

**UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY**

**QUESTIONNAIRE FOR JUDICIAL NOMINEES**

**PUBLIC**

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

Mary Helen Murguia

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

United States Circuit Judge for the Ninth Circuit

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

Sandra Day O'Connor United States Courthouse, Suite 525  
410 West Washington Street, SPC 53  
Phoenix, Arizona 85003-2154

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

1960; Kansas City, Kansas

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

1982 – 1985, University of Kansas School of Law; J.D., 1985  
1978 – 1982, University of Kansas; B.S. & B.A., 1982

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

2000 – Present  
United States District Court for the District of Arizona  
Sandra Day O'Connor United States Courthouse, Suite 525  
410 West Washington Street, SPC 53  
Phoenix, Arizona 85003-2154  
Unites States District Judge

1999 – 2000  
Executive Office for United States Attorneys  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530  
Director (1999 – 2000)  
Principal Deputy Director (1999)  
Counsel to Director's Staff (1998 – 1999)

1990 – 2000  
United States Attorney's Office  
District of Arizona  
Two Renaissance Square  
40 North Central Avenue, Suite 1200  
Phoenix, Arizona 85004-4408  
Deputy Chief, Criminal Section (1994 – 1998)  
Assistant United States Attorney (1990 – 2000)

1985 – 1990 & 1984  
Wyandotte County District Attorney's Office  
710 North 7<sup>th</sup> Street  
Kansas City, Kansas 66101  
Assistant District Attorney (1985 – 1990)  
Legal Intern (summer 1984)

1982 & 1983  
Wyandotte County Office of the Clerk of the Court  
710 North 7<sup>th</sup> Street  
Kansas City, Kansas 66101  
Assistant Deputy Clerk (summers)

Other Affiliations (uncompensated)

1995 – 1998  
Arizona Foundation for Women  
2828 North Central Avenue, Suite 1200  
Phoenix, Arizona 85004  
Board Member

1996 – 1998  
Arizona Pilot Parent Partnerships  
(now known as Raising Special Kids)  
5025 East Washington Street, Suite 204  
Phoenix, Arizona 85034  
Executive Board Member

1994 – 1997  
St. Thomas More Society  
c/o Maria Salapska, Esq.  
3001 East Camelback Road, Suite 120  
Phoenix, Arizona 85016  
Board Member

1989  
United Way of Wyandotte County, Kansas  
434 Minnesota Avenue  
P.O. Box 17-1042  
Kansas City, Kansas 66117  
Assistant Treasurer

1987 – 1990  
MANA de Kansas City National Latina Organization  
2100 Metropolitan Avenue  
Kansas City, Kansas 66106  
Vice President

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

I have not served in the military. I have not registered for selective service.

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

Kansas University Women's Hall of Fame, Honoree (2010)  
Hugo L. Black Chapter, Phi Alpha Delta Law Fraternity, International (2002)  
Chief United States Postal Inspector Award (1997)  
Hispanic American Law Student Association, President (1984)  
American Business Women's Association Academic Scholarship (1982)  
William Allen White School of Journalism and Mass Communication, Communications  
Law Scholarship (1980)  
Sigma Delta, Spanish Honorary Society (1979 – 1982)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association  
Arizona Women Lawyers Association

Association of Trial Lawyers of America  
Association of Women Lawyers of Greater Kansas City  
Federal Bar Association  
Federal Judges Association  
Hispanic National Bar Association  
Kansas District Attorneys Association  
Los Abogados Hispanic Lawyers Association  
National District Attorneys Association  
Ninth Circuit Capital Case Committee  
St. Thomas More Society  
    Board of Directors (1994 – 1997)  
Sandra Day O'Connor Inn of Court  
State Bar of Arizona

10. **Bar and Court Admission:**

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

Kansas, 1986 (membership lapsed after 1990 upon moving to Arizona)  
Arizona, 1993 (no lapse in membership)

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

United States Court of Appeals for the Ninth Circuit, 1991  
United States District Court for the District of Arizona, 1993

There has been no lapse in membership.

11. **Memberships:**

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

University of Kansas School of Law  
    Founding Member, Women's Advisory Council (2008)  
University of Kansas School of Law  
    Member, Board of Governors (2005 – 2007)

Arizona Foundation for Women  
Director (1985 – 1998)  
Arizona Pilot Parent Partnerships  
Executive Board Member (1996 – 1998)  
Civic Leadership Training Council  
Member, Class II (1987 – 1988)  
United Way of Wyandotte County, Kansas

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

To my knowledge, none of the organizations listed currently discriminates or formerly discriminated.

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

To respond to the questions below, I searched my electronic calendar, electronic and physical records I have kept of speeches and presentations, and my memory.

The material below also includes responsive results of searches for the term “Mary Murguia” on the following websites:

1. American Business Women’s Association
2. Arizona Foundation for Women
3. Arizona Women Lawyer’s Association
4. Civic Leadership Training Council
5. MANA de Kansas City National Latina Organization
6. Raising Special Kids
7. St. Thomas More Society
8. United States Courts
9. United States Department of Justice
10. United Way of Wyandotte County, Kansas
11. University of Kansas
12. University of Kansas School of Law
13. Wyandotte County Unified Government

The material below also includes responsive results of the following searches:

**Lexis Nexis & Westlaw searches:**

-An “all news” search for “Mary pre/2 Murguia.” Any article which referenced responsive material not previously identified was further investigated. The same search was conducted in Westlaw “all news.” Google, YouTube and Lexis Nexis searches on the individual materials and events were performed. If those searches produced new materials not previously identified, that material was added.

**YouTube searches:**

-A YouTube search for “Mary Murguia” was performed. The single responsive hit was added to this response. An individual YouTube search was conducted for every panel or speech identified on this response for which no transcript or video had been identified.

**Google searches:**

-A search for “Mary Murguia -ninth -circuit” (to filter out hits related to my nomination) was conducted and produced approximately 394,000 hits. Approximately 300 of these hits were reviewed. An individual Google search was performed on any speech, panel, or article identified in this response for which no video or transcript had been identified.

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

*A Tribute to Ann Dooley*, 38 TULSA L. REV. ix, xii-xiii (2002). Copy supplied.

Message from the Director in *United States Attorneys Annual Statistical Report Fiscal Year 1999*, Executive Office for United States Attorneys (2000), available at [http://www.justice.gov/usao/reading\\_room/reports/asr1999/99statrpt.pdf](http://www.justice.gov/usao/reading_room/reports/asr1999/99statrpt.pdf) (last accessed Apr. 15, 2010).

I may have been listed as an official author of other reports in my capacity as Director of the Executive Office for United States Attorneys during my tenure from 1999-2000, but I have been unable to specifically identify them.

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

I was a member of the Committee that produced a video entitled “B.J. Learns About Federal and Trial Court,” NCJ 139730, and the accompanying instructor’s guide, NCJ 183473 as a resource for Native American children required to testify

in court (Dec. 1996). The project was sponsored by the United States Attorney's Office for the District of Arizona. I do not have a copy of the video or the instructor's guide. A summary of the project is available at [http://www.ojp.gov/ovc/publications/infores/bjcourtprep/print\\_text.html](http://www.ojp.gov/ovc/publications/infores/bjcourtprep/print_text.html) (last visited Apr. 15, 2010).

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

Late February 1990 – I testified before the Kansas State Senate Judiciary Committee regarding amendment of the state sodomy law (SB 687), which later was codified at *Laws of Kansas* 1990, page 929, ch. 149, enacted May 18, 1990. I have been unable to obtain a transcript of this testimony.

March 23, 2000 – Statement (Long and Short) of Mary H. Murguia, Director, Executive Office for United States Attorneys, before the House Appropriations Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies. Copy supplied.

July 25, 2000 – I testified before the United States Senate Committee on the Judiciary in connection with my nomination to the United States District Court for the District of Arizona. Copy supplied.

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

I have spoken at a number of Continuing Legal Education Seminars for the Arizona State Bar and at a number of community events relating to Hispanic Heritage month or the Hispanic community, where I speak about my background, education, and job experiences. I have supplied the notes that I use for such events. The list below includes all specific speeches I have been able to identify or recall and I have indicated where I offered remarks based on these standard notes. In addition, I often give remarks at the Naturalization Ceremonies over which I preside, for which I have supplied my standard notes.

April 29-30, 1995 – Roundtable Discussion Conference, Women Judges' Fund for Justice, the United States Department of Justice, and the State Justice Institute. I

found reference to this item in searching online databases although I do not independently recall it. No copy of remarks.

March 15, 2000 – Evaluation and Review Staff AUSA Team Leader Training. National Advocacy Center, Columbia, South Carolina. Speaker. Notes supplied.

March 28, 2000 – Special Program in Observance and Celebration of National Women’s History Month, Washington, DC. Speaker. Notes supplied.

May 18, 2000 – Management Issues Seminar, National Advocacy Center, Columbia, South Carolina. Speaker. Notes supplied.

May 25, 2000 – National Firearms Trafficking Training Conference, Crystal City, Virginia. Speaker. Notes supplied.

May 31, 2000 – Weed and Seed Law Enforcement and Prosecution Conference, New Orleans, Louisiana. Speaker. Notes supplied.

June 21, 2000 – 2000 United States Attorneys National Conference, Keystone Colorado. Remarks to attendees as Director of the Executive Office for United States Attorneys. Notes supplied.

March 30, 2001 – Panel Discussion: Women in Law. University of Kansas School of Law, Lawrence, Kansas. Panelist. Transcript at 49 Kan. L. Rev. 847.

November 3, 2001 – Arizona Women Lawyers Association, Annual Conference. Phoenix, Arizona. Speaker. Introductory remarks. I had been recently appointed to the federal district court and I spoke about my background and experience and answered questions from the audience. No copy of remarks.

April 5, 2002 – Arizona State Bar CLE program, “Successful Strategies for Winning Commercial Cases in Federal Courts.” Speaker. No copy of remarks.

June 7, 2002 – Arizona State Bar Convention Employment Seminar, Tucson, Arizona. Panelist. No copy of remarks.

February 1, 2003 – University of Michigan Law School, Ann Arbor, Michigan. Juan Tienda Banquet, minority law student event. Keynote speaker. I spoke from my standard Hispanic community event notes.

June 13, 2003 – Arizona State Bar Young Lawyers Division, Phoenix, Arizona. Panelist. No copy of remarks.

July 18, 2003 – Kansas Women Lawyers Conference, Louisburg, Kansas. Panelist. No copy of remarks.



