

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Nina Rauh Morrison

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

United States District Judge for the Eastern District of New York

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.

Innocence Project
40 Worth Street, Suite 701
New York, New York 10013

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

1970; New York, New York

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1995 – 1998, New York University Law School; J.D. (*magna cum laude*), 1998

1988 – 1992, Yale College; B.A. (*magna cum laude*), 1992

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.

2002 – present
Innocence Project
40 Worth Street, Suite 701
New York, New York 10013
Senior Litigation Counsel (2019 – present)

Senior Staff Attorney (2004 – 2019)
Executive Director (2002 – 2004)

October 2001 – December 2001
American Civil Liberties Union
125 Broad Street
New York, New York 10004
Contract Attorney

1999 – 2001
Emery, Cuti, Brinckerhoff & Abady
(currently Emery, Celli, Brinckerhoff, Abady, Ward & Maazel)
600 Fifth Avenue, Tenth Floor
New York, New York 10020
Associate

1998 – 1999
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007
Law Clerk to the Honorable Pierre N. Leval

1997
NOW Legal Defense and Educational Fund
(currently Legal Momentum)
32 Broadway, Suite 1801
New York, New York 10004
Legal Intern

1996
Sanctuary for Families/Center for Battered Women's Legal Services
P.O. Box 1406
Wall Street Station
New York, New York 10268
Legal Intern

1995 – 1996
Legal Aid Society of New York, Prisoners' Rights Project
199 Water Street
New York, New York 10038
Legal Intern

1993 – 1995
California Appellate Project
345 California Street, Suite 1400

San Francisco, California 94104
Legal Investigator

1992
Guess What?, Inc.
(address unknown)
Oakland, California
Substitute Preschool Teacher

1992
United Democratic Campaign of Northern California
(address unknown)
Alameda County, California
Field Organizer

Other affiliations (uncompensated):

2021 – present
For the People
1624 Franklin Street, Suite 1200
Oakland, California 94612
Member, Board of Directors

2002 – 2016
Benjamin N. Cardozo School of Law at Yeshiva University
55 Fifth Avenue
New York, New York 10003
Adjunct Professor of Law

2003 – 2006, 2014 – 2016
Butler Family Fund
1730 Pennsylvania Avenue, Northwest, Suite 275
Washington, DC 20006
Member, Board of Directors

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

I have not served in the military. I was not required to register for the selective service.

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

Iconic Woman in Legal History, Texas Young Lawyers' Association (2021)

Alumni Changemaker of the Year, New York University Board of Trustees (2021)

Spirit of Justice Award, Texas Criminal Defense Lawyers Association (2012)

Progressive Women's Voices Fellowship, Women's Media Center (2009)

New York University Law School

Graduated *magna cum laude* (1998)

Order of the Coif (1998)

Public Interest Law Foundation Award (1998)

Rose L. & Herbert Rubin Prize (1998)

Root-Tilden-Snow Public Service Scholar (1995 – 1998)

Yale College

Graduated *magna cum laude* (1992)

Norman H. Pearson Prize in American Studies (1992)

Saybrook College Fellows' Prize (1992)

Steere Prize in Women's Studies (1992)

University President's Community Service Award (1992)

Harry S. Truman Public Service Scholar (1991)

Elected to *Phi Beta Kappa* (1991)

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.

Kings County District Attorney's Office, Justice 2020 Committee & Professional Responsibility and Conviction Integrity Subcommittee, Member (2018 – 2019)

New York Police Department, Joint Working Group on Post-Conviction DNA Evidence, Member (2013 – 2015)

Transition Committee, District Attorney-Elect George Gascon, Informal Adviser (2020)

Transition Committee, District Attorney-Elect Larry Krasner, Informal Adviser (2017)

Transition Committee, State Attorney-Elect Melissa Nelson, Informal Adviser (2016)

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.

New York, 2000

There have been no lapses in membership.

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

Supreme Court of the United States, 2009

United States District Court for the Eastern District of New York, 2000

United States District Court for the Southern District of New York, 2000

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.

New York Urban Professionals Basketball League (1999 – 2000)

Old First Nursery School Cooperative (2010 – 2012)

Old Goat Basketball Association (2009 – present)

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

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor,

editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

A Reckoning for Prosecutors in Drug Lab Scandal?, Commonwealth Mag. (Mar. 6, 2021). Copy supplied.

How to (Really) Fix a Drug Scandal: San Francisco's District Attorney Sets a Strong Example, Innocence Project (Dec. 18, 2020). Copy supplied.

Innocence Project Calls for Policy Reforms in Wake of Landmark Report on 25 Wrongful Convictions in Brooklyn, Innocence Project (July 9, 2020). Copy supplied.

Why Holding Prosecutors Accountable Is So Difficult, Innocence Project (Apr. 23, 2020). Copy supplied.

Prosecutors Can Right Past Wrongs—If Only the System Lets Them, Appeal (Dec. 10, 2019). Copy supplied.

Fraud upon the Court and the People of Massachusetts, Mass. Laws. Wkly. (Aug. 2, 2018). Copy supplied.

What Happens When Prosecutors Break the Law?, N.Y. Times (June 18, 2018). Copy supplied.

Innocence Project Lawyers Support Texas Prosecutor, Innocence Project (Mar. 29, 2018). Copy supplied.

Guest Column: These Questions Still Need Answers after Wilbert Jones' Release from Wrongful Imprisonment, Advocate (Nov. 27, 2017). Copy supplied.

Massachusetts Court Dismisses Drug Convictions in Cases Tainted by Lab Analyst Who Used Illegal Drugs on the Job, Innocence Project (June 26, 2017). Copy supplied.

Innocence Project Responds to the Execution of Ledell Lee, Innocence Project (Apr. 21, 2017). Copy supplied.

Arkansas Supreme Court Issues Stay of Execution for Stacey Johnson for DNA Testing, Innocence Project (Apr. 20, 2017). Copy supplied.

Prosecutors Made Massachusetts' Drug Lab Scandal Much, Much Worse, Slate (Mar. 16, 2017). Copy supplied.

In Memoriam: Exoneree Scott Fappiano, Innocence Project (Dec. 16, 2016). Copy supplied.

My Work on the Michael Morton Case, Katie Couric (Nov. 13, 2012). Copy supplied.

U.S. Supreme Court: Inmate Can Seek DNA Testing, Open Soc’y Found. (Mar. 7, 2011). Copy supplied.

Guest Commentary: Time to Face Truth in Willingham Case, Corsicana Daily Sun (Sept. 3, 2009). Copy supplied.

A Misguided Decision and the Path Forward, Am. Const. Soc’y (June 24, 2009). Copy supplied.

Five Cases Follow Traditional Course, N.Y.L.J. (Oct. 2, 2000). Copy supplied.

