jan. 22, 2008). I authored the non-precedential opinion that affirmed the District Judge's determination that the denial of long term disability benefits was neither arbitrary nor capricious.

United States v. Jones, 261 F. App'x 412 (3d Cir. 2008). I authored the non-precedential opinion that affirmed the sentence imposed in the matter, concluding that the defendant's waiver of the right to appeal the sentence, set forth in his plea agreement, was valid and enforceable.

In re Pittsburgh Corning Corp., 260 F. App'x 463 (3d Cir. 2008).

Mulahasawovic v. U.S. Atty. Gen., 256 F. App'x 458 (3d Cir. 2007).

Cemex, Inc. v. Industrial Contracting and Erecting, Inc., 254 F. App'x 148, (3d Cir. 2007).

United States v. Jordan, 253 F. App'x 246 (3d Cir. 2007).

United States v. Harris, 253 F. App'x 171 (3d Cir. 2007).

United States v. Strickland, 237 F. App'x 773 (3d Cir. 2007). I authored the non-precedential opinion that found that parole officers had a sufficient basis for conducting a warrantless search of defendant's residence.

U.S. ex rel. Bogart v. King Pharmaceuticals, 493 F.3d 323 (3d Cir. 2007). I authored this precedential opinion in which the court held that the party bringing the qui tam action could not recover under the common fund doctrine an attorney fee award from settlement proceeds received by non qui tam states.

Snedeker v. Commissioner of Social Security, 244 F. App'x 470 (3d Cir. 2007). I authored the non-precedential opinion that affirmed the denial of social security disability benefits on the ground that the ALJ had not erred by failing to consult claimant's treating physician and in failing to classify the claimant's hypotension as a severe impairment.

United States v. Mathis, 238 F. App'x 807 (3d Cir. 2007).

Poulos v. Nicolaidis, 241 F. App'x 25 (3d Cir. 2007).

Briseno-Flores v. Attorney General of U.S., 492 F.3d 226 (3d Cir. 2007).

United States v. White, 235 F. App'x 876 (3d Cir. 2007). I authored this non-precedential opinion that found that the District Judge had not erred in imposing a four-level enhancement in the defendant's offense level for use of a firearm during the commission of a felony and also finding that the imprisonment term of 80 months was not unreasonable.

United States v. Elliott, 235 F. App'x 879 (3d Cir. 2007).

United States v. Smith, 224 F. App'x 194 (3d Cir. 2007).

Prajoga v. Attorney General of U.S., 233 F. App'x 184 (3d Cir. 2007).

United States v. USX Corp., 68 F.3d 811 (3d Cir. 1995). I authored this precedential opinion holding that the Comprehensive Environmental Response, Compensation and Liability Act imposed transporter liability on corporate officers and shareholders only if they participated in the liability-creating conduct, and finding that genuine issues of material fact precluded summary judgment on whether officers and shareholders of a waste hauler had sufficient knowledge of the company's decision to dump hazardous wastes so as to hold them personally liable.

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:

Our Court maintains an "automatic" recusal system. Judges identify entities and/or persons that warrant their recusal so that a judge will not be assigned a case involving an entity or person on his or her recusal list.

- 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.

## MOTIONS FOR DISQUALIFICATION .

1. Mellott, et al v. USA, et al. - 1:94-cv-02071  
Filed 2/27/1995: Motion by plaintiff for recusal and for case to be heard by judge from another district - Motion granted. Case involved Deputy Marshals in the Middle District of Pennsylvania who regularly provided security for judges of this District. Case was assigned to a Delaware U.S. District Judge.
2. Schlegel, et al v. First Eastern Bank N, et al. - 3:94-cv-01617  
Filed 12/15/1994: Motion by plaintiff for recusal. Motion was denied. Plaintiffs were pro se and moved to disqualify because they were dissatisfied with my rulings. The motion was denied. I ultimately dismissed the action, and the dismissal was affirmed.
3. Boreland v. PA Corrections, Dept, et al. - 3:95-cv-01255  
Filed 10/24/1997: I do not recall the basis for the motion, which was denied in a Memorandum and Order filed on April 24, 1998.
4. Boreland v. Braggeman, No. 3:CV-93-0544  
Plaintiff moved for recusal based upon dissatisfaction with my rulings. The motion was denied by Memorandum and Order dated March 1, 1995.
5. United States v. Alcan Aluminum Corp. - 3:99-cv-01160  
Filed 12/15/1999: Motion by defendant Alcan Aluminum Corp. for recusal based upon my purported knowledge of relevant facts. By Memorandum and Order dated February 27, 2001, I denied the motion because my limited work on a tangentially related matter more than twenty years earlier did not warrant disqualification. Alcan sought mandamus relief on this issue, which was denied by the Third Circuit and by the United States Supreme Court.
6. Deluxe Delivery Services v. United States - 3:02-cv-00543  
Filed 4/17/2002: Plaintiff was represented by a non-lawyer whom the Third Circuit had enjoined from filing complaints of judicial misconduct, and I was a member of the Third Circuit Judicial Council which took that action. I denied the motion in an Order dated May 8, 2002. My dismissal of the action for lack of subject matter jurisdiction was affirmed.
7. Gleeson v. Robson, et al. - 3:02-cv-01747  
Following settlement, Plaintiff moved to disqualify me from presiding over a dispute concerning counsel fees on the ground that I had knowledge of material facts. I denied the motion in a written opinion that explained that knowledge gained as a settlement officer did not require disqualification.