August 28, 2003 – Four Corners United States Attorney Conference, Albuquerque, New Mexico. Panelist. No copy of remarks.

September 5-6, 2003 – District Judges Meeting, Sedona, Arizona. Presentation: “Managing Federal Death Penalty Cases: Lessons Learned from United States v. Mitchell.” Presentation supplied.

April 4, 2004 – Arizona State University, Tempe, Arizona. Hispanic Mother/Daughter Program. Speaker. I spoke from my standard Hispanic community event notes.

June 2004 – Annual National Conference, National Council of La Raza (NCLR), Phoenix, Arizona. Latina Brunch panel presentation: “Sister Act II” with Janet Murguia and United States Congresswomen Loretta and Linda Sanchez. DVD recording supplied.

October 15, 2004—Hispanic Women’s Corporation Conference. Phoenix, Arizona. Speaker. News account supplied.

April 20, 2005 – Arizona State University, Tempe, Arizona. Hispanic Mother / Daughter Program. Speaker. I spoke from my standard Hispanic community event notes.

August 11, 2005 – City of Phoenix, Hispanic Network Breakfast, Hispanic Heritage Month event. Phoenix, Arizona. Speaker. I spoke from my standard Hispanic community event notes.

September 15, 2005 – National Center for State Courts Ninth National Court Technology Conference, Seattle, Washington. Presentation: “Litigation Support Systems in Death Penalty Trials.” Notes supplied.

October 14, 2005 – Phoenix College, Youth Leadership Fair. Phoenix, Arizona. Presentation to high school students from across the state of Arizona. Panelist. An announcement of the event is attached.

November 15, 2006 – Arizona State University College of Law, Tempe, Arizona. Judicial Clerkship Panel. Panelist. No copy of remarks.

January 30, 2007 – Ninth Circuit Midwinter Workshop, Santa Barbara, California. Presentation: “Managing Federal Death Penalty Cases: Observations from the District Court.” Presentation supplied.

March 28, 2007 – Arizona State University College of Law, Tempe, Arizona. Guest Lecturer, Federal Prosecution. No copy of remarks.

April 18, 2008 – Valle Del Sol Peacemaker Breakfast, Phoenix, Arizona. Celebrating the opening of a multicultural events center. Speaker. I spoke from my standard Hispanic community event notes.

October 9, 2008 – Northwestern University School of Law, Hispanic Heritage Month, Latino Law Students Event. Chicago, Illinois. Panelist. I spoke from my standard Hispanic community event notes.

October 18, 2008 – 12th Annual National Latino Law Student Conference, Albuquerque, New Mexico. Speaker. I spoke from my standard Hispanic community event notes.

March 20, 2009 – State Bar of Arizona, Minority Bar Convention, Pro Bono Opportunities Panel. Phoenix, Arizona. Panelist. No copy of remarks.

November 6, 2009 – “Court Works - Kids to Court” program, United States District Court, Phoenix, Arizona. Remarks to General Assembly. Notes supplied.

December 10, 2009 – Investiture of Dennis Burke as United States Attorney for the District of Arizona, Phoenix, Arizona. Speaker. Notes supplied.

February 25, 2010 – The Emily Taylor & Marilyn Stokstad Women's Leadership Lecture sponsored by the KU Hall Center For The Humanities at the University of Kansas, Lawrence, Kansas. Speaker. The program was entitled “An Evening With Janet and Mary Murguia.” A recording is available at <http://www.youtube.com/watch?v=Hw8WedQdnkE> (last visited Apr. 15, 2010). My remarks also were broadcast by Kansas Public Radio on March 28, 2010.

During my service as an Assistant United States Attorney in Arizona from 1990 to 1998, I occasionally attended events on behalf of the Office or the United States Attorney, such as local crime task force meetings and community domestic violence meetings.

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

Lawrence Journal-World, May 1, 1989, “Tonganoxie Man Sentenced in KC for Kidnap, Rape.”

The Kansas City Star, April 30, 1995, “A Proud Family Tradition.”

The Associated Press State & Local Wire, Oct. 7, 1999, “Prosecutors in Loomis, Fargo Case Honored.”

Charlotte Observer, Oct. 7, 1999, "Prosecutors in Heist Case Get Award."

Kansas City Business Journal, Feb. 9, 2001, "Raising the Bar."

Lawrence Journal-World, Aug. 11, 2001, "Murguia to Give KU's Public Image a Facelift"

The Kansas City Star, Oct. 16, 2003, "Prosecutor Nick Tomasic to Step Down After 8 Terms."

The Kansas City Star, Feb. 8, 2004, "Chain of Support; Each Sibling Forms a Link in the Murguia Chain."

The Arizona Republic, Oct. 16, 2004, "Conference Focuses on Role Change for Latinas."

The Arizona Republic, Mar. 12, 2005, "Despite Security, Fear Lingers in Court with Many Threats Made, Officials Worry About Similar Event in Valley."

Arizona Business Gazette, Aug. 31, 2006, "Judges Mentor Minority Interns."

The Arizona Republic, Sept. 2, 2006, "Judges Mentor Minority Interns; Snell & Wilmer Helps Program to Aid Diversity."

Alpha Phi Quarterly, Vol. 119, No. 4, "Alpha Phi Salutes Distinguished Alumnae," Fall 2007.

I may have provided other brief quotations to media that I have not been able to identify in my capacities as a state and federal prosecutor with respect to particular cases or during my service as Director of the Executive Office of United States Attorneys with respect to Department of Justice initiatives.

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

In 2000, I was appointed to the United States District Court for the District of Arizona, a position I currently hold.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I have presided over 3,819 cases to verdict or judgment. Of these, 59 went to trial; 52 were jury trials and 7 were bench trials.

- i. Of these, approximately what percent were:

jury trials:	88%
bench trials:	12%
civil proceedings:	68%
criminal proceedings:	32 %

- b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list of opinions.

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

1. United States v. Mitchell, No. CR-01-1062-PCT-MHM (D. Ariz. 2003)

This case concerned the killing and dismemberment of an elderly woman and her nine year-old granddaughter following a carjacking that occurred on the Navajo Nation Indian Reservation in October 2001. The United States charged the defendant, a Navajo, with first degree murder felony murder, carjacking resulting in death, kidnapping, and several counts of robbery. Before trial, the government filed a notice that it intended to seek the death penalty against the defendant based on the charge of carjacking resulting in death. The jury ultimately convicted the defendant on all counts, and the trial proceeded to the penalty phase. The defendant declined to be present for the penalty phase, but his attorneys presented mitigating evidence and made arguments on his behalf. The jury unanimously found that all statutory aggravating factors were present for each victim, along with one mitigating factor for each victim. After weighing the relevant factors, the jury recommended a sentence of death. I accepted the jury's recommendation and sentenced the defendant to death. The Court of Appeals affirmed. See United States v. Mitchell, 502 F.3d 931 (9th Cir. 2007). To the best of my knowledge, this was the first direct death penalty sentence (non-habeas) affirmed by the Ninth Circuit since passage of the Antiterrorism and Effective Death Penalty Act of 1996.

Counsel for Plaintiff: Vincent Q. Kirby Kurt Michael Altman, United States Attorney's Office, 2 Renaissance Square, 40 North Central Avenue, Ste. 1200, Phoenix, Arizona 85004, 602-514-7500. Counsel for Defendant: John M. Sears, Law Offices of John M Sears PC, 107 North Cortez Street, Ste. 104, Prescott, Arizona 86301, 928-778-5208; Gregory A. Bartolomei, Jeffrey A. Williams, Federal Public Defender's Office, 850 West Adams Street, Ste. 201, Phoenix, Arizona 85007, 602-382-2700.

2. Bard Peripheral Vascular, Inc. and David Goldfarb, M.D. v. W.L. Gore & Associates, No. CV-03-0597-PHX-MHM, 586 F. Supp. 2d 1083 (D. Ariz. 2008)

This case concerned a longstanding dispute over the ownership of a patent for a synthetic vascular graft. For 28 years, the Parties fought for control of the disputed medical device before the United States Patent and Trademark Office (“PTO”) and the Federal Circuit. The patent finally issued in the name of the plaintiffs in 2002, and shortly thereafter the plaintiffs sued for patent infringement. To establish the parameters of the patent, I conducted a hearing pursuant to Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996) and issued a claim construction order that defined the meaning of the disputed claims and accepted the report and recommendations of the Special Master. 2006 WL 2802200 (D. Ariz. Sept. 16, 2006). The case then progressed to a 6-week jury trial. The jury returned a verdict for the plaintiffs on all counts, including a finding that the defendant was a “wilful infringer.” The jury assessed damages totaling approximately \$185,000,000. After the jury returned its verdict, I held an evidentiary hearing on the issue of inequitable conduct and issued a 90-page order rejecting the defendant’s contention that the plaintiffs failed to meet their duty of candor, good faith, and honesty to the PTO. 573 F. Supp. 2d 1170 (D. Ariz. 2008).

At the post-trial stage, I granted the plaintiffs’ motion for enhanced damages under 35 U.S.C. § 284. In addition, based on the Supreme Court’s recent opinion in eBay, Inc. v. MercExchange, L.L.C., 547 U.S. 338 (2006), I declined to impose a permanent injunction on the defendant from continuing to produce its infringing products. Instead, I determined that the plaintiffs could be adequately compensated by way of a compulsory license. 586 F. Supp. 2d 1083 (D. Ariz. 2008).

Counsel for Plaintiffs: Steven C. Cherny, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, 212-446-4800. Maximilian A. Grant, Latham & Watkins, LLP, 555 11th Street NW, Ste. 1000, Washington, DC 20004, 202-637-2200. Counsel for Defendants, Brett L. Dunkelman, Osborn Maledon PA, 2929 North Central Avenue, Ste. 2100, Phoenix, Arizona 85012, 602-640-9000; James W. Gould, David H. Pfeffer, Locke Lord Bissell & Liddell LLP, 3 World Financial Center, New York, New York 10281, 212-415-8600. Special Master: James M. Amend, Kirkland & Ellis LLP, 200 East Randolph Drive, Chicago, Illinois, 60601, 312-861-2133.

3. Societe Civile Succession Richard Guino v. Beseder, Inc., No. CV-03-1310-PHX-MHM, 2007 WL 3238703 (D. Ariz. Oct. 31, 2007)

This case resolved a century-long dispute regarding the copyrights to a number of sculptures created by Pierre-Auguste Renoir and one of his assistants, Richard Guino. The descendants of both sculptors sued each other, disputing whether the items were copyrighted or in the public domain. Claims for false advertising

under the Lanham Act and for state law unfair competition claims relating to a different series of sculptures were also involved. I presided over a jury trial for copyright infringement damages and the other claims. The Court of Appeals affirmed in two opinions. Societe Civile Succession Richard Guino v. Renoir, 305 Fed. Appx. 334 (9th Cir. 2008); Societe Civile Succession Richard Guino v. Renoir, 549 F.3d 1182 (9th Cir. 2008).