Curing “Constitutional Amnesia”: Criminal Procedure Under State Constitutions, 73 N.Y.U. L. Rev. 880 (June 1998). Copy supplied.

Tipping the Scales, New J. (Apr. 10, 1992). Copy supplied.

Why No News YCC Endorsements For Minorities?, Yale Daily News (Jan. 28, 1991). Copy supplied.

Poison Pen: A Yale English Professor Writes Up a Storm of Controversy, New J. (Oct. 20, 1989). Copy supplied.

Frozen Yogurt Creates Flurry of Converts in New Haven, After Hours Mag. (Sept. 8, 1989). Copy supplied.

Lux et Servitas? Give YCC’s Proposal a Try, Yale Daily News (Oct. 27, 1988). Copy supplied.

- 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.

426 Years: An Examination of 25 Wrongful Convictions in Brooklyn, New York, Innocence Project, Kings County District Attorney’s Office, and Wilmer Cutler Pickering Hale & Dorr LLP (2020). Copy supplied.

Justice 2020: An Action Plan for Brooklyn, Kings County District Attorney’s Office (2019). I served on the Kings County District Attorney’s “Justice 2020” advisory committee, whose recommendations contributed to the agenda reflected

in this report, but I did not draft or edit the report, and I had no authority over which recommendations the report ultimately adopted. Copy supplied.

Report on Attorney Responsibility in Criminal Cases, New York State Justice Task Force (Feb. 2017). Although I did not draft or edit this report, I appeared at several Task Force meetings at the invitation of its co-chairs and members to discuss the issues addressed in the report, and I submitted proposed language for the model orders recommended by the Task Force and included in the report's appendix. Copy supplied.

Prosecutorial Oversight: A National Dialogue in the Wake of Connick v. Thompson, Innocence Project (Mar. 2016). Copy supplied.

- 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.

The following list reflects my best efforts to identify all communications responsive to the question, including through searches of my files and internet databases. But there may be other communications that I have been unable to recall or identify.

Letter from Innocence Project to New York State Office of Court Administration in Support of Model Standing Orders in Criminal Cases (May 31, 2017). Copy supplied.

Proposal from Legal Aid Society and Innocence Project Submitted to New York State Justice Task Force Regarding Standing Brady Order in New York State Courts (Sept. 22, 2016). I helped draft and edit this proposal, a version of which was adopted as part of New York State's court rules in 2018. Copy supplied.

Hearing on the History and Use of the Death Penalty, New York Assembly Standing Committees on Codes, Judiciary, and Correction (2005). Copy supplied.

Hearing in Support of Senate Bill 12 (Death Penalty Moratorium and Study), Maryland Senate Judicial Proceedings Committee (2003). Copy supplied.

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

from which you spoke.

The following list reflects my best efforts to identify all events responsive to the question, including through searches of my files and internet databases. There may, however, be events I have been unable to recall or identify.

January 27, 2021: Presenter, Deconstructing a Wrongful Conviction, Institute for Innovation in Prosecution, John Jay College, New York, New York (virtual). Video available at <https://www.prosecution.org/wrongful-convictions-panel-series>.

December 15, 2020: Panelist, The Efficacy of State and Federal Challenges to State Criminal Convictions, Harry Phillips American Inn of Court, Nashville, Tennessee. The panel discussed procedural vehicles for judicial review of claims of wrongful conviction. I have no notes, transcript, or recording. The address for the Harry Phillips American Inn of Court is 4013 Armory Oaks Drive, Nashville, Tennessee 37204.

September 23, 2020: Presenter, Innocence and the Criminal Legal System, Hofstra University School of Law Monroe Freedman Institute for the Study of Legal Ethics, New York, New York (virtual). I have no notes, transcript or recording. I spoke about the exoneration of my client Mr. Rodriguez in Queens County, New York, and the legal issues in his post-conviction proceedings. The address for the Hofstra University School of Law Monroe Freedman Institute for the Study of Legal Ethics is 121 Hofstra University, Hempstead, New York 11549.

May 21, 2020: Panelist, The Innocence Files, Innocence Project (virtual). Video available at <https://www.facebook.com/innocenceproject/videos/243782070021426/>.

March 27, 2019: Speaker, Prosecutors, Wrongful Convictions, and Conviction Review Units, New York University School of Law, New York, New York. I spoke about my office's work in cooperation with prosecutors' offices to reinvestigate claims of innocence by the wrongly convicted. I have no notes, transcript, or recording, but press coverage is supplied. The address for the New York University School of Law is 40 Washington Square South, New York, New York 10012.

January 31, 2019: Panelist, Wrongful Convictions and the Brooklyn Community, Brooklyn Nets, Brooklyn, New York. Video available at <https://www.youtube.com/watch?v=8KncLuqNQws>.

October 30, 2018: Panelist, Prosecutorial Power and Wrongful Convictions, Innocence Project, New York, New York. Video available at <https://www.youtube.com/watch?v=3ZbF0M9pglIhttps://innocenceproject.org/co>

versations-with-innocence-project-prosecutorial-power-wrongful-convictions/.

October 16, 2018: Panelist, How Exonerations Make the American Criminal Justice System Stronger, 2018 Criminal Justice Summit, The Florida Bar, Tampa, Florida. Video available at <https://www.youtube.com/watch?v=e4szP3mD-Vs>.

August 17, 2018: Panelist, Wrongful Convictions in the Post-DNA Era, KentPresents, Kent, Connecticut. Video available at https://www.youtube.com/watch?v=BHN4Znp6JMY&feature=emb_logo.

June 2018 (date unknown): Speaker, New York's New *Brady* Orders, Innocence Network Policy Conference, Innocence Network, New York, New York. I spoke about a new order issued by the State of New York to facilitate compliance with *Brady v. Maryland*. I have no notes, transcript, or recording. The address for the Innocence Network is 40 Worth Street, Suite 701, New York, New York 10013.

March 23, 2018: Speaker, Getting to Yes: Creative Advocacy Strategies, Innocence Network Annual Conference, Innocence Network, Memphis, Tennessee. I spoke about strategies for reaching agreement with prosecutors and other law enforcement officials in wrongful conviction cases. I have no notes, transcript, or recording. The address for the Innocence Network is 40 Worth Street, Suite 701, New York, New York 10013.

October 23, 2017: Panelist, Lessons Learned from Wrongful Convictions: Patterns, Pitfalls, and Prevention, Fair and Just Prosecution, Philadelphia, Pennsylvania. Outline supplied.

September 14, 2017: Speaker, Access to Justice Issues Arising During Pre- and Post-Arrest, Yeshiva University Benjamin N. Cardozo School of Law, New York, New York. Video available at <https://vimeo.com/235937990>.

June 23, 2017: Speaker, Database Access for the Defense, Texas Criminal Defense Lawyers' Association, San Antonio, Texas. I spoke about ways national DNA databases may be used to develop exculpatory evidence before trial and in support of post-conviction claims. I have no notes, transcript, or recording. The address for the Texas Criminal Defense Lawyers' Association is 6808 Hill Meadow Drive, Austin, Texas 78736.

June 16, 2017: Speaker, Redefining the Role of the Prosecutor Within a Reformed Justice System, Charles Hamilton Houston Institute for Race and Justice, Harvard Law School, Cambridge, Massachusetts. Video available at <https://charleshamiltonhouston.org/events/redefining-role-prosecutor/>.

June 2, 2017: Panelist, Error and the Duty to Correct in Wrongful Conviction Cases, American Bar Association, New York, New York. I participated in a panel discussion about prosecutorial ethics and forensic science. I have no notes,

transcript, or recording. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

March 24, 2017: Speaker, Conviction Integrity Units: Strategies and Models, Innocence Network Annual Conference, Innocence Network, San Diego, California. I spoke about best practices for conviction integrity units within prosecutors' offices. I have no notes, transcript, or recording. The address for the Innocence Network is 40 Worth Street, Suite 701, New York, New York 10013.

March 2017 (date unknown): Speaker, Litigating Challenges to Guilty Pleas, National Association of Criminal Defense Lawyers, San Diego, California. Presentation supplied.

November 3, 2016: Speaker, The Role of Scientific Evidence in the Courtroom, Yale Law School, New Haven, Connecticut. I spoke about ways that flawed forensic testimony has contributed to wrongful convictions. I have no notes, transcript, or recording, but press coverage is supplied. The address for Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

April 8, 2016: Speaker, Conviction Review Programs: Opportunities, Challenges, and Best Practices, Innocence Network Annual Conference, Innocence Network, San Antonio, Texas. I spoke about my office's work in cooperation with prosecutors' offices to reinvestigate claims of innocence by the wrongly convicted. I have no notes, transcript, or recording. The address for the Innocence Network is 40 Worth Street, Suite 701, New York, New York 10013.

November 5, 2015: Speaker, Wrong Side of the Wall: How the Innocent End Up in Prison, and How They (Sometimes) Get Out, Vanderbilt Law School, Nashville, Tennessee. I spoke about causes of wrongful convictions and select cases I have litigated to free the innocent. I have no notes, transcript, or recording, but press coverage is supplied. The address for Vanderbilt Law School is 131 21st Avenue South, Nashville, Tennessee 37203.

May 4, 2015: Speaker, The Slow Pace of Justice: Expanding Access to DNA and Other Exculpatory Evidence, United States Court of Appeals for the Fifth Circuit Judicial Conference, New Orleans, Louisiana. Presentation supplied.

May 2, 2015: Speaker, Cutting-Edge DNA: New Methods, Developments, and Techniques, Innocence Network Annual Conference, Innocence Network, Orlando, Florida. I spoke about advances in DNA technology and their application in criminal cases. I have no notes, transcript, or recording. The address for the Innocence Network is 40 Worth Street, Suite 701, New York, New York 10013.

March 2015 (date unknown): Speaker, DNA, A Tool for Truth: Freeing Wrongfully Convicted Americans, The City College of New York, New York,

New York. I spoke about DNA technology and its role in freeing the wrongly convicted. I have no notes, transcript, or recording, but press coverage is supplied. The address for the City College of New York is 160 Convent Avenue, New York, New York 10031.

March 10, 2015: Speaker, Wrongful Convictions in the U.S.: Tales from the Front Lines of the DNA Revolution, International Society of Barristers, Key Biscayne, Florida. Transcript supplied.

February 9, 2015: Speaker, Wrongful Convictions and the Struggle for Civil Rights, University of Texas Lyndon B. Johnson School of Public Affairs, Austin, Texas. Presentation and press coverage supplied.

March 12, 2014: Keynote Speaker, Discussing Michael Morton, University of Virginia Journal of Criminal Law, Charlottesville, Virginia. Video available at <https://www.youtube.com/watch?v=mod3DCuIMMA>.

October 17, 2013: Speaker, Litigating Innocence: Tales from the Front Lines of the DNA Revolution, Santa Clara University School of Law Center for Social Justice and Public Service, Santa Clara, California. I spoke to a group of law students and faculty about my career at the Innocence Project. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Santa Clara University School of Law Center for Social Justice and Public Service is 500 El Camino Real, Santa Clara, California 95050.

July 31, 2013: Speaker, Freeing the Innocent: The DNA Revolution, Chautauqua Institution, Chautauqua, New York. PowerPoint and press coverage supplied.

April 8, 2013: Speaker, Defending Innocence: Wrongful Convictions and What Lawyers Can Do About Them, Vanderbilt Law School, Nashville, Tennessee. I spoke about litigation to exonerate the wrongly convicted. I have no notes, transcript, or recording, but press coverage is supplied. The address for Vanderbilt Law School is 131 21st Avenue South, Nashville, Tennessee 37203.

June 13, 2011: Speaker, Learn How the Innocence Project Works, New York Rotary Club, New York, New York. I spoke about my office's work to free the innocent and prevent wrongful convictions. I have no notes, transcript, or recording, but press coverage is supplied. The address for the New York Rotary Club is 322 Eighth Avenue, Suite 7101, New York, New York 10001.

April 7, 2011: Panelist, Forensic Litigation After the National Academy of Sciences Report, National Association of Criminal Defense Lawyers, Cincinnati, Ohio. Presentation supplied.

March 2011 (date unknown): Panelist, Wrongly Convicted: An Exoneree, His Lawyer, and Tales from the Front Lines of the Innocence Revolution, Vanderbilt

Law School, Nashville, Tennessee. I appeared with one of my exonerated clients to discuss his case and some of the legal issues it raised. I have no notes, transcript, or recording. The address for Vanderbilt Law School is 131 21st Avenue South, Nashville, Tennessee 37203.

July 2010 (date unknown): Speaker, Constitutional Right to DNA Testing, NAACP Legal Defense & Educational Fund, Inc., Warrenton, Virginia. Presentation supplied.

July 2010 (date unknown): Speaker, Litigating Challenges to Flawed Forensic Evidence, NAACP Legal Defense & Educational Fund, Inc., Warrenton, Virginia. I spoke about legal claims arising from the introduction of flawed forensic analysis in criminal trials. I have no notes, transcript, or recording. The address for the NAACP Legal Defense & Educational Fund, Inc. is 40 Rector Street, Floor Five, New York, New York 10006.