8. Algieri v. Conway, et al. - 3:03-cv-01838  
The pro se litigant moved for disqualification based upon dissatisfaction with my dismissal of his action. The motion was dismissed as moot.
9. Ascenzi v. O'Brien, et al. - 3:05-cv-01184  
Pro se plaintiff moved for recusal based upon dissatisfaction with court rulings. The motion was denied because dissatisfaction with court rulings does not warrant recusal.
10. Gleeson v. Dyller, et al. - 3:07-cv-00247  
Plaintiff moved for recusal on the ground that I had personal knowledge of material facts. Because any knowledge of the facts was gained as a result of presiding over the relevant judicial proceedings, I denied the motion.
11. Thomas v. Conway - 3:04-cv-1137  
The pro se Plaintiff's motion to disqualify me because he had filed an action against me (which was dismissed as frivolous) was granted.
12. Beardsley, et al. v. Ranck - 3:97-cv-684  
The motion for disqualification was based upon my prior representation of parties adverse to the defendant in this case. The motion was granted.

#### SUA SPONTE RECUSALS (NO MOTION FILED)

#### CASES IN WHICH I DISQUALIFIED MYSELF BECAUSE MY FORMER LAW FIRM WAS INVOLVED

- 3:98-cv-2133 Carter Footwear, Inc. v. Graystone World-Wide, et al., Order filed 5/11/1999
- 3:99-cv-1634 Gardner v. McGroarty, et al., Order filed 10/14/1999
- 3:99-cv-1556 Pribula v. Wyoming Area School, et al., Order filed 11/12/1999
- 3:00-cv-1747 Rescigno, et al. v. City of Wilkes Barre, et al., Order filed 1/18/2001
- 3:01-cv-142 Natale v. Marwen, Inc., et al., Order filed 3/23/2001
- 3:01-cv-0710 Hallisy v. Gonchar, et al., Order filed 5/10/2001
- 3:95-cv-834 Medico v. Medico, et al., Order filed 10/3/1995

3:96-cv-2003 Madwed, et al. v. Gruen Marketing, et al., Order filed 11/26/96

3:96-cv-2204 Patel v. McGroarty, et al., Order filed 2/7/97

3:96-cv-2205 Shemanski, et al. v. McGroarty, et al., Order filed 2/7/97

#### CONFLICTS WITH PARTIES

3:96-cv-443 Singer, et al v. Cosco, Inc., Order filed 3/28/1996

I had represented the Defendant in private practice in an unrelated matter. Counsel was directed to submit written waivers of disqualification. Because all parties did not submit written waivers, I disqualified myself in an Order dated March 28, 1996.

3:01-cv-0211 Khazzaka v. University of Scranton

I served on the Board of Trustees of a private institution as did the President of the University of Scranton, which was a defendant in this case.

3:02-cv-0900 International Union v. M.V.M., Inc.

Conflict in presiding over case involving Court Security Officers in Scranton.

3:94-cv-1511 Rhodes v. United States Inc., et al.

Case involved Judge Kosik of the Middle District as a Defendant; case reassigned outside of the district.

3:94-cv-1645 Price v. Deshmukh, et al.

I represented one of the defendants in private practice. As all parties did not waive this conflict, I disqualified myself.

3:96-cv-207 Mullen, et al. v. Guthrie Clinic, Ltd., et al.

I represented one of the defendants in private practice. As all parties did not waive this conflict, I disqualified myself.

3:96-cv-709 Larrabee v. Robert Packer Hospital, et al.