Counsel for Plaintiff: Richard William Morris, Morris Law Firm, PLLC, 3951 West Grand Avenue, Ste. 203, Surprise, Arizona 85374-2436, 623-583-1040. Counsel for Defendants: Ray Kendall Harris, Fennemore Craig PC, 3003 North Central Avenue, Ste. 2600, Phoenix, Arizona 85012-2913, 602-916-5000; David Paul Steiner, David Steiner & Associates PLC, 1925 Century Park E, Ste. 2350, Los Angeles, California 90067-2737, 310-557-8422.

4. In re LifeLock, Inc., Mktg. and Sales Practices Litig., MDL Docket No. 08-1977, 2009 WL 2222711 (D. Ariz July 24, 2009)

This nationwide class action lawsuit concerning consumer fraud claims consists of 14 related federal cases that were transferred to my court by the United States Judicial Panel on Multidistrict Litigation pursuant to 28 U.S.C. § 1407. To facilitate an efficient resolution of this matter, I issued a Practice and Procedure Order, which, among other things, directed the plaintiffs to provide briefing as to the appointment of an interim lead counsel pursuant to Fed. R. Civ. P. 23(g). I then presided over an Initial Scheduling Conference where I heard oral arguments on the appointment of interim lead counsel. Following the hearing, I issued an order designating interim lead counsel for the plaintiffs. I then issued an Amended Scheduling Order, which set forth a case management schedule, including deadlines for the filing of a consolidated amended complaint, motions to dismiss, fact and expert discovery, class certification, and summary judgment. Furthermore, when the case was first transferred to my court, there were several pending motions for remand. I determined that the most appropriate way to resolve the pending remand motions was to have the Parties who wished to participate in seeking remand file a single consolidated motion, rather than filing potentially redundant individual motions. Only two plaintiffs joined the single consolidated motion for remand, which was unopposed by the defendants. I resolved the remand issue by ruling that federal jurisdiction was lacking because the cases failed to meet the rule announced by the Supreme Court in Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust for S. Cal., 463 U.S. 1 (1983) and Grable & Sons Metal Prods. v. Darue Eng'g & Mfg., 545 U.S. 308 (2005).

Lead Counsel for Plaintiffs: Robert B. Carey, Leonard W. Aragon, Hagens Berman Sobol Shapiro PLLC, 11 West Jefferson Street, Ste. 1000, Phoenix, Arizona, 85003, 602-840-5900. Counsel for Defendants: Peter A. Antonucci, Greenberg Traurig LLP 200 Park Avenue New York, New York 10166 212-801-9200; Pamela M. Overton, Greenberg Traurig LLP, 2375 East Camelback Road Ste. 700, Phoenix, Arizona 85016, 602-445-8000.

5. United States v. James, No. CR-03-00900-PHX-MHM (D. Ariz., Mar. 01, 2007)

The Government charged the defendant with multiple crimes, including first-degree murder, felony murder, robbery, two counts of aggravated sexual abuse, and five counts of use of a firearm during a crime of violence. After determining that the defendant should be tried as an adult, I declined to hold an additional juvenile-transfer hearing when the Government added additional charges to the indictment. The jury convicted the defendant, and I sentenced him to life imprisonment for felony murder, second degree murder, and two counts of aggravated sexual abuse; 180 months for robbery; and 300 months for using a gun in the felony murder, second degree murder, and robbery, to be served concurrently with each other but consecutively to all other sentences. On appeal, the Ninth Circuit affirmed my decision not to hold an additional juvenile-transfer hearing and affirmed the defendant's convictions and sentences for the felony murder, aggravated sexual abuse, and related gun charges. United States v. James, 556 F.3d 1062 (9th Cir. 2007). The Ninth Circuit, however, determined that the defendant's convictions for second-degree murder and robbery violated the double-jeopardy clause because those crimes were lesser included offenses of felony murder, and remanded so that I could reconsider the defendant's sentence in light of that holding.

Counsel for Plaintiff: Vincent Quill Kirby, United States Attorney's Office, 2 Renaissance Square, 40 North Central Avenue, Ste. 1200, Phoenix, Arizona 85004-4408, 602-514-7500. Counsel for Defendant: Darryl Lee James, Jr., Donna Lee Elm, Federal Public Defender's Office, 850 West Adams Street, Ste. 201, Phoenix, Arizona 85007, 602-382-2700; James Sun Park, Park Law Office PLC, 111 West Monroe Street, Ste. 716, Phoenix, Arizona 85003, 602-462-5700.

6. United States v. Sinclair, No. 01-0486-PHX-MHM (D. Ariz., May 5, 2005)

The defendant was a member of a Jamaican marijuana trafficking organization. In June 2003, the defendant took part in a triple homicide, where members of his drug trafficking organization murdered three Mexican nationals during a drug transaction "rip-off" in an apartment in Tempe, Arizona. The defendant was charged with conspiracy to commit money laundering, conspiracy to possess with intent to distribute marijuana, and possession or use of a firearm during and in relation to a drug trafficking offense resulting in death. The government initially indicated that it would seek the death penalty, but shortly before trial withdrew its request. The jury convicted the defendant on all counts, and I sentenced him to the maximum allowable term of life imprisonment. The defendant appealed his conviction, arguing that he was incapable of voluntarily, knowingly and intelligently waiving his Miranda rights, that the government engaged in prosecutorial misconduct when it elicited false testimony from a witness, that the sentence was unreasonable, and that I had engaged in improper judicial fact-finding. In a unanimous memorandum opinion, the Court of Appeals affirmed the

defendant's conviction and sentence. United States v. Sinclair, 283 Fed.Appx. 582 (9th Cir. 2008).

Counsel for Plaintiff: Kevin M. Rapp, Keith Vercauteren, United States Attorney's Office, 2 Renaissance Square, 40 North Central Avenue, Ste. 1200, Phoenix, Arizona, 85004, 602-514-7500. Counsel for Defendant: Daniel D. Maynard, Maynard Cronin Erickson Curran & Sparks PLC, 3200 North Central Avenue, Ste. 1800, Phoenix, Arizona 85012, 602-279-8500.

7. Athletic Alternatives, Inc., v. Benetton Trading USA, Inc. No. CV-98-01953-PHX-MHM (D. Ariz., Mar. 31, 2005)

The plaintiff brought suit alleging multiple counts of patent infringement and one claim for breach of contract. The case concerned the plaintiff's patent for a tennis racquet utilizing a specialized method to anchor strings to the racquet frame. At summary judgment, I dismissed a number of claims of the patent, finding they were obvious. I also ruled that the applicable statute of limitations barred the plaintiff's breach of contract claim. After a bench trial, I invalidated other claims of the patent for indefiniteness. The plaintiff appealed to the Court of Appeals for the Federal Circuit, which affirmed my findings concerning obviousness and breach of contract. The Federal Circuit, however, reversed the indefiniteness ruling, deciding that the patents' claims were sufficiently precise and, therefore, valid. 174 Fed. Appx. 571 (Fed. Cir. 2006). Following the Supreme Court's denial of plaintiff's certiorari request, 549 U.S. 887 (2006), the parties informed me that no further proceedings were necessary, and I directed that the case be closed.

Counsel for Plaintiff: Daniel D. Maynard, Maynard Cronin Erickson Curran & Sparks PLC, 3200 North Central Avenue, Ste. 1800, Phoenix, Arizona 85012-2443, 602-279-8500; Douglas Cameron Erickson, Maynard Cronin Erickson Curran & Sparks, 3200 North Central Avenue, Ste. 1800, Phoenix, Arizona 85012-2443. Counsel for Defendant: Mark I. Harrison, Osborn Maledon PA, PO Box 36379, Phoenix, Arizona 85067-6379, 602-640-9000; Robert B. Smith, Skadden Arps Slate Meagher & Flom LLP, 4 Times Square, New York, New York 10036.

8. United States v. Poseley, No. CR-03-00344-MHM (D. Ariz., July, 11 2006)

This case involved multiple defendants in a conspiracy to defraud the United States through the use of bogus trusts and was designated a complex case due to the nature of the case, extensive discovery issues, and the numerous defendants charged. Several individuals were charged for founding and being associated with a company that sold sham entities called "Pure Trust Organizations" to purportedly help its customers avoid taxes. These individuals also were charged with 26 counts of failing to file income tax returns. Prior to trial, it was discovered that out-of-state co-counsel for one of the defendants was involved in



disciplinary proceedings in Arkansas. I therefore terminated his representation and required the defendant to proceed with in-state co-counsel. The defendant later appealed, arguing that I had violated her right to counsel. The Ninth Circuit affirmed my decision in United States v. Ensign, 491 F.3d 1109 (9th Cir. 2007). The case proceeded; after a 32-day jury trial against the remaining defendants, two were found guilty of the conspiracy charge and failure to file tax returns. I sentenced one defendant to 84 months, to be followed by three years of supervised release, and a \$175,000 fine. I sentenced a second defendant to 60 months, to be followed by three years of supervised release. Several other defendants were found guilty of a number of counts of failure to file tax returns and I imposed lesser sentences. The Court of Appeals affirmed these convictions in United States v. Poseley, 267 Fed. Appx. 613 (9th Cir. 2008).

Counsel for Plaintiff: Larry J. Wszalek, United States Department of Justice, Tax Division Criminal Enforcement, PO Box 972, Ben Franklin Station, Washington, DC 20044, 202-616-3866; Mark T. Odulio, United States Attorney's Office, Tax Division Criminal Enforcement, PO Box 972, Ben Franklin Station, Washington, DC 20044, 202-514-8032. Counsel for Defendants: Stephen Christopher Kunkle, Law Office of Stephen C Kunkle, 7227 North 16th Street, Ste. 224, Phoenix, Arizona 85020, 602-266-6900; Douglas Cameron Erickson, Maynard Cronin Erickson Curran & Sparks, 3200 North Central Avenue, Ste. 1800, Phoenix, Arizona 85012-2443, 602-279-8500.