June 2010 (date unknown): Speaker, DNA Applications: Pre-and Post-Trial, American Bar Association, New York, New York. I spoke about DNA science and its application in the courtroom. I have no notes, transcript, or recording. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

April 2007 (date unknown): Speaker, The Innocence Revolution: Why is it taking so long?, Chicago-Kent College of Law Institute for Law and Humanities, Chicago, Illinois. I spoke about legal barriers to seeking relief from wrongful convictions. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Chicago-Kent College of Law Institute for Law and Humanities is 565 West Adams Street, Chicago, Illinois 60661.

July 1, 2006: Speaker, Screening of *After Innocence*, Culture Project, New York, New York. I answered audience questions after a screening of *After Innocence*, a film about challenges faced by the wrongly convicted following their release from prison. I have no notes, transcript, or recording. The address for the Culture Project is 85 Delancey Street, Suite 201, New York, New York 10002.

April 8, 2006: Panelist, Twisting the Facts: The Problem of "Junk Science" in the Courtroom, UCLA School of Law, Los Angeles, California. I spoke about the impact of flawed or false forensic testimony in criminal proceedings. I have no notes, transcript, or recording, but press coverage is supplied. The address for the UCLA School of Law is 385 Charles Young Drive East, Los Angeles, California 90095.

April 8, 2006: Panelist, Misconduct by Police and Prosecutors, UCLA School of Law, Los Angeles, California. I spoke about the role that intentional misconduct by police and prosecutors has played in wrongful convictions. I have no notes, transcript, or recording, but press coverage is supplied in connection with the

April 8, 2006 event listed immediately above. The address for the UCLA School of Law is 385 Charles Young Drive East, Los Angeles, California 90095.

- 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.

See Attachment 12e.

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

I have not held judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?
 - i. Of these cases, approximately what percent were:
 - jury trials: _____%
 - bench trials: _____%
 - ii. Of these cases, approximately what percent were:
 - civil proceedings: _____%
 - criminal proceedings: _____%
- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your

decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an “automatic” recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held judicial office.

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

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

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

I have not held public office. I have had no unsuccessful candidacies for public office or unsuccessful nominations for appointed office.

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

In 1990, I served in a volunteer capacity as the Treasurer for Michael Morand's campaign for Alderman in New Haven, Connecticut. Otherwise, I have not held any office in a political party or election committee.

In 1992, I was employed as a Field Organizer with the United Democratic Campaign of Northern California. In that role, I organized get-out-the-vote efforts in Alameda County on behalf of candidates in the November 1992 general election for President, U.S. Congress, and state offices.

I have also served in a volunteer capacity for a few other political campaigns. In 1990, I made phone calls and canvassed voters in New Haven, Connecticut for John Daniels, a New Haven mayoral candidate. In 2004, I canvassed voters in Dayton, Ohio on behalf of John Kerry's presidential campaign. In 2008, I made phone calls to voters on behalf of Barack Obama's presidential campaign. In 2018, I helped canvass voters in Brooklyn, New York for Zellnor Myrie in the Democratic primary election for the New York State Senate. Also in 2018, I helped canvass voters in Long Island, New York for Liuba Shirley, a candidate for the U.S. House of Representatives. In 2016 and 2020, I served as an attorney volunteer for a legal hotline sponsored by the Pennsylvania Democratic Party on Election Day. In 2020, I made phone calls to voters with Fair Fight Action and the Democratic Party. And in 2021, I publicly endorsed Brad Lander in his campaign to be Comptroller of New York City.

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

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From 1998 to 1999, I served as a law clerk to the Honorable Pierre N. Leval of the United States Court of Appeals for the Second Circuit.

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

I have never practiced law alone.

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

1999 – 2001

Emery, Cuti, Brinckerhoff & Abady
(currently Emery, Celli, Brinckerhoff, Abady, Ward & Maazel)
600 Fifth Avenue, Tenth Floor
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Associate

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Contract Attorney

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Innocence Project
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Executive Director (2002 – 2004)
Senior Staff Attorney (2004 – 2019)
Senior Litigation Counsel (2019 – present)

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

I have never served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

After serving as a law clerk on the United States Court of Appeals for the Second Circuit, I spent two years (1999 to 2001) as an associate at Emery, Cuti, Brinckerhoff & Abady (“ECBA”) (now known as Emery, Celli, Brinckerhoff, Abady, Ward & Maazel), a small litigation firm in New York. While at ECBA, I handled various commercial litigation matters, including debt collection actions on behalf of an international publishing house and an action by a corporate executive who claimed he had been wrongly denied the value of stock options due to him upon separation

from employment. I also handled civil rights actions brought on behalf of both private individuals and government officials, including several cases in which my clients were police officers or officials.

After leaving ECBA in 2001, I briefly served as a contract attorney at the American Civil Liberties Union. During my approximately three months there, I performed various legal tasks in support of other attorneys' work.

Since 2002, I have worked for the Innocence Project, initially as Executive Director (2002 to 2004), then as a Senior Staff Attorney (2004 to 2019), and now as a Senior Litigation Counsel (2019 to present). At the Innocence Project, I focus on representing the wrongly convicted in state and federal courts. Among other things, I litigate (i) petitions seeking access to DNA and other evidence that has the potential to prove my clients' innocence; (ii) petitions for post-conviction relief from my clients' convictions and sentences; and (iii) following vacatur of the convictions, if the government does not agree to dismiss the charges, retrial proceedings under the original indictment. I have been the attorney of record or lead counsel in dozens of state and federal cases. Approximately 30 of my clients in more than ten states have been freed from prison or death row as a result of my litigation efforts.

As one of the Innocence Project's most senior attorneys, I not only maintain my own significant caseload, but also assist with hiring, training, and mentoring more junior attorneys; serve as a consultant to litigators and other stakeholders on legal and scientific issues related to wrongful convictions and DNA evidence; and recruit and coordinate pro bono litigation teams from around the country to serve as co-counsel on the Innocence Project's most demanding cases. Additionally, I have spearheaded the Innocence Project's new program involving affirmative civil litigation to prevent and redress intentional misconduct by prosecutors and other government officials.

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

While in private practice, I represented a diverse array of clients, including business executives, corporations, police officers, and individual citizen plaintiffs. I litigated cases of various kinds, including commercial, contract, employment, and civil rights matters.

While at the Innocence Project, I have primarily represented indigent individuals who are seeking to prove their innocence of the crimes for which they were convicted. My clients are typically incarcerated in state or federal prisons and subject to significant sentences. These clients seek various forms of post-conviction relief based on violations of the United

States Constitution or other federal or state laws. I have also litigated civil matters, including on behalf of a former prosecutor who was fired for refusing a supervisor's orders to withhold exculpatory evidence.

- 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.

During my legal career, approximately 75% of my practice has been in litigation, and I have litigated cases in various federal and state courts across the country. The frequency of my court appearances has varied from year to year, depending on whether I am able to reach agreement with prosecutors regarding the relief my clients are seeking without litigation. I generally appear in court occasionally, though there are periods when certain cases require that I appear in court frequently.

- i. Indicate the percentage of your practice in:

1. federal courts:	25%
2. state courts of record:	75%
3. other courts:	0%
4. administrative agencies:	0%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	20%
2. criminal proceedings:	80%

- 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.

My litigation practice has been primarily in post-conviction litigation. In the vast majority of my cases where I secured post-conviction relief for my clients, the prosecutors immediately dismissed the underlying indictments (often on grounds of "actual innocence" in light of the new evidence I had developed), thus obviating the need for a trial. I have, however, tried one case to verdict or judgment. In that case, I successfully secured post-conviction relief for my client, and we obtained his acquittal on all counts following a complex three-week jury retrial. In addition, along with co-counsel I have prepared several other cases for trial, and they were resolved by a dismissal of charges, favorable plea bargain, or civil settlement on the eve of trial. Further, I have conducted numerous evidentiary hearings and repeatedly given fact-intensive oral arguments in trial and appellate courts.

- i. What percentage of these trials were:

- | | |
|--------------|------|
| 1. jury: | 100% |
| 2. non-jury: | 0% |

- 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.

The following list reflects my best efforts to identify all matters that I have litigated before the Supreme Court of the United States, including through searches of my files and internet databases. There may, however, be other briefs that I have been unable to recall or identify.

Stein v. United States, No. 20-326 (Oct. 13, 2020) (amicus brief of Innocence Project in support of petition for writ of certiorari). Copy supplied.

Keith v. Ohio, No. 09-1052 (Apr. 5, 2010) (amicus brief of Innocence Project in support of petition for writ of certiorari). Copy supplied.

Dist. Att’y’s Off. for Third Judicial Dist. v. Osborne, 557 U.S. 52 (2009) (brief of respondent; brief in opposition). Copies supplied.

House v. Bell, 547 U.S. 518 (2006) (amicus brief of Innocence Project in support of petitioner). Copy supplied.

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

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

1. *State v. Jones*, No. 356-745-D (Orleans Parish Crim. D. Ct.) (Winsberg, J.); *Jones v. Williams*, No. 2:18-CV-0503-JTM-JCW (D. La.) (Milazzo, J.)

In 1996, Mr. Jones was wrongly convicted of crimes he did not commit, and he served over 23 years in prison before he was exonerated in 2017. Mr. Jones’s convictions were overturned based on the discovery of exculpatory evidence

suppressed by prosecutors at the time of his 1996 trial that both supported Mr. Jones's claim of actual innocence and inculpated another man as the actual perpetrator. Following his exoneration, Mr. Jones filed a federal civil rights lawsuit under 42 U.S.C. § 1983 against the Orleans Parish District Attorney ("OPDA"), seeking to recover damages for his wrongful conviction and incarceration on the ground that the OPDA's Office had caused that conviction through its longstanding policies, practices, and customs evidencing a systemic disregard for its obligations under *Brady v. Maryland*. In August 2021, following significant discovery and motions practice, the parties agreed to settle Mr. Jones's claims. The settlement not only awarded Mr. Jones over \$2,000,000, but also included an agreement by OPDA to enact a series of reforms to prevent and remedy wrongful convictions.

From 2016 to 2017, I served as co-counsel for Mr. Jones in the final stages of his post-conviction proceedings, after his longtime lead counsel at the Innocence Project New Orleans requested my assistance with a pending motion to quash charges against Mr. Jones based on prosecutorial misconduct. I represented Mr. Jones at an evidentiary hearing on the motion to quash, where I cross-examined a key prosecution witness. The evening after my cross-examination concluded, ODPA agreed to terminate the hearing and dismiss all charges against Mr. Jones.

From 2017 to 2021, I also served as co-lead counsel in Mr. Jones's § 1983 suit, and I was directly involved in numerous key aspects of the litigation, from its inception through the eve of trial when the case settled. For example, I drafted and edited numerous pleadings; took and defended key depositions; and retained and prepared several expert witnesses to testify. I also co-supervised a team of lawyers in litigating discovery issues; conducting factual investigation and legal research; preparing witnesses for trial; and litigating over a dozen motions *in limine* and dispositive motions after the close of discovery. Finally, along with my co-lead counsel, I conducted our successful settlement negotiations with ODPA, including drafting and editing the non-monetary reforms ultimately included in the settlement agreement.

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2. *Maxton v. Hilbert*, No. 1:18-cv-372 (S.D. Ohio) (Bowman, Barrett, JJ.)

In 2015, Mr. Maxton was charged with murder, and he was imprisoned until being acquitted by a jury in 2016. At trial, it was revealed that the State had failed to disclose exculpatory DNA evidence identifying the defense's prime suspect based on key evidence from the crime scene. Following his acquittal, Mr. Maxton successfully sued for the violation of his civil rights under 42 U.S.C. § 1983. The lawsuit alleged that Mr. Maxton had been maliciously prosecuted, and that his case represented a pattern and practice of the City's failing to comply with its constitutional obligation to timely provide exculpatory DNA evidence to accused defendants awaiting trial. In July 2020, the parties agreed to settle Mr. Maxton's claims. The settlement included not only a financial award to Mr. Maxton, but also the City's agreement to allow a Special Master to conduct a first-in-the-nation independent audit of seven years' worth of homicide cases to determine whether exculpatory DNA evidence was withheld from any other convicted persons.

From 2018 to 2020, I was co-counsel for Mr. Maxton in his civil rights lawsuit. I conducted the initial investigation of and research into his potential civil rights claims. I also co-drafted the complaint and co-lead our discovery efforts. In addition, I was the principal negotiator of the settlement agreement. I am now working with the Special Master to implement the settlement agreement, including by helping review approximately three dozen cases involving potentially suppressed DNA evidence.

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3. *Hildwin v. State*, 141 So.3d 1178 (Fla. 2014) (per curiam); *Hildwin v. State*, 73 So.3d 33 (Fla. 2010); *Hildwin v. State*, 951 So.2d 784 (Fla. 2006) (per curiam)

From 2004 to 2016, I served as co-counsel for various DNA-related proceedings in the case of Mr. Hildwin, who in 1985 was wrongfully convicted and sentenced to death for a Florida murder. Ultimately, Mr. Hildwin was freed from prison after post-conviction litigation successfully challenged his conviction and death sentence.

In 2004, I filed an amicus brief on Mr. Hildwin's behalf in the Florida Supreme Court in connection with his state post-conviction proceedings, and thereafter I jointly argued the case. Although the Florida Supreme Court issued a 4-3 decision denying Mr. Hildwin relief, I continued to assist lead counsel with the post-conviction investigation and litigation.

In 2010, I drafted and filed a petition in the Florida Supreme Court on Mr. Hildwin's behalf, asking the court to use its "all writs" authority to order state officials to search an unknown DNA profile from the crime scene in the national DNA database. The court conditionally granted our petition and remanded the case for an evidentiary hearing. At that hearing, I served as lead counsel, presenting testimony from several expert and fact witnesses. We prevailed at the hearing, the profile was searched in the DNA database, and the search revealed that the DNA had come from the man identified as the defense's primary alternate suspect at Mr. Hildwin's original trial.

With Mr. Hildwin's lead counsel, I then helped prepare and file a successive petition for state post-conviction relief, which we litigated in the trial court and on appeal. In 2014, the Florida Supreme Court granted relief and vacated Mr. Hildwin's conviction and death sentence based on the new DNA evidence. Thereafter, I recruited a new team of pro bono lawyers to prepare for a possible capital retrial, and I continued to consult with them periodically during their retrial preparations. In March 2020, Mr. Hildwin was freed from prison after accepting the State's offer of a time-served plea to a lesser, non-capital charge.

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4. *Hillman v. Nueces County*, 579 S.W.3d 354 (Tex. 2019)

In 2013, Mr. Hillman was fired from his position as an Assistant District Attorney after refusing to follow a supervisor's orders to suppress favorable evidence from the defense. Mr. Hillman retained civil counsel in Nueces County to file a claim for wrongful termination, but the case was dismissed on grounds of state sovereign immunity. The Texas Supreme Court granted discretionary review of the sovereign immunity issue in 2018, and issued its decision the following year.

From 2018 to 2019, I served as lead counsel for the Innocence Project as amicus to Mr. Hillman, and closely coordinated with his primary counsel on all aspects of the Texas Supreme Court litigation strategy. This matter was the first case where the Innocence Project entered a court appearance on behalf of a current or former prosecutor.

After Mr. Hillman's lawyers sought discretionary review in the Texas Supreme Court with a truncated petition, I filed an amicus brief in further support of the petition. The brief raised an issue of first impression: whether the public policy objectives at stake (namely, Texas' robust enforcement of due process protections for the accused) warranted abrogation of the State's immunity from suit. The brief was widely credited with the court's decision to accept review of the case in 2018.

Following the Texas Supreme Court's grant of discretionary review, the Innocence Project filed supplemental briefing with the court, and we shared argument time with lead counsel. Although I could not argue the case myself due to a prior commitment, I prepared both Mr. Hillman's lead counsel and Innocence Project counsel for oral argument. I also coordinated an amici brief from a group of bipartisan advocates and criminal justice scholars.

Ultimately, the Texas Supreme Court ruled that abrogation of state immunity in such cases is within the exclusive province of the legislature and that current law barred Mr. Hillman's suit on immunity grounds. But three members of the court wrote separately to urge the legislature to amend applicable law, given the important public policy questions I had offered in our brief. And in 2021, the Texas House of Representatives passed a bipartisan bill to provide persons like Mr. Hillman with a cause of action to recover for wrongful termination, though the bill did not receive a vote in the Texas Senate before the close of its session.

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5. *People v. Denny*, Ind. No. 2953/1988 (Kings Cty. S. Ct.) (D'Emic, J.); *People v. Denny*, Ind. No. 3302-88(N) (N.Y. Cty. S. Ct.) (Biben, J.); *People v. Denny*, Ind. No. 90-229 (Chemung Cty. S. Ct.) (Rich, J.)

I represented Mr. Denny in three successful post-conviction challenges to his wrongful convictions in three different New York counties. In 1989, at the age of 17, Mr. Denny was wrongly convicted of a rape and robbery in Kings County. He maintained his actual innocence and presented a misidentification defense. Shortly thereafter, Mr. Denny pleaded guilty to one count of criminal possession of a weapon in New York County, for which he also maintained his innocence, but agreed to accept because he had already served the agreed-upon sentence (one year's imprisonment) while awaiting trial in Brooklyn. In addition, during his state incarceration, Mr. Denny was convicted of a prison contraband charge following a jury trial in Chemung County.

From 2007 to 2017, I served as Mr. Denny's counsel in all three state post-conviction proceedings. The primary proceeding concerned Mr. Denny's wrongful convictions for rape and robbery in Kings County. In that case, I worked cooperatively with the Kings County District Attorney's Office for several years to reinvestigate Mr. Denny's claims of actual innocence and potential due process violations. In December 2017, as a result of the joint reinvestigation, the District Attorney agreed to

vacate and dismiss all of Mr. Denny's Kings County convictions based on actual innocence. Along with the District Attorney's Office, I presented the new evidence on Mr. Denny's behalf at the hearing that led to the vacatur and dismissal.

I then successfully litigated the vacatur of Mr. Denny's New York County and Chemung County convictions on due process grounds. In particular, I researched and filed motions to vacate both convictions. I also appeared on Mr. Denny's behalf at two post-conviction hearings, after which his motions to vacate were granted, and the District Attorneys agreed to dismiss all charges against him.

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6. *Commonwealth v. Wright*, 14 A.3d 798 (Pa. 2011); *Commonwealth v. Wright*, 935 A.2d 542 (Pa. Super. 2007) (Panella, J.); *Commonwealth v. Wright*, No. CP 51-R-1131582-1991 (Phila. C.P.) (Keogh, Byrd, JJ.)

Mr. Wright was wrongly convicted of a rape and murder in Philadelphia in 1993. Beginning in 2005, the Innocence Project sought DNA testing to prove Mr. Wright's innocence, but prosecutors refused to grant Mr. Wright the requested DNA test on the ground that he had "confessed" to the crime (by signing a written statement that he maintained was fabricated and coerced) and thus was ineligible for testing. Mr. Wright accordingly filed suit in Pennsylvania state court, seeking an order compelling DNA testing. The lower courts denied Mr. Wright's claims, but the Pennsylvania Supreme Court reversed, ruling that even a legally "voluntary" confession properly admitted into evidence at trial was not a per se bar to DNA testing after conviction.

Thereafter, the DNA testing was conducted, its results exculpated Mr. Wright, and he filed a petition for post-conviction relief in Pennsylvania state court based on newly

discovered evidence and violations of due process. In 2014, the trial court granted Mr. Wright's petition, vacated his conviction, and remanded the case. After a three-week retrial in August 2016, the jury acquitted Mr. Wright of all charges, and he was released from jail that day.

From 2006 to 2014, I served as lead counsel for Mr. Wright in his post-conviction proceedings, handling numerous key aspects of the investigation and litigation. In particular, I briefed and argued the appeals from his denial of DNA testing in the Pennsylvania Superior Court and the Pennsylvania Supreme Court. Following the resulting DNA testing, I also prepared, filed, and litigated a new state court petition seeking to vacate his convictions based upon the exculpatory DNA evidence. During that litigation, I presented new expert and lay witness evidence and repeatedly appeared in court on Mr. Wright's behalf over the course of two years.

From 2014 to 2016, I then served as co-lead counsel as prosecutors announced their intent to retry Mr. Wright under the original indictment, culminating in Mr. Wright's three-week retrial in August 2016. During this phase of the litigation, I supervised an intensive factual reinvestigation of Mr. Wright's innocence claim; filed and litigated numerous pretrial motions; prepared various lay and expert witnesses to testify; and conducted direct and cross-examinations of witnesses at the retrial.

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7. *Buffey v. Ballard*, 782 S.E.2d 204 (W.V. 2015); *Buffey v. Ballard*, Crim. No. 02-F-10-2 & Civ. No. 12-C-183-2 (Harrison Cty. Cir. Ct.) (Bedell, Marks, JJ.); *Buffey v. Ballard*, No. 5:12-cv-00058-FPS-JSK (N.D. W.Va.) (Stamp, J.)

In 2002, based on the advice of counsel and facing a potential sentence of decades in prison if convicted at trial, Mr. Buffey pleaded guilty to rape and robbery—crimes for which he maintained his innocence from the date of his arrest. Unbeknownst to Mr. Buffey or his trial counsel, the State obtained DNA test results after the entry of Mr. Buffey’s plea but before his sentencing that exculpated Mr. Buffey. Once the suppressed DNA evidence came to light, Mr. Buffey filed a petition for post-conviction relief in state trial court. After Mr. Buffey’s initial petition was unsuccessful, he sought additional DNA testing to further develop his innocence and due process claims. Thereafter, Mr. Buffey obtained additional exculpatory evidence through DNA testing and investigation, and he filed successive state and federal post-conviction petitions, challenging the constitutional validity of his guilty plea. In 2015, the West Virginia Supreme Court unanimously overturned Mr. Buffey’s conviction, holding that the State must disclose not only impeachment but also exculpatory evidence prior to final entry of a guilty plea.

From 2009 to 2016, I served as co-lead counsel for Mr. Buffey, and I was directly involved in every key aspect of his post-conviction proceedings. I prepared and filed Mr. Buffey’s DNA testing motion and petitions for post-conviction relief in state and federal court, as well as numerous substantive motions related to those proceedings. I also served as co-counsel at a multiday evidentiary hearing on Mr. Buffey’s state habeas petition, and I drafted our post-hearing briefing and proposed findings of fact and conclusions of law. Additionally, I was the lead author of Mr. Buffey’s brief on the merits to the West Virginia Supreme Court. Following the vacatur of Mr. Buffey’s conviction, I recruited a team of lawyers to prepare for a possible retrial, and I worked with them on the associated reinvestigation and pretrial motions. Ultimately, on the eve of retrial, Mr. Buffey agreed to accept the State’s offer of a time-served *Alford* plea to burglary, which ensured his freedom and allowed him to continue to maintain his actual innocence. In October 2016, Mr. Buffey—who had been on house arrest pending a possible retrial—was then permanently released from custodial supervision.

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8. *In re Morton*, 326 S.W.3d 634 (Tex. App. 2010) (Waldrop, Jones, Henson, JJ.); *Ex Parte Morton*, No. AP-76,663, 2011 WL 4827841 (Tex. Crim. App. Oct. 12, 2011) (per curiam); *State v. Morton*, No. 86-452-K26 (Williamson Cty. Cts. Div.) (Stubblefield, Harle, JJ.); *In re Anderson*, No. 12-0420-K26 (Williamson Cty. Cts. Div.) (Sturns, J.).

Mr. Morton—a husband and father from Georgetown, Texas—was wrongly convicted of the murder of his wife in 1987, and he served nearly 25 years in prison before he was exonerated in 2011. At that point, Mr. Morton’s conviction was overturned and all charges were dismissed based on new DNA evidence that (1) excluded Mr. Morton as the source of male DNA on a bandana recovered near the crime scene that was stained with the victim’s blood; (2) identified another person in the FBI’s national DNA database as the source of the male DNA; and (3) further identified that other individual as the source of hair from the crime scene of another unsolved murder with a similar *modus operandi* to the Morton case. (The other individual was later convicted of both murders and sentenced to life imprisonment based on the evidence we uncovered.) Our investigation and litigation also revealed other evidence of Mr. Morton’s innocence that was in the prosecutor’s files, but not disclosed to the defense as required by law.

From 2004 to 2011, I served as co-lead counsel for Mr. Morton in his post-conviction proceedings. In particular, I drafted and argued numerous DNA testing motions and subsequent filings in the trial court and appellate proceedings that led to the DNA testing ultimately clearing Mr. Morton. I also spearheaded the investigation that led to the discovery of the previously suppressed exculpatory evidence, as well as the investigation that revealed the previously unknown link between Mr. Morton’s wife’s murder and the unsolved murder of another victim in an adjacent county. In addition, I drafted and argued the state post-conviction petition that led to Mr. Morton’s release and exoneration.

In 2011, following his exoneration, Mr. Morton invoked a rare Texas procedure called a “Court of Inquiry,” which allows private actors to petition a court for criminal charges against a public official. I was the lead author of Mr. Morton’s 137-page petition, which addressed numerous novel issues of substantive and procedural law. In 2012, the Texas Supreme Court agreed that a Court of Inquiry was required, and the subsequent proceedings led to the resignation, disbarment, and criminal

contempt prosecution of Mr. Morton's former prosecutor, based on his misconduct in the Morton trial. Mr. Morton's case also inspired legislation—unanimously passed by the Texas legislature and signed by then-Governor Rick Perry—enhancing procedural safeguards in the discovery process to prevent wrongful convictions like Mr. Morton's.

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9. *Dist. Att'y's Off. for Third Judicial Dist. v. Osborne*, 557 U.S. 52 (2009)

In this case, Mr. Osborne—an Alaska prisoner convicted of sexual assault and kidnapping—filed a federal civil rights lawsuit seeking DNA testing of evidence possessed by Alaska officials. The case presented the question whether Mr. Osborne's constitutional rights were violated by the State's refusal to release the DNA evidence for testing at the Innocence Project's expense. Both the federal district court and the court of appeals agreed that Mr. Osborne had a "limited, constitutional post-conviction right" to access potentially exculpatory DNA evidence. Thereafter, the U.S. Supreme Court reversed, ruling 5-4 that there is no freestanding constitutional right to such testing under either procedural or substantive due process principles. But the majority agreed with our contentions that convicted prisoners have

a constitutionally protected liberty interest in reasonable procedures to access DNA evidence where, as in Alaska, the State chooses to provide a vehicle for post-conviction relief based on actual innocence, and that convicted persons may use 42 U.S.C. § 1983 to challenge the denial of DNA testing in certain cases.

From 2008 to 2009, I served as one of three lead counsel for Mr. Osborne during the Supreme Court litigation. As co-lead counsel, I was the principal drafter of Mr. Osborne's certiorari-stage and merits briefing. I also spearheaded our amicus strategy, ultimately coordinating briefs filed by victims, prosecutors, and others in support of Mr. Osborne.

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10. *People v. Deskovic*, Ind. No. 90-00192 (Westchester Cty. S. Ct.) (Molea, J.)

Mr. Deskovic was a 16-year-old high school student in Peekskill, New York when, in 1990, he was wrongly convicted and sentenced to 25-years to life in adult prison for the rape and murder of a classmate. Mr. Deskovic was prosecuted despite DNA evidence that appeared to exclude him as the perpetrator, and he was convicted based upon a partial confession provided during an extended police interrogation which he later disavowed. In 2006, after serving 16 years in prison, Mr. Deskovic was

exonerated and freed based upon new DNA evidence identifying the actual source of the DNA from the victim's autopsy.

I was sole counsel for Mr. Deskovic in the 2006 post-conviction proceedings that led to his exoneration and release from prison. As sole counsel, I prepared a motion for DNA re-analysis under New York's DNA testing statute, which raised a legal issue of first impression regarding whether the statute permitted claims for re-testing of forensic evidence for purposes of a DNA database search. Before the motion was filed, I approached the District Attorney about the motion, and, after providing her with a draft of our motion and the relevant legal authorities, I obtained her agreement to conduct the requested DNA testing and database search without litigation. After the DNA re-analysis revealed that Mr. Deskovic was not the perpetrator of the 1990 rape and murder, the District Attorney agreed that Mr. Deskovic's conviction should be vacated. In 2006, the trial court accordingly vacated the conviction, and the District Attorney thereafter dismissed the indictment against Mr. Deskovic. I prepared the successful motions to vacate and dismiss, and I appeared at the vacatur and dismissal hearings on Mr. Deskovic's behalf.

Opposing Counsel:

Hon. Janet DiFiore (formerly with Westchester County District Attorney's Office)
Maryanne Luciano (formerly with Westchester County District Attorney's Office)
New York Court of Appeals
20 Eagle Street
Albany, NY 12207
(518) 455-7700

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.)

In addition to the extensive litigation experience described above, I have been involved in legal practice and the legal community in various other ways. For example, as the Innocence Project's Executive Director from 2002 to 2004, I performed a host of managerial and strategic responsibilities for the organization. Among other things, I led the process by which the Innocence Project became an independent 501(c)(3) non-profit organization. I also led the initial strategic planning process that helped grow the organization to a staff of over 100 people. And I spearheaded our search for a professional Executive Director to replace me so that I could refocus on litigation.

As an attorney at the Innocence Project, I have continued to engage in non-litigation work, as well. For instance, in 2016, I represented the first Innocence Project client to be freed from prison through clemency. In that case, I successfully petitioned the Governor

of New York to commute a client's 25-years-to life sentence to time served. Three years later, the client was fully exonerated following a joint reinvestigation of the case by the Queens County District Attorney's Office and my office.

Moreover, virtually all of the post-conviction litigation matters I have handled on behalf of my clients have resolved through favorable plea bargains or settlement, even after we prevailed and secured court orders vacating my clients' convictions. This is because in the overwhelming majority of cases in which I have secured post-conviction relief for my clients through the courts, my co-counsel and I thereafter convinced prosecutors to dismiss the underlying charges without retrial, and often with the prosecution conceding our clients' actual innocence. Similarly, in a substantial portion of the cases where I obtained exculpatory post-conviction DNA testing or other critical discovery on behalf of my clients, I was able to do so by successfully negotiating with prosecutors and obtaining such discovery without litigation.

Further, I have repeatedly served as an outside adviser to chief prosecutors around the nation seeking to improve their office's policies and practices to prevent wrongful convictions. And I often provide technical assistance to Innocence Project policy staff in connection with their efforts to secure passage of new federal and state legislation, including in the areas of forensic science and prosecutors' disclosure obligations. Those activities have not, however, required me to register and I have never registered as a lobbyist.

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

From 2002 to 2016, I co-taught the Innocence Project Clinic at the Yeshiva University Benjamin N. Cardozo School of Law. The course discussed various issues related to the Innocence Project's work, including DNA science, non-DNA forensics, post-conviction litigation procedure, client advocacy, ineffective assistance of counsel, and access to exculpatory information. Additionally, the course enabled students to participate directly in the Innocence Project's work on behalf of wrongly convicted clients. Available syllabi supplied.

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

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.

None.

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.

I am unaware of any individual or entity with whom I have a personal, financial, or professional relationship that is likely to present a conflict of interest when I first assume the position to which I have been nominated. If confirmed, I would recuse myself from any case with which I previously had been involved, any case involving any individual whom I had personally represented, and any other case in which I had an interest raising an appearance of bias or which presented a ground on which my impartiality might reasonably be questioned. If a potential conflict arose, I would apply the standards of 28 U.S.C. § 455, the Code of Conduct for United States Judges, and any other applicable canons or rules.

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

I would resolve any potential conflict of interest by applying the standards of 28 U.S.C. § 455, the Code of Conduct for United States Judges, and any other applicable canons and rules. I would also seek the guidance of other judges and the input of the parties as necessary and appropriate

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.

The vast majority of my legal career has been dedicated to public service and representing the disadvantaged. Since 2002, I have worked for the Innocence Project, where I represent indigent individuals convicted of state or federal crimes who are not charged for my services. Before that, I was an attorney at Emery Celli Brinckerhoff & Abady (“ECBA”), where (among other cases) I litigated a number of civil rights matters on behalf of low-income clients. And in Fall 2002—during the transition period between my employment at ECBA and the Innocence Project—I worked for approximately three months as a contract attorney with the American Civil Liberties Union, a non-profit civil rights organization.

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.

On March 7, 2021, I submitted an application to Senator Charles Schumer to be considered for positions on the United States District Courts for the Eastern and Southern Districts of New York. On March 11, 2021, I submitted an application to Senator Kirsten Gillibrand. On March 23, 2021, I interviewed with Senator Schumer’s Judicial Screening Committee. On April 7, 2021, I interviewed with Senator Gillibrand’s staff. On May 31, 2021, I interviewed with Senator Schumer and his staff. On September 2, 2021, I interviewed with attorneys from the White House Counsel’s Office. Since that date, I have been in contact with officials from the Office of Legal Policy at the United States Department of Justice. On December 15, 2021, the President announced his intent to nominate me.

- 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.