I represented one of the defendants in private practice. As all parties did not waive this conflict, I disqualified myself.

3:96-cv-828 Ripley v. Goglin, et al.

I represented one of the defendants in private practice. As all parties did not waive this conflict, I disqualified myself.

3:07-cv-1590 Harvey v. Swetz, et al.

Reassigned to out-of-district judge because Middle District Judge Caputo was named as defendant.

3:07-cv-1991 Davidson v. Lydon, et al.

I disqualified myself because of my personal acquaintance with one of the defendants.

3:07-cv-2208 Messett, et al. v. Home Consultants, Inc., et al.

I disqualified myself because of my personal acquaintance with the plaintiff.

3:02-cv-1678 American States Insurance v. Component Technologies, et al.

I became a member of the Board of Directors of Community Medical Center, which was engaged in a possible affiliation with Moses Taylor Hospital, which had a substantial interest in this litigation.

3:04-cv-938 Hartford Fire Insurance Company v. Spall, et al.

I disqualified myself because of my personal acquaintance with a person listed as a key defense witness on the joint case management plan.

3:02-cv-2297 LiVecchi v. UnumProvident Corp.

I disqualified myself because of my personal acquaintance with the plaintiff.

3:02-cv-1102 Stawinsky, et al. v. Pentasuglio, et al.

I disqualified myself because of my personal acquaintance with one of the defendants.

3:97-cv-270 Yetter v. Five Unknown Agents, et al.

I disqualified myself because defendants were determined to be members of the U.S. Marshals service assigned to the William J. Nealon Building in Scranton, PA.

3:96-cv-568 O'Neill v. Grewal, et al.

I disqualified myself because I had personal knowledge of the matter.

#### DISQUALIFICATION UNDER 28 USC §455

3:96-cv-857 Rock v Augello, et al., Order filed 3/20/97

Defense counsel had represented me.

3:95-cv-0457 Dongelewicz, et al. v. First Eastern Bank, et al.

I directed each party to inform the Clerk of Court as to whether each waived the grounds for disqualification -- prior representation of a party whose interests were adverse to a defendant -- so that I would not know the position taken by any party. When the Clerk informed me that not all parties had waived disqualification, I recused myself.

3:04-cv-1403 Thomas v. Conway et al.

Sua sponte disqualification because the pro se plaintiff had named me as a defendant in an action (which was dismissed as frivolous).

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

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

None.

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

I was Counsel to Governor Robert P. Casey's Campaign Committee from 1986 to 1993. My responsibilities included communication with the Pennsylvania Bureau of Elections and rendering advice on the Pennsylvania Campaign Finance Law. I reviewed Campaign Expense and Contribution Reports for compliance with Pennsylvania law.

I served on the Finance Committee for Gerald Stanvitch, a candidate for Mayor of Scranton in 1993.

**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;

Sept. 1978 to Sept. 1980 – Law Clerk to the Hon. William J. Nealon, then Chief Judge of the U.S. District Court for the Middle District of Pennsylvania.

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

I have not engaged in the practice of law by myself.



- 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.

1980 - 1992

Dilworth, Paxson, Kalish, & Kauffman

600 Penn Security Bank Bldg.

127 N. Washington Ave.

Scranton, PA

Associate attorney (1980 -1985)

Partner (1986 – 1992)

I was in charge of the Dilworth Scranton office from January 1, 1987 to March 19, 1992.

March 20, 1992 to February 28, 1994 - Vice-President and member of the Board of Directors of Elliott, Vanaskie, & Riley, a partnership of Professional Corporations, in charge of its Scranton, PA Office.

- 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 did not serve as a mediator. From time to time, I served as an arbitrator on cases referred to arbitration under a local county court rule. The cases had a value under a few thousand dollars, and I cannot recall any of the cases.

b. Describe:

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

The general character of my law practice was civil litigation, with particular emphasis in complex contract, commercial, environmental, employment, and products liability litigation. Prior to 1985 I was involved in some criminal defense matters. Since 1985, however, I restricted my practice to non-criminal defense matters. A small percentage of my practice had also been devoted to general representation of some small businesses.

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

Former clients include: Individuals in employment discrimination, trade secret, restrictive covenant, contract, commercial, products liability, and personal injury litigation;

Closely-held companies in commercial and contract litigation;

Large publicly held companies in contract, commercial, and products liability litigation;

American subsidiaries of foreign corporations in environmental, employment, and products liability litigation;

Municipal authorities in contract and grants litigation;

A legislatively established insurance organization for no-fault automobile insurance benefits in statutory interpretation and insurance coverage litigation.