9. United States v. Butts, No. CR-05-1127-PHX-MHM, 2007 WL 2081182 (D. Ariz. July 19, 2007)

The defendant was convicted of multiple counts of possession of child pornography and one count of distribution of child pornography based on his sharing of a movie containing child pornography on Limewire software. After trial, I sentenced the defendant to 220 months for distribution of child pornography and 120 months for multiple counts of possession of child pornography, to be served concurrently. This case involved numerous exhibits, special discovery procedures, and the defendant's choice to represent himself during a portion of trial. The defendant appealed, challenging the misdating of the warrant used to search his property. The Ninth Circuit affirmed, holding that the misdating was inadvertent rather than intentional, in United States v. Butts, 2009 WL 4884356 (9th Cir. 2009).

Counsel for Plaintiff: Sharon K. Sexton, United States Attorney's Office, 40 North Central Avenue, Ste. 1200, Phoenix, Arizona 85004-4408, 602-514-7500; James Anthony Silver, United States Attorney's Office, 2 Renaissance Square, 40 North Central Avenue, Ste. 1200, Phoenix, Arizona 85004-4408, 602-514-7500. Counsel for Defendant: Philip Edward Hantel, Attorney at Law, 710 West Roosevelt Street, Phoenix, Arizona 85004, 602-252-1099; Mark A. Paige Paige Law Firm, 111 West Monroe Street, Ste. 1212, Phoenix, Arizona 85003, 602-254-5457.

10. Ctr. for Biological Diversity v. Kempthorne, No. CV 07-0038-PHX-MHM, 2008 WL 659822 (D. Ariz., March 6, 2008)

The plaintiffs challenged the defendants' denial of the plaintiffs' petition to define the desert bald eagle population of the Sonoran Desert region of the American Southwest as a distinct population segment and to list the desert bald eagle as "endangered" pursuant to the Endangered Species Act. I held that the defendants' final delisting rule did not moot the plaintiffs' challenge, and the defendants acted arbitrarily and capriciously in evaluating the plaintiffs' petition. I ordered that the defendants issue a 12-month report concerning whether listing the desert eagle population as a distinct population segment is warranted, and, if so, whether listing the desert bald eagle as threatened or endangered under the Endangered Species Act is warranted. I further enjoined the defendants from removing the desert bald eagle from the threatened species list pending the outcome of the 12-month finding.

Counsel for Plaintiffs: Daniel John Rohlf, Pacific Environmental Advocacy Center, 10015 SW Terwilliger Blvd., Portland, Oregon 97219, 503-768-6707; Howard M. Shanker, The Shanker Law Firm PLC, 700 East Baseline Road, Bldg. B, Tempe, Arizona 85283, 480-838-9460. Counsel for Defendants: Lisa Lynne Russell, United States Department of Justice, PO Box 7369, Ben Franklin Station, Washington, DC 20044-7369, 202-305-0388; Hao-Chin Yang, United States Department of Justice, PO Box 7369, Washington, DC 20044-7369 202-305-0209.

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. Northern Queen, Inc. v. Kinnear, 298 F.3d 1090 (9th Cir. 2002). Counsel for Appellant: Michael A. Barcott, Weddle & Barcott, 999 3rd Avenue, Suite 2600, Seattle, Washington 98104, (206) 292-8008; Nina M. Mitchell, Weddle & Barcott, 999 3rd Avenue, Suite 2600, Seattle, Washington 98104, (206) 292-8008. Counsel for Appellee: Donald P. Marinkovich, LeGros Buchanan & Paul, 701 Fifth Avenue, Suite 2500, Seattle, Washington 98104, (206) 623-4990.

2. Ctr. for Biological Diversity v. Kempthorne, 2008 WL 659822 (D. Ariz. Mar. 6, 2008). Counsel for Plaintiffs: Daniel John Rohlf, Pacific Environmental Advocacy Center, 10015 SW Terwilliger Blvd., Portland, Oregon 97219, 503-768-6707; Howard M. Shanker, The Shanker Law Firm PLC, 700 East Baseline Road, Bldg. B, Tempe, Arizona 85283, 480-838-9460. Counsel for Defendants: Lisa Lynne Russell, United States Department of Justice, PO Box 7369, Ben Franklin Station, Washington, DC 20044-7369, 202-305-0388; Hao-Chin Yang, United States Department of Justice, PO Box 7369, Washington, DC 20044-7369 202-305-0209.

3. Black Star Farms, LLC v. Oliver, 544 F. Supp. 2d 913 (D. Ariz. 2008), aff'd, 2008 U.S. Dist. LEXIS 15242 (9th Cir. Apr. 10, 2008). Counsel for Plaintiffs: James A. Tanford, Indiana University School of Law, 211 South Indiana Avenue, Bloomington, Indiana 47405, 812-855-4846; Kent McGregor Nicholas, Kent M. Nicholas Attorney at Law, 40 North Center Street, Ste. 202, Mesa, Arizona 85201-7300, 480-461-4690. Counsel for Defendants: Christopher Arthur Munns, Office of the Attorney General, 1275 West Washington Street, Phoenix, Arizona 85007, 602-542-7997; Keely Lynn Verstegen, Office of the Attorney General, Gibraltar Bldg., 1275 West Washington Street, Phoenix, Arizona 85007, 602-542-7982.

4. Ortega Melendres v. Arpaio, No. CV-07-2513, 2009 WL 2132693 (D. Ariz. July 15, 2009). Counsel for Plaintiffs: David J. Bodney, Steptoe & Johnson LLP, 201 East Washington Street, Ste. 1600, Phoenix, Arizona 85004, 602-257-5200, Nancy Anne Ramirez, MALDEF, 634 South Spring Street, 11<sup>th</sup> Floor, Los Angeles, California 90014, 213-629-2512. Counsel for Defendants: Drew Metcalf, Schmitt Schneck Smyth & Herrod PC, 1221 East Osborn Road. Ste. 105, Phoenix, Arizona 85014-5540, 602-277-7000, Charitie L. Hartsig, Ryley Carlock & Applewhite PA, 1 North Central Avenue, Ste. 1200, Phoenix, Arizona 85004-4417, 602-440-4898.

5. J.K. v. Ariz. Bd. of Regents, 2008 WL 4446712 (D. Ariz. September 30, 2008). Counsel for Plaintiff: Ariela Migdal, ACLU, 125 Broad Street, 18th Floor, New York, New York 10004, 212-519-7861; Baine P Kerr, Hutchinson Black & Cook LLC, 921 Walnut Street, Ste. 200, Boulder, Colorado, 80302, 303-442-6514. Counsel for Defendants: Michael King Goodwin, Office of the Attorney General, Liability Management Section, 1275 West Washington Street, Phoenix, Arizona 85007-2997, 602-542-7674; William August Richards, Office of the Attorney General, Liability Management Section, 1275 West Washington Street, Phoenix, Arizona 85007-2997, 602-542-8355

6. Patel v. Verde Valley Med. Ctr., No. CV-05-01129-PHX-MHM (D. Ariz. Mar. 31, 2009). Counsel for Plaintiff: Brian J. Foster, Dan W. Goldfine, Michelle Leigh Keogh, Snell & Wilmer LLP, 1 Arizona Center, 400 East Van Buren, Phoenix, Arizona 85004-0001, 602-382-6000. Counsel for Defendant: Calvin L. Raup, Raup & Hergenroether PLLC, 1 Renaissance Square, 2 North Central Avenue, Ste. 1100, Phoenix, Arizona 85004, 602-229-8989; David A. Ettinger, Honigman Miller Schwartz & Cohn LLP, 2290 1st National Bldg., 660 Woodward Avenue, Detroit, Michigan 48226, 313-465-7368. Special Master: Roxane C. Busey, Baker & McKenzie LLP, 130 East Randolph Drive, Ste. 3500, Chicago, Illinois 60601, 312-861-8281.

7. Bard Peripheral Vascular, Inc. v. W.L. Gore & Assocs., 573 F. Supp. 2d 1170 (D. Ariz. 2008). Counsel for Plaintiffs: Steven C. Cherny, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, 212-446-4800. Maximilian A. Grant, Latham & Watkins, LLP, 555 11th Street NW, Ste. 1000,

Washington, DC 20004, 202-637-2200. Counsel for Defendants, Brett L. Dunkelman, Osborn Maledon PA, 2929 North Central Avenue, Ste. 2100, Phoenix, Arizona 85012, 602-640-9000; James W. Gould, David H. Pfeffer, Locke Lord Bissell & Liddell LLP, 3 World Financial Center, New York, New York 10281, 212-415-8600. Special Master: James M. Amend, Kirkland & Ellis LLP, 200 East Randolph Drive, Chicago, Illinois 60601, 312-861-2133.

8. Stanley v. Schriro, CV-98-430-PHX-MHM (D. Ariz. Sept. 27, 2006) (Document #67). Counsel for Petitioner: Gilbert Henry Levy, Law Office of Gilbert H. Levy, Market Place Two, 2001 Western Avenue, Ste. 200, Seattle, Washington 98121, 206-443-0670; Sylvia Jeanne Lett, Federal Public Defender's Office, 407 West Congress Street, Ste. 501, Tucson, Arizona 85701-1310, 520-879-7500; Jim D. Nielsen, Office of the Attorney General, Criminal Appeals Section, 1275 West Washington Street, Phoenix, Arizona 85007-2997, 602-542-8591; Gregory A. McCarthy, Office of the Attorney General, Capital Litigation Section, 1275 West Washington Street, Phoenix, Arizona 85007-2997, 602-542-4686.

9. Van Adams v. Schriro, No. CV-04-01359-PHX-MHM, 2007 WL 973959 (D. Ariz. Mar. 30, 2007); Van Adams v. Schriro, 2007 U.S. Dist. LEXIS 63747 (D. Ariz. Aug. 27, 2007). Counsel for Petitioner: Amy Beth Krauss, Amy B Krauss Esq., PO Box 65126, Tucson, Arizona 85718, 520-400-6170; Sean Christopher Chapman, Law Offices of Sean C Chapman PC, 100 North Stone Avenue, Ste. 701, Tucson, Arizona 85701. Counsel for Respondents: Kent E. Cattani, Office of the Attorney General, Criminal Appeals Section, 1275 West Washington Street, Phoenix, Arizona 85007-2997, 602-542-8589; Patricia Ann Nigro, Office of the Attorney General, Criminal Appeals Section, 1275 West Washington Street, Phoenix, Arizona 85007-2997, 602-542-4686.

10. W. Watersheds Project v. Bureau of Land Mgmt., 629 F. Supp.2d 951 (D. Ariz. 2009). Counsel for Plaintiff: Erik Bowers Ryberg, Attorney at Law, 312 South Convent Avenue, Tucson, Arizona 85701, 520-622-3333; Lauren M Rule, Advocates for the West, PO Box 1612, Boise, Idaho 83701, 208-342-7024. Counsel for Defendant: Donna S. Fitzgerald, US Department of Justice, 601 D Street NW, Room 3104, Washington, DC 20004, 202-305-0476; Richard Glenn Patrick, United States Attorney's Office, 2 Renaissance Square, 40 North Central Avenue, Ste. 1200, Phoenix, Arizona 85004-4408, 602-514-7500.

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

D'Angelo v. Schriro, No. CV-04-1006-PHX-MHM, 2007 WL 2892959 (D. Ariz. Sept. 28, 2007), aff'd, 338 Fed. Appx. 583 (9th Cir. 2009), cert. denied sub nom. D'Angelo v. Ryan, 130 S. Ct. 627 (2009).

Stewart v. Bond, No. CV-07-0344-PHX-MHM, 2007 WL 1467177 (D. Ariz. May 17, 2007), appeal denied, No. CV-07-16003-PHX, cert. denied, 128 S. Ct. 2905 (2008).

Smalling v. Stearnes, No. CV-05-2043-PHX-MHM, 2007 WL 779616 (D. Ariz. Jan. 19, 2007), appeal denied, No. CV-07-15580-PHX-SMM, cert. denied, 552 U.S. 1281 (2008).

Elliott v. White Mountain Apache Tribal Court, No. CV-05-4240-PHX-MHM, 2006 WL 3533147 (D. Ariz. Dec. 6, 2006), aff'd, 566 F.3d 842 (9th Cir. 2009), cert. denied, 130 S. Ct. 624 (2009).

United States v. George, No. CR-05-0709-PHX-MHM, 2010 WL 682536 (D. Ariz. February 25, 2010), aff'd, 291 Fed. Appx. 803 (9th Cir. 2008), cert. denied, 129 S. Ct. 659 (2008).

United States v. James, No. CR-03-0900-PHX-MHM, 2006 WL 2456224 (D. Ariz. Aug. 21, 2006), aff'd, 556 F.3d 1062 (9th Cir. 2009), cert. dismissed sub nom. James v. United States, 130 S. Ct. 46 (2009).

Nash v. Schriro, No. CV-97-1104-PHX-MHM, 2006 WL 1889589 (D. Ariz. Jul 07, 2006), reconsideration denied, 2006 WL 2821666 (D. Ariz. Sep 30, 2006), appeal denied, 2006 WL 3218662 (D. Ariz. Nov 02, 2006), remanded sub nom. Nash v. Ryan, 581 F.3d 1048 (9th Cir. 2009), cert. denied, 78 U.S.L.W. 3368.

McManus v. Gibson, No. CV-01-1225-PHX-MHM, appeal denied, No. CV 06-15797-PHX, cert. denied sub nom. McManus v. Svedin, 549 U.S. 1352 (2007).

McManus v. Ridgley, No. CV-04-2813-PHX-MHM, appeal denied, No. CV 06-15765-PHX, cert. denied, 549 U.S. 1136 (2007).

United States v. Poseley, No. CR-03-0344-PHX-MHM, 2008 WL 4811174 (D. Ariz. Nov. 5, 2008), aff'd, 267 Fed. Appx. 613 (9th Cir. 2008), cert. denied sub nom. Poseley v. United States, 129 S. Ct. 92 (2008).

United States v. Ortiz, No. CR-04-1303-PHX-MHM, aff'd, 225 Fed. Appx. 638 (9th Cir. 2007), cert. denied sub nom. Ortiz v. United States, 552 U.S. 926, (2007).

Acuna v. Mel Clayton Ford, No. CV-04-2368-PHX-MHM, aff'd, 171 Fed. Appx. 551 (9th Cir. 2006), cert. denied, 549 U.S. 838 (2006), rehearing denied, 549 U.S. 1048 (2006).

Kroncke v. Hood, No. CV-01-1466-PHX-MHM, appeal denied, No. CV-05-16038-PHX, cert. dismissed, 549 U.S. 974 (2006), reconsideration denied by, 549 U.S. 1076 (2006).

Kroncke v. Arizona, No. CV-03-2481-PHX-MHM, appeal denied, 171 Fed. Appx. 544 (9th Cir. 2006), cert. denied, 549 U.S. 802 (2006).

Klepper v. City of Page, No. CV-03-0847-PHX-MHM, aff'd, 206 Fed. Appx. 692 (9th Cir. 2006), cert. denied, 552 U.S. 814 (2007).

Kucernak v. Sinfield, No. CV-03-1175-PHX-MHM, aff'd, 137 Fed. Appx. 59 (9th Cir. 2005), cert. denied, 546 U.S. 1040 (2005).

Athletic Alternatives, Inc. v. Benetton Trading USA, Inc., No. CV-98-01953-PHX-MHM (D. Ariz. March 31, 2005), rev'd, 174 Fed. Appx. 571 (Fed. Cir. March 31, 2006), cert. denied, 549 U.S. 887 (2006).

Schroeder v. Stewart, No. CV-02-1701-PHX-MHM, appeal denied, No. CV-04-15406-PHX-MHM, cert. notice received, Aug. 31, 2004.

United States v. Mitchell, No. CR-01-1062-PHX-MHM, aff'd, 502 F.3d 931 (9th Cir. 2007), amended by, 2007 U.S. App. LEXIS 23632 (9th Cir. 2007), cert. denied, 128 S. Ct. 2902 (2008).

Barton v. Ruechel, No. CV-01-1221-PHX-MHM, appeal dismissed, No. CV-03-17233-PHX, cert. denied, 543 U.S. 886 (2004).

E.E.O.C. v. Peabody W. Coal Co., No. CV-01-1050-PHX-MHM, 214 F.R.D. 549 (D. Ariz. Sept. 26, 2002), rev'd and remanded, 400 F.3d 774 (9th Cir. 2005), cert. denied sub nom. Peabody Western Coal Co. v. E.E.O.C., 546 U.S. 1150 (2006), remanded, 2006 WL 2816603, 99 Fair Empl.Prac.Cas. (BNA) 40, 88 Empl. Prac. Dec. P 42,537 (D. Ariz. Sep 30, 2006).

Kroncke v. Saldate, No. CV-02-0136-PHX-MHM, appeal denied, No. CV-02-17176-PHX-MHM, cert. denied, 539 U.S. 962 (2003), reh'g denied, 539 U.S. 983 (2003).

In re Krystal Energy Co., No. CV-01-1970-PHX-MHM, 2001 WL 34395864 (Bankr. D. Ariz. Oct 22, 2001), aff'd, In re Krystal Energy Co., 308 B.R. 48 (D. Ariz. Sep 30, 2002), rev'd sub nom. Krystal Energy Co. v. Navajo Nation, 357 F.3d 1055 (9th Cir. 2004), cert. denied sub nom. Navajo Nation v. Krystal Energy Co., 543 U.S. 871 (2004), Krystal Energy Co. v. Navajo Nation, 2008 WL 2477084 (D. Ariz. June 18, 2008), subsequent determination sub nom. In re Krystal Energy Co., 2008 WL 4446703 (D. Ariz. Sep 30, 2008).

United States v. Rossi, No. CR-01-1110-PHX-MHM, aff'd sub nom. United States v. Price, 84 Fed. Appx. 917 (9th Cir. 2003), cert. denied, 542 U.S. 913 (2004).

Stotts v. Luna, CV-01-1040-PHX-MHM, appeal dismissed, 46 Fed. Appx. 523 (9th Cir. (2002)), cert. denied, 537 U.S. 1126 (2003).

Huth v. Hartford Ins. Co. M.W., No. CV-00-2345-PHX-MHM, aff'd, 298 F.3d 800 (9th Cir. 2002), cert. denied sub. nom. Hartford Ins. Co. M.W. v. Huth, 537 U.S. 1233 (2003).

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

Okai v. Ashcroft, No. CV-01-0679-PHX-MHM (D. Ariz. Mar. 12, 2002), rev'd, No. 02-15894 (9th Cir. Aug. 15, 2003). I adopted in full the Magistrate Judge's Report and Recommendation. The Appeals Court reversed and remanded for further proceedings consistent with Demore v. Kim, 538 U.S. 510 (2003).

Pugliese v. Arizona Department of Health and Human Servs., 147 F. Supp. 2d 985 (D. Ariz. 2001), rev'd, Pugliese v. Dillenberg, 346 F.3d 937 (9th Cir. 2003). I held that Arizona's Eleventh Amendment immunity was not abrogated nor waived in a case involving alleged violations of the Rehabilitation Act. The Court of Appeals held that Arizona validly waived its sovereign immunity under the Eleventh Amendment.

Prieto v. Paul Revere Life Ins. Co., No. CV-98-01484-MHM (D. Ariz. Aug. 13, 2001), rev'd, 354 F.3d 1005 (9th Cir. 2004). I found that plaintiff had waived his entitlement to benefits for the period of August 1996-97 by failing to apply for benefits in accordance with the applicable policy provisions. The Court of Appeals held that waiver was not properly pled and that no waiver occurred.

Isley v. Arizona Dep't of Corrs., No. CV-01-01567-MHM (D. Ariz. Mar. 31, 2003), rev'd, 383 F.3d 1054 (9th Cir. 2004). I dismissed plaintiff's petition for writ of habeas corpus as untimely under the Antiterrorism and Effective Death Penalty Act ("AEDPA"). The Court of Appeals held that the state petition was "pending" and tolled the AEDPA limitations period once Isley filed notice of post-conviction relief under state procedures.

Ferreira v. Ashcroft, No. CV-01-1903-MHM (D. Ariz. Sept. 25, 2002), rev'd, 382 F.3d 1045 (9th Cir. 2004). I found that the petitioner's conviction constituted an aggravated felony because it was a controlled substance offense punishable by more than one year's imprisonment under state law. The Court of Appeals ruled that the conviction was not an aggravated felony because it would not be punishable as a felony under federal drug laws and did not contain a trafficking element.

In re Krystal Energy Co., 308 B.R. 48 (D. Ariz. 2002), rev'd, Krystal Energy v. Navajo Nation, 357 F.3d 1055 (9th Cir. 2004). I found that the Bankruptcy Code provision that purported to abrogate sovereign immunity of governmental units did not explicitly waive sovereign immunity of Navajo Nation. Therefore, I found that Navajo Nation could not be named as a defendant in turnover proceeding absent waiver of its immunity. The Court of Appeals held that Congress did abrogate the sovereign immunity of Indian tribes under 11 U.S.C. §§ 106(a) and 101(27).

Schwartz v. Metro. Life Ins. Co., No. CV-01-2075-PHX-MHM (D. Ariz. Sep. 03, 2003), rev'd, 127 Fed. Appx. 279 (9th Cir. 2005). I ruled in favor of the defendant, applying an abuse of discretion standard and deciding that the defendant did not improperly deny the plaintiff long term disability benefits. The Court of Appeals reversed, holding that the decision to deny the plaintiff benefits should have been reviewed de novo.

E.E.O.C. v. Peabody W. Coal Co., 214 F.R.D. 549 (D. Ariz. 2002), rev'd, 400 F.3d 774 (9th Cir. 2005). I granted summary judgment in favor of Peabody Western, holding that (1) it was not feasible to join the Navajo Nation based on sovereign immunity, (2) the Nation was necessary and indispensable party, and (3) that the legality of the Navajo employment preference in the lease was a nonjusticiable political question. The Court of Appeals held that it was feasible to join the tribe as a party and that the EEOC's claim did not present a nonjusticiable political question.

Athletic Alternatives, Inc., v. Benetton Trading USA, Inc., No. CV-98-01953-PHX-MHM (D. Ariz. Mar. 31, 2005), rev'd, 174 Fed. Appx. 571 (Fed. Cir. Mar. 31, 2006). I invalidated for indefiniteness claims 3-5 of Athletic Alternatives, Inc.'s ("AAI") '731 patent. The Federal Circuit reversed per curiam, holding claims 3-5 of AAI's '731 patent were sufficiently precise, and therefore valid.

Gerberry v. Maricopa County, No. CV-00-01342-MHM (D. Ariz. Sept. 18, 2003), rev'd, 172 Fed. Appx. 781 (9th Cir. 2006). I found that plaintiff was wrongfully terminated under the Arizona Employment Act. The Court of Appeals held that plaintiff's claim should have failed under this statute.

Taylor v. Stewart, No. CV-01-01708-MHM-MS (D. Ariz. Aug. 21, 2003), rev'd, 168 F. Appx. 218 (9th Cir. 2006). I dismissed a prisoner's 42 U.S.C. § 1983 action with prejudice as to certain claims that were barred under Edwards v. Balisok, 520 U.S. 641, 644-48 (1997). The Court of Appeals remanded the case for entry of judgment dismissing the same claims without prejudice.

United States v. Vargas-Ochoa, No. CR-05-00016-MHM (D. Ariz. Oct. 3, 2005), rev'd, 201 Fed. Appx. 571 (9th Cir. 2006). The Court of Appeals found that my imposition of a 16-level sentencing enhancement based on a pre-sentence report was error and it reversed and remanded for resentencing.



Menken v. Emm, No. CV-04-00598-MHM (D. Ariz. June 29, 2005), rev'd, 503 F.3d 1050 (9th Cir. 2007). I dismissed this action, finding that the Court lacked personal jurisdiction over a judgment creditor. The Court of Appeals held that the exercise of personal jurisdiction over the judgment creditor was reasonable.

Diaz, v. Eagle Produce Ltd. P'ship, No. CV-03-02127-PHX-MHM (D. Ariz. Mar. 31, 2006), rev'd, 521 F.3d 1201 (9th Cir. 2008). I granted summary judgment to the defendant in a lawsuit alleging age discrimination. The Court of Appeals reversed regarding one plaintiff, finding that evidence of satisfactory job performance and other circumstantial evidence, taken together, could lead a reasonable juror to draw an inference of age discrimination.

Grabinski v. Nat'l Union Fire Ins. Co. of Pittsburgh, 2005 WL 2412784 (D. Ariz. Sept. 23, 2005), rev'd, 265 Fed. Appx. 633 (9th Cir. 2008). I dismissed Grabinski's complaint for failure to state a claim. The Court of Appeals held that Grabinski sufficiently alleged an abuse of process claim in his complaint.

Kim v. Ariz. Bd. of Regents, 2006 U.S. Dist. LEXIS 73456 (D. Ariz. Sept. 28, 2006), rev'd, 2008 U.S. App. LEXIS 20513 (9th Cir. Sept. 15, 2008). I granted summary judgment to the defendant in a lawsuit alleging race-based employment discrimination. The Court of Appeals reversed, finding there was a genuine issue of material fact concerning whether the defendant discriminated against the plaintiff based on his Asian ethnicity.

Thompson v. Paul, 402 F. Supp. 2d 1110 (D. Ariz. 2005), rev'd, 547 F.3d 1055 (9th Cir. 2008). I dismissed Thompson's complaint under Section 10(b) of the Securities Exchange Act of 1934 for failing to state a claim upon which relief could be granted. The Court of Appeals held that the complaint stated a claim upon which relief could be granted under Section 10(b).

Hubble v. Soc. Sec. Admin., No. CV-05-1583-PHX-MHM (D. Ariz. Sept. 29, 2006), rev'd, 290 Fed. Appx. 56 (9th Cir. 2008). I remanded Hubble's claim for disability insurance benefits for further administrative proceedings. The Court of Appeals held that the claim should have been remanded for a calculation and payment of benefits.

Slone v. Schriro, No. CV-05-3362-PHX-MHM, 2006 WL 3806708 (D. Ariz. Dec. 27, 2006), rev'd, 291 Fed Appx. 837 (9th Cir. 2008). The Court of Appeals vacated my dismissal of a habeas petition as untimely and instead directed dismissal of the petition on mootness grounds.

United States v. James, No. CR-03-0900-MHM-1 (D. Ariz. Mar. 1, 2007), rev'd, 556 F.3d 1062 (9th Cir. 2009). I presided over a trial in which the defendant was convicted of second degree murder, robbery, and felony murder, along with several other crimes. The Court of Appeals held that punishing the defendant for second degree murder, robbery, and their related gun crimes violated double

jeopardy given that the defendant had also been convicted and sentenced for felony murder and a related gun count for the same underlying act.

Siracusano v. Matrixx Initiatives, Inc., 2005 U.S. Dist. LEXIS 41102 (D. Ariz. Dec. 15, 2005), rev'd, 585 F.3d 1167 (9th Cir. 2009). I dismissed the plaintiffs' claim brought under the Private Securities Litigation Reform Act of 1995 (PSLRA), concluding that the plaintiff failed to allege materiality. The Court of Appeals reversed, deciding that my reliance on the statistical significance standard was in error and that the plaintiffs' allegations were sufficient to meet the PSLRA's pleading requirement.

Stanley v. Schriro, No. CV-98-00430-PHX-MHM, 2006 WL 2816541 (D. Ariz. Sept. 27, 2006), rev'd, Stanley v. Schriro, \_\_\_ F.3d \_\_\_, 2010 WL 816940 (9th Cir. Mar. 11, 2010). I denied a 28 U.S.C. § 2254 habeas corpus petition challenging a conviction and capital life sentences for a double murder. The Court of Appeals affirmed the denial of the petition for a writ of habeas corpus for ineffective assistance of counsel during the guilt phase of trial and for Petitioner's Miranda claim. It reversed as to Petitioner's claim for ineffective assistance of counsel during the sentencing phase, holding that Petitioner was entitled to an evidentiary hearing on whether his lawyer rendered ineffective assistance of counsel during this phase.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

As a general rule, I do not submit my orders for publication in the Federal Supplement. On occasion, however, orders that I have issued are designated for publication by the publishers of the Federal Supplement. Many are available online through Westlaw, Lexis, and other services. My unpublished orders are filed and stored with the Clerk of the Court.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

Ortega Melendres v. Arpaio, 598 F. Supp. 2d 1025 (D. Ariz. 2009).

Black Star Farms, LLC v. Oliver, 544 F. Supp. 2d 913 (D. Ariz. 2008).

Elliott v. White Mountain Apache Tribal Court, No. CV 05-4240-PCT-MHM, 2006 WL 3533147 (D. Ariz. Dec. 06, 2006), aff'd, 566 F.3d 842 (9th Cir. 2009).

United States v. Fabela, 666 F. Supp. 2d 1082 (D. Ariz. 2009).

Marlyn Nutraceuticals, Inc. v. Improvita Health Prod., 663 F. Supp. 2d 841 (D. Ariz. 2009).

Bard Peripheral Vascular, Inc. v. W.L. Gore & Assoc., Inc., No. CV-03-0597-PHX-MHM, 2009 WL 886514 (D. Ariz. Mar. 31, 2009).

Wroclawski v. United States, 634 F. Supp. 2d 1003 (D. Ariz. 2009).

United States v. Kasey, No. CR. 06-775-PHX-MHM, 2007 WL 505291 (D. Ariz. Feb. 14, 2007).

ASU Students For Life v. Crow, No. CV 06-1824-PHX-MHM, 2008 WL 686946, (D. Ariz. Mar. 10, 2008), aff'd in part, vacated in part, WL 4841124 (9th Cir. Dec. 11, 2009).

J.K. v. Ariz. Bd. of Regents, No. CV-06-916-PHX-MHM, 2008 WL 4446712 (D. Ariz. Sept. 30, 2008)

Stanley v. Schriro, CV-98-430-PHX-MHM (D. Ariz. Sept. 27, 2006) (Document #67), rev'd, \_\_\_ F.3d \_\_\_, 2010 WL 816940 (9th Cir. Mar. 11, 2010)

Van Adams v. Schriro, No. CV-04-01359-PHX-MHM (D. Ariz. Mar. 30, 2007) (Document #116).

Van Adams v. Schriro, No. CV 04-1359-PHX-MHM, 2007 U.S. Dist. LEXIS 63747 (D. Ariz. Aug. 27, 2007)

Nash v. Schriro, No. CV-97-1104-PHX-MHM, 2006 WL 1889589 (D. Ariz. July 7, 2006), remanded, 581 F.3d 1048 (9th Cir. 2009).

United States v. Shootinglady, No. CR-05-0399-PCT-MHM, 2006 WL 398618 (D. Ariz. Feb. 13, 2006).

United States v. Cruz-Guerra, No. CR-05-788-PHX-MHM, 2006 WL 381678 (D. Ariz. Feb. 17, 2006).

United States v. Mitchell, No. CR-01-01062-PHX-MHM, (D. Ariz. Mar. 11, 2003) (Document #220), aff'd, 502 F.3d 931 (9th Cir. 2007).

United States v. Mitchell, No. CR-01-01062-PHX-MHM, (D. Ariz. Mar. 5, 2003) (Document #233), aff'd, 502 F.3d 931 (9th Cir. 2007).

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

Panel: Judge Betty Fletcher, Judge Ronald Gould, Judge Mary Murguia

CID Enters., Inc, et al. v. Wallowa Forest, 40 Fed. Appx. 601 (9th Cir. 2002).

CID Enters., Inc, et al. v. Wallowa Forest, 40 Fed. Appx. 601 (9th Cir. 2002).

Goodman v. United States, 298 F.3d 1048 (9th Cir. 2002).

Esplanade Props. v. City of Seattle, 307 F.3d 978 (9th Cir. 2002).

Zuniga-Banuelos, v. INS, 44 Fed. Appx. 113 (9th Cir. 2002).

Quintanilla v. INS, No. 99-70328 (dismissed for lack of jurisdiction; not reported in Westlaw).

Velazquez-Castillo v. INS, 40 Fed. Appx. 585 (9th Cir. 2002).

Turner Sand & Gravel, et al. v. JGC Enters., et al., 40 Fed. Appx. 561 (9th Cir. June 24, 2002).

Commercial Elec. v. JGC Enters, 40 Fed. Appx. 561 (9th Cir. 2002).

Northern Queen Inc. v. Kinnear, 298 F.3d 1090 (9th Cir. 2002).

Schumacher v. Gen. Sec., 41 Fed. Appx. 49 (9th Cir. 2002).

Kinnear v. Sea Pac Ins., 41 Fed. Appx. 141 (9th Cir. 2002).

King County v. Rasmussen, 299 F.3d 1077 (9th Cir. 2002).

Manjiyani, et al. v. Gonzales, 343 F.3d 1018 (9th Cir. 2003).

Panel: Judge Stephen Trott, Judge Johnnie Rawlinson, Judge Mary Murguia

Hen v. City of Los Angeles, 244 Fed. Appx. 794 (9th Cir. July 27, 2007).

Stein v. Braum Inv., 244 Fed. Appx. 816 (9th Cir. 2007).

Shane v. Albertson's Inc., 504 F.3d 1166 (9th Cir. 2007).

Trotter v. Baca, 247 Fed. Appx. 878 (9th Cir. 2007).

Chang v. Liberty Life Assurance. Co. of Boston, 247 Fed. Appx. 875 (9th Cir. 2007).

Ramirez, et al. v. Century 21, 235 Fed. Appx. 489 (9th Cir. 2007).

I authored the following opinions:

Northern Queen, Inc. v. Kinnear, 298 F.3d 1090 (9th Cir. 2002). This was a maritime case about a crab fishing boat that capsized in the Bering Sea due to an excessive build up of ice and an accumulation of sea water in the lazarette, killing all those on board. Following the accident, the Northern Queen brought suit against the estate of the ship's captain to limit its liability pursuant to the Limitation of Liability Act, 46 U.S.C. §§ 181 et seq. I authored the majority opinion, which affirmed the district court's ruling that the estate of the ship's captain could not recover damages from the ship's owner because of the primary duty rule.

Manjiyani v. Ashcroft, 343 F.3d 1018 (9th Cir. 2003). In this immigration case, we granted Petitioner's request to supplement the record on appeal and concluded that her evidence was sufficient to reopen proceedings before the Board of Immigration Appeals to consider her evidence, and to determine, in the first instance, whether to grant her petition to reopen her underlying deportation proceedings in light of the complete record.

Shane v. Albertson's Inc., 504 F.3d 1166 (9th Cir. 2007). In this ERISA case, the panel held (1) that the version of plan in effect at commencement of participant's total disability controlled, and (2) under the de novo standard of review (given an unauthorized delegation of discretionary fiduciary authority) the denial of benefits was proper.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:
- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
  - b. a brief description of the asserted conflict of interest or other ground for recusal;
  - c. the procedure you followed in determining whether or not to recuse yourself;
  - d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

We do not have an “automatic” recusal system at the District Court. I maintain a standing recusal list of individuals and entities consistent with the Code of Conduct for United States Judges. I review the parties and counsel in each case to ensure I do not have a close friendship or business association with any of them. I have a few attorney friends, who are either current or former Assistant United States Attorneys. If any of them were to represent a party in a case to which I was assigned, I would recuse.

There have been a few cases in which my recusal was requested by a *pro se* litigant who was dissatisfied with the decision I rendered in his/her case.

There are two cases in which I was requested to recuse myself by a party who was not *pro se*:

Ortega Melendres v. Arpaio, No. CV-07-2513-PHX-MHM (D. Ariz.)

This was a class action lawsuit brought against Maricopa County, the Maricopa County Sheriff's Office ("MCSO") and Sheriff Joseph M. Arpaio pursuant to the Fourth and Fourteenth Amendments to the United States Constitution, Title VI of the Civil Rights Act, and Article II, § 8 of the Arizona Constitution alleging racial profiling and unlawful detention of persons of Hispanic appearance and/or descent during the defendants' attempt to enforce federal immigration laws. After I denied the defendants' renewed motion to dismiss, the defendants moved to recuse me from the case under both 28 U.S.C. § 144 and 28 U.S.C. § 455(a)-(b). I rejected as groundless the defendants' arguments that I was personally biased against them under § 455(b)(1) and that I had an improper “interest” in the litigation under § 445(b)(4) and (b)(5)(iii) based on the position of my identical twin sister, Janet Murguia, as CEO and President of the National Council of La Raza (“NCLR”). However, under § 455(a), I recognized that NCLR had published internet-based articles that were highly disparaging of specific defendants in the case, and that the articles took strong stands on disputed factual matters lying at the heart of the litigation. Accordingly, I concluded in an abundance of caution and to avoid even the slightest doubt in public perception of fair adjudication of this case, I should recuse myself from this case.

Okonkwo v. Glendale Union High School Dist., No. CV-08-0633-PHX-MHM (D. Ariz.)

This civil case was filed by a *pro se* plaintiff against his former employer alleging discrimination on the basis of age and race. At the conclusion of fact discovery, the plaintiff retained private counsel. Thereafter, the plaintiff's counsel requested an extension of time to engage in additional fact discovery. The plaintiff's counsel also filed a motion for a protective order to prevent the plaintiff's deposition. After these issues were not resolved to the plaintiff's satisfaction, the plaintiff moved to recuse me under 28 U.S.C. § 144 and 28 U.S.C. § 455. I denied the motion for recusal. Plaintiff then filed a related civil rights lawsuit that named me

as a defendant. See Okonkwo v. Murguia, CV-09-2604-PHX-JWS (D. Ariz.). All claims against me were dismissed with prejudice, and the district court issued an order to show cause why the plaintiff's counsel should not face sanctions under Rule 11 of the Federal Rules of Civil Procedure.

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

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

I have not held public office other than judicial office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

I have not held any memberships or offices in, or rendered any services to, any political party or election committee, nor have I held a position or played a role in a political campaign.

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

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

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

I did not serve as a law clerk to a judge.

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

I did not practice alone.

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

1985 – 1990  
Wyandotte County District Attorney's Office  
710 North 7<sup>th</sup> Street  
Kansas City, Kansas 66101  
Assistant District Attorney

1990 – 2000  
United States Attorney's Office  
District of Arizona  
Two Renaissance Square  
40 North Central Avenue, Suite 1200  
Phoenix, Arizona 85004-4408  
Deputy Chief, Criminal Section (1994 – 1998)  
Assistant United States Attorney (1990 – 2000)

1999 – 2000  
Executive Office for United States Attorneys  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530  
Director (1999 – 2000)  
Principal Deputy Director (1999)  
Counsel to Director's Staff (1998 – 1999)

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

I did not serve as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

From 1985 to 1990, I was an Assistant District Attorney for Wyandotte County, Kansas. I was responsible for all aspects of felony criminal prosecution with emphasis on sex crimes and child abuse. I was a senior trial attorney in the Sex Crimes Unit for two and one-half years. I was also a trial attorney in the Major Crimes Division for two years. My duties included evaluating the sufficiency of evidence, secondary investigation, interviewing and preparing witnesses for court, jury trials and related courtroom appearances, preparing briefs and arguing appeals before the Kansas Supreme Court and the Kansas Court of Appeals, and



daily interaction with the public regarding criminal issues. I tried more than 40 state felony jury trials to verdict.

From 1990 to 2000, I was an Assistant United States Attorney in the United States Attorney's Office, District of Arizona. From September 1990 to November 1994, I was an attorney in the Criminal Section, Violent Crime Unit. I was responsible for all aspects of federal felony criminal prosecutions and appeals, with an emphasis on violent crime. My duties included evaluating the sufficiency of evidence, presenting cases to the grand jury, directing secondary investigation, interviewing and preparing witnesses for court, jury trials, and related courtroom appearances, writing briefs, and arguing appeals before the Ninth Circuit. I tried approximately 20 federal felony jury trials to verdict.

From 1994 to 1998, I served as Deputy Chief of the Criminal Section. I was responsible for my own caseload, as well as training, directly supervising, and evaluating 10 Assistant United States Attorneys in the Violent Crime Unit. Additionally, I directly supervised seven attorneys in the Organized Crime Drug Enforcement Task Force - Major Drug Unit. I was responsible for consultation/staffing of major prosecutions, including areas such as Domestic Terrorism, Capital Murder, Civil Rights, Violence Against Women Act, Child Support Recovery Act, Gang and Juvenile matters. I served as chair of the Hiring Committee for the United States Attorney's Phoenix Office.

From August 1998 to September 1999, I was Counsel to the Director, and then Principal Deputy Director of the Executive Office for United States Attorneys (EOUSA), United States Department of Justice. I assisted the Director of the Executive Office for United States Attorneys in the overall operations of the 94 United States Attorneys' offices nationwide. I served as a liaison between all components in the Department of Justice and the field.

From September 1999 to November 2000, I was Director of the Executive Office for United States Attorneys. As Director, I supervised the EOUSA which provides oversight of and support to the 94 Offices of the United States Attorneys comprised of 93 Presidentially-appointed United States Attorneys (a single United States Attorney serves Guam and the Northern Mariana Islands), and approximately 5,000 support staff employees. I served as the liaison between the United States Attorneys and the Attorney General, Deputy Attorney General, the Department's legal divisions, and other Department components. As Director, I supervised 22 staffs comprised of approximately 270 people and was responsible for the administration of an appropriation of more than 1 billion dollars.

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

As a prosecutor, my former clients were the United States and the State of Kansas. My area of specialty was criminal prosecution.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

As a state prosecutor, 100% of my practice involved litigation in state court. Likewise, as a federal prosecutor, 100% of my practice involved litigation in federal court. I appeared in court frequently.

- i. Indicate the percentage of your practice in:

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

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings:
- 2. criminal proceedings: 100%

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

I estimate that I tried at least 60 cases to verdict since I started practicing as a lawyer. I estimate that I tried 40 cases to verdict in state court in Kansas. I estimate that I tried 20 cases to verdict in federal court in Arizona. In most instances, I was sole counsel. In addition, some cases resulted in guilty pleas after the trial commenced, but before verdict.

- i. What percentage of these trials were:

- 1. jury: 98%
- 2. non-jury: 2%

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

I did not practice before the Supreme Court of the United States.

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

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

1. United States v. Orlando Yazzie, No. CR-96-0255-PCT-EHC (D. Ariz).

I represented the United States in this prosecution under the federal homicide statute. The case was tried October 23 to October 31, 1996 before the Honorable Earl H. Carroll. The charges included first degree murder, aggravated assault, and violations of the federal firearm laws. I was lead counsel in the case and argued the case on behalf of the United States before the Ninth Circuit Court of Appeals.

In this case, the defendant went to the home of an individual with whom he had previously had an altercation. The defendant broke down the front door, shot several rounds of ammunition into the front living room, and then fled. The individual the defendant had targeted, however, was not in that house. Instead, there were five children sleeping in the front room. One child was killed and another suffered serious bodily injury. The defendant had been previously convicted of second degree murder and had been out of prison less than six months before committing this offense. His possession of a handgun was thus illegal under the federal "felon in possession" law. The trial involved the presentation of medical and scientific experts and child witnesses.

To avoid undue prejudice to the defendant by disclosure of his prior felony, the District Court ordered that the trial on the felon in possession charge be bifurcated from the murder and assault trial, but in a unique fashion: subsequently, the same jury considered the felon in possession case at the conclusion of the murder and assault trial. The defendant was found guilty of all charges and sentenced to a term of life imprisonment. The Ninth Circuit affirmed the conviction in February 1998. United States v. Yazzie, 139 F.3d 909 (9th Cir. 1998).

Co-counsel: Sharon K. Sexton, United States Attorney's Office, District of Arizona Two Renaissance Square, 40 North Central Avenue, Suite 1200, Phoenix, Arizona 85004, 602-514-7500. Counsel for defendant: Celia M. Rumann, Federal Public Defender's Office, 850 West Adams Street, Ste. 201, Phoenix, Arizona 85007, 602-382-2700.

2. United States v. Frederick Yazzie, No. CR-92-296-PCT-SMM (D. Ariz.)

I represented the United States in this federal prosecution of fourteen counts of sexual abuse of a minor. This case was tried May 4 to May 13, 1993, before the Honorable Stephen M. McNamee. I was lead counsel and briefed the matter before the Court of Appeals for the Ninth Circuit.

The defendant was charged with committing a variety of sexually abusive acts against his stepson over an extended period of time. An uncle of the victim, who was an eyewitness to some of the offenses, was mentally handicapped. The mother of the victim originally told law enforcement that she had seen some incidents of abuse, but recanted her statement prior to trial. Closed circuit television was used during trial when the child testified. The defendant was convicted of all counts and sentenced to 365 months' imprisonment.

During an emergency room visit, the victim's mother wrote a note to the physician concerning her son, and the trial court's admission of the mother's statement to the emergency room doctor presented an issue of first impression for the Ninth Circuit. The Ninth Circuit held that in limited circumstances, a statement from someone other than the patient to the doctor—in this case the parent of a child patient—may be introduced in court and admitted under the medical treatment exception to the hearsay rule. The Ninth Circuit Court of Appeals affirmed the conviction in December 1995. United States v. Yazzie, 59 F.3d 807 (9th Cir. 1995).

Co-counsel: Bruce Taylor, National Law Center for Children and Families, 3819 Plaza Drive, Fairfax, Virginia 22030, 703-691-4626. Counsel for defendant at trial: Deborah Williams, Federal Public Defenders Office, 850 West Adams Street, Sté. 201, Phoenix, Arizona 85007, 602-382-2700. Counsel for defendant on appeal: Sandra L. Slaton, 4815 East Crystal Lane, Paradise Valley, Arizona 85253, 480-483-2178.

3. United States v. Bedonie, No. CR-94-033-PCT-PGR (D. Ariz.)

I represented the United States in this prosecution of a defendant who shot and killed two of his brothers-in-law. After an altercation with the victims, the defendant drove 32 miles to obtain a firearm, drove 32 miles back, and shot the victims at their home while 10 children were in the house. I was the sole counsel on the case and also argued the matter before the Court of Appeals for the Ninth Circuit.

On October 25, 1994, before the Honorable Paul G. Rosenblatt, the defendant pleaded guilty to two counts of second degree murder and one count of using a firearm in a crime of violence. The written plea agreement provided that the defendant receive a sentence of 20 to 25 years' imprisonment. Despite this agreement, and the recommendation in the presentence report for a sentence of between 19 and 22½ years, the court granted the defendant a two level reduction for acceptance of responsibility, rejected the plea agreement's provision for an upward departure, and sentenced the defendant to a term of

imprisonment of sixteen years and four months. The court denied the government's motion to withdraw the plea, and its motion for reconsideration of the sentence.

The government appealed. On appeal, we successfully argued that the court should have accepted the terms of the plea agreement or allowed the government to withdraw its agreement to the plea. The case was remanded to the district court, and the defendant was sentenced to twenty years in prison. United States v. Bedonie, 86 F.3d 1163 (9th Cir. 1996).

Counsel for defendant: John Sands, Federal Public Defender's Office, 850 West Adams Street, Ste. 201, Phoenix, Arizona 85007, 602-382-2700.

4. United States v. Sterkel, No. CR-97-209-PCT-RMS (D. Ariz.)

I was lead prosecutor in this federal interstate stalking case. The defendant, a former employee of the National Park Service, traveled from Utah to Arizona to stalk a former co-worker. The defendant traveled to Page, Arizona, in April 1997 and wrote several vulgar statements about his former co-worker on the door of the Glen Canyon National Recreational Area headquarters building. In May 1997, the defendant again wrote statements about the victim on the door to the headquarters and in several other locations. (The writings described the victim in sexually vulgar terms, urged sexual acts against the victim and also advocated destruction of the Glen Canyon dam.)

During the investigation, we were able to establish the defendant's identity and captured him on videotape leaving the writings. Although fearful of death or serious bodily injury, the victim did not sustain any physical injury. On August 22, 1997, the defendant pleaded guilty before the Honorable Roslyn Moore Silver and was sentenced to six months in a community-based facility, and a three-year term of supervised release. This was apparently the first interstate stalking case filed in the country.

Co-counsel: Hon. W. Scott Bales, (former Assistant U.S. Attorney), Justice, Arizona Supreme Court, 1501 West Washington Street, Room 427, Phoenix, Arizona 85007, 602-452-3534. Counsel for defendant: Bruce Griffen, Coconino County Legal Defender, 110 East Cherry Street, Flagstaff, Arizona 86001, 928-779-6816.

5. United States v. Gutberto Beltran-Gutierrez; United States v. Jose Beltran-Cardenas, No. CR-92-178-PHX-RO (D. Ariz.)

I was the sole prosecutor in this drug trafficking case involving black tar heroin. I also argued this case on behalf of the United States before the Court of Appeals for the Ninth Circuit.

The defendants sold black tar heroin to undercover DEA agents, and represented that they acquired the heroin from Mexico and regularly smuggled it into the United States. Both of the defendants spoke only Spanish. At the time of their arrests, the defendants reportedly had been selling as many as 15 ounces of heroin at a time, at a purchase price

of approximately \$3,000 per ounce. The defendants had \$25,000 worth of heroin in their possession at the time of the arrest, and had indicated to the undercover agents that they could provide the agents up to ten ounces every ten days. The defendants used an apartment in Phoenix, Arizona, to cook the heroin and conduct drug related business.

Several pretrial motions were filed by the defendants, including an unsuccessful motion to suppress the drug evidence. An evidentiary hearing was held on the suppression motion, at which one of the defendants, Beltran-Gutierrez (Gutierrez), testified.

On the day his case was set for trial, Beltran-Cardenas (Cardenas) pleaded guilty to all counts in the indictment, without any agreement with the government. Gutierrez' trial was held on December 2 to 7, 1992, before the Honorable Richard J. Owen (visiting judge from the Southern District of New York). Cardenas testified on behalf of his co-defendant, Gutierrez. In his testimony, Cardenas attempted to falsely exculpate Gutierrez. Gutierrez also testified at the trial, and made several inconsistent statements, including a statement inconsistent with his testimony at the suppression hearing. He was impeached with his prior sworn statement. The jury found Gutierrez guilty of all charges.

At the sentencing hearing, the judge found that Cardenas had an aggravated role in the offense, and that Cardenas had obstructed justice by committing perjury at his co-defendant's trial. Cardenas was sentenced to a term of 82 months' imprisonment. Gutierrez was sentenced to a term of 78 months' imprisonment. Cardenas appealed the length of his sentence, and Gutierrez appealed his conviction on the grounds that the use of his prior testimony violated his Fifth Amendment privilege against self-incrimination.

The Court of Appeals decided in the government's favor in all respects. The use of suppression hearing testimony for impeachment purposes at trial was apparently an issue of first impression for the Ninth Circuit. United States v. Beltran-Gutierrez, 19 F.3d 1287 (9th Cir. 1994); United States v. and Beltran-Cardenas, 19 F.3d 30 (9th Cir. 1994).

Counsel for defendant: Sandra Lynn Slaton, 4815 East Crystal Lane, Paradise Valley, Arizona 85253, 480-483-2178.

6. United States v. Sneezzer, No. CR-91-054-PCT-RGS (D. Ariz.)

I represented the United States in this prosecution under the federal kidnapping and rape statutes. I also argued this case on behalf of the government before the Court of Appeals for the Ninth Circuit.

The defendant in this case picked up the female victim and her boyfriend while they were hitchhiking in Arizona. He used a stop with the pretext of allowing the man to relieve himself to kidnap the female, leaving the boyfriend and another passenger behind. The defendant drove his victim to a remote area on the Navajo Indian reservation where he raped her twice. The victim eventually broke away and ran. The defendant gave chase, threatening to kill her and her boyfriend. The victim was picked up by a passing motorist on a nearby highway.

The defendant had been convicted of a nearly identical act of kidnapping and sