

**NOMINATIONS OF CAROL A. DALTON, ANTHONY  
C. EPSTEIN, AND HEIDI M. PASICHOW**

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**HEARING**

BEFORE THE

COMMITTEE ON  
HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

ON THE

NOMINATIONS OF CAROL A. DALTON, ANTHONY C. EPSTEIN, AND HEIDI  
M. PASICHOW TO BE ASSOCIATE JUDGES OF THE SUPERIOR COURT  
OF THE DISTRICT OF COLUMBIA

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JULY 23, 2008

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**NOMINATIONS OF CAROL A. DALTON,  
ANTHONY C. EPSTEIN, AND  
HEIDI M. PASICHOW**

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**WEDNESDAY, JULY 23, 2008**

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:37 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Daniel K. Akaka, presiding.

Present: Senators Akaka and Voinovich.

**OPENING STATEMENT OF SENATOR AKAKA**

Senator AKAKA. The Committee on Homeland Security and Governmental Affairs will come to order.

I want to say good afternoon to our witnesses as well as all of you who are present, and welcome our nominees along with their family and friends to the Committee today. We are always delighted to have the nominees' families present, and I want to add my welcome to Peter Flynn, the husband of Judge Dalton; Karen and Katherine Epstein; and to Betty and Milton Pasichow who are here. Welcome to the hearing.

Today, the Committee on Homeland Security and Governmental Affairs meets to consider the nominations of Carol Dalton, Anthony Epstein, and Heidi Pasichow to be Associate Judges on the District of Columbia Superior Court.

The nominees have an impressive range and depth of experience. Judge Dalton has been a magistrate judge on the Family Court of the D.C. Superior Court since 2002, and prior to that she had considerable experience in family law and other fields. Mr. Epstein has approximately 30 years of legal experience in a variety of areas of law, and he is a partner at the law firm Steptoe and Johnson. Ms. Pasichow has worked as a prosecutor in the Office of the U.S. Attorney for more than 20 years, currently investigating and prosecuting cold cases in the Homicide Section.

I am particularly glad to be holding this hearing today. It had been delayed due to a technical error in the District of Columbia Family Court Act. That Act increased the number of judges for the D.C. Family Court, but failed to increase the overall cap in D.C. Superior Court Judges. All of the nominations before the Committee today have been pending for quite some time because the

Senate was unable to confirm Superior Court nominees as judges retired.

This spring, Congress enacted legislation, S. 550, which I introduced with my good friends Senator Voinovich and Senator Lieberman. That Act increased the total number of D.C. Superior Court judges to correct the problem, allowing us to move forward on these nominations. The fact that each of you is sitting here today suggests that you have the patience and dedication to make a good judge.

I would like to yield for a statement from our friend and Delegate of the District of Columbia, Eleanor Holmes Norton. Delegate Norton has served in the U.S. House of Representatives with distinction, and we are happy to welcome her to the Committee. I know you have a very tight schedule, so we will let you introduce the nominees and then resume our opening statements and proceed with the hearing.

Delegate Norton.

**TESTIMONY OF HON. ELEANOR HOLMES NORTON, DELEGATE OF THE DISTRICT OF COLUMBIA, U.S. HOUSE OF REPRESENTATIVES**

Ms. NORTON. I thank you very much, Mr. Chairman, and I thank you for your graciousness in observing the House schedule as well. And I thank both of you—Senator Akaka and Senator Voinovich—for the special and sensitive attention you have paid to the District of Columbia, to observing its home rule status, and essentially helping the District in so many ways as its legislation has come before you, one of which you have just cited, Mr. Chairman. And I particularly thank you for taking time as we approach the end of the session—a very busy session at that—to confirm judges so that we are not left with a very busy court without a full complement of judges.

The bill you spoke about, Mr. Chairman, that returned the court to the authorized number was very important for the District. What it took to get it through the House meant that for some time the District could not fill vacancies as Congress always intended, and we are very grateful that these three judges are before you now precisely because of that legislation, which started here, actually, and then we were able to get it through the House.

Let me thank you as well for the very important work you did on the Family Court Division, which was a law that we got through by the temporary reduction in judges to the Superior Court, but which you have generously brought back to your original intention all along.

Mr. Chairman, you and the Ranking Member have been well briefed and have before you all of the background of these judges. I will just in very summary fashion indicate by introduction who they are.

In alphabetical order, Carol Dalton comes to you having been a magistrate judge, Mr. Chairman, through the very bill that enlarged the number of magistrates to the Family Court. She has spent her entire career litigating matters involving caretakers, children, abused children, indigent children, and neglect cases. She is, it seems to me, tailor made for the Family Court. As you know,

that court requires some time spent, some time for each of these judges to spend on Family Court matters alone. She is a graduate of the George Washington University and the New York Law School.

Anthony Epstein has strong litigation experience. He has been an attorney with the Department of Justice Antitrust Division. He has been a Special Assistant U.S. Attorney. His distinguished career well prepared him to sit on our Superior Court. He is a graduate of Yale Law School and Yale College, summa cum laude, Phi Beta Kappa.

Finally, Heidi Pasichow is at present an Assistant U.S. Attorney with the Homicide Section of that division. She knows the city well, having litigated matters of the very kind that are important before the Superior Court. She is a graduate of the American University Law School and the George Washington University with distinction, Phi Beta Kappa.

Let me thank you once again for your consideration of these three nominees who, in my judgment, are well qualified to sit on the court. And may I indicate that they were all three chosen by a home rule process, by residents of the District of Columbia. They are themselves residents of the District of Columbia. I am fully satisfied with their qualifications, and I am pleased and proud to recommend them to you for your consideration.

Thank you, Mr. Chairman.

Senator AKAKA. Thank you very much, Delegate Norton, and we much appreciate your being here and your introducing the nominees today. I understand that you have a busy schedule on the other side of the Capitol, and I really appreciate your coming all the way over here to introduce our nominees. So thank you very much again.

I would like to now ask Senator Voinovich for his opening statement.

#### **OPENING STATEMENT OF SENATOR VOINOVICH**

Senator VOINOVICH. Thank you, Senator Akaka. I want to extend a welcome to the nominees appearing before us today. We appreciate your time and your willingness to serve on the District of Columbia Superior Court.

Judges have the significant responsibilities of protecting citizens' rights and liberties, upholding and interpreting the law, and equitably resolving disputes. I trust that, if confirmed, each of you will fulfill these responsibilities with honor, courage, and character befitting the court.

We have reviewed each of your background questionnaires, and I believe all of you are well qualified to serve as an Associate Judge for the Superior Court. I just wish that my own Court of Common Pleas in Cuyahoga County, Ohio, had the qualifications as you have here today. It is just amazing how qualified the people are that are being asked to serve here. The people of the District are very fortunate to have such high-quality nominees for the bench.

I am not going to go over your resumes. We have already done that. I look forward to hearing more about your experience and your interest in pursuing public service. And, again, I thank each of you for your willingness to serve. I would also like to express my

appreciation to your families. I know the folks that are related to you are very proud that you are being nominated for this court, and many of them have made great sacrifices over the years so you could be where you are today. And many of them will continue to make sacrifices as you carry out your responsibilities on the court. And to them, to all of you, welcome.

Senator AKAKA. Thank you very much, Senator Voinovich.

All three nominees have filed responses to a biographical and financial questionnaire, answered pre-hearing questions submitted by the Committee, and had their financial statements reviewed by the Office of Government Ethics. Without objection, this information will be made part of the hearing record, with the exception of the financial data, which are on file and available for public inspection in the Committee office.

Our Committee rules require that all witnesses at nomination hearings give their testimony under oath. Therefore, I ask each of you to please stand and raise your right hand. Do you swear that the testimony you are about to give the Committee is the truth, the whole truth, and nothing but the truth, so help you, God?

Judge DALTON. I do.

Mr. EPSTEIN. I do.

Ms. PASICHOW. I do.

Senator AKAKA. Thank you. Let the record note that the witnesses answered in the affirmative.

As I mentioned earlier, each of you have family members here with you today. I would like to give each of you the opportunity to introduce them or any friends who are here today to the Committee before we proceed with your statements. Judge Dalton.

Judge DALTON. Thank you, Mr. Chairman, and I am thrilled that my wonderful husband, as you mentioned is here, who has been so supportive of me.

I am also honored that Judge Emmett Sullivan of the U.S. District Court and the Chair of the Nominating Commission is here.

I am joined by some of my colleagues who have inspired me and supported me through this process. Judge Kramer is here, whose spot I applied for. Judge Howze, Judge Irving, and Judge McKenna are here, who have been so supportive to me.

I would also like to recognize my wonderful judicial assistant Kelly Benson who, if I am confirmed, will be coming with me as my assistant.

I also have some attorneys who have actually come before me and have been my colleagues, so I guess I am doing OK. I have Ms. Sharon Singh and Lawrence Spillan.

I would like to say that my mother, Ann Stephenson, and my aunt Marge Kalita could not make it because of health reasons due to age, nor could my brother, John Dalton, who is taking care of them. But they are here with me in spirit and have been very supportive. So thank you.

Senator AKAKA. Thank you for that.

Mr. EPSTEIN. I am here with my wife, Karen, who has been also incredibly supportive to me, and my older daughter Kate, who happens to be a graduate student at the Ohio State University.

Senator AKAKA. Welcome. Ms. Pasichow.



Ms. PASICHOW. Thank you, Mr. Chairman and Senator Voinovich. I am honored to appear here today. I would like to acknowledge and thank your staff members for their diligence and for their confidence in me during the process. I wish to acknowledge and thank Congresswoman Eleanor Holmes Norton for her introduction and support of my nomination to the Superior Court for the District of Columbia.

Mr. Chairman, I would like to recognize my parents, Betty and Milton Pasichow, whom you mentioned earlier and whom I am so proud to have with me here today. I want to thank my older brother Bill, who is not able to attend, but who, with my parents, gave me confidence and compassion, qualities that have come with encouragement and love. My parents guided me in the tradition of their parents, my grandparents, who immigrated to the United States, whom I was fortunate to know and who were hard-working, generous, and respectful. They taught me by example, and they are with me every day.

I want to say with gratitude and humility that I thank the Chairman of the District of Columbia Judicial Nomination Commission, Judge Emmett Sullivan, who is here today, and members of his staff, members of the Nomination Commission who supported my professional aspiration to become an associate judge on the Superior Court, for the confidence they placed in me by sending my name to the White House for consideration.

I want to thank the President of the United States for nominating me for the position and acknowledge with gratitude John Smith and Scott Coffina in the White House Counsel's Office for their support.

I am honored by the presence and continuing guidance that I receive from the staff of Chief Judge King's chambers. And I am moved and gratefully acknowledge the presence of Judge Sylvia Bacon, currently a law professor, who is here today, who was a distinguished judge on the D.C. Superior Court and who took me under her skilled and dedicated wing as her judicial law clerk from 1983 to 1985.

The U.S. Attorney Jeffrey Taylor is here with us, who supported my efforts to seek a judgeship and with whom I have had the privilege of working; Glenn Kirschner, chief of the Homicide Section, who gave me the opportunity to return to Superior Court from the Criminal Division; and First Principal U.S. Attorney Channing Phillips, whose counsel is unsurpassed and whose tenure spanned generations of prosecutors and numerous Presidential administrations. I would also like to thank the judges who are here and before whom I appeared, who have set the highest standards for civility and professionalism.

I am trying to make this brief. I have one more little section, and I apologize, but this day is so important to me, and I want to make sure that the people who are here understand how much I appreciate their support.

I also acknowledge with affection my dear colleagues from the U.S. Attorney's Office, attorneys' support staff and victim witness advocates who have supported efforts and who have worked tirelessly with victims and witnesses to crimes, to my colleagues on the defense bar, to my fellow faculty members at the National Institute

for Trial Advocacy. I am honored by the presence of members of the Metropolitan Police Department, including those detectives whose dedication to public service, competence, and bravery provide a trusting hand to the witnesses and victims of crime in our community. And I would especially like to recognize Karen Evon, who is here today. Her son was the victim of a violent shooting in a public market over 15 years ago. She relied on the system to seek justice and closure. Ms. Evon, like so many survivors of crime, has inspired me by her courage and faith in the process.

In large measure due to the support and encouragement of all the people I have mentioned, including my dear friends and others who have joined me here today, I am humbled to be before this Committee for its consideration of my nomination to the D.C. Superior Court.

Thank you, Mr. Chairman.

Senator AKAKA. I can see now the strong support each of you have by your introductions of those who are here to witness this hearing. And I want to thank you for having them here today.

I look forward to hearing your testimony. Judge Dalton, please proceed with your statement.

**TESTIMONY OF CAROL A. DALTON TO BE ASSOCIATE JUDGE,  
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Judge DALTON. Yes, thank you, Mr. Chairman. I am honored to testify before this Committee today. I would also like to thank Congresswoman Eleanor Holmes Norton for coming and speaking on our behalf.

I would also like to thank Judge Sullivan and his committee for recommending me, and the President for nominating me.

I would also like to thank the White House staff, including Scott Coffina, who has been wonderful through this process. It has been 2½ years, so he has received a number of calls from me. [Laughter.]

And he has been very kind, and the Committee staff members as well have been absolutely wonderful and worked very diligently. I was shocked during my meeting to see that they read many of my orders, but they have been wonderful. And I want to thank you for convening this at this very late time. It has been my privilege to serve as a magistrate judge for 6 years, and I can honestly say that it has been the best position that I have ever had. And I am still humbled by it.

So thank you for letting me be here, and one last thing. If I forgot to thank Judge Irving for being here—I am not sure I did, but he has been a very good friend as well.

Thank you.

Senator AKAKA. Thank you very much. Mr. Epstein.

**TESTIMONY OF ANTHONY C. EPSTEIN TO BE ASSOCIATE  
JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Mr. EPSTEIN. Thank you, Mr. Chairman. I join my fellow witnesses in thanking you for giving us this hearing today. I agree that the District is fortunate in having its judges chosen through the nonpartisan process. I am grateful to Judge Sullivan and the Judicial Nomination Commission for recommending me to the

White House and to the President for nominating me. I appreciate the exemplary professionalism of your staff throughout this phase of the process. And I want to thank Delegate Norton for her kind and generous introduction.

I also would be remiss if I did not thank you two, Senator Akaka and Senator Voinovich, along with Chairman Lieberman, for your leadership in increasing the number of judges on the Superior Court. As you said, we would not be here today if it weren't for that. As the Committee noted in its report, it is a hardship to be in limbo for as long as we were, and I am grateful the process is coming to an end.

It would be an honor and a privilege and a dream come true for me to serve as an associate judge on the Superior Court. The court deals on a daily basis with some of the most serious and difficult problems that the District of Columbia faces, and it would be an honor to serve with some of the judges who are here today on that court and try to resolve those cases on a just and equitable basis.

Thank you.

Senator AKAKA. Thank you very much.

And now I would like to call on Ms. Pasichow. If you have given your statement, fine. Otherwise, you may proceed. [Laughter.]

**TESTIMONY OF HEIDI M. PASICHOW<sup>1</sup> TO BE ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Ms. PASICHOW. I joined the U.S. Attorney's Office and experience firsthand each and every day how the judges strive to provide access to the justice system to all litigants. Outside of the courtroom, I participated in the Office's citywide community prosecution effort and its unprecedented outreach programs. What I knew before was greatly reinforced; that is, if given the opportunity, I would make my life's work the challenges and rewards of serving the District of Columbia community. It is with profound respect for those on the bench where I seek a position, that I would be honored and would welcome the opportunity to continue my public service as an associate judge on the Superior Court of the District of Columbia.

Thank you very much.

Senator AKAKA. Well, thank you.

I will begin with the standard questions this Committee asks of all nominees, and I would like each of you to answer each question.

Is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Judge DALTON. No, Mr. Chairman.

Mr. EPSTEIN. No, Mr. Chairman.

Ms. PASICHOW. No, Mr. Chairman.

Senator AKAKA. Do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Judge DALTON. No, Mr. Chairman.

Mr. EPSTEIN. No, Mr. Chairman.

Ms. PASICHOW. No, sir.

<sup>1</sup>The prepared statement of Mr. Pasichow appears in the Appendix on page 60.

Senator AKAKA. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted Committee of Congress if you are confirmed?

Judge DALTON. Yes, Mr. Chairman.

Mr. EPSTEIN. Yes, Mr. Chairman.

Ms. PASICHOW. Yes, Mr. Chairman.

Senator AKAKA. Well, thank you very much for your answers to that.

My first question is to Judge Dalton. You have practiced family law for quite some time. If you are called upon to hear cases outside the Family Court, how do you plan to overcome the challenge of rapidly developing expertise in other areas of law?

Judge DALTON. I think, Mr. Chairman, that there probably is an opening in Family Court, but obviously, I serve at the will of the chief judge, and if there weren't, I have a LL.M. in tax. I have practiced some civil cases and some criminal cases.

I am an extremely diligent person, so I can promise you that I would never take the bench without having read the rules, the statute, and the case law.

I also am somewhat famous, as my judicial assistant could tell you, for hiring what she calls "The Firm." I have many interns that work for me and I am constantly giving them research assignments to keep me up to date.

The court also provides two mentors under a new program, and so I would work with my mentors. And, also, I think my litigation experience—and I have probably done 80 to 100 trials now and before I came to the bench, and so I think all of that put together, I will welcome any challenges, and I can assure you that I will serve with the knowledge that I need.

Senator AKAKA. Thank you.

Mr. Epstein, you have an impressive background and a great deal of legal experience but little recent trial experience and experience in D.C. courts. Why did you decide to seek this position? And why do you believe you will be good at it?

Mr. EPSTEIN. I sought the position because this is my community. This is the city where I live. I have a commitment to it. You are correct that I haven't tried a lot of cases recently here in Washington, although I should put in a good word for the Court of Common Pleas in Canton, Ohio, where I had a case that went on for some years, and the judge there was absolutely terrific.

I think it would a wonderful challenge to help the court deal with a very long and difficult docket. I have had a varied experience on the criminal side, both as a prosecutor and as a defense lawyer. And I have represented both plaintiffs and defendants in civil cases and in courts that have basically the same rules of procedure that the Superior Court does. I have tried to use the waiting time I have had productively. When I have had the chance, I have stopped by various courtrooms around the courthouse here in the District, and I am happy to say that what the lawyers and judges were doing all looked familiar to me. And I feel confident that I could make an effective contribution to the court if I were confirmed.

Senator AKAKA. Well, thank you very much.

Ms. Pasichow, you have been a prosecutor for nearly—well, I guess your entire career. As a judge hearing criminal cases, you

will have to maintain neutrality and adopt a presumption of innocence. Do you feel confident that you will be able to fulfill the judge's neutral role?

Ms. PASICHOW. Yes, I do. And I will say that in that 22-plus-year-period, because I actually first stepped into D.C. Superior Court as a law student with the D.C. Law Students in Court Program, I did have an opportunity to see throughout my career at the U.S. Attorney's Office, each and every day in each and every courtroom that I went into, how the judges strive to provide justice—whether it is in the criminal context, the civil context, landlord-tenant, the whole volume of cases—in a full and fair manner. I believe that those experiences in that courthouse have guided me. I am committed to the characteristics that I have seen; that the courtrooms are places that provide a safe and fair forum, and through the mentorship that I have received through the judges, qualities such as fairness, unbiased presiding over cases, and respect for all litigants are really the qualities that I am committed to bring to the court if confirmed. Fairness, particularly in the criminal justice system, is a characteristic that I have learned as an Assistant U.S. Attorney, both on the line and also as a supervisor where I have had to balance many competing interests and always ensure that the law is upheld.

Senator AKAKA. Thank you. I have further questions that I will ask in the second round.

I will call on Senator Voinovich for his questions.

Senator VOINOVICH. Thank you, Mr. Chairman.

Judge Dalton, you had a legal career in trust and estate matters, and then you went over to Family Court. You have been nominated for the Superior Court. How are the experiences that you have had as a magistrate, do you think, relevant to the job you are now seeking and have been nominated to?

Judge DALTON. Having served on the bench for 6 years, I think I have grown as a judge. Obviously, with hindsight after the first year when I looked back, I thought about how I had changed. It was an awesome responsibility to make decisions about families' lives, and I hope I have followed the code. I have been independent. I have been unbiased. I have always tried to keep my temperament at the appropriate level, and I think most importantly also, pretty much everyone knows, and the attorneys here could tell you, that I am very conscious, as the code notes, of time, starting on time and ending on time, so people, including the people that come into the court, can get to their jobs or where they need to be.

I think the 6 years of hearing cases, the litigation experience has prepared me for any further challenges.

Senator VOINOVICH. Mr. Epstein, following up on Senator Akaka's question, from what I understand none of your cases have gone to trial in the past 10 years. Of course, that is an accomplishment. [Laughter.]

Given that fact, describe your knowledge of evidentiary rules and trial and post-trial procedures. Will go through an orientation period.

Mr. EPSTEIN. Yes, the Court has a training program, a training committee, which is—

Senator VOINOVICH. You have your old book on evidence, have you?

Mr. EPSTEIN. I got the standard handbook on the D.C. law of evidence, Judge Graae's book on evidence. I have had the interesting experience of serving for the last 3½ weeks on a grand jury in the District of Columbia in the Superior Court, and I have used our lunch breaks and morning and afternoon breaks to review that. I don't want to say it is like riding a bicycle. I need to refresh my recollection on some of the rules, and there are some idiosyncracies of D.C. evidence law and D.C. procedure that I need to become familiar with. And I will do what I need to do to get up to speed.

Senator VOINOVICH. This may be a tough question. How would you deal with an attorney that you do not think is doing the job that he should be doing for the client?

Mr. EPSTEIN. That is a hard question. I do not think there is any single or simple answer to that question. Sometimes I think some lawyers are just hopeless, not to put too fine a point on it, and then sometimes the judge, to ensure that justice is done, has to roll up his or her sleeves and do the research that the lawyer should have done. I do not think the sins of the lawyer should necessarily be visited on the client.

Sometimes I think a quiet word, perhaps off the record, to a lawyer can be useful. Obviously, in extreme cases, if the lawyer has really fallen down on the job and prejudiced his or her client, then judges need to refer lawyers to the D.C. bar counsel. There is also a procedure in place in criminal cases for appointed lawyers that their performance is reviewed, and obviously if I had a concern about a lawyer's performance, I would want to call that to the attention of the judges who oversee the Criminal Justice Act Panel.

Senator VOINOVICH. Good answer.

Ms. PASICHOW, you have been a prosecutor, and one of the things that bothered me when I practiced is that so often people get on the bench and they lose their humility and, sometimes, common sense. I am sure that you have had the opportunity over the years to observe many judges. Could you tell me the three characteristics that you think reflect the best judges that you have had the privilege of dealing with?

Ms. PASICHOW. Thank you for that question, Senator. Respect, fairness, and an ability to make a decision: I think those three characteristics trump many of the other ones that are needed to be an effective and compassionate judge. But those would be the three that I would put at the top of my list.

Senator VOINOVICH. And I am sure you remember how some of them treated you— [Laughter.]

And the ones you liked better than others.

Ms. PASICHOW. I must say, Senator, that, I was so inspired by so many of the judges before whom I appeared throughout my entire career. I would like to think that is one of the reasons that I was so highly motivated to become a judge in that courthouse.

Senator VOINOVICH. Well, again, the District is lucky to have you. I have been on this Committee now for 10 years. The quality of our Judicial nominees I have seen is just outstanding, so you must have come in contact with some very good people.

Ms. PASICHOW. Yes, I did. Thank you.

Senator VOINOVICH. Thank you.

Senator AKAKA. This question is to Judge Dalton and Ms. Pasichow. I would like to hear from both of you on the issue that I asked Mr. Epstein about why do you want to serve as a Superior Court judge? And what particular strengths do you believe you will bring to the bench? Judge Dalton.

Judge DALTON. Mr. Chairman, having served for 6 years as a magistrate judge, as I said, I think it has been the best position of my career. I have had the ability to make decisions, hopefully helping families. I am constantly humbled by that opportunity.

If I am confirmed, I think that serving as an associate judge would help me to grow as a judge, help me to meet new challenges and serve in different areas of the court that I could not serve on now. For instance, even if I stayed in Family Court, I cannot do juvenile trials now, or I cannot do mental health cases. So I believe that to grow as a judge, if I am confirmed, that would be very helpful to me.

I think for the past 6 years what I have learned as a judge that is important is to treat everyone that comes before me with respect. Even having seen some of the most heinous abuse of children, having sat on the bench, I have seen the abusers and realized that they are human beings, albeit fragmented and fragile human beings. And so I have learned to treat everyone with respect. I am still humble about the job that I have, and so I think there is no fear that I will ever not take it seriously or be honored by it.

Senator AKAKA. Ms. Pasichow.

Ms. PASICHOW. Chairman thank you for the question. I would like to, if confirmed, further my public service beyond the criminal justice system to all litigants who would be before a court for which I have, as I indicated, so much respect. I actually feel like I grew up there in the courthouse and have been in and out of that courthouse over the past 24-plus years, and have been able to not just be a passive observer, but a real participant in a process that I truly believe in, whether it is the criminal justice system or the civil process. But I have seen the court at work, and throughout that time I have also seen the court's progress in providing access to the court system, education to the community, programs such as the community courts. I think Judge Kramer is here—she was earlier—who went out into the community—I am very committed to the community, and I think those types of programs are programs that I would like to participate in so that the community understands that there is actual access to justice. And then once inside the courtroom, I agree with Judge Dalton that an environment of respect and balanced judgment would weigh in favor of people leaving the courthouse feeling like they have been able to express their views and feel a sense of closure.

I hope that I would be informed by all of the experience I have had in that courthouse and bring that experience to the court.

Senator AKAKA. Thank you.

I would like to ask this question to all three of you, and I would like to hear what you see as the biggest challenge that you will face as a Superior Court judge. And how do you plan to address that challenge? Judge Dalton.

Judge DALTON. Mr. Chairman, thank you for the question. I think there are many challenges that I will face as a judge. One of the biggest challenges is something that I think Chief Judge Rufus King keeps reminding us of: Justice delayed is justice denied. And so with a heavy volume of cases, the pressure is now on the court for us to issue our findings within a day, if we can, of trial. So that would be one of the challenges that I face, is to timely issue my findings.

I think that there are a number of changes that the court has made over the years with our Family Court Act, and we are in the second phase of our strategic plan. And under the aegis of Chief Judge King, we have accomplished a lot. But one of the most important things that he is looking at is moving our cases, also balancing the type of personalities that the court is now experiencing. We have a change in the community. We have a lot of wealthy, technologically proficient people moving into D.C. that are coming to the court. But at the same time, I think we have a diverse community of people that speak different languages. And so I think as a judge, we have to be culturally competent. We have to learn how to keep up with the technology, but also how to speak to people who are not familiar with the technology and to make them understand the orders that we are issuing.

So I think those are the biggest challenges I will face.

Senator AKAKA. Mr. Epstein.

Mr. EPSTEIN. I agree with Judge Dalton. I think the hardest part of the job is that there are tough cases and so many of them. This is a busy trial court in a major metropolitan area, and I think the challenge is how do you give each case the individual attention that it deserves, and at the same time keep up with your docket. I do not think there is any simple answer to that. Hard work is clearly one of them. I think you have to have some judgment about what is important in each case reasonably quickly and try to focus on the key issues as best you can.

Senator AKAKA. Thank you. Ms. Pasichow.

Ms. PASICHOW. Chairman, I would take my cues from Judge Dalton, who has the experience here, and I certainly concur with what Mr. Epstein has said. My experience in the courthouse has indicated that one of the most difficult things that I have observed is how to manage expectations; that is, that the party comes into the courtroom and has the trial date set, and then is discouraged when that trial date is not really a firm trial date, when because of the volume of cases and because of other issues that come up that sometimes they become disappointed. And I think it would be a great challenge to attempt in the best way possible to adjust expectations and ensure that there is some reliance on a calendar in a system that works so that lawyers and parties can come into the courtroom and know what to expect at that particular time.

Senator AKAKA. Thank you.

My next question is to Judge Dalton. From your experience practicing family law and working with the Family Court, what do you view as the greatest difficulties facing the Family Court and the D.C. Trial and Family Services Agency?

Judge DALTON. That is a very good question. I would be remiss if I didn't say that thanks to Congress for the Family Court Act



and under the leadership of Judge Satterfield, Judge Josey-Herring and Chief Judge Rufus King, we have made remarkable strides in Family Court from its appearance, making families more comfortable, to our timeliness, to our giving closure to families either through reunification or adoption.

I think the challenges that we face—throughout the entire court there are challenges in the sense that we need mental health services and substance abuse services. I know the court is constantly looking for grants to have programs like our Family Treatment Court. And it will be a challenge to continue to expand them.

I know in Criminal Court, we have just started a Mental Health Court, and it would be my privilege to serve on a committee to start a Juvenile Mental Health Court. But I think the biggest challenge is to help the community deal with substance abuse and mental health issues in order to make the families whole.

But we have done such a large amount of work after the Family Court Act, from going out into the community, to going to the schools, to help solve truancy problems by working with children and parents, to hearing cases, sometimes every week until we get it right, until we help the families. We have challenges, but we certainly are moving forward very rapidly.

Senator AKAKA. Mr. Epstein, you have represented corporations primarily while practicing at law firms for more than 25 years. Many of the people who will come before you in Superior Court face economic disadvantage and have limited access to information about the legal system.

Do you feel you will be able to relate well to the diverse backgrounds of those who will come before you as a judge?

Mr. EPSTEIN. I certainly hope to. I should add, you are right, I have represented mostly companies, but I have represented a number of individuals over the years.

Maybe the best way to answer your question is this: For the past 6 months, I have served as a volunteer in the Self-Help Center of the Family Court. As Judge Dalton said, the Family Court recognizes that a substantial majority of the people who appear before it do not have lawyers. They do not know their way around the courthouse. They do not know where to begin. And the court created this Self-Help Center where they can come in and get practical advice. And I have tried to volunteer there at least once a week for a 3-hour stint each week. And I think I have been able to connect with at least some of the people there. I am happy to keep agreeing with Judge Dalton. You know, there is a real mix of people who come before the Superior Court. Some of them are hard to relate to, in part because the whole process is just so intimidating and frightening to them. Particularly in the Family Court, I think one of the obligations of the judge, to the extent that he or she can, is to put them at their ease so that they feel that their problem is being understood and addressed.

Senator AKAKA. Ms. Pasichow, similarly, I would like to hear your views on the greatest criminal justice challenges facing the District of Columbia today.

Ms. PASICHOW. Well, Chairman Akaka, I can speak from my experience. I think that some of the greatest challenges that we have had, particularly in the U.S. Attorney's Office, are issues that in-

volve fear, fear of retaliation, fear of being involved in the system, fear of cooperating with law enforcement, fear of overzealous prosecution, and the fear of heavy-handed judges. I have had a first-hand view working with the community, with witnesses and victims of crime, and advocates in our office to attempt to get into the community and bring the community into the system. I think the most rewarding experience that I have had was when individuals who get involved in the process, and there is a detective here who has worked tirelessly with me to attempt to do this, that when one individual says that he or she have a more positive perception of the criminal justice system, I feel like that is one step closer to where we need to go and where we need to be.

The reality of intimidation in this community is striking, the reality of it, not just the perception that people do not feel safe when they come forward to work within the system, at least the criminal justice system. I am hoping that with each step forward we move people into the process so that there is more confidence in the system.

Senator AKAKA. Well, thank you. I want to thank you all. There are no further questions at this time. There may be additional questions for the record which we will submit to you in writing.

The hearing record will remain open until the close of business tomorrow for Members of this Committee to submit additional statements or questions that they may have. It is my hope that the Committee will vote in the near future and that your nominations will be considered soon by the full Senate. And I just want you to know that I will make every effort to expedite that.

I want to thank you again for your statements, your sincerity, your humility, and your respect. I just have a feeling that you will make great judges. But we will do our part here and try to get this through and to have it confirmed as soon as we can.

So, with that, this hearing is adjourned.

Ms. PASICHOW. Thank you, Mr. Chairman.

Judge DALTON. Thank you, Mr. Chairman.

Mr. EPSTEIN. Thank you.

[Whereupon, at 3:30 p.m., the Committee was adjourned.]

## A P P E N D I X

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### QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS COMMITTEE ON GOVERNMENTAL AFFAIRS, UNITED STATES SENATE I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

1. Full name (include any former names used).  
  
Carol Ann Dalton (Prior Names: Carol A. Silver, Carol Irwin) Divorce Decrees –  
Attachment A\*
2. Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).  
  
United States Citizen
3. Current office address and telephone number.  
  
Superior Court of the District of Columbia  
500 Indiana Ave. NW  
Chambers 4450  
Washington, D.C. 20001  
(202) 879-0427
4. Date and place of birth.  
  
September 2, 1950  
Staten Island Hospital  
New York, New York
5. Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business addresses.  
  
Peter M. Flynn, Senior Attorney  
United States Department of Justice  
Environment and Natural Resources Division  
Environment Enforcement Section  
601 D St. NW  
Washington, D.C. 20004
6. Names and ages of children. List occupation and employer's name if appropriate.  
  
No Children
7. Education. List secondary school(s), college(s), law school(s), and any other institutions

\*Attachments A through I are retained in the files of the Committee.

**REDACTED**

of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.

George Washington University National Law Center  
Washington, D. C.  
1988-1990  
LL.M., Tax  
June 1990

New York Law School  
New York, New York  
1982-1986  
J. D.  
June 1986

College of Insurance,  
Masters of Business- Insurance Program  
1979-1981  
Left to attend Law School  
Did not receive masters

City College of New York  
New York, New York  
1968-1972  
BA- Psychology  
June 1972

Cardinal Spellman High School  
Bronx, New York  
1964-1968  
High School Diploma  
June 1968

8. Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.

Leron Inc.  
Vice President and Office Manager  
Fifth Ave  
New York New York  
1975-1984

Corporate officer and manager responsible for personnel, payroll, taxes risk management, marketing, inventory control and general accounting procedures of business and supervision of office staff.

Master Plan Co.<sup>1</sup>  
Park Avenue South  
New York, New York  
1974-1975  
Retail sales of hearing aids  
Office Manager  
Fitted Hearing Aids

Sonny's Bar & Grill  
38<sup>th</sup> & Third Ave  
1973-1974  
Bartender

Café Yaffo  
42<sup>nd</sup> Street Between 9<sup>th</sup> and 10<sup>th</sup> Ave  
New York, New York  
1972-1973  
Second Job  
Bartender at a Nightclub

Johnson & Higgins  
Insurance Brokerage  
55 Wall Street  
New York, New York  
Secretary to a Vice President  
1972-1973

9. 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.

Honorary Resolution passed by D. C. Council for outstanding service as an Advisory Neighborhood Council Commissioner.

Honorary Certificate from Whitman-Walker for five years of service as a Volunteer with the Public Benefits Clinic.

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<sup>1</sup> Prior to 1975, I have no records that accurately document the dates, addresses or other pertinent information requested. Nor could I obtain this information by accessing the internet and other sources as a number of the businesses no longer exist. This information provided on employment prior to 1975 is based on my recollection of the dates which may not be exact but I believe fairly accurate.

10. Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.

Vice President of Leron Inc-retail linen business listed above in prior employment.

11. Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.

1. Bar Association Memberships

Member, District of Columbia Bar Association, 1987-Present  
 Member, Virginia Bar Association, 1995-Present  
 Member, New York Bar Association, 1987-Present  
 Member, New Jersey Bar Association, 1987-2001—decided to suspend membership as I never intended to practice in New Jersey.

2. D. C. Superior Court Committees:

Chair of Dual Jackets Committee-2005-Present  
 Chair and Co-Chair, DC Family Court Interdisciplinary Training Committee 2002-Present  
 Member, DC Superior Court Judicial Training Committee, 2004-Present  
 Member, DC Family Court Implementation Committee, 2002-Present  
 Member, DC Superior Court Juvenile Justice Committee, 2002-3, 2005-Present  
 Member, DC Superior Court “Hooked on Books” Committee 2004-Present  
 Member, DC Superior Court Benchmark Permanency Hearing Committee, 2002-2003  
 Member, DC Superior Court Advisory Rules and Practice Standards Committee, 2000-2002  
 Member, DC Superior Court Mediation Committee, 2000-2002

Other Memberships

Member, DC Consortium of Legal Service Providers, 2000-2002  
 Member, Charles Fahey Inn of Court, 2003-2004  
 Voting Member of National Assn. of Women Judges, 2002-2004  
 Member, For Love of Children (FLOC) Advisory Board, 2001-2002  
 Member, Women’s Bar Association 1988-Present  
 Member, Crescent Place Cooperative Board, 1999-2002  
 Co-Chair, DC Chapter of New York Law School Alumni Association, 1992-2001

Member, D.C Cares Volunteer Organization, 2004-Present

12. Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.

None

13. Court admissions. List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies which require special admission to practice.

U.S. District Courts

D. N. J., Dec. 22, 1986  
S.D.N.Y., April 28, 1997  
E.D. N. Y., April 28, 1997  
D.D.C., July 6, 1992

U.S. Court of Appeals

D. C. Cir. July 21, 1992

14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.

Actually, the below articles were not formally published:

Co-Authoring an Estate Planning Brochure for the American Nurserymen's Association --  
Published a monthly Court Newsletter on Family Court Issues  
Training Manuals for D.C. Superior Court on Family Law Issues

15. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.

Speaker at Ceremony for Juliet McKenna, for her elevation to associate judge position—  
December 16, 2005—D. C. Superior Court  
Speaker for DC Bar on Guardian Ad Litem in Custody Cases—Spring 1993—D. C. Bar

Speaker, Neglect and Delinquency Practice Institute on evidentiary issues - December 2000, Thurgood Marshall.  
 Speaker, Lawyers for Children Training Seminars for Pro Bono attorneys—1996, 1997, 1998, 2000, 2002, 2004, 2005- Lawyers for Children America  
 Speaker, Foster Parents Association on Court appearances and existing law—2004, 2005- FASA—Rhode Island Ave, NE  
 Speaker, Estate Planning Seminars for Washington Gas and Bechtel Inc.—Washington, Gas and Bechtel Offices—1995, 1996, 1997, 1998.  
 Guest Commentator, “Sound Advice” UDC Cablevision on changes in Family Court University of the District of Columbia, 20002  
 Numerous Presentations to the Court employees and judges and attorneys on topics related to Family Law-most recent at Judicial Training on Recent appellate decisions for Family Cases-from 2003-2005.

None of these presentations has been reduced to writing other than notes for Judge McKenna’s ceremony. **Attachment B**

16. Legal career.
- A. Describe chronologically your law practice and experience after graduation from law school, including:
- (1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;
 

I have never served as a law clerk to a judge.
  - (2) Whether you practiced alone, and if so, the addresses and dates;
 

Carol Ann Dalton, Law Offices  
 December 1992-2000  
 1150 Connecticut Ave N.W. (closed office)  
 Washington, D.C. 20036  
 2122 California St. NW (residence)  
 Washington, D.C. 20008
  - (3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.
 

Superior Court of the District of Columbia April 2002-Present  
 Magistrate Judge of the Family Court in Superior Court of the District of Columbia.  
 500 Indiana Ave. NW  
 Chambers 4450  
 Washington, D.C. 20001



Counsel for Child Abuse and Neglect (CCAN) Superior Court of the  
District of Columbia, Branch Chief, May 2000-April 2002.  
500 Indiana Ave. NW  
Chambers 4450  
Washington, D.C. 20001

Carol A. Dalton Law Offices, D. C. 1992-May 2000<sup>2</sup>  
1150 Connecticut Ave N.W.  
Washington, D.C. 20036

Winkelman & Mann, 1987-1992  
1750 Connecticut Ave. NW  
Washington, DC 20036  
Supervisor, Stephen Winkelman  
(301) 545-0085

English & Rountree, 1986-1987  
7219 Third Avenue  
Brooklyn, New York 11209-2198  
Partner, Harry English (deceased)  
(718) 238-3360

Manhattan District Attorney's Office, 1984-1985  
80 Centre Street  
New York, New York 10013  
6<sup>th</sup> Floor  
Robert Krakow  
(212) 815-0426  
para-legal during law school

Human Resources Administration: 6 months in 1986  
220 Church Street  
New York, New York 10013  
(202) 334-7676  
Gene Skarin  
Law student intern—

**Attachment C**—affidavit of Mr. Skarin for Bar application attached.

- B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

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<sup>2</sup> During a short period of time in or around 1993-1994 I shared cases with A. Reyes, Esq. I do not have any files that reflect the exact dates.

Immediately after graduating from law school, beginning in the summer of 1986, I worked for English and Rountree, in New York. The firm handled all facets of general practice with an emphasis in estate planning, contested and uncontested probate, intervention and guardianship proceedings. I also represented and assisted clients in domestic relation's proceedings including divorce, custody and child support. I left the firm to come to Washington, D.C. in 1987.

Between 1987 and 1992, I was employed by Winkelman and Mann, in Washington, D.C. The practice concentrated mainly on trust and estate work, including drafting of complex wills and trusts covering generation skipping transfers, marital deduction planning, charitable dispositions and pre-nuptial agreements. I assisted in drafting pension plans. I was responsible for administering estates from inception to final accounting. I handled intervention proceedings and guardianship proceedings. I co-authored an estate-planning brochure for a trade association. I also handled incorporations and creating other types of business entities

From 1992 through May 2000, my law practice centered on the representation of children, parents, and custodians in neglect and abuse cases, custody cases, termination of parental rights, adoption cases and juvenile matters. During that time period, I participated in approximately sixty five (65) trials, which includes adoption show cause hearings, attended more than eight hundred hearings, and handled approximately fifteen (15) appeals, relating to family law topics. I maintained a practice in intervention cases where I served as guardian and conservator. I maintained a trust and estate practice consisting of primarily World Bank clients. In the earlier years, from 1992-1995, I handled juvenile cases, probate cases and adult criminal cases.

From May 2000 through March 2002, I was employed by D.C. Superior Court as the Branch Chief of the Counsel for Child Abuse and Neglect office. I was responsible for training attorneys practicing in neglect and abuse and adoption and termination of parental rights hearings and for training and recruiting new attorneys. I conducted at least nine multi-day seminars, and approximately thirty luncheon seminars. My responsibilities also included providing training to judicial-administrative staff, courtroom clerks and to newly appointed judges on neglect and abuse law, and Adoption and Safe Families Act. Another responsibility included lecturing to attorneys and social workers at mediation trainings on abuse and neglect case law, statutory law and lecturing to attorneys on strategies for preparing for and litigating their cases.

As Branch Chief, I published a monthly newsletter, which contained articles on relevant family law issues including: Adoption and Safe Families Act; trial techniques; evidence; neglect, adoption, guardianship and custody law. I sat on and continue to participate in numerous committees, which dealt with revising rules, creating attorney practice standards, implementing the family court act and creating

training for the Court.

In April 2002, I was appointed as one of the first five D.C. Superior Court Family Court Magistrate Judges pursuant to the District of Columbia Family Court Act of 2001. I am currently sitting as a Magistrate Judge in Family Court and preside over 275 neglect and abuse cases. Additionally, my calendar includes related domestic violence, juvenile, developmental disability, domestic relation, adoption and termination of parental rights cases which have been consolidated with my neglect cases, in order to achieve the "one family one judge" goal of the Family Court act.

- C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

Since 1995 through 2002, I specialized in the area of family law, with a particular focus on child welfare law. The family situations I have encountered that bring children to the attention of to the child protection system are incredibly varied, ranging from instances of child abandonment, severe neglect, sexual abuse, physical abuse and death of a sibling. A typical client I represented in family law consisted of parents, children and caretakers. Many of the cases involved children with special education needs or mental and physical health issues that had to be addressed. Parents had similar issues.

From 1987 through 2000, I specialized in estate planning and probate. The typical client in estate planning required, a will and or a trust, a living will, health care power of attorney and general power of attorney. The probate cases I handled required filing for probate, appointment of personal representatives and trustees, litigation contested issues and filing accountings. Moreover, I handled guardianship and conservatorship proceedings.

In 1992 until around 1995, I handled a minor number of civil, criminal and juvenile matters. I represented adults and juveniles accused of crimes including threats, robbery, possession of and possession with intent to distribute drugs, solicitation and assault. I did not handle a substantial number of criminal cases and chose to focus on family.

During this time I handled some domestic violence cases. I handled an assortment of civil cases, including incorporating businesses, creating partnerships, representing those entities in related litigation and pursuit of permits, etc. In this pursuit, I handled discovery and depositions.

A significant change in my practice in the later years involved my participation on committees that created standards for attorneys, adopted neglect rules to comply with changes in the law concerning Adoption and Safe Families Act and reviewed changes in the neglect statute. I was appointed to serve on these Committees before working for the Court. Becoming involved in policy issues substantially increased

my ability to understand the system, how to improve the system and to move these cases towards permanency more expeditiously

As discussed in response to other questions, from May 2000 through March 2002, I did not practice law but trained attorney practicing in the family law area and was involved in significant policy planning in the Family Division of D.C. Superior Court, prior to serving as Magistrate Judge.

D. Describe the general nature of your litigation experience, including:

- (1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.
- (2) What percentage of these appearances was in:
  - (a) Federal courts (including Federal courts in D.C.);  
No actual appearance in federal court. Assisted briefly on a special education class action brief but did not appear in Court
  - (b) State courts of record (excluding D.C. courts);  
1% New York State Court.
  - (c) D.C. courts (Superior Court and D.C. Court of Appeals only);  
99%
  - (d) other courts and administrative bodies.

What percentage of your litigation has been:

- (a) criminal 1%
- (b) civil 99%

I have served as a magistrate judge in the D.C. Superior Court, Family Court since April 2002 presiding over numerous trials. Prior to my appointment I appeared in D. C. Superior Court regularly. The appearances during the years I practiced law were mainly in abuse and neglect cases, adoption cases, custody cases and a limited amount of probate cases. I appeared in Court during those years at a minimum 4 times a week

After May 2000, I was employed by the Superior Court of the District of Columbia as Branch Chief of the Counsel for Child Abuse and Neglect and therefore, unauthorized to practice law. During this time period I appeared in Court regularly as

part of my responsibility to both observe and critique attorneys. I was often called to court by judges on specific cases to observe attorneys.

- (3) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.
  - (4) What percentage of these trials was to
    - (a) a jury- none
    - (b) the court (include cases decided on motion but tabulate them separately). 100%
17. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and 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 court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.

**CASES HANDLED AS MAGISTRATE JUDGE:**

**In Re GD & AM N-232 & 231-02**

Yewande Aderoju  
Assistant Attorney General  
Office of Attorney General  
Child and Family Services Agency  
400 6<sup>th</sup> St, SW  
Washington, D.C. 20024  
(202) 489-2814

James King, Esq  
1331 South Carolina Ave SE  
Washington, D.C. 20024  
(202) 543-1993

Jesse Goode, Esq  
3210 Vista Street, NE

Washington, DC 20004  
(202) 529-1281

Pamela Roth, Esq.  
717 D St. NW  
Suite 100  
Washington, D.C. 20004  
(202) 667-4842

George Tilton, Esq.  
2446 Oakwood Terrace, NW  
Washington, D.C. 20010  
(202) 387-8512

The children were removed from their mother's care on March 20, 2002. I received this case shortly after taking the bench in April 2002. In the short time after GD's removal from his mother's home and immediately prior to disposition, GD who was seven, had been in seven placements in a period of two months. One of the seven placements was a group home. During his stay at the group home, GD was sexually molested by several older boys. After the incidents of sexual molestation, GD was put in a therapeutic foster home and finally with his father. At no time prior to the Court hearing in May, was the Court advised by the social worker, the then government attorney or the guardian ad litem of the multiple moves and sexual abuse of this young child. In fact, the disposition hearing was continued without any notice to the Court of the serious abuse to this child subsequent to his coming into care. When the Court learned of the abuse, it immediately scheduled a hearing. The hearing became public and the press was authorized by the Chief Judge to attend this hearing. The Court ordered the agency to file numerous documents concerning the abuse of this child, how it happened, an explanation as to the supervision or absence of and who was responsible for the abuse. Prior to this case, the agency had a policy of not placing any child under 12 in congregate care, however, the policy was clearly violated. The Court held multiple hearings on these issues and at some time after the publicity in this case, group home regulations were instituted. Children of this age are no longer placed in congregate care. Due to the serious mishaps in this case, it became apparent to me, the importance of competent counsel, the need to notify the parties that the Court is to be apprised of disruptions in children's placements, that requisite reports are to be filed on any issues that threaten the safety and best interest of the child and the need for numerous hearings on complex cases, to ensure the safety of the children and families. See Attachment D for the articles published on this issue.

**In Re T.W** N-921-02

Yewande Aderoju  
Assistant Attorney General

Office of Attorney General  
Child and Family Services Agency  
400 6<sup>th</sup> St, SW  
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(202) 489-2814

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1330 Connecticut Ave. NW  
Washington, D.C. 20036  
(202) 429-3000

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601 Pennsylvania Ave. NW  
South Building, Suite 900  
Washington, D. C. 20004  
(202) 434-8162

Ashok Batra, Esq.  
14509 Cantrell Road  
Silver Spring, Md. 20901  
(301) 384-8276

Adriane Marblestein-Deare, Esq.  
10609 Cavalier Drive  
Silver Spring, Md. 20901  
(301) 593-4123

This case involves the myriad difficult decisions, I have been called upon to make over the past several years as a magistrate judge, as well as the challenges and rewards involved in this work. The mother in this case was arrested for assault with a dangerous weapon. When officers came to her home, they found it in deplorable conditions. The mother had a history of heroin abuse and was known to police as an addict. The child was born with cocaine in his system.

I handled the case from its inception though its closure after an adoption trial. The case came to me in October 02 and the child was removed from his mother and placed in foster care in a pre-adoptive placement. Although, the goal was reunification, I asked the agency to find a potential permanent placement as the mother had been in the system before and had not overcome her drug problem. The child had a number of health problems including microcephaly, congenital encephalopathy, moderate to severe speech and language delays, and numerous other developmental delays. Regular court oversight required that all of the case participants-the social worker, attorneys, counselors, therapists, and parties-work together to achieve successful permanency. ~~He~~ progressed

remarkably.

The foster mother filed for adoption of TW. The mother failed to comply with court ordered services and the Court proceeded to an adoption trial. Based upon the evidence received concerning the failure of either parent to maintain a relationship with their child, and the lay and expert testimony of that the child was thriving in the care of his foster mother, **TW** was successfully adopted and the mother's rights were terminated. I entered a final decree of adoption in 2004 and closed the underlying neglect case.

Subsequent to closing the case, I have met the adoptive parent at foster parent trainings, I was asked to participate in. TW has far surpassed his milestones medically and emotionally and is extremely happy in his adoptive placement. The foster mother is considering another adoption. With the implementation of Adoption and Safe Families and the provision of appropriate services, this case illustrates the significance and rewards of my work as a judicial officer. This case successfully reached permanency in less than two years.

**In Re. J.B. and J.P.B.**  
N 288-05 and 287-05 SF 700 & 699

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This case came to Child and Family Services Agency (CFSA) when the CFSA hotline received a report regarding the children. It was reported that one of the children came to school with a mark on her cheek and when questioned she reported that her father hit her with a doll. One child was removed from the parents for abuse and the other for imminent danger. The parents disputed the injury.

This case involved significant discovery issues and pre-trial issues and conferences. Evidentiary issues that had to be dealt with were significant. One issue involved whether the child's statements to the doctor examining her were admissible under the medical diagnosis exception or whether the recent Supreme Court Case of Crawford v. Washington dealing with testimonial statements applied to this case and excluded her statements. Another evidentiary issue that arose was whether the Court should grant the government's motion to add the interpreter for the child and the doctor as a witness and under what exception the interpreter was allowed

The most difficult issue in this case, is that the Court did not perceive that the government had sufficient evidence to meet its burden and advised the government that barring any unforeseen evidence at trial the evidence in the pre-trial statement was not sufficient. The Court allowed the government additional time to investigate. At a pre-trial conference, the government dismissed the case. Had the case proceeded to trial, it appeared from the pre-trial conference that the government would not have met its burden of proof.

It is always difficult to dismiss a case where there is an apparent injury to a child, however, the role of a judge to follow the law and to ensure that the government meet it's burden of proof is as important in family as in all other areas of the court.

**In re D.B. 879 A.2d 682 (July 28, 2005)**

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This is the first case heard by the Court of Appeals reviewing a Magistrate Judge's order. In this case, the caretakers applied for guardianship and the mother contested the guardianship. The mother had serious mental health problems thereby preventing her from caring for her daughter. The attorney for the petitioner did not call an expert to deal with the appropriateness of visitation. Consequently, I called my own expert. Moreover, there is a decision from D.C. Court of Appeals in a neglect case that admonishes the trial judge who dismissed a neglect case that should have called her own expert before dismissing the opinion. It was clear from observing the mother in Court that regular visitation would be detrimental to the child. I granted permanent guardianship of respondent to his paternal grandparents who maintain their residence in New Jersey.

In granting the guardianship, I imposed several conditions on the mother's right to visitation, based largely upon the testimony of a court-appointed psychiatrist. Specifically, I granted the mother four supervised visits annually and supervised telephone access provided she attend weekly therapy and follow psychiatric medication recommendations. The visits would take place in Washington, D.C. and the guardians would be responsible for transporting respondent to D.C. for three of the visits. The guardians had discretion to suspend visitation if the mother behaved inappropriately. The mother appealed the Judge's order denying the mother's motion to reconsider my findings as untimely. Moreover, the mother claimed that my curtailment of visitation was a termination of parental rights.

The Court held that the guardianship order did not effectively terminate the mother's right to visitation. The mother, a D.C. resident, presented no evidence that she was unable to travel to New Jersey; the order required the guardians to transport the respondent to D.C. for three of the annual visits; and no evidence was presented supporting the mother's contention that the guardians would misuse their discretion to prevent visitation.

The Court held sufficient evidence existed for the magistrate judge to condition the mother's visitation on her willingness to enter weekly therapy and undergo a medication assessment. The psychiatrist testified that S.B. suffered from borderline personality disorder, was unable to control her anger, and was unlikely to improve without therapy and medication. Based upon the strength of the psychiatrist's testimony, and that S.B. offered no evidence to contradict his expert opinion or demonstrate that she was capable of behaving appropriately when visiting with her daughter, the magistrate judge did not abuse her discretion.

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**CASES HANDLED PRIOR TO CURRENT POSITION**

**Ex Parte In the Matter of The Petition of K.J.W., and D.T.E., for the Adoption of Minor Child, Et AL.**

Honorable Arthur Burnett, Sr. D.C. Superior Trial Court  
Trial Opinion Published-Washington Law Reporter-March 21-22, 2000.

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This case concerned the petitions of two foster parents for the adoption of KP and MP. I served as the guardian ad litem for the children and filed termination of parental rights motions.

Prior to the beginning of the trial, the mother's attorney filed an appeal on the denial of visitation by Honorable Zinora Mitchell Rankin who was the neglect judge for this case. The legal premise was that the denial of visitation constituted a termination of parental rights. I filed a brief on the denial of visitation. The issue was expedited and the Court of Appeals issued a memorandum decision stating that the denial of visitation was appropriate and in the best interest of the children.

KP was seven at the time of the trial and had been in the Court system for most of his life and lived with his biological mother, KRP, a very short time. MP was three at the time of the trial and also had lived with her mother for only two weeks. At the time of the commencement of the trial, the mother had completed in-patient drug treatment and wanted her children returned to her. The mother had a lengthy history of drug and alcohol use and co-dependence on abusive men. The mother claimed that the Child and Family Services thwarted her efforts to reform by not making reasonable efforts to reunify her with her children. Although the facts would appear to indicate a very short trial, there were numerous issues involved and the trial lasted almost three weeks.

The trial of these cases commenced on June 28, 1999 and continued over a period of two and one half weeks, concluding on July 14, 1999. Although a termination of parental rights motion two years before the trial, the delay in getting to trial was a result of a number of creative motions filed by the mother's counsel and the visitation appeal, which stayed the trial.

The case factually would appear to be relatively straightforward, however, the Court record and the agency's records were devoid of appropriate paperwork that could have been used as exhibits. Due to the dearth of paperwork, the case was presented through a number of witnesses.

My key witnesses were the psychiatrist who performed the bonding study, the clinical therapist for the respondent, KP, the court appointed special advocate, the mother and the social worker. We were successful in disqualifying the mother's expert from testifying on an unusual "biological string connection" after establishing that the theories were not accepted in the community, had not been published in any reputable journals and had not been subject to peer review.

Numerous procedural and substantive motions had been filed including a Motion to Dismiss for lack of appropriate service on the mother, a Motion to Dismiss for the alleged failure of Child and Family Service Agency to comply with the technical Adoption Rules and Motions In-Limine to exclude evidence.

This case is of particular significance because of the end result. KP was in numerous foster homes and in fact spent the first two years of his life in the Hospital for Sick Children. KP was diagnosed with attachment disorder. Judge Mitchell Rankin ordered the therapist, the social worker, the school social worker and the Court appointed

Special Advocate to work as a team to assist in recruiting adoptive parents. I had never been actively involved in adoption recruitment and it became readily apparent that we often place children with the first person requesting placement as opposed to finding a match between the child's needs and the petitioners capabilities. Due to the pro-active nature of the team and the judge, KP was put in a wonderful home. I receive emails from the petitioner who is on a military base in Hawaii. This child is now mainstreamed in the school system, off medication, on the Honor Roll and is no longer aggressive with younger children. This case taught me that with collaboration on the part of the judge and the parties attorneys and social workers the most appropriate placement can be found. However, this case was prior to Adoption and Safe Families and the child languished in foster care longer than now allowable, with the mother having numerous chances for reunification.

I was appointed to represent KP in the Court of Appeals and worked on the appellate brief dealing with the issue of notice however, I had to withdraw after accepting my job as Branch Chief with the Court.

**Ex Parte In The Matter of the Petition of VW ; Neglect Case No. 430-99.**  
No appeal was filed.

Honorable Zinora Mitchell-Rankin, D. C. Superior Court

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As the guardian ad litem, I filed a termination of parental rights motion which I litigated and also opposed the judges' dismissal of the neglect case on behalf of the child.

The neglect trial judge, Judge George Mitchell, after a fact finding hearing dismissed the petition. The caretaker/pre-adoptive parent had custody of the child since birth and the mother had visitation rights. The child was abused during his visits with his mother. On a motion to reconsider, filed by the attorney along with myself, the Court heard further evidence and found neglect.

The termination of parental rights trial occurred on February 22-24, 2000 before Judge Zinora Mitchell Rankin. Seven witnesses were presented on behalf of the child, namely, two Court Social Service Workers, the current Child and Family Services Worker, the caretaker, her daughter and friend and Dr. Karen Gail Lewis therapist and expert on physical abuse. I introduced and the Court took judicial notice of several domestic violence orders indicating that the mother was still living with her paramour, the abuser. Dr. Lewis was qualified as an expert in child psychology with an expertise in sexually abused children.

The significance of this case is that when it was first petitioned there were few available witnesses and experts and the evidence was weak. It became particularly important subsequent to the initial trial to plan for the termination of parental rights trial by identifying appropriate fact witnesses and experts so that the same problem did not occur at the termination and adoption trial.

Another interesting issue in this case is whether the father exercised his opportunity interest and whether he should have a preference as a fit father. In many of these cases fathers are notified at the last minute that they are in fact the father of the child, come to court and are fit fathers. I filed a brief on his failure to exercise his opportunity issue and his lack of fitness. It is crucial to anticipate these issues in advance of trial, thoroughly comprehend the case law and prepare direct and cross-examination.

The parent's rights were terminated and the child successfully adopted.

**In Re C.C. J. and B.K. J.**  
777 A. 2d 265 (D.C. 2001)

Honorable Robert S. Tignor-D. C. Superior Court  
Before Schwelb, Farrell, and Ruiz Associate Judges Court of Appeals.

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Georgia Carty, Esq  
Assistant Corporation Counsel  
Prosecuted the Case  
Could not locate phone number in Martindale-Hubbell

This case concerned the sexual abuse of two sisters by their father. The siblings were aged nine (9) and ten (10) years old at the time the case was petitioned. The court appointed me to serve as guardian ad litem.

On September 6, 1996 a third grade school teacher discovered that one of the girls had written in the notebook of a friend, sexually explicit material about sex between herself and her father. The parents of the two girls ignored the police officers request to take the children to Children's Hospital and moved from their residence immediately after meeting with the police officer. The parents had a history of moving and it took some time to locate them. The children were removed from their home after a probable cause hearing. The children were interviewed by the Child Advocacy Center and recanted that sexual abuse occurred.

The trial occurred on October 30, November 3, 4, 12 and December 3, 1997. The government and I worked together and presented seven (7) witnesses, namely an expert on physical abuse, teachers, the parents and relatives. The parent's attorneys called three (3) witnesses.

A significant issue in this case is that the attorneys for the parents subpoenaed the children to testify. I filed Motions to Quash along with affidavits from psychologists concerning the harm to the children and also, Motions to allow *in camera* testimony. The judge was going to allow the children to testify and therefore, I stipulated that if they did testify they would recant prior statements. The Court accepted the agreed upon stipulation. The stipulation was not harmful to the case as our expert testified to the strong likelihood and percentage of children recanting or denying any abuse and it's lack of relevance based on her medical findings. In most cases the harm to young children of testifying against their parents is substantial and therefore, it is better to find an appropriate expert and to stipulate where possible.

The Court believed it did not have sufficient evidence to find that the father sexually abused the children as the Court discounted the significance of the diary. The Court did find that the parents failed to make reasonable efforts to prevent the sexual abuse under D. C. Code Section 16-2316 (C) which allows for an inference of neglect when the child is in the custody of the parents, suffers an injury and the parents can offer no reasonable explanation. The philosophical underpinnings of this section are that this type of abuse occurs behind closed doors and there are no "smoking guns". The government and myself spent a great deal of time convincing the court to find neglect based on the inference. The father appealed the Court's findings, based on a claim of insufficiency of the evidence. I filed the brief for appellees. The Court of Appeals affirmed the Trial Court's findings.

**In re Prosecution of Neal Monaghan,**  
**In re Prosecution of James J. Craig, Jr.**  
690 A.2d 476 (D.C. 1997)

Honorable Ronald P. Wertheim, D.C. Superior Court  
Before Farrell, King and Reid

Dianne Harris, Epps  
Assistant United States Attorney  
United States Attorney's Office  
555 4<sup>th</sup> Street, NW  
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Currently serving as a magistrate judge.

Paul Knight, Esq.  
O'Connor and Hannan, L.L. P.  
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This case concerned a United States Park police officer and his partner's brother who were accused of soliciting for purposes of prostitution. In 1987, D.C. Code Section 22-2701 was amended to provide that a first offense of soliciting for purposes of prostitution was punishable by a fine only, not as previously by a fine, imprisonment, or both. The statute was subsequently amended to provide for a fine and imprisonment for a first offense. The defendants in this case were charged while the 1987 amendment was in effect. A motion was filed to dismiss information filed by the United States on the ground that authority to prosecute for the crimes charged had reverted to the Office of the Corporation Counsel under D. C. Code Section 23-101. The trial court certified the issue of prosecutorial authority to the Court of Appeals. The Court of Appeals expedited consideration of the cases.

Mr. Knight who had been an Assistant United States attorney for many years prior to leaving for private practice handled the oral argument at the Appellate Court, as he was much more seasoned in this area of practice

The crux of the issue was that prosecutions for violations of all police or municipal ordinance or regulations and for violations of all penal statutes in the nature of police or municipal regulations, where the maximum punishment is a fine only or imprisonment not exceeding one year, shall be conducted in the name of the District of Columbia by the Corporation Counsel and all other criminal prosecutions shall be conducted in the name of the United States. We conceded that D. C. Code Section 22-2701 relating to solicitation is a penal statute but argued that it was in the nature of a police or municipal regulation. The court considered it relevant that the defendants did not cite nor could they find any penalty structure for a D.C. police or municipal regulation, resembling the mandatory punishment imposed for solicitation.



The Court of Appeals noted that the courts of this jurisdiction have had only rare occasion to interpret the phrase penal statute in the nature of police or municipal regulations. The Court cited a decision of the United States Court of Appeals from 1911, which shed light on the meaning of the phrase and noted that for example a motor vehicle speed regulation is imposed in accordance with regulations to comport with requirements of local conditions. In contrast solicitation denounces a general offense and therefore, that prosecution was rightly commenced in the name of the United States. The case went to trial and the defendants were found guilty of solicitation.

Research issues in this matter were quite interesting as many of the cases on point dated back 70 years or so.

Mr. Knight was lead counsel as his command of criminal law, litigation and appellate argument far surpassed mine at the time and it was a great learning experience to work with him.

- a. In Re. V. C.  
98 FS 1654; 98 FS 717

Honorable Geoffrey Alprin, Neglect Judge

Donna Murasky  
Senior Assistant Corporation Counsel  
Appellate Division  
441 Fourth St. NW  
Washington, D.C. 20001

The District of Columbia appealed from an order of the neglect review judge, which committed the respondent VC to the District of Columbia., with the specific intent of ordering Child and Family Services to pay for a private school placement until the appropriate public school was identified. The child was in third party placement with his aunt and the District of Columbia takes the position that they have fewer obligations to provide services to children in third party placement.

Numerous Maryland public school placements had disrupted due to inappropriate services and the child's problems threatened to disrupt his placement with a relative. Therefore, the judge ordered that the District pay for a private school placement. After entering the appropriate school, the child's behavior drastically improved.

The issues were extremely interesting. I was not on the neglect case but was appointed for the appeal.

The first issue was that the appeal should be dismissed as moot as the respondent

was no longer attended the academy and the District was not asking for reimbursement for any payments to the private school nor did the District have any liability pursuant to said order. The Supreme Court and this Court of appeals has found exceptions to the requirement of a case or controversy when an issue presented is capable of repetition yet evading review. The Court of Appeals disagreed and did not grant the Motion to Dismiss.

The first issued raised was whether or not the family division have the authority to order DHS to pay for services such as a private education for a neglected child. D.C. Code Sections 6-2121 *et seq.* 16-2321(a)(5) and DHS's foster care manual supported the ability of the judge to order the agency to pay. Moreover, the best interest of the child standard and numerous case law authorized the judge in his *parens patriae* role to provide requisite services to the child.

One argument of first impression for me was whether the state was prohibited from paying for school due to being pre-empted by federal law. It was interesting to investigate the history of IDEA in order to determine if there is a conflict with D. C. 's neglect statute and Supreme Court cases on pre-emption. IDEA provides federal funds to assist state and local agencies in educating handicapped children and is merely a funding mechanism to ensure that children receive free appropriate education and that due process procedural requirements have been followed. IDEA has no impact on a state court's decision. Nor did anything in IDEA pre-empt state action.

b. My experience as the Branch Chief of CCAN was invaluable in developing litigation skills as I trained attorneys on writing motions, handling numerous evidentiary issues, developing case strategies, qualifying expert witnesses and in preparing for direct and cross examination. Moreover, my ability to observe attorneys in court at hearings and during trials, helped to develop my litigations skills and knowledge of evidence. Publishing a monthly newsletter allowed me to academically learn numerous family court issues and evidentiary issues by doing extensive case law research.

18. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

Consistent with the mandates of Adoption and Safe Family Act (ASFA), I have handled approximately 580 cases, 330 of which have been successfully closed by primarily reunification, adoption or guardianship. A number of cases have been closed when the young adult emancipates. Securing legal permanence for each child is a crucial objective of ASFA. My extremely high rate of closure has been accomplished in part through frequent court hearings, identification of barriers to permanency, ensuring that appropriate services are timely provided and enforcement of strict deadlines.

Through regular court oversight, I require that all participants—social worker, attorneys, therapists, parents, relatives and foster parents-work together as a team to overcome the obstacles to permanency. I have successfully closed a large number of cases through re-unification by holding all parties accountable. As of this point in time, I have not had a reunification case come back into the system. Similarly where the goal has changed from reunification to adoption, I have set deadlines for filing of petitions for adoption, proceeding to mediation and trial and have closed numerous cases in short time periods.

As a magistrate judge, I handle a number of cases that involve teenagers who have been in the system for many years. Through the use of numerous court hearings, intensive monitoring of the parties and ordering of services, I have ensured that the needs of the teenagers and young adults who will transition from the child welfare system into adulthood at age twenty-one are met. The obstacles facing these young adults are overwhelming. Many cases transferred to me are pre-Adoption and Safe Families Act, wherein the young adults had numerous placements, never achieving permanency. While some youth that are before me, attend college or are engaged in vocational training, many are struggling to complete high school, address mental health problems and overcome substance addiction. A number of young adults are learning to raise their own children.

My primary focus is to engage the young adults by having them come to court to plan for their future and to determine what services and supports they believe they need to assist them in successfully transitioning out of the system into adulthood. I ask the child to invite anyone they believe will be of assistance in helping them reach majority and order various agencies that are or will be instrumental in developing a plan for the young adult.

As a magistrate judge, I have continued to train attorneys at the request of various organizations. I assisted in creating standards for attorneys. The Chief Judge approved the standards and the attorneys are now obligated to follow them. I expect publicly funded attorneys to handle their cases no differently than if they were handling a civil or criminal case as privately retained counsel. The parties in the proceedings before us have substantial rights at stake. I require that attorneys have pre-trial conferences, submit briefs on appropriate issues and prepare for trial and file reports for disposition and permanency hearings. Through training, and raised expectations and the implementation of standards, I believe that the quality of legal representation has improved greatly.

One of the most significant non-litigation activities I have pursued since my appointment as a magistrate judge is my chairing and then co-chairing of the Family Court training committee for the past four years. The Family Court Act mandates that the Court conduct a yearly interdisciplinary training. The training is mandatory for all judges and involves representatives of all related district agencies and includes stakeholders. The curriculum is designed to improve the collaboration between the Court and agencies to improve the services provided to all those affected by or who appear before the Family

Court. I also created voluntary bi monthly evening trainings open to all agency workers and leaders, attorneys, stakeholders and judges. The trainings have covered all topics affecting family court participants including cultural competency, educational issues, substance abuse, integrated systems of care, mental health issues and changes in family law such as the Juvenile Justice Omnibus Act.

19. Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.

I currently hold judicial office as a D.C. superior Court Family Court magistrate judge. I was appointed to this position effective April 2002 to serve a four year term. Family court magistrate judges preside over proceedings within the jurisdiction of the Family Court and the Domestic Violence Unit, which include neglect, juvenile adoption, divorce, custody, paternity and support, mental health, and intra-family civil protection proceedings, excluding jury trials in mental health cases.

Attached are four copies of opinions addressing contested factual or legal issues that I have written during my service. (**Attachment E**) I have not issued any published opinions. I have redacted the names of the parties involved in each case for the purposes of confidentiality. In our guardianship and adoption cases, we have created templates so the orders appear substantially similar.

In all of my cases, after every hearing, I issue a detailed form order that does have findings required by child welfare law, as well as reducing verbal orders issued in the course of the hearing. I have not attached these orders due to the sheer number of preprinted nature of the forms.

- A. List all court decisions you have made which were reversed or otherwise criticized on appeal.

I have not had a decision reversed or criticized on appeal. I had one decision supported, which is attached hereto as **Attachment F**.

20. Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).

I was elected as Advisory Neighborhood Council Commissioner. 1992-1994

21. Political activities and affiliations.

- List all public offices, either elected or appointed, which you have held or sought as a

candidate or applicant.

None other than ANC commissioner.

- List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.

None

- Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of \$50 or more.

I have not made any political contributions during the last five years.

22. To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.

No

23. Have you or any business of which you are or were a officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.

I was a party to a divorce case in New York in 1982 when I terminated my marriage to Charles Irwin and also in 1979 when I terminated my marriage to Earl Silver. Neither proceeding was contested. Attached hereto are copies of my divorce decrees as **Attachment A.**

24. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.

In late July 2002, the brother of a client who is deceased filed a complaint with D.C. Counsel. The decedent's brother had claimed that did not fund his brother's trust .I did not transfer his condo to the trust and therefore, he had to probate the case. The brother was a client that I obtained through lectures at the Smithsonian to employees who

were ill. The brother had an AIDS defining illness and it became impossible to continue to represent him as he become mentally incompetent. He believed he had transferred the condo. The Case was dismissed by Bar Counsel 5 months after the complaint was filed. The complaint was handled informally.

**II. POTENTIAL CONFLICTS OF INTEREST**

1. Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?

I am currently serving as a D.C. Superior Court Family Court magistrate judge and if confirmed, will continue to serve on the Family Court as an associate judge. My current position on the court does not pose any conflict if I should be confirmed.

2. Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.

None

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.

None

4. Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.

None

5. Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.

None

6. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.

None

7. Explain how you will resolve any potential conflicts of interest, including any that may

have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.

I do not foresee any conflicts of interest that I am aware of. My spouse and I have arranged our financial affairs in order to minimize any potential conflicts of interests. Moreover, he is employed by the Department of Justice and has similar obligations as I do to minimize any conflicts. If a potential conflict of interest arises, I will carefully consult as I have over the past three years with the Code of Judicial Conduct, related opinions and Court cases and our judicial ethics committee and take all requisite and appropriate action to resolve such conflict.

8. If confirmed, do you expect to serve out your full term?

Yes.

### III. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection).

### IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section 11 - 150 1 (b), as amended.

1. Are you a citizen of the United States?

Yes

2. Are you a member of the bar of the District of Columbia?  
Yes
3. Have you been a member of the bar of the District of Columbia for at least five (5) years?  
Please provide the date you were admitted to practice in the District of Columbia.  
Yes
4. If the answer to Question 3 is "no" --
  - A. Are you a professor of law in a law school in the District of Columbia?
  - B. Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?
  - C. Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?
  - D. Upon what grounds is that eligibility based?
5. Are you a bona fide resident of the District of Columbia?  
Yes
6. Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.  
Yes—
7. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?  
No
8. Have you been a member of either of these Commissions within the last 12 months?  
No
9. Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire. **Attachment I**



AFFIDAVIT

Carl A Dalton being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Carl A Dalton

SUBSCRIBED and SWORN TO before me this 28 day of December 2005.

Vivian Jackson  
Notary Public

Vivian Jackson  
Notary Public, District of Columbia  
My Commission Expires 8-14-2010

**REDACTED**

ANTHONY C. EPSTEIN  
April 16, 2008

**QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS  
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,  
UNITED STATES SENATE**

**I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION**

1. Full name (include any former names used).  
  
Anthony Charles Epstein
2. Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).  
  
U.S.
3. Current office address and telephone number.  
  
Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, D.C. 20036;  
telephone (202) 429-8065; fax (202) 261-7507
4. Date and place of birth.  
  
June 17, 1952. New York City, NY.
5. Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
  
Married to Karen Kuell Epstein (maiden name Karen A. Kuell). She is a self-employed clinical psychologist. Her office address is 4424 Montgomery Avenue, Suite 300, Bethesda, MD 20814.
6. Names and ages of children. List occupation and employer's name if appropriate.  
  
Katherine C. Epstein (25): graduate student in history at the Ohio State University.  
  
Claire H. Epstein (22): student in theater at the Circle in the Square Theatre School.
7. Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.

Yale Law School (1974-1977): J.D. (1977)

Yale College (1970-1974): B.A. (1974)

Taft School (1967-1970): high school diploma (1970)

8. Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.

During the summer after my second year of law school, I worked as a summer associate at Arnold & Porter, 555 Twelfth Street, N.W., Washington, DC 20004. During the summer after my first year of law school, I worked as an intern in the U.S. Attorney's Office for the District of Oregon.

9. 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.

I graduated from college *summa cum laude* and was a Yale National Scholar. When I was Chair of the Court Rules Committee of the D.C. Bar, it was selected as the Best Bar Committee. When I was on the Steering Committee of the Courts, Lawyers, and Administration of Justice Section of the D.C. Bar, it was selected as the Best Bar Section. When I was Vice Chair of the D.C. Bar's Rules of Professional Conduct Review Committee, it was awarded the Bar's top prize for outstanding achievement.

- ~~10.~~ Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.

Not applicable.

11. Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.

The District of Columbia Court of Appeals appointed me in 1998 to serve on its Committee on Unauthorized Practice of Law. I have been Chair since 2000.

I have been a member of the D.C. Bar since 1978. I have served on the following D.C. Bar committees: Multijurisdictional Practice Committee, Member (2002-2004); Rules of Professional Conduct Review Committee, Vice Chair (2004-2005), Member (1999-2005);

Section on Courts, Lawyers, and Administration of Justice, Steering Committee (1994-1999); and Court Rules Committee of the Section on Courts, Lawyers, and Administration of Justice, Chair (1992-1994).

I have been a member of the American Bar Association since approximately 1981.

12. Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.

In the early 1990s, I served for two years as an officer in my local neighborhood association: Vice President-Zoning, Westmoreland Civic Association, Bethesda, MD. I have never belonged to any organization that discriminated on the basis of race, sex, or religion.

13. Court admissions. List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies which require special admission to practice.

District of Columbia, 1978.

State of Maryland, 1988.

U.S. Supreme Court, 1980.

U.S. Courts of Appeals for the District of Columbia Circuit (1980), Fourth Circuit (1981), Sixth Circuit (1995), Ninth Circuit (2001), Tenth Circuit (1990), Eleventh Circuit (2000), and Federal Circuit (2005).

United States District Courts for the Districts of Columbia (1978), Maryland (1982), Arizona (1985), and Colorado (2002).

14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.

“Horizontal Mergers” (coordinating author) in ABA Section of Antitrust Law, *Telecom Antitrust Handbook* (2005)

“Ethical Issues of Unauthorized Practice and Supervisory Liability” (with Joyce E. Peters), *Washington Lawyer* (July/August and September 2004)

"Who's in Charge? AOL Time Warner and Regulatory Merger Conditions," ABA Antitrust Section, Internet Committee (Aug. 2001)

"How to Avoid the Unauthorized Practice of Law: Compliance with Rule 49," *The Washington Lawyer* (May 2001)

"Come Together," *The Daily Deal* (Oct. 7, 1999)

"The Telecom Tango," *Legal Times* (June 21, 1999)

"Lobbying and Defamation" and "Lobbying and Antitrust" (with David E. Zerhusen and Carl S. Nadler) in J. Jacobs (editor), *Federal Lobbying Law Handbook* (2d ed. BNA 1993)

"Open Courts, Closed Trials," *Litigation* (Summer 1987)

"The Right of Access to Court Proceedings and Records" (with Jerold S. Solovy and Herbert F. Janick III) (American Bar Association 1986)

15. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.

Not applicable.

16. Legal career.

A. Describe chronologically your law practice and experience after graduation from law school, including:

- (1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;
- (2) Whether you practiced alone, and if so, the addresses and dates;
- (3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.

Law clerk, Hon. Charles B. Renfrew, United States District Judge for the Northern District of California, San Francisco, California (1977-1978).

Attorney, Antitrust Division, U.S. Department of Justice, Washington, D.C. (1978-1979).

Special Assistant to Deputy Attorney General Charles B. Renfrew, U.S. Department of Justice, Washington, D.C. (1979-1981).

Special Assistant United States Attorney, Eastern District of Virginia, Alexandria, Virginia (1981).

Leva, Hawes, Symington, Martin & Oppenheimer, 815 Connecticut Avenue, N.W. Washington, D.C. (associate 1981-1983).

Jenner & Block, 601 Thirteenth Street, N.W., Washington, D.C. 20005 (partner 1985-1999, associate 1983-1984).

Stephens & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, D.C. 20036 (partner April 1, 1999 to present).

B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

Since I left the U.S. Department of Justice and entered private practice in 1981, my practice has primarily consisted of a wide variety of litigation in federal and state courts around the country. I have usually represented companies, and I have also represented individuals, local governments, and non-profit organizations. Some of the litigation has been garden-variety commercial litigation. *E.g., Nuclear Management Corp. v. Combustion Engineering, Inc.*, 1997 U.S. Dist. LEXIS 970 (D. Conn. 1997) (granting my client summary judgment on a claim of tortious interference with contract). I represented on a *pro bono* basis a member of the Maryland House of Delegates who was sued in the Circuit Court in Annapolis for defamation and tortious interference with contract. Some cases have involved more specialized areas of the law. *E.g., Convenient Food Mart v. 6-Twelve Convenient Mart*, 690 F. Supp. 1457 (D. Md. 1988), *aff'd mem.*, 870 F.2d 654 (4th Cir. 1989) (granting summary judgment to my client, a small business sued for trademark infringement by a national chain of convenience stores). Some cases have involved litigation against the government. *E.g., American Society of Cataract and Refractive Surgery v. Sullivan*, 772 F. Supp. 666 (D.D.C. 1991), *vacated mem.*, 986 F.2d 546 (D.C. Cir. 1993), in which the district court granted summary judgment to my client, a professional society of cataract surgeons who challenged a Medicare reimbursement regulation. I have also represented clients in arbitrations and mediations. From 2002-2005, I spent a significant portion of my time in a large international trade case involving claims that Canada subsidizes lumber exported to the United States.

Throughout my time in private practice, and based on my interest and experience from the Antitrust Division of the U.S. Department of Justice, I have represented clients in antitrust cases and investigations. Some has been for plaintiffs in private cases, most notably MCI in its case against the former Bell System. Some has been for defendants in private cases: I represented MCI in a case in federal court in Washington (*see IT&E Overseas, Inc. v. RCA Global Communications, Inc.*, 747 F. Supp. 6 (D.D.C. 1990)); in two cases involving denial of privileges at local hospitals, I successfully defended cardiologists employed by a non-profit health care provider in Canton, Ohio, and a group of physicians that won summary judgment in state court in Lubbock, Texas. I

have also represented companies in government investigations, both by the U.S. Department of Justice and by State Attorneys General. A substantial portion of my antitrust work has involved merger investigations, and I have also counseled clients on antitrust compliance. I have also represented individual in federal criminal antitrust investigations.

Primarily through my representation of MCI, I have devoted a substantial portion of my time to telecommunications matters. Some involved a series of disputes arising out of the consent decree that broke up the Bell System. After Congress rewrote the Communications Act in 1996, I spent a considerable portion of my time on a broad range of FCC proceedings and related court challenges involving the implementation of the new law.

After clerking for a federal district judge, I spent 3 years with the U.S. Department of Justice. In the Antitrust Division, I served in what was then called the Evaluation Section, which provided advice concerning major cases and legislative matters. I served as a Special Assistant to the U.S. Deputy Attorney General when the judge for whom I previously clerked was appointed to that position. At that time, the Deputy Attorney General was responsible for criminal law enforcement matters. I was involved in a variety of projects, ranging from funding issues to the investigation of leaks about the Abscam investigation. During my service as a Special Assistant United States Attorney in Alexandria, I handled a variety of criminal cases, ranging from official corruption to bank embezzlement to drugs to speeding on the G.W. Parkway to parking violations at the Pentagon.

- C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

*See answer to Question 16(B).*

- D. Describe the general nature of your litigation experience, including:
- (1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.
  - (2) What percentage of these appearances was in:
    - (a) Federal courts (including Federal courts in D.C.);
    - (b) State courts of record (excluding D.C. courts);
    - (c) D.C. courts (Superior Court and D.C. Court of Appeals only);
    - (d) other courts and administrative bodies.

In the last ten years, I have appeared in court occasionally, both in trial and appellate matters. None of my cases has gone to trial during that time. Some were resolved by judicial ruling, and some by settlement. These cases were in federal courts around the country and in the state courts in New York. I have also handled during that time several cases litigated before federal

administrative agencies, some involving adjudications, others involving notice-and-comment rulemaking.

The only case I handled in the D.C. courts was *In re Banks*, 805 A.2d 990 (D.C. 2002), which I briefed and argued on behalf of the Court of Appeals' Committee on Unauthorized Practice of Law – see answer to Question 17 below.

- (3) What percentage of your litigation has been:
- (a) civil;
  - (b) criminal.

In the last ten years, I estimate that I spent 99% of my overall time on civil matters. I spent a majority of my time in 1992-1994 on a major grand jury matter involving price-fixing – see answer to Question 17. When I served in the U.S. Attorney's Office in Alexandria, Virginia, I spent 100% of my time on criminal cases.

- (3) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.

I have tried 4 felony criminal cases (3 as sole counsel) and one civil case (as lead counsel) to verdict before a jury, and 1 civil case (as lead counsel) to verdict in a bench trial. I also tried several scores of misdemeanor and petty offense cases to the court as sole counsel when I was in the U.S. Attorney's Office. I have been responsible as sole, lead, or co-counsel for dozens of cases that were decided on motion.

- (4) What percentage of these trials was to
- (a) a jury;
  - (b) the court (include cases decided on motion but tabulate them separately).

Since I left the U.S. Department of Justice, all but two of the cases I have tried to verdict or judgment were decided on motion, and those two cases were a civil jury trial and a civil bench trial. While with the U.S. Department of Justice, I tried 4 felony cases to a jury, and numerous misdemeanor and petty offense cases to the court.

17. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and 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



court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.

The five most significant litigated matters that I personally handled are:

1. *In re Banks*, 805 A.2d 990 (D.C. 2002): I briefed and argued this case on behalf of the D.C. Court of Appeals' Committee on Unauthorized Practice of Law. The appellant challenged the finding that he committed civil contempt by violating the Court's prior injunctions against unauthorized practice of law. The Court upheld the contempt finding. The panel included then-Chief Judge Rogers and Associate Judges Farrell and Schwelb. The appellant was pro se. Assistant U.S. Attorney (now D.C. Court of Appeals Associate Judge) John R. Fisher represented the United States with respect to the criminal contempt issues.

2. *National Cable & Telecom. Ass'n v. Gulf Power Co.*, 534 U.S. 327 (2002), *rev'g in part Gulf Power Co. v. FCC*, 208 F.3d 1263 (11th Cir. 2000); *Gulf Power Co. v. United States*, 187 F.3d 1324 (11th Cir. 1999), *aff'g* 998 F. Supp. 1387 (N.D. Fla. 1998): These are two in a series of related cases for MCI involving the right of telecommunications companies to attach wires used for telephone and Internet service to the poles owned by electric utility companies. In the first case listed above, the Supreme Court overturned the Eleventh Circuit's decision on the two issues on which the Eleventh Circuit had ruled against MCI's position. The 1999 case involved a claim that federal law and FCC regulations effected a taking of utility property without just compensation. The Eleventh Circuit affirmed the district court's ruling in favor of my client.

The Eleventh Circuit judges who heard these cases included Judges Carnes, Edmondson, Garwood, Tjoflat, and Watkins. In the 2000 case in the Eleventh Circuit, Gregory M. Christopher represented the Federal Communications Commission, and in the 1999 case, Alisa B. Klein represented the United States on appeal. The utilities were represented by, among others, Charles A. Zdebski.

3. *Morrison v. Olson*, 487 U.S. 654 (1988), *rev'g In re Sealed Case*, 838 F.2d 476 (D.C. Cir. 1988), *rev'g* 665 F. Supp. 56 (D.D.C. 1987): I was one of a small team of lawyers representing Theodore B. Olson, who was then the target of an independent counsel investigation involving testimony he gave as an Assistant Attorney General in the U.S. Department of Justice. The litigation in the District Court, the D.C. Circuit, and the Supreme Court involved the constitutionality of the independent counsel statute. The Supreme Court ultimately upheld the constitutionality of the statute. The Independent Counsel was Alexia Morrison. Lead counsel for Mr. Olson was Thomas S. Martin.

4. *In re Reporters Committee for Freedom of the Press*, 773 F.2d 1325 (1985); *Tavoulaareas v. Washington Post Co.*, 724 F.2d 1010 (D.C. Cir.), *vacated and remanded*, 737 F.2d 1170 (D.C. Cir. 1984) (en banc): These related cases involved the constitutional right of public access to civil trials and to discovery materials in civil cases. I represented the Reporters Committee for Freedom of the Press in its efforts to get access to trial exhibits and discovery

materials subject to a protective order. The underlying case involved a libel suit brought by the then-president of Mobil against the Washington Post. The D.C. Circuit panels included Judges Scalia, Wright, MacKinnon, Tamm, and Wilkey. Mobil was represented by Loren Kieve.

5. I represented a number of employees, including several high-level executives, at General Electric Co. in an investigation and prosecution by the U.S. Department of Justice of price fixing in GE's industrial diamonds business. Several of my clients were subpoenaed to testify before a grand jury and at a jury trial in Columbus, Ohio. Although the company was indicted (and acquitted at trial), none of my clients was indicted. Lead counsel for the Justice Department was David A. Blotner. Lead counsel for General Electric were Dan K. Webb and William J. Baer.

18. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

In addition to the matters described in the answer to Question 17, I include the following four matters.

1. I was lead antitrust counsel for MCI in major merger cases. I was MCI's lead antitrust counsel in its merger in 2005 with Verizon Communications, Inc., which involved an antitrust consent decree. I also was MCI's lead antitrust counsel in its planned 1997 merger with British Telecommunications. MCI obtained the necessary judicial and regulatory approvals in the United States and Europe, including approval of a consent decree with the U.S. Department of Justice. *See United States v. Concert and MCI*, 1997-2 Trade Cas. (CCH) ¶ 71,935 (Sept. 16, 1997). However, after obtaining these approvals, MCI decided instead to merge with WorldCom, then a little-known Mississippi-based telecommunications company. The WorldCom merger case also involved a negotiated resolution with the Antitrust Division, as well as a private challenge which the plaintiff ultimately dropped.

2. I represented a small company that was sued for trademark infringement by a national chain of convenience stores. The Fourth Circuit affirmed the district court's grant of summary judgment to my client because the plaintiff's trademark was invalid. *Convenient Food Mart v. 6-Twelve Convenient Mart*, 870 F.2d 654 (4th Cir. 1989) (mem.), *aff'g* 690 F. Supp. 1457 (D. Md. 1988).

3. I represented MCI when it intervened to support the FCC in a challenge by the Bell companies to FCC regulations restricting their ability to offer long-distance services, an issue of major importance to independent long-distance companies like MCI. The D.C. Circuit upheld the regulations. *Bell Atlantic Telephone Cos. v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997).

4. I represented two students and the campus chapter of the American Civil Liberties Union in a case challenging restrictions on speech in the outdoor areas of the campus of the

University of Maryland at College Park. The dispute concerning restrictions on speech by students was resolved when the University agreed to relax those restrictions. The courts upheld the University's position concerning restrictions on speech by members of the public. *ACLU Student Chapter v. Mote*, 423 F.3d 438 (4th Cir. 2005), *aff'g* 321 F. Supp. 2d 670 (D. Md. 2004).

19. Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.

No.

- A. List all court decisions you have made which were reversed or otherwise criticized on appeal.

20. Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).

I submitted applications in 1991 and 1994 for the position of United States Magistrate Judge in the U.S. District Court for the District of Columbia.

21. Political activities and affiliations.

- List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.

None.

- List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.

None.

- Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of \$50 or more.

Step toe & Johnson LLP Political Action Committee: \$250 (2007)

Forward Together PAC: \$1,000 (2006)

Committee to Elect Kate Marshall: \$200 (2006)

Granholm for Governor: \$100 (2006)

Democratic National Committee: \$1,000 (2004)

John Kerry for President: \$2,000 (2004)

Citizens for Melony Griffith: \$375 (2003-2007)

22. To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.

No.

23. Have you or any business of which you are or were a officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.

No.

24. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.

No.

## II. POTENTIAL CONFLICTS OF INTEREST

1. Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?

Yes.

2. Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.

Not applicable.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.

None.

4. Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that

could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.

None.

5. Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.

Not applicable.

6. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.

No.

7. Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.

I do not anticipate any conflicts of interest if I am confirmed.

8. If confirmed, do you expect to serve out your full term?

Yes.

### III. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

### IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section II - 150 1(b), as amended.

1. Are you a citizen of the United States?

Yes.

2. Are you a member of the bar of the District of Columbia?

Yes.

3. Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.

Yes. 1978.

4. If the answer to Question 3 is "no" --

- A. Are you a professor of law in a law school in the District of Columbia?
- B. Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?
- C. Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?
- D. Upon what grounds is that eligibility based?

Not applicable.

5. Are you a bona fide resident of the District of Columbia?

Yes.

6. Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.

Yes.

7. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?

No.

8. Have you been a member of either of these Commissions within the last 12 months?

No.

9. Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.

I am providing 4 copies of my completed questionnaire.

**AFFIDAVIT**

I, Anthony C. Epstein, being duly sworn, hereby states that I have read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

*District of Columbia, ss.* Anthony C Epstein.  
SUBSCRIBED and SWORN TO before me this 16<sup>th</sup> day of April 2008.

Clemmie M. Wilson  
Notary Public

**Clemmie Wilson  
Notary Public, District of Columbia  
My Commission Expires 02-14-2011**

**Statement of Heidi M. Pasichow before the Senate Committee on Homeland Security  
and Governmental Affairs -Nomination to be Associate Judge, Superior  
Court of the District of Columbia - July 23, 3008**

**Introduction:**

Thank you Mr. Chairman and Members of the Committee. I am honored to appear before you today. I'd like to acknowledge and thank your staff members for their diligence and for their confidence in me during this process.

**Introduction to My Family and Supporters:**

I wish to acknowledge and thank Congresswoman Eleanor Holmes Norton for her introduction in support of my nomination to the Superior Court of the District of Columbia.

Mr. Chairman, I would like to recognize my parents Betty and Milton Pasichow who I am so proud to have with me here today. I also want to thank my older brother Bill, who is not able to be here but who, with my parents, gave me confidence and compassion, qualities that come with encouragement and love. My parents guided me in the tradition of their parents, who I was fortunate to know. Two of my grandparents immigrated to the United States to seek the safety, freedom and opportunities this country had to offer. They were hard-working, generous and respectful. They taught me by example and they are with me every day.

It is with gratitude and humility that I thank the Chairman of the District of Columbia Judicial Nomination Commission, Judge Emmet Sullivan, [who is here today], and the members of the Nomination Commission who supported my professional aspiration to become an Associate Judge on the Superior Court of the District of Columbia, and for the confidence they placed in me by sending my name to the White House for consideration. I want to thank the President of the United States for nominating me for the position, and acknowledge with gratitude, Mr. John Smith and Mr. Scott Coffina in the White House Counsel's Office for their support and guidance throughout the nomination and confirmation process.

I am honored by the presence and continuing guidance that I have received from the staff of the Court's Chief Judge, Rufus King. I am moved and gratefully acknowledge the presence of Judge Sylvia Bacon, currently a law professor, who was a distinguished judge on the D.C. Superior Court and who took me under her very skilled and dedicated wing as her judicial law clerk from 1983-1985; U.S. Attorney Jeffery Taylor, who has supported my efforts to seek a judgeship and for whom I have had the privilege of working; Glenn Kirschner, Chief of the Homicide Section who gave me the opportunity to return to the Superior Court Division from the Criminal Division to work with cold case detectives on unsolved homicide investigations and prosecute child and domestic violence homicides; the First Principal U.S. Attorney Channing Phillips, whose counsel is unsurpassed and whose tenure has spanned generations of prosecutors and numerous presidential administrations. I would also like to thank many of the judges who I



have appeared before and who have set the highest standards for civility and professionalism, some of whom are here today.

I also acknowledge with affection, my dear colleagues from the U.S. Attorney's Office, who have supported my efforts and who have worked tirelessly with victims and witnesses to crimes, to my colleagues on the defense bar, and to my fellow faculty members at the National Institute for Trial Advocacy. I am honored by the presence of members of the Metropolitan Police Department and especially note the presence of Assistant Chief Peter Newsham, including those detectives whose dedication to public service, competence, and bravery provide a trusting hand to the witnesses to and victims of crime in our community. I'd like to recognize Ms. Karen Avant, who is here today. Her son was the victim of a violent shooting in a public market over 15 years ago. She relied on the system to seek justice and closure. Ms. Avant like so many survivors of crime, has inspired me by her courage and faith in the process.

It is, in large measure, due to the support and encouragement of all of those I mentioned, including my dear friends and others who have joined me here today, that I am humbled to be before the Committee for its consideration of my nomination to the D.C. Superior Court.

Thank you, Mr. Chairman, for allowing me to acknowledge those who are here with us today.

**My Statement:**

I would like to make a very brief statement.

I came to the District of Columbia to seek my undergraduate education 35 years ago. I have lived here ever since. I first stepped into the D.C. Superior Court as a law student with the D.C. Law Students in Court program, representing indigent tenants in landlord-tenant proceedings. I vividly recall with great admiration how hard the judge in that courtroom worked and the care he took to provide every litigant a full and fair opportunity to resolve their legal issues notwithstanding the volume of cases before him.

After serving in both the Labor Department and the Commerce Department in areas of employment and occupational health law, I gravitated back to the courthouse and was given the opportunity to serve as a judicial law clerk, as I mentioned before when introducing Judge Sylvia Bacon. I experienced all of the hard work that went on behind the scenes in the judge's chambers, and observed how her demeanor promoted respect, professionalism and efficiency in the courtroom.

I joined the U.S. Attorney's Office in 1986 and experienced first-hand, each and every day, how the judges strive to provide access to the justice system to all litigants who appear before the court. Outside of the courtroom, I have participated in the Office's city wide community prosecution effort and in its unprecedented outreach programs. What I had known before was greatly reinforced, that is, if given the opportunity, I would make my life's work the challenges and rewards of serving the District of Columbia community.

With profound respect for those on the bench where I seek a position, if confirmed, it would be an honor, and a responsibility I welcome, to continue my public service as an Associate Judge on the Superior Court of the District of Columbia.

Thank you very much for permitting me to make this statement.

QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA  
COURTS COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL  
AFFAIRS, UNITED STATES SENATE

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

1. Full name (include any former names used).  
Heidi M. Pasichow
2. Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).  
United States of America
3. Current office address and telephone number.  
Office of the United States Attorney for the District of Columbia  
555 4th Street, N.W., Room 9917  
Washington, DC 20530  
202-514-7564
4. Date and place of birth.  
May 24, 1955, Queens, New York.
5. Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
Single.
6. Names and ages of children. List occupation and employer's name if appropriate.  
I have no children.
7. Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.

**REDACTED**

- Washington College of Law, The American University 1978-1981, Juris Doctorate, 1981.
- The George Washington University 1973-1977, Bachelor of Arts With Distinction, 1977.
- Oceanside High School, Oceanside, Long Island, New York 1969-1973. Diploma, 1973.

8. Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.

**Law Clerk, 1980-1982**

Office of Civil Rights, United States Department of Commerce, Washington, D.C.

Selected, organized, and analyzed pertinent facts from extensive investigative files and hearing transcripts on employment discrimination complaints filed by Department employees and applicants under Title VII of the Civil Rights Act of 1964. Researched, analyzed, and applied appropriate case and statutory law to these facts, drafted and recommended final agency decisions for the signature of the Department's Secretary of Administration. Summer position continued on a part-time basis during law school.

**Legislative Assistant, 1978**

United States Representative Timothy Wirth, United States Congress, Washington, D.C.

Assisted in the coordination of several subcommittee hearings, including identifying and scheduling witnesses and preparing briefing books. Prepared legislative analyses, substantive briefings, and constituent correspondence in the areas of communications, environment, and conservation.

**Research Assistant, 1977-1978**

The Brookings Institution, Washington, D.C.

Conducted interviews with Congressional staff members and Department of Defense officials. Researched newspapers, magazines, Congressional hearings, and the Congressional Budget Act. Drafted the section on the impact of the Act on the national defense budget for a chapter on this subject for publication.

9. 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.

- Special Achievement Award, U.S. Attorney's Office, September, 2007.
- Justin D. Simon Award for Excellence in Teaching Trial Advocacy, National Institute for Trial Advocacy (NITA), June, 2007.
- Certificate of Appreciation in Recognition of Performance in The Superior Court Division, October 1, 2005 – September 30, 2006, Office of the United States Attorney, 2006.
- Recognition and Endorsement from the Fraternal Order of Police, National and Washington D.C. 2006.
- Certificate of Appreciation, Death Investigation School, Metropolitan Police Department, 2002.
- Employee Volunteer Service to Others in the Community Award, U.S. Department of Justice, 1998.
- Letter of Commendation, Metropolitan Police Department, Homicide Division, 1998.
- Special Achievement Award in Recognition of Sustained Superior Performance of Duty, Office of the United States Attorney, 1992.
- Special Achievement Award, Office of the United States Attorney, 1991.
- Special Achievement Award, Office of the United States Attorney, 1990.
- Phi Beta Kappa, 1977.
- Hilda Manchester Award, The George Washington University, 1977.
- Political Science Honor Society, The George Washington University, 1977.
- Sociology Honor Society, The George Washington University, 1977.

10. Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.

None.

11. Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.

- District of Columbia Bar Association.
- United States Attorney's Association.

- Courts, Lawyers, and the Administration of Justice Section of the D.C. Bar.
  - The Woman's Bar of the District of Columbia.
  - District of Columbia Judicial Bar Conferences.
12. Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.
- National Advocacy Center, United States Department of Justice, Instructor, 2002, 2004, 2006-2007.
  - United States Attorney's Office Hiring Committee, 2000-present.
  - National Institute for Trial Advocacy, Faculty, 1998-present.
  - Mentor, J.O. Wilson Elementary School, 5th grade class, 2003-2006.
  - Child Fatality Review Committee, 1994-1998.
  - Phi Beta Kappa, 1977- present.
  - Women's Legal Defense Fund, 1992-1993.
  - Bet Mishpachah Synagogue, 1992-present.
  - Smithsonian Institution Associates Program, 1996-1998.
13. Court admissions. List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies which require special admission to practice.
- United States Supreme Court, January 26, 2004.
  - United States District Court for the District of Columbia, November 4, 1985.
  - District of Columbia Court of Appeals, October 17, 1983.
14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.
- Contributing Researcher, in Diane Dodson, "Legal Framework for Ending Foster Care Drift," Sourcebook, The American Bar Association, 1983.
  - Author, "Fighting For Homemakers' Rights to Pension Benefits," in The Women's Newsletter, National Lawyer's Guild, 1979.
  - Contributing Author, "Defense Spending," in Setting National Priorities, The Brookings Institution, 1978.

- Literature Editor, "In the Literature," in First Principles, Newsletter of the Project on National Security and Civil Liberties, The Center for National Security Studies, 1977.
- Co-Author, "Military Intelligence," in Morton Halperin, The Lawless State: The Crimes of the U.S. Intelligence Agencies, The Center for National Security Studies, 1976.

15. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.

None.

16. Legal career.

- A. Describe chronologically your law practice and experience after graduation from law school, including:
- (1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;
  - (2) Whether you practiced alone, and if so, the addresses and dates;
  - (3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.
- **1982-1983. Attorney Advisor, Benefits Review Board, United States Department of Labor, Washington, D.C.** During my tenure at the Benefits Review Board, I researched and applied complex regulatory law to issues raised by petitioners in compensation cases on appeal to the Board under the Federal Coal Mine Health and Safety Act of 1969. I recommended alternative dispositions to the administrative appeals judges in memoranda, draft decisions, and in oral presentations. I prepared final decisions for the judges' signatures.
  - **1983-1985. Judicial Law Clerk, The Honorable Sylvia Bacon, Associate Judge, the Superior Court for the District of Columbia, Washington, D.C.** As a judicial law clerk, I prepared the daily court calendar and assisted in the courtroom during selected trials and motion hearings. In addition, I reviewed and summarized pleadings filed in civil, criminal, domestic relations, small claims, and landlord tenant cases. I researched applicable law and drafted internal memoranda, memorandum opinions, and orders for review.

- **1986-Present. Assistant United States Attorney, Office of the United States Attorney for the District of Columbia, Washington, D.C.**

I initially served as a rotational prosecutor in the Appellate Division and in the Misdemeanor, Grand Jury, and Felony Trial Sections of the Superior Court Division.

**July 1989.** I was promoted to the Violent Crime Section in the Superior Court Division. My responsibilities included the grand jury investigation, indictment, and trial of violent crimes and armed offenses including domestic violence cases.

**July 1990.** I was promoted to the Homicide Section in the Superior Court Division. In that Section, my duties included the grand jury investigation, the preparation and presentation of witnesses, and the prosecutions of homicide cases before juries in the District of Columbia Superior Court.

**1994-1998.** After five years as a prosecutor in the Homicide Section, I was promoted to the position of Deputy Chief of the Homicide Section. In that capacity, I supervised a staff of 16 senior attorneys responsible for the grand jury investigation and prosecution of homicides occurring in the First, Second, Third, and Fourth Police Districts. I reviewed all arrest and search warrants submitted by the Metropolitan Police Department pertaining to homicides in those police districts. My responsibilities included, among other things, the assignment of cases and investigations, review and approval of indictments and plea offers in all cases, and direct supervision of all cases in trial. I also coordinated victim-witness security issues and worked closely with survivors of homicide victims. In addition, I served as a liaison to the District of Columbia's Office of the Medical Examiner and to the District of Columbia's Child Fatality Review Committee.

**1998-1999.** In 1998, I was appointed Chief of the Violent Crime Section. At that time, that Section handled the prosecution of all violent crimes (other than homicides and sex offenses) committed in the District of Columbia. As Chief, I was responsible for the intake and management of new violent crime investigations and cases. To that end, I supervised a staff of 11 attorneys who handled all of the grand jury investigations, indictments, and trials of those matters on an accelerated trial calendar because the defendants were incarcerated pending trial. I also reviewed all arrest and search warrants submitted by the Metropolitan Police Department pertaining to all violent crimes except homicides and sex offenses. My responsibilities included, among other things, the assignment of cases and investigations, review and approval of indictments and plea offers, and direct supervision of all cases in trial.

**1999-2002.** One year later, the Violent Crime Section merged with the Homicide Section to form the Community Prosecution Section as a result of the expansion of the U.S. Attorney's "Community Prosecution Initiative" to include all police districts within the District of Columbia. I was appointed District Chief of the Community Prosecution-Major Crimes Section for the Second and Fourth Police Districts. In that capacity, I served as the United States Attorney's Office point of contact for community leaders, residents, and law enforcement agencies. That program included collaboration with residents on crime prevention initiatives, particularly focusing on lowering the instances of teenage truancy, substance abuse, and underage drinking in commercial establishments. In addition, I participated in the implementation of the United States Attorney's Firearm Violence Reduction Strategy. I also reviewed all arrest and search warrants submitted by the Metropolitan Police Department pertaining to homicides, violent crimes, and community-based offenses and offenders. I supervised ten community prosecutors and my work included, among other things, the assignment of cases and investigations, review and approval of indictments and plea offers in all cases, and direct supervision of all cases in trial.

**2002-2003.** I was appointed Special Counsel for Professional Development in the Superior Court Division. My experience as a supervisor of trial attorneys during the eight preceding years prompted me to create a training initiative uniquely tailored to develop the litigation skills of approximately 130 Assistant U.S. Attorneys who practice in Superior Court. In my capacity as Special Counsel for Professional Development, I participated in pretrial conferences with prosecutors, observed prosecutors in pretrial and trial proceedings and provided critiques of their performance, assisted in the preparation of witnesses, and created new ways to address performance challenges. I managed the Special Assistant U.S. Attorney program through solicitation of agencies for candidates and selected candidates for participation in a six-month detail to the U.S. Attorney's Office.

**2003-2005.** I served in the Transnational Major Crimes Section and in the Federal Major Crimes Section of the Criminal Division. This shift to the Office's federal practice provided me with an opportunity to litigate in the U.S. District Court for the District of Columbia. I was responsible for conducting grand jury investigations into allegations of violations of the U.S. Criminal Code. I handled all aspects of the prosecution of cases pertaining to immigration violations, threats to national security including threats against the government officials, government property, and religious and governmental organizations, mail, identity and passport fraud, the illegal exportation of goods, and child pornography and child exploitation using the internet.



**2006-present.** As a prosecutor handling "cold cases" in the Homicide Section, I am responsible for conducting the grand jury investigation and prosecution of previously unsolved murder cases, some of the most difficult cases to investigate and bring to trial.

For example, in 2007 I prosecuted two unrelated cases, each more than five years after the murders had occurred. In the first, U.S. v. Carl Meade, the grand jury investigation had revealed that witnesses having information relevant to the murder had been silenced for fear of retaliation. Identifying and locating those witnesses took over six months and ultimately led to the indictment and conviction of Mr. Meade for fatally shooting a 21-year old neighbor. In the second, U.S. v. George Riddick, the defendant had fled to New York and had assumed a new identity after having fatally shot his girlfriend in her apartment. Six years later, we were able to bring justice to the young woman's family which included her child who had been left at the scene of the murder.

Most recently, I have had the opportunity to utilize, for crime-solving purposes, and to present to the jury, more complex forensic methods for analyzing evidence. I am currently in trial with co-counsel prosecuting an individual charged with the 2004 sexual assault and brutal murder of his elderly neighbor. We have presented forensic evidence such as DNA, handwriting, fingerprint, and hair and fiber analyses linking the defendant to the crime.

- **1999-Present. *Instructor*, National Institute for Trial Advocacy.** Continuing Legal Education Program, Georgetown University Law Center. In March 1999, I obtained a Diploma from the Board of Trustees of the National Institute for Trial Advocacy to teach trial advocacy skills to attorneys. The course is designed to improve the skills in case analysis and strategy, witness preparation, the foundations for the admission of tangible evidence, effective witness examination, and persuasive jury presentation. In June 2007, I was awarded the Justin D. Simon Award for Excellence in Teaching Trial Advocacy.
- B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

As described in detail in the answer to 16A above, during my twenty years of practice as an Assistant United States Attorney, I have:

- Assumed increased responsibility, as a Deputy Chief and a Chief, for managing staff attorneys and all their cases.

- Assumed increased responsibility in the community and in coordinating multi-agency participation as part of an expansion of our community prosecution efforts.
- Proposed and initiated a new position that focused on enhanced training and development of staff attorneys.
- Enhanced participation in city-wide programs that focused on specific crime trends and law enforcement.

Commencing in 1989, I handled complex criminal cases and prosecuted serious crimes of violence including assaults that did not result in the death of the victim. The following year, in 1990, I was promoted and began to prosecute murder cases. In 1994, as Deputy Chief of the Homicide Section, I began to work proactively with law enforcement by coordinating the direction of death and homicide investigations immediately after the incident and prior to the arrest of an alleged perpetrator. I also coordinated efforts to establish a law-enforcement protocol for child deaths and served as the U.S. Attorney's Office's representative on the Child Death Fatality Review Committee. In 1998, I was promoted to Chief of the Violent Crime Section and led prosecutorial efforts to bring justice to victims of violent offenses city-wide. In 1999, our local practice shifted as our United States Attorney expanded the community prosecution effort from one police district, the Fifth District, to all seven police districts. That shift acknowledged a need to enhance effectiveness in crime prevention, reduction, and prosecution through a better understanding of the problems unique to each particular community. I worked closely with the United States Attorney during that transition and was responsible for coordinating efforts, particularly in the Second and Fourth Police Districts, to work more closely with the community's residents, school officials, civic organizations, and law-enforcement agencies to further crime prevention and enforcement efforts. Our efforts in those two districts ranged from teenage violence to school truancy to underage drinking in commercial establishments. In 2003, after over fourteen years of prosecuting or supervising the prosecution of violent offenders, with the experience of instructing trial advocacy at the Justice Department's National Advocacy Center and at the National Institute for Trial Advocacy, my proposal to create a rotational trial training and professional development position that focused exclusively on the advocacy skills of our prosecutors practicing before the D.C. Superior Court was approved by the United States Attorney. I served as Special Counsel for Professional Development for approximately eighteen months. Before returning to the Homicide Section in 2006 to focus on the investigation, closure, and prosecution of previously unsolved murders, I practiced before the United States District Court for the District of Columbia for almost two years handling a variety of federal cases for the Transnational Major Crimes and Federal Major Crimes Sections of the Office's Criminal Division.

- C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

I do not have "clients" *per se*. During the majority of my tenure in the U.S. Attorney's Office I served victims of and witnesses to crimes committed in the District of Columbia.

- D. Describe the general nature of your litigation experience, including:

- (1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.
- (2) What percentage of these appearances was in:
  - (a) Federal courts (including Federal courts in D.C.);
  - (b) State courts of record (excluding D.C. courts);
  - (c) D.C. courts (Superior Court and D.C. Court of Appeals only);
  - (d) other courts and administrative bodies.
- (3) What percentage of your litigation has been:
  - (a) civil;
  - (b) criminal.
- (4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.
- (5) What percentage of these trials was to
  - (a) a jury;
  - (b) the court (include cases decided on motion but tabulate them separately).

One hundred percent of my litigation has been criminal litigation. While I served in the trial sections of the United States Attorney's Office between 1986 and 1995, I appeared before the D.C. Superior Court almost daily. I prosecuted hundreds of cases, the majority of which were resolved through plea, and brought approximately 65 others to jury trial. In 1987, between my trial rotation in the

Misdemeanor and Felony Trial Sections, I served in the Grand Jury Section investigating allegations of criminal offenses before the D.C. Superior Court's grand juries. Between October 1987 and July 1988, I was assigned to the Appellate Section and researched and authored 19 briefs and argued one case before the D.C. Court of Appeals. From August 1989 - May 1995, I appeared in D.C. Superior Court on a regular basis and was responsible for the grand jury investigation and prosecution of violent crime and homicide cases. Between December, 1994 and March, 2002, as Deputy Chief of the Homicide Section, Chief of the Violent Crime Section, and Special Counsel for Professional Development, I supervised or trained other prosecutors and did not appear in D.C. Superior Court to handle the prosecutions on a regular basis, but rather appeared in court to supervise prosecutions. For approximately eighteen months between 2004 and 2006, I appeared before the United States District Court of the District of Columbia on a regular basis to represent the United States in prosecutions involving violations of the United States Code. I handled the grand jury investigation, prosecution, and ultimate pre-trial disposition of dozens of cases before the federal court. In December, 2005, I returned to the Office's Superior Court Division to handle grand jury investigations and prosecutions of previously unsolved "cold cases." In that capacity, I, once again, appear before the D.C. Superior Court on a regular basis. Ninety-nine percent of the trials that I have handled during my career in the U.S. Attorney's Office were tried to a jury in D.C. Superior Court.

17. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and 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 court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.

1. United States v. Karlos Meyhew, F3237-94 (Richter, J.), *aff'd*, 792 A.2d 260 (D.C. 2000) (*per curiam*). United States v. Kevin McCrimmon, F9350-94 (Cushenberry, J.), *rev'd* and remanded on the issue of defense attorney conflict of interest, 853 A.2d 154 (D.C. 2004). United States v. William Napper, F3239-94 (Cushenberry, J.), *aff'd* 818 A.2d 202 (D.C. 2003).

A rush hour shooting rampage in a public food market that injured eight innocent bystanders and left a 15 year old dead was one of the most heinous crimes committed in the District of Columbia. The grand jury investigation spanned three police districts and three separate gangs.

This violent act chilled a neighborhood when a total of eight defendants retaliated against a crew whose turf was the 7 & 0 Street Market. The larger picture was a “beef swap,” wherein the defendant, Karlos Meyhew (and his friend William Napper), would avenge the shooting of Kevin McCrimmon (because McCrimmon’s enemies would not recognize Napper and Meyhew), in return for McCrimmon’s promise to avenge the unrelated shooting of Napper’s brother. Following an extended investigation, Meyhew’s trial commenced on May 1, 1996, before D.C. Superior Court Associate Judge Robert I. Richter.

The long-term grand jury investigation of this market shooting ultimately revealed the calculated and particularly cold-blooded nature of this attack. Defendants Napper and Meyhew agreed to their part of the swap, knowing only that the targets were young African-American males who could be located at the “O Street” Market, but not knowing specifically their targets by name or even by face. Their advantage was that no one at the market would know who they were. This resulted in five young men, who normally spent time at the “O Street” Market, and four innocent bystanders, to be injured in the assault. Four defendants fired a total of 30 shots inside and outside of the Market; a fifth defendant remained in the getaway car; Kevin McCrimmon, who masterminded the plan with William Napper, did not go to the Market; and the seventh and eighth defendants supplied the weapons and destroyed the vehicle that was stolen and used for transportation. The convictions of all eight defendants, either through verdict or plea, were particularly satisfying, because this armed assault had severely traumatized the residents of the Shaw neighborhood and the patrons of the Market.

I was sole trial counsel in each trial.  
 Meyhew’s conviction was affirmed by the D.C. Court of Appeals.  
 Napper’s conviction was affirmed by the D.C. Court of Appeals.

*Counsel for the defendants:*  
 Eli Gottensteiner, Esquire  
 1614 20th Street, N.W.  
 Washington, D.C. 20009  
 (On behalf of Karlos Meyhew)

Bernard S. Grimm, Esquire  
 307 G Street, N.W.  
 Washington, D.C. 20001  
 (On behalf of Kevin McCrimmon)

Gloria Henderson, Esquire  
 3001 Georgia Avenue, N.W.  
 Washington, D.C. 20001  
 (On behalf of William Napper)

2. United States v. Sylvester Ingram, F288-91 (Burgess, J.), *aff'd*, No. 92-CF-1101 (D.C., Memorandum Opinion and Judgment filed Feb. 8, 1996) (*per curiam*).

United States v. Victor Lugo, F7976-92 (von Kann, J.), *aff'd*, No. 94-CF-630 (D.C., Memorandum Opinion and Judgment filed Oct. 7, 1996) (*per curiam*);

United States v. Derek A. Proctor, F12802-92 (Suda, J.), *aff'd*, No. 94-CO-572 (D.C., Memorandum Opinion and Judgment filed Dec. 4, 1995) (*per curiam*).

Among the most significant cases to me were those that had community impact. Two examples involved crimes in opposite quadrants of the city -- Southeast and Northwest -- each involving daytime shootings committed by young gang members, and in each, the approach to problem-solving and the impact on each neighborhood was similar. We enhanced the desired outcome in each case through the persistent involvement of law enforcement officials directly in the community, thereby opening lines of communication and lessening fears.

A jury convicted Sylvester Ingram in February of 1992, following a month-long trial before D.C. Superior Court Associate Judge Franklin A. Burgess, Jr. In a courtyard between two buildings in a public-assisted housing project located in the area of Wahler Place, Southeast, Washington, D.C., the defendant shot a young teenager in the face because the victim mentioned his name during a drug transaction. Although there were several witnesses, initially, no one was willing to come forward.

Victor Lugo was the head of a drug operation in the Mount Pleasant Section of Northwest, Washington, D.C. The victim, Lugo's rival, although warned about selling drugs in the same neighborhood, had persisted in his drug operation. Lugo and co-defendant Proctor, who was tried separately, were convicted in January, 1994, following a six-week long trial before D.C. Superior Court Judge Curtis E. von Kann, of shooting a rival drug dealer, in broad daylight, in front of numerous South American immigrant high school students who, at that time of day, were leaving school and walking to the Latin-American Youth Center.

In both cases, witnesses were reluctant to come forward because of widely divergent issues with the criminal justice system. I, along with homicide detectives and neighborhood "beat" officers, made persistent, repeated visits to each neighborhood over a protracted period. Also, relentless and thorough grand jury investigations improved our relationships with witnesses who, in these two unrelated trials in the Superior Court of the District of Columbia, came forward to help convict each defendant of murder and, subsequently, to reclaim their neighborhoods.

I was sole trial counsel in each trial.

Each case was affirmed in separate, unpublished opinions, by the D.C. Court of Appeals.

*Counsel for the defendants:*  
 Veronice Holt, Esquire  
 3003 Van Ness Street, N.W. #W919  
 Washington, D.C. 20008  
 (On behalf of Sylvester Ingram)

Jonathan L. Stern, Esquire  
 Arnold & Porter  
 555 12th Street, N.W.  
 Washington, D.C. 20004  
 (On behalf of Victor Lugo)

3. United States v. Morris Arthur, F-7452-89 (Weisberg, J.) , *aff'd*, 602 A.2d 174 (D.C. 1992).

This case, tried before D.C. Superior Court Associate Judge Frederick H. Weisberg (commencing on November 6, 1989), addressed the brutal beating and "stomping" of Katherine DeGrace, Mr. Arthur's common law wife. It was a "stomping" that left her partially paralyzed. The government charged Assault with Intent to Kill While Armed at a time when the crime of Aggravated Assault was not codified until the passage of the Omnibus Criminal Justice Reform Amendment Act of 1994. The charge required that the government prove that the defendant had the specific intent to kill the victim while he stomped her with his foot covered by a sneaker. In addition to proving the requisite intent, not necessary if the charge had been Aggravated Assault, the government had to prove that the defendant, at the time of the assault, was "armed with or [had] readily available any...dangerous or deadly weapon...." D.C. Code Section 22-3202(a)(1989). When I first met the Katherine DeGrace, the victim in this case, she was in a coma. She ultimately regained consciousness; however, her short term memory was affected by her boyfriend's attack and she did not remember the assault. Fortunately, several witnesses came forward to tell us that they were walking past the room where Ms. DeGrace was residing with her children and saw the defendant "stomping" her head with his foot. Ms. DeGrace's siblings told us that she had reported being physically abused by Mr. Arthur in the past. The jury convicted Mr. Arthur of Assault With Intent to Kill While Armed (shod foot). The defendant was sentenced to seven to 30 years' imprisonment.

Although the defense did not dispute that a shod foot was a dangerous weapon if used in a way as to cause death or great bodily injury, the defendant claimed that the government failed to establish that the sneakers worn during the assault caused any injury more significant than would have been caused by bare feet. According to the defense, without causing any more significant injury, even a foot covered by a sneaker or tennis shoe would not be an instrumentality considered a deadly or dangerous weapon that would fall within the DC Code's "while armed"

provision. The Court disagreed and concluded that there was sufficient evidence that Mr. Arthur's sneaker was a dangerous weapon without having to prove that any more significant injuries were caused by the foot being shod. Had the Court concluded that those provisions did not apply, the simple assault statute, a one-year misdemeanor offense, would have governed the defendant's criminal conduct and defendant's sentence would have been limited to a maximum of one year imprisonment.

I was sole trial counsel.  
The conviction was affirmed by the D.C. Court of Appeals.

*Counsel for the defendant:*  
David Hanzo, Esquire  
Jenner & Block  
601 13<sup>th</sup> Street, N.W.  
Suite 1200 South  
Washington, F.C. 20005

4. United States v. Sharita Shade, F-10446-89 (Kennedy, J.), *aff'd* Nos. 92-CF-458, 94-CO-1459 (D.C., Memorandum Opinion and Judgment filed June 3, 1996).  
United States v. Wendell Davis, F-10447-89 (Kennedy, J.), *aff'd* No. 91-CF-1049 D.C., Memorandum Opinion and Judgment filed June 19, 1996)

I tried these two cases that were severed for trial over a 26 week period. I spent approximately seven of the 26 weeks litigating pre-trial motions before then D.C. Superior Court Associate Judge Henry H. Kennedy, Jr. (currently a Judge on the United States District Court for the District of Columbia). There were no direct witnesses to the murder. The presentation of a circumstantial case required the presentation of a significant number of witnesses to provide evidence of a motive, the opportunity to commit the crime, and events after the murder that established the perpetrator's identities. In developing the evidence in this case by learning about the neighborhood and "the locales", we were able to find scores of witnesses who knew that our defendant, Ms. Shade, was far from the friend that the victim thought that she was. Instead, the witnesses told us that Ms. Shade was a prostitute who preyed upon older men. Our victim, 73-years old, had recently lost his wife and was seeking the company of a woman. Ultimately he developed a relationship with Ms. Shade, who ultimately and without the victim's knowledge, brought her boyfriend, Wendell Davis, to the victim's home so that they could steal his property and his car. Ms. Shade let Wendell Davis into the home while the victim walked his dog. When the elderly Mr. Barnes returned to his house, Mr. Davis grabbed the victim, tied him up and then rummaged through the house while Ms. Shade waited in the living room. Both defendants then took his personal property and placed it into the victim's car, which they also stole.



- **Managerial Decision Making and Prosecutorial Discretion:** During my tenure as a supervisor and manager, I was responsible for making threshold decisions in hundreds of cases. Typically these decisions involved the coordination of the homicide or violent crime investigations with other law enforcement agencies. As a supervisor, I assessed the strengths and weaknesses of cases at their inception. That discretion required an understanding of legal principles relating to the constitutionality of stops, arrests, searches and seizures, interrogation techniques, and the utilization of a variety of investigative tools. I reviewed, and when lawfully sound approved, arrest warrants and determined the appropriate charges. I assisted in obtaining resources for witness protection, and supervised the direction of grand jury investigations, assessed the viability of each prosecution, determined bond requests to the court, reviewed and authorized grand jury indictments, recommended legal strategies at trial, determined the appropriate disposition of a matter, and provided plea alternatives where appropriate.
- **Community Prosecution:** I played an active role in the expansion of the Office's Community Prosecution efforts city-wide. My participation in the Office's outreach effort further underscored the importance of community involvement in addressing issues that influenced the quality of life in a particular neighborhood. I worked closely with the civic, church, education, and business communities as well as with government agencies and law enforcement to identify crime problems unique to particular communities, and attempted to work out solutions for crime prevention and increased crime-solving. A sound legal basis was required to take appropriate action that addressed nuisance properties, abandoned cars, skip-(school) parties, underage drinking in commercial establishments, and trafficking in drugs and firearms in public housing projects, to name a few.
- **Cold Cases:** The ability to solve homicide cases increases the sooner the case is investigated. Once a case gets "cold" its solvability diminishes. The work of conducting grand jury investigations into "cold" and unsolved cases is like opening up an old wound for survivors and witnesses to murders. It is extremely difficult for the survivors to experience the grief of the loss once again. The difficulty in getting a cold case solved is also further exacerbated by the climate in communities that discourage community involvement because of the fear of retaliation. In addition, I have eagerly joined a handful of prosecutors who are working closely with the Metropolitan Police Department to review the solvability of older cases and reinvigorate the investigation into those cases that have the potential to be solved. Recent developments in forensic technology have brought new and promising opportunities to solving some of these cases. In one case, 22 years after the rape and stabbing death of a 59 year-old woman found in a Washington, D.C., townhouse, we were able to link her assault to a District of Columbia resident whose DNA was found on the scene. The defendant was charged by indictment with First Degree Felony Murder While Armed and he is pending trial before a D.C. Superior Court Judge.

- **Teaching and Training :** Teaching and mentoring attorneys with less trial experience has been an extremely rewarding aspect of my work over the last ten years. In addition to participating in the United States Attorney's Office training, I have taught Evidence and Trial Advocacy at the United States Justice Department's National Advocacy Center. Moreover, as a faculty member of the National Institute for Trial Advocacy, I teach trial advocacy skills to civil litigators and to government attorneys. Our course materials utilize case studies involving civil and criminal cases and focus on providing numerous opportunities for the "student" lawyer to practice and develop courtroom skills and confidence through mock exercises.

19. Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.

I have never held judicial office.

- A. List all court decisions you have made which were reversed or otherwise criticized on appeal.

None.

20. Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).

In March 2003 and in September 2004 the District of Columbia Judicial Nomination Commission nominated me for a position as an Associate Judge for the Superior Court of the District of Columbia and forwarded my name to the White House for its consideration. I was not nominated by the White House on either occasion. In October, 2006 the Commission nominated me for a position as an Associate Judge for the Superior Court for the District of Columbia. In December 2006 and January 2007 (re-nomination), the White House nominated me and sent my name to the Senate for its consideration.

21. Political activities and affiliations.

- List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.
- List all memberships and offices held in and services rendered to any

political party or election committee during the last ten (10) years.

- Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of \$50 or more.
  - February 4, 2008: \$100.00 contribution to Obama for President Committee
  - February 4, 2008: \$250.00 contribution to Hillary Clinton for President Committee
  - February 23, 2008: \$100.00 contribution to Hillary Clinton for President Committee

22. To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.

Not to my knowledge.

23. Have you or any business of which you are or were an officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.

1. I was an unnamed member of a class action of more than 9000 United States Department of Justice attorneys in a law suit that challenged the lack of overtime paid to employees. The case caption is John Doe et al. v. The United States. The case was filed in the United States Court of Federal Claims, Docket No. 98-CV896 on November 25, 1998. The case was appealed to the United States Court of Appeals for the Federal Circuit, Washington, D.C. in Docket No. 05-5104. The case was resolved in favor of the United States in September, 2006.
2. In May, 1989, I appeared as a government witness in the United States District Court for the District of Columbia in my capacity as an Assistant U.S. Attorney in the case of United States v. Shelton Roberts. The defendant was a vice police officer charged with various criminal violations including perjury, tampering with evidence, obtaining a search warrant maliciously, and obstruction of justice. Assistant U.S. Attorney John Dominquez prosecuted the case before United States District Court Judge Stanley Sporkin.

24. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.

I have never been informed that I was the subject of any complaint, nor have I been cited or disciplined for a breach of ethics or unprofessional conduct relating to my professional conduct. In a letter to me from the Office of Bar Counsel dated July 16, 2003, however, I was asked to respond to questions pertaining to its inquiry into a matter that arose as a result of a Memorandum Order by the Honorable Chief Judge Rufus G. King, III, Superior Court for the District of Columbia, on October 23, 2001. This litigation was referred to as In Re Grand Jury Subpoenas to Witness X, Special Proceeding number 2802-00.

Chief Judge King III's Memorandum Order rendered his decision on a motion that was filed by the Public Defender Service for the District of Columbia, the agency that represented the grand jury witness. The motion requested the Court to quash a series of repeated subpoenas that an Assistant United States Attorney had issued to one grand jury witness. At issue was not only the repetition of subpoenas to a single witness, but also some of the text of the subpoenas. I was not in any way involved with the subject case; however, the motion included, as exhibits, subpoenas issued by other Assistant United States Attorneys including two exhibits with my signature. Those exhibits were not the subpoenas that the movants sought to quash, but were, instead, used only as examples of some of the standard grand jury subpoenas issued by the United States Attorney's Office at that time, including language that was then consistent with the standard instructions and procedures of the Office and of the Department of Justice Federal Grand Jury Practice Manual. In late 2001, the United States Attorney determined that the United States Attorney's Office could improve its policies and procedures; therefore, revisions were instituted in some of those previously well-established practices pertaining to the language of grand jury and trial subpoenas. The changes in practice involved a change in location of where the grand jury witness was told to check in on the day the witness was summoned to the grand jury. The changes in practices were consistent with the Chief Judge's ultimate disposition of the matter a few months later.

As a consequence of the above-described litigation, I, along with other Assistant United States Attorneys referenced in the litigation, were required to present information to the Office of the Bar Counsel regarding its inquiry into the matter. In a letter dated May 26, 2004, then United States Attorney Roscoe C. Howard Jr., responded to the Bar Counsel's inquiry on our behalf as well.

In 2005, the Bar Counsel's inquiry regarding the issuance of the two subpoenas that I signed presented as illustrations was dismissed. Furthermore, by letter

dated November 8, 2005, the Office of Professional Responsibility, United States Department of Justice concluded that I did not commit professional misconduct or exercise poor judgment, but rather, I was following the United States Attorney's Office long established grand jury practice.

## II. POTENTIAL CONFLICTS OF INTEREST

1. Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?  
  
Yes.
2. Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.  
  
None.
3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.  
  
None.
4. Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.  
  
None.
5. Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.  
  
None.
6. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.  
  
No.

7. Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.

I have no potential conflicts of interest.

8. If confirmed, do you expect to serve out your full term?

Yes.

### III. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection).

### IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section 11-1501 (b), as amended.

1. Are you a citizen of the United States?  
Yes.
2. Are you a member of the bar of the District of Columbia?  
Yes.
3. Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.  
Yes. 1983.
4. If the answer to Question 3 is "no" --
  - A. Are you a professor of law in a law school in the District of Columbia?
  - B. Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?

- C. Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?
- D. Upon what grounds is that eligibility based?
- 5. Are you a bona fide resident of the District of Columbia?  
Yes.
- 6. Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.  
Yes.
- 7. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?  
No.
- 8. Have you been a member of either of these Commissions within the last 12 months?  
No.
- 9. Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.

**AFFIDAVIT**

*Heidi M. Pando*

being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

SUBSCRIBED and SWORN TO before me this 27<sup>th</sup> day of April 2008.  
*David A. Foster*  
Notary Public

**Senator George V. Voinovich  
Additional Questions for the Record  
Nomination Hearing of Carol Ann Dalton  
July 23, 2008**

**Question**

1. I understand that much of your early legal career focused on trust and estate matters. Please tell us about your transition from that practice to a focus on family law.

**Answer:**

From 1986 through 1992, I worked in two firms that handled multiple facets of estate planning. The transition from estate planning to family law was a natural process in that both areas of the law deal with clients who are in need of solutions to problems in their lives and lives of their family. Estate planning assists clients to pass their estates to their intended beneficiaries, providing for minor children and preparing for one's own incapacity. Much of estate planning deals with giving decision-making authority to someone else usually a family member. Estate planning also involves prenuptial agreements and protections of assets in the event of divorce. In drafting documents for my estate planning clients, the most important concerns revolved around family issues such as providing guardians for children in the event of death and ensuring that families can sustain themselves by passing on assets. Many clients wanted to ensure that adopted children were included as part of their estate plan. Similar to family law, my clients at that time were representative of all social and economic classes.

My interest in family law is longstanding. During law school, in addition to taking family law classes, I interned with a New York City Agency that dealt with child abuse and neglect issues. Moreover, my first experience after law school was in a general practice firm that handled not only estate planning but also represented clients in domestic relations proceedings including divorce, custody and child support. Similar to estate planning, family law provides for child support, permanency for children, distributing assets in the event of divorce and dealing with incapacity.

My transition from estate planning to family law practice was an evolving process. While practicing family law in the D.C. Superior Court, I continued to represent some estate planning clients until coming to the Court as Branch Chief of the Counsel for Child Abuse and Neglect. As much as I enjoyed Estate planning, I developed a passion for my clients in my neglect and abuse cases.

Working in the area of child abuse and neglect clearly presents tougher issues that are more difficult than a typical estate planning practice. I am happy that I came to this arena at an older age with more wisdom and ability to handle the stress that comes with



making such tough decisions that impact so many lives. My estate planning background was helpful in decreasing my learning curve in family law.

I believe that my practice in estate planning, my L.L.M. in tax and my criminal law practice have helped me to be a more versatile judge.

**Question**

2. In your time on the Superior Court's Family Court, I am sure you had to reach some decisions by relying on your judgment as much as legal precedent, perhaps by removing children from a dangerous home when the law did not require removal. Please describe the process you undergo and the factors you consider when the laws and precedent leave a decision to your discretion.

**Answer:**

As a judge, my decisions are governed by legal authority. I believe that my background, personal preferences and beliefs should not control my decision making. My decisions are reached after hearing from all the parties, assessing the credibility of the testimony and then applying the facts to the relevant legislation and case law. This requires judgment in conformance with the law. There are situations wherein your instincts may tell you to act in a certain manner but the facts and the evidence are contrary and the decision must be tailored to the law. If my instincts indicated that the safety of a child was endangered by a return home but the evidence indicated otherwise, case law allows the Court to bring in an expert prior to dismissing a neglect case, which I have done on occasion.

The paramount consideration in abuse and neglect cases is the best interest of the child. The Court, in its *parens patriae* role, must act in the best interest of the child and may not expose the child to serious risk of harm. The Court's authority to act in the interest of the child is broad but must be exercised within the constraints established by the legislature and the Court of Appeals. The state has to have a compelling justification in order to intervene in the family. Parents have constitutional rights in the care and custody of their children that must be addressed. Generally, if a child is removed from the home it is often done prior to an initial Court hearing by Child and Family Services Agency (CFSA). All parties are afforded counsel, the opportunity to admit or deny the allegations, the right to present evidence and to cross examine witnesses. The Court must determine whether removal is appropriate for the child and does so after hearing from counsel and the parties. Generally an investigation will have been done by CFSA and a report filed documenting why the child was removed or whether removal is being recommended. A guardian ad litem (GAL) is appointed for the child. The GAL is charged with performing a dual role under our practice standards which is as neutral fact finder for the judge and as zealous advocate for the child's best interests. The GAL must be also be mindful of the child's safety and well being and often files reports with the Court. I have the ability to and frequently do appoint additional persons such as Court

Appointed Advocates who report to the Court as well. Parents have counsel who report to the Court. Our attorneys are regularly trained in this area and subject to practice standards mandated under the Family Court Act. Any decisions that are made concerning the family are made after hearing from all the parties. In addition to the parties, the Court hears from family members, foster parents, teachers, therapists, medical doctors, clinical social workers and psychologists. Clearly, a removal decision is made after substantial input from all persons with information concerning the family and the issues.

In making a decision to sanction a removal, the Court must be apprised of the entire mosaic and must address the issues attendant on removing a child from his or her home as well as those involved in keeping the child where he or she is. This holding requires that an explicit balancing be made by the judge of the risks of removal from the home versus the risk of permitting the child to remain in the home. The balancing calculus prescribed by the District of Columbia Court of Appeals for determining the risk of removal varies depending on the facts of the case, the age of the child, and the services available to ameliorate the neglect. In evaluating the harm that may result from placement out of the home, the Court considers the child's attitude/adjustment toward out of home placement, the child's bond with the parents and the disruption to the child's school and social relationships.

Another factor that has to be considered in removal situations is that Federal and District law mandate the Court to make a finding on whether reasonable efforts to prevent removal have been made by the social service agency (CFS) subject to certain exceptions. This reasonable efforts requirement applies at all stages of the proceedings. If there are services that can safely maintain the child in the home that is the ideal. Best practices across the country indicate that the most important goal for children is to be with their parents. One only has to have observed a removal of a child from a family to realize how damaging it can be to the child. In using my judgment to remove a child, I will have heard from parties and experts at every stage of the process from initial removal to achieving final permanency. The decision to remove is always difficult but sometimes it is clearer than others. For instance, I have removed children that have been physically abused and medical testimony indicated that the femur or tibia was damaged and the break could only be consistent with abuse. Situations of serious physical abuse mandate parental separation.

I have to use my judgment in assessing the credibility of witnesses and determine what is factually correct and applying those facts to the law. However, in instances where I have removed the child and a parent complies with court requirements and services, after establishing that the child will not be in further danger of abuse or neglect, I have returned the child and have terminated jurisdiction. I have closed a fairly sizeable amount of cases by reunification in such circumstances.

Congress via the Family Court Act, reorganized the Court's abuse and neglect system after the death in 2000 of a child that was killed after being returned home to her mother without a Court hearing. The Court under the reorganization strived to ensure that each child will get the attention that they deserve on the issues of safety and well-being as

they move through our court system. Through the use of frequent hearings, barriers to permanency are identified, strict deadlines and dates for overcoming barriers are established, and needed services to children and families are provided. This approach facilitates the ongoing assessment of the child's safety, service needs, and best interests<sup>1</sup>.

**Short Statement**

Again thank you for the opportunity to appear before the Committee and to be considered for confirmation.

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<sup>1</sup> It may be of significance to note that with the establishment of Family Team Meetings and Mediation in every case, parents are empowered to make decisions concerning the placement of their children and the acceptance of services in advance of Court. Consequently, many parents agree with the removal of the child and stipulate to allegations making the process more treatment oriented. Of course, a parent who does not agree with removal is entitled to a probable cause hearing after removal and a trial to determine if the child is neglected.

**Senator George V. Voinovich**  
**Additional Questions for the Record**  
**Nomination Hearing of Anthony C. Epstein**  
**July 23, 2008**

1. Mr. Epstein, your legal experience and background are very impressive. However, as a judge on the D.C. Superior Court you will inevitably face issues and areas of law that you have not had exposure to previously. Please tell us how you intend to prepare for and decide on those areas of law.

**ANSWER**

I appreciate the generous words about my experience and background. But I also appreciate that if I am confirmed, I will face issues and areas of law that I have not had exposure to previously. I have faced the same challenge as a lawyer, and I think I have successfully met it in that context. I have welcomed the opportunity as a lawyer to handle a wide variety of cases and to avoid excessive specialization. For example, I have represented clients in intellectual property and international trade cases even though I previously had no background in those areas. With the help of my colleagues and by dint of hard work, I have been able to learn what I need to know to brief and argue the issues effectively.

I would follow the same strategy if I am confirmed as an Associate Judge of the Superior Court. One of the Court's strengths is the collegiality of its judges, and I am confident that experienced judges would share their knowledge with me. The Court has also developed an intensive and comprehensive training program, and I will eagerly take advantage of that opportunity. By way of analogy, the Family Court offers training for volunteers like me in its Self-Help Center, and I think that this training effectively enabled me to give pro se litigants information about the substantive law and procedure in custody cases, divorce cases, child support cases, and the like.

I might add that the Court's docket is so varied that no new appointee can realistically expect to have in-depth experience in all facets of the Court's caseload. Other new judges have been able to surmount this challenge. With the Court's help and the necessary commitment of time and effort, I believe I can do so as well.

**Additional Questions for the Record from  
Senator George V. Voinovich  
Nomination Hearing of Heidi M. Pasichow on July 23, 2008**

**1. Ms. Pasichow, if you are confirmed as an associate judge for the D.C. Superior Court, you may preside over civil, criminal or administrative cases. As I look at your background, I note that one hundred percent of your litigation experience has been criminal litigation. How do you intend to prepare yourself to handle other types of cases?**

I am highly motivated by the prospect of continuing my public service in areas beyond the criminal law, and would welcome the challenge, if confirmed by the Senate. I will continue to learn from and apply my experience in law school, my employment and experience in two executive branch agencies before working as a judicial law clerk in the D.C. Superior Court, and my extensive litigation experience in D.C. Superior Court during my twenty-two year tenure as an Assistant U.S. Attorney. These have served to prepare me to preside over cases in all areas of the law.

I have a strong working knowledge of the rules of evidence applicable to every area of litigation. I taught evidence and trial advocacy at the U.S. Department of Justice's National Advocacy Center to new and experienced lawyers practicing in both the civil and criminal context. I also teach trial practice for attorneys who represent litigants in civil cases, as a faculty member of the National Institute for Trial Advocacy. As a Special Counsel for Professional Development in the U.S. Attorney's Office, I also was responsible for developing and advancing courtroom skills of our Office's litigators.

Although case law, rules, and statutes vary in different cases, I am committed to continuing to learn every area of the law necessary to handle all of the work within the D.C. Superior Court's jurisdiction. Indeed, as law evolves through case precedent and statutory modifications, I have throughout my tenure in the U.S. Attorney's Office reviewed and analyzed new jurisprudence and legislation toward determining how they apply in the litigation context. In addition, in 2003, after practicing before the D.C. Superior Court for approximately seventeen years, I was assigned to the Criminal Division for almost two years where I handled federal criminal cases before the U.S. District Court for the District of Columbia. In that capacity, I quickly mastered entirely different statutes, regulations, case law, and sentencing guidelines. It was a task I welcomed and achieved efficiently and effectively.

Though I have not litigated civil or administrative cases in court, my experience prior to my appointment as an Assistant U.S. Attorney laid a solid foundation in several areas of the law outside of the criminal context. As a law student-attorney with the D.C. Law Students in Court Program, I developed an expertise in landlord tenant law while representing indigent tenants in the courtroom; as a law clerk at the Office of Civil Rights, U.S. Department of Commerce, I researched and applied civil case law and statutes to address complaints filed by Department employees pursuant to Title VII of the Civil Rights Act of 1964; as an Attorney-Advisor to a

panel of Administrative Law Judges on the Benefits Review Board at the U.S. Labor Department, I drafted opinions for the Judges' consideration concerning occupational health claims filed under a complex regulatory scheme under the Federal Coal Mine Health and Safety Act of 1969; and as a judicial law clerk for a D.C. Superior Court Judge, I conducted legal research and drafted memoranda in civil, small claims, domestic relations, and criminal matters.

Finally, I have appeared before dozens of the D.C. Superior Court judges who began their work on the bench, much like I would if I have the honor of your confirmation, with limited experience in some areas of the law. It has been those judges who have acquired knowledge and experience in all areas of the law who have become mentors to those who practice before them. If confirmed, not only would I apply my own experiences in areas beyond the criminal law and participate in the Court's extensive training program for new judges, but also I would learn from experienced judges on the bench. Serving as an Associate Judge on the D.C. Superior Court would continue to inspire me to be hard-working and diligent in the administration of justice in all areas of the law. If confirmed, I would be honored by that challenge.

**2. In your more than twenty years as an Assistant U.S. Attorney, I am sure you have appeared before a number of judges and have observed a variety of judicial temperaments. I would like you to discuss what you believe to be the appropriate temperament and approach of a judge.**

I have appeared before many D.C. Superior Court judges over the course of my professional career as a litigator. "Growing up" in that courthouse as a trial lawyer has been a humbling experience for me. I have had the opportunity not only to observe, but also to learn from my experiences there.

The judicial temperament and approach that further the fair administration of justice in a courthouse that has a significant volume of work include: (1) the respectful treatment of all parties; (2) a fair, unbiased and reasoned approach to decision-making; (3) timely decision-making to bring closure to litigants without compromising the opportunity for parties to fully air their positions; (4) the obligation to follow the rule of law; and (5) hard-work and diligence. Each of these qualities furthers public confidence in the judiciary and respect for the law, which are essential to an effective judicial process.

Moreover, the importance of judicial temperament in the judicial process cannot be overstated. For example, the results of a participant survey conducted in the D.C. Superior Court in 2007 suggest that litigants may be more positively influenced by the way they are treated than by the outcome of the litigation itself.

"This survey is especially important because it tells whether court users feel that the Courts are accessible and treat people with fairness and respect. Many people assume that "winning" or "losing" is what matters most to citizens when dealing with the courts. However, research shows that positive perceptions of the court are shaped more by court

users' feelings of how they are treated in court and whether the court's process of making decisions seems fair."

(<http://www.dccourts.gov/dccourts/docs/CourtParticipantSurveyResults.pdf>)

It has been the temperament and approach of the majority of judges before whom I have appeared that have, to a significant extent, inspired me toward judicial service on the D.C. Superior Court. If confirmed, I would strive to be vigilant in conducting myself in a manner consistent with the highest standards of judicial temperament and conduct guided by those qualities, such as those listed above, which foster trust in the judicial system.

**3. I note that you are very passionate about community involvement. Please explain how you think a judge should influence his or her community and what steps you would take as judge to influence the D.C. community.**

I have had the privilege to work closely and directly with individuals in neighborhoods whose quality of life was greatly affected by those who commit dangerous and violent crimes. I have also participated in a number of mentorship programs with local elementary schools. My work with victims of and witnesses to crime brought me into the community and, in turn, I have brought many members of our community into the courts. I believe that Community participation in the judicial process provides a better understanding of and increased respect for the legal system.

Although my experiences in the community as a public servant would inform me as a judge, I understand that a judge's role differs significantly from the role of an advocate representing a particular party's interest. Therefore, if confirmed, I would refocus my involvement in the community consistent with the Code of Judicial Conduct and through established judicial initiatives such as the Community and Truancy Courts. The Community Courts were established to focus on quality-of-life offenses and traffic cases. The Truancy Court focuses on reinforcing the efforts of students and their caretakers to improve school attendance. Each of these Court initiatives identifies alternatives and resources within the community itself that can be brought into the process of problem-solving efforts to increase public safety and to hold those responsible accountable.

In addition to participating in the community-oriented Courts described above, I would seek to positively impact the community by continuing to work towards resolutions in a manner that is respectful, fair-minded, balanced, and consistent in its application of the law. It is an approach informed by my extensive experience in the community, as well as in the courtrooms. As my answer to question two above describes, if confirmed, it is with this approach to judicial temperament that I would hope to positively influence the D.C. community and its access to the fair administration of justice.