- 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 appeared in court frequently, having practiced in each of the three Federal District Courts in Pennsylvania, the Bankruptcy Court for the Middle District of Pennsylvania, the Bankruptcy Court for the Southern District of Florida, the United States Court of Appeals for the Third Circuit, the United States Supreme Court, the Pennsylvania Supreme, Superior and Commonwealth Courts, and the trial courts in Lehigh, Schuylkill, Northampton, Luzerne, Monroe, Lackawanna, Pike, Wayne, Lancaster, Cumberland, Wyoming, Bradford, Dauphin, Lycoming, Philadelphia, and Westmoreland counties. I also represented clients in matters pending before the Pennsylvania Environmental Hearing Board and the Pennsylvania Board of Claims.

- i. Indicate the percentage of your practice in:

- |                            |     |
|----------------------------|-----|
| 1. federal courts:         | 50% |
| 2. state courts of record: | 45% |
| 3. other courts:           | 5%  |
| 4. administrative agencies |     |

- ii. Indicate the percentage of your practice in:

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

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

I tried to verdict or judgment in courts of record twelve cases. In four of those cases I served as sole counsel; in six of those cases I served as lead counsel; and in the remaining two cases I served as associate counsel.

i. What percentage of these trials were:

1. jury: 17%
2. non-jury: 83%.

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 had filed several cert. petitions, but none were granted. I do not have copies of any of the petitions.

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.

A. Ragnar Benson, Inc. v. Bechtel Power Corp., 651 F. Supp. 962 (M.D. Pa. 1986), aff'd mem., 833 F.2d 303 (3d Cir. 1987). Ragnar Benson, Inc. claimed that Bechtel Power Corporation ("Bechtel") had delayed its construction of cooling towers at the Limerick Nuclear Generating Station, located near Pottstown, Pennsylvania, allegedly resulting in Ragnar Benson incurring substantial cost overruns. I represented Bechtel, which counterclaimed to recover overpayments it had made to Ragnar Benson. Ragnar Benson's claims totaled more than \$750,000. Bechtel's counterclaim sought \$250,000. Litigation involved thousands of records pertaining to construction of the cooling towers over a three year period. The case was tried in May of 1986 to the Honorable R. Dixon Herman of the Middle District of Pennsylvania. I handled the examination and cross examination of all witnesses, as well as presentation of all arguments and preparation of Requests for Findings of Fact and Post Trial Briefs. Following a two week trial, Judge Herman rejected Ragnar Benson's claims and awarded judgment in favor of Bechtel on its counterclaim. See 651 F. Supp. 962 (M.D. Pa 1986). On appeal, the Third Circuit affirmed, without opinion. Serving as my associate counsel at trial was John L. Heaton,

Esq. Opposing counsel was Joseph Conway, Esq., 2510 One PPG Place, Pittsburgh, PA 15222, 412- 471-8300.

- B. Czerw v. Grove Manufacturing Company, Lackawanna County Docket No. 83-CIV-6005. Plaintiff's husband was killed when the hydraulic fire truck ladder he was occupying in fighting a fire in Taylor, Pennsylvania contacted a high voltage line. I represented Grove Manufacturing Company, the manufacturer of the ladder. Defense of this claim involved coordination of expert testimony from mechanical and electrical engineers as well as professional firefighters. Following a two week jury trial in Lackawanna County before the Honorable S. John Cottone in October of 1988, a jury returned a verdict in favor of Grove Manufacturing Company. No appeal was taken. I was lead counsel at trial and conducted examination of all witnesses, jury selection and all argument. I was assisted by Kevin C. Quinn, Esq. of my firm. Opposing counsel were Patrick B. Dougherty, Esq., Dougherty, Mundy, Laventhal & Price, 459 Wyoming Avenue, Kingston, PA 18704, 717-288-1427, Paul J. Drucker, Esq., Jablon, Epstein, Wolf, Drucker, Bellevue, 9th Floor, 200 S. Broad Street, Philadelphia, PA 19102, 215-922-7100, and Marianne Gilmartin, Esq., Lenahan, Dempsey, Kane Building, N. Washington Ave., Scranton, PA 18503, 717-346-2097.
- C. Tama v. Llinas, Bradford County Docket No. 86-13E. I represented Dr. Lawrence Tama in this action to enforce a covenant not to compete in a contract between Dr. Tama and his independent contractor, Dr. Llinas. The defendant claimed the right to pay liquidated damages of \$50,000 in satisfaction of a two year restrictive covenant. Several attorneys had informed Dr. Tama that he could not enforce the restrictive covenant. Following a three day trial in July of 1986, Judge Williams, Senior Judge in Bradford County, enjoined Dr. Llinas from breaching the restrictive covenant. On appeal, the Pennsylvania Superior Court affirmed. Docket No. 00493HBG86 of 1986. I was lead counsel and I conducted the examination of all witnesses and argument to the court. Opposing counsel was Howard Levinson, Esq., Rosenn, Jenkins & Greenwald, 15 South Franklin Street, Wilkes-Barre, PA 18701, 717-826-5600.
- D. United States v. Tabor Court Realty, Scott P. Linde, Party to the Agreement of Sale, 943 F. 2d 335 (3d Cir. 1991), cert. denied, 117 L.Bd.2d 413 (1992). I represented Scott Linde, who had contracted to purchase approximately 600 acres of land in Lackawanna County from the court-appointed Receiver of the Raymond Colliery Companies. The total consideration was approximately \$1.5 million. Linde had conditionally assigned his interests under this Agreement of Sale to Carrier Coal Enterprises. Following a hearing in January of 1989, the Honorable Malcolm Muir of the Middle District of Pennsylvania concluded that the assignment improperly interfered with the court-directed bidding process on the property in question. I represented Linde on appeal to the United States Court of Appeals for the Third Circuit. Carrier Coal Enterprises elected not to appeal. In order to prevail on appeal we had to establish that the District Court had abused its discretion. In October of 1989, the Third Circuit, in an unreported opinion, agreed with our position and reversed and remanded the matter to the District Court for further hearings. Following a two day trial in April of 1990, the District Court concluded that Linde had not acted improperly in entering into the assignment. There then ensued

litigation between Linde and Carrier Coal Enterprises as to whether the Assignment remained in effect. The District Court ruled in favor of Linde, but the Third Circuit reversed and remanded the matter once again. See 943 F.2d 335 (3d Cir. 1991). The Supreme Court denied certiorari. 117 L. Ed.2d 413 (1992). On the second remand the District Court found in favor of Carrier Coal Enterprises, and the Third Circuit affirmed without opinion. Opposing counsel were Thomas P. Brennan, Esq., Gallagher, Brenann & Gill, 300 First Eastern Plaza, 60 Public Square, Wilkes-Barre, PA 18701, 717-824-3208, and Joseph G. Ferguson, Esq., Rosenn, Jenkins & Greenwald, 15 S. Franklin Street, Wilkes-Barre, PA 18701, 717-826-5600.

- E. Eckersley v. WGAL-TV, Inc., 831 F.2d 1204 (3d Cir. 1987). This litigation, brought in the Middle District of Pennsylvania under the Employee Retirement Income Security Act, was the sequel to a settlement of litigation in the Eastern District of Pennsylvania concerning Mr. Eckersley's entitlement to a bonus based upon the net profit realized on the sale of a Massachusetts television station. We claimed that the amount received in settlement should be included in the calculation of Mr. Eckersley's retirement pension. Judge Kosik of the Middle District of Pennsylvania ruled in favor of the defendant. On appeal, however, the United States Court of Appeals for the Third Circuit agreed with our position and reversed the district court ruling. Opposing counsel was K. Jane Fankhanel, Esq., Fulbright and Jaworski, 666 Fifth Avenue, 31st Floor, New York, New York 10103, (212) 318-3000.
- F. Stark v. Pennsylvania National Mutual Casualty Insurance Company, Wayne County Docket No. 23 of 1987. Donna Stark, a member of the Honesdale Borough Police Force, was involved in a high speed chase of a reckless driver. The police cruiser occupied by Officer Stark spun out of control and slammed into a parked vehicle. The vehicle Officer Stark was chasing was uninsured at the time of the accident. We brought an action against the uninsured motorist carrier for the Borough of Honesdale, which defended on the ground that it enjoyed the Borough's workers' compensation immunity. This defense was based upon Pennsylvania Supreme Court precedent pre-dating the 1984 Pennsylvania Motor Vehicle Financial Responsibility Act. In May of 1989, the Hon. Robert Conway of the Court of Common Pleas of Wayne County ruled in favor of the insurance company. We appealed to the Pennsylvania Superior Court (Docket Nos. 01601-PHL-89 and 01602-PHL-89), arguing that the Pennsylvania Supreme Court precedent was no longer applicable in light of the 1984 legislation. The Superior Court agreed, ruling in Officer Stark's favor on this issue in 1990 in an unpublished opinion. The insurance company was unsuccessful in its efforts to have the Pennsylvania Supreme Court hear the case. Opposing counsel was Howard Levinson, Esq., of Rosenn, Jenkins & Greenwald, 15 S. Franklin Street, Wilkes-Barre, PA 18701, (717) 826-5600.
- G. Allegheny County Sanitary Authority v. United States Environmental Protection Agency, et al., 557 F. Supp. 419 (W.D. Pa 1983), aff'd, 732 F.2d 1167 (3d Cir. 1987). This action was brought in the United States District Court for the Western District of Pennsylvania to determine the entitlement of the Allegheny County Sanitary Authority ("ALCOSAN") to a multi-million dollar grant under the Federal Water Pollution Control Act. A principal issue in this litigation was whether the state environmental agency charged with

administering the federal funding program was amenable to suit for alleged violations of the Federal Water Pollution Control Act. In an opinion reported at 557 F. Supp. 419 (W.D. Pa. 1983), the Hon. Hubert I. Teitelbaum ruled against ALCOSAN. The Third Circuit, in an opinion reported at 732 F.2d 1167 (3d Cir. 1984), affirmed the trial court. I served as co-counsel in this litigation with Governor Robert P. Casey. I was principally responsible for the preparation of the trial and appellate court briefs. Following the Third Circuit decision, I assumed the role of lead counsel in this litigation, which was eventually decided in 1987 on a summary judgment motion. The trial court ruling on the summary judgment motion is not reported. Opposing counsel included Dean Dunsmore, Esq., United States Department of Justice, 202- 633-2216; Maxine Woelfling, Esq., 717-787-3483, who became a member of the Pennsylvania Environmental Hearing Board; and James J. Kurtz, Esq., Eckert, Seamans, Cherin & Mellott, One South Market Square Building, 213 Market Street, Harrisburg, PA 17701. This matter was handled between 1982 and 1987.

- H. Precision National Plating Services, Inc. v. United States Environmental Protection Agency. I served as lead counsel, representing Precision National Plating Services, Inc. ("Precision"), in litigation concerning the Environmental Protection Agency's "emergency powers" provisions under the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA") and the Safe Drinking Water Act. EPA had threatened to issue unilaterally an Administrative Order that could have resulted in Precision incurring hundreds of thousands of dollars in investigative and remedial actions that were not compelled by any imminent threat to public health or the environment. Initially, we brought an action in the United States District Court for the Eastern District of Pennsylvania for immediate injunctive relief. No. 90-6813. Although ruling against Precision on jurisdictional grounds, the Hon. J. William Ditter expressed sympathy with Precision's "plight," observing that the record revealed that Precision had responded to all reasonable requirements imposed upon it by state environmental agencies and that the matter of which EPA was complaining certainly did not appear to involve an imminent threat to public health or the environment. 1990 WL 191968 (E.D. Pa. 1990). Subsequently, EPA issued an Administrative Order, purporting to exercise its emergency powers under both CERCLA and the Federal Safe Drinking Water Act. Because jurisdiction over orders issued under the Safe Drinking Water Act is vested in the appellate courts, we caused to be filed a Petition for Review with the United States Court of Appeals for the Third Circuit. (Docket No. 91-3158.) Following our briefing of issues involving the proper exercise of the "emergency powers" provisions and EPA's authority to effectively enforce compliance with administrative orders through the threat of accrual of substantial monetary penalties, EPA and Precision resolved the dispute in 1991 on terms favorable to Precision yet protective of public health and safety. Opposing counsel was Karen Kellen, Esq., United States Environmental Protection Agency, Region III (3RC22), 841 Chestnut Building, Philadelphia, PA, (215) 597-9800.
- I. Scranton Redevelopment Authority v. Pennsylvania Department of Transportation, Pa. Board of Claims Docket No. 658. This action arose out of condemnation of properties in South Scranton. The Pennsylvania Department of Transportation ("PennDOT") had used the Scranton Redevelopment Authority as a condemnation agency to acquire a number of

properties along a proposed right-of-way. PennDOT later scrapped its plans for the highway, and did not sign a proposed written contract with the Scranton Redevelopment Authority for the acquisition of the properties in question. An action was brought before the Pennsylvania Board of Claims, seeking to impose liability on promissory estoppel and contract theories. PennDOT defended on the ground that no written contract between it and the Redevelopment Authority existed. We were retained following the Board of Claims trial to prepare proposed findings of fact, conclusions of law, and a memorandum of law. I was the principal drafter of our filings, which were submitted in 1983. The Board of Claims ruled in our favor in 1984. The matter was subsequently settled in 1985 on appeal to the Commonwealth Court, resulting in a substantial recovery for the financially distressed City of Scranton. I served as co-counsel on this matter with Governor Robert P. Casey and James W. Brown, Esq., 225 Main Capital Bldg., Harrisburg, PA 17120, (717) 787-5403. Opposing counsel was Spencer Manthorp, Esq., then Chief Counsel for PennDOT, Department of Transportation, Room 313, Transportation & Safety Building, (717) 787-2063.

- J. Maid Rite Steak Co. v. United States, 643 F. Supp. 1162 (M.D. Pa. 1986). I, along with Morey M. Myers, Esq., represented Maid Rite Steak Co. ("Maid Rite") in an action challenging the Internal Revenue Service's denial of Maid Rite's attempt to obtain an investment tax credit. The principal owners of Maid Rite had erroneously claimed the investment tax credit at issue on their personal tax returns. An examination of the owners' tax returns disclosed that the owners were not entitled to the tax credit. Thereafter, Maid Rite attempted to claim the credit, but it was denied by the Internal Revenue Service. I was principally responsible for preparation of a brief in support of our summary judgment motion. The Hon. William J. Nealon ruled in favor of Maid Rite, concluding that the owners had not made a binding irrevocable tax credit election by erroneously and in good faith claiming the investment tax credit themselves. The court also ruled that, even if such election was binding, the Internal Revenue Service abused its discretion in refusing to permit the taxpayers to amend their return. The court's decision is reported at 643 F. Supp. 1162 (M.D. Pa. 1986). Opposing counsel was Stephen Carlton, (202) 724-6514, United States Department of Justice. Co-counsel was Morey M. Myers, Scranton, PA 18505, (717) 342-6100.

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.)

I served as lead counsel in a Civil RICO action concerning the efforts of a healthcare provider to circumvent Certificate of Need requirements to establish a radiation therapy center. Powers v. Williamsport Hospital, et al. (M.D. Pa., Docket 89-0059). I represented a radiation oncologist whose practice was threatened by the establishment of the competing radiation therapy center. Defendants were represented by prominent



Philadelphia, Pittsburgh and Atlanta law firms. I coordinated extensive discovery efforts. The case, along with parallel litigation in the Middle District of Pennsylvania, the Pennsylvania Commonwealth Court, and the Pennsylvania Department of Health, ultimately settled.

A significant litigation matter which settled on the eve of trial was Condella v. Duo Fast Corporation (Lackawanna County, Docket 88-CIV-6187). This was a products liability case in which I represented the plaintiffs. William Condella was severely injured when a nail from a nail gun discharged through his skull, embedding below the scalp line. Fortunately, Mr. Condella had not sustained severe neurological impairment. Extensive discovery yielded information concerning a design defect in the nail gun and negligent conduct on the part of the companies in charge of the construction site. The case was eventually settled under terms that paid Mr. and Mrs. Condella more than \$4.6 million.

I provided pro bono representation to a local non-profit gymnastics training center in connection with its efforts to secure a building at which to conduct its activities for the youth of this area.

From 1991 to 1994, I served as Chair of the Continuing Legal Education Committee of the Lackawanna Bar Association. In that capacity, I developed a program of monthly continuing legal education programs presented to members of the Lackawanna Bar Association. We also invited students and professors of local universities and colleges to attend our presentations. I also participated in the development of continuing legal education programs that satisfy the requirements for mandatory continuing legal education on ethics issues.

I served as a member of the Middle District of Pennsylvania Lawyers' Advisory Committee. The Committee met with the Chief Judge of the District on a quarterly basis. Members of the Committee also attended the Third Circuit Judicial Conference. The Committee served as an advisory group with respect to procedural and other practice-related issues.

In March of 1993 I was appointed to the Civil Justice Reform Act Committee for the Middle District of Pennsylvania. Our group met on a periodic basis and finalized a Civil Justice Reform Act Plan for the Middle District.

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

I have taught a two-credit seminar, entitled "Electronic Evidence," at the Dickinson School of Law at Penn State University. I taught the course during the fall semesters of 2007 and 2008. The course covers the discovery and evidentiary implications of the creation and storage of information in electronic format. Specifically, the course covers



computer forensics, electronic discovery, electronic case filing, and electronic presentation of evidence.

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

None.

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

I plan to teach the seminar on Electronic Evidence during the Fall of 2009 at the Dickinson School of Law at Penn State University.

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.

None.

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

I will comply with the applicable provisions of the Code of Conduct and the Opinions issued thereunder.

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.

As a Judge, I may not practice law and thus have not provided representation to the disadvantaged. I have, however, been active in law-related community activities. For example, I participated in the establishment of a program by which students from disadvantaged backgrounds were provided summer jobs in law firms and in the federal court system. Several students worked directly in my Chambers. I have also engaged in activities of a pro bono publico nature during my tenure as a District Judge. I have visited elementary schools, and hosted both elementary and secondary school classes in our courthouse. I have participated in the Open Doors of Justice program developed by the Administrative Office of the United States Courts, hosting secondary school classes for that purpose. I have served for a number of years as a presiding judge in the Pennsylvania Mock Trial Program, which provides high school students an opportunity to serve as trial advocates. My participation has included traveling to Harrisburg, Pennsylvania, where I have presided over both the semi-finals and finals of the state competition.

I participated as a presenter in the Peoples Law School program conducted by our local bar association. This program was presented to a live audience and broadcast over a local access television station.

I have participated as a speaker in Law Day Activities, and I am a frequent lecturer at continuing legal aid education programs conducted by local, state, and national bar associations.

I have participated in community service projects sponsored by the Young Lawyers' Division of our Local Bar Association, including volunteering at a local soup kitchen and working at a fundraising picnic for the St. Joseph's Center, which provides care for severely disabled children.

I have served as a board member and Chair of the Board of a local high school. I have also served as a Board Member of the local chapter of the American Heart Association and on the Board of a local hospital. I served on advisory Boards for the Dickinson School of Law at Penn State University, the Wilkes University Law School initiative, and the University of Scranton.

In private practice, I accepted appointments to represent indigent defendants in criminal cases, as well as indigent federal and state prisoners. For example, in 1987, I was appointed by the Third Circuit to represent an inmate at the State Correctional Institution in Huntingdon, Pennsylvania, contesting long-term incarceration in administrative segregation. I devoted more than 100 hours to the pursuit of that appeal.

Also while in private practice I served pro bono as counsel to a non-profit corporation providing gymnastics training to hundreds of children in our area. Our representation was instrumental in establishing this non-profit training facility. I was a volunteer for the Lackawanna Bar Association pro bono project, providing pro bono representation to a number of persons of low or moderate income. Also while in private practice I served as a volunteer on the United Way Allocations Panel for Lackawanna County. I served as a coach for Little League baseball and youth basketball programs. I devoted more than fifty hours in establishing a successful ongoing continuing legal education program for the Lackawanna Bar Association.

As a Judge, I preside over our Court-Assisted Re-entry program. Partnering with the Probation Office, Public Defender's Office, and the United States Attorney's Office, the Court meets monthly with offenders who are at high risk of recidivism. The program is intended to provide intensive supervision and assistance to enable a successful re-entry into our communities.

**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.

Encouraged by others, who had written letters to our State's U.S. Senators without any solicitation on my part, I made known to Senator Robert P. Casey, Jr., my interest in serving on the Third Circuit. In late May of 2009, I was contacted by Senator Casey, who informed me that the White House had authorized the Department of Justice to undertake an investigation for my possible nomination to the Third Circuit.

On May 21, 2009, I was contacted by the United States Department of Justice, requesting that I complete a number of forms preliminary to an investigation for possible nomination. I have had regular contact with staff from the Department of Justice since that date regarding the paperwork and the process. I was interviewed at the Department of Justice in Washington, DC on Tuesday, August 4, 2009 by Associate Attorney General Thomas Perrelli, and staff from the Department of Justice and from the White House Counsel Office. My nomination was submitted to the United States Senate on August 6, 2009.

- 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 person in the selection process has discussed with me any currently pending or specific case, legal issue or question in a manner that could be reasonably interpreted as seeking any express or implied assurance concerning my position on such case, issue, question.

AFFIDAVIT

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

8-14-09  
(DATE)

Thomas I. Vanaskie  
(NAME)

Diane V. McClosky  
(NOTARY)

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
DIANE V. McCLOSKY, Notary Public  
Wilkes-Barre, Luzerne County  
My Commission Expires Oct. 27, 2010

*Acting in Lackawanna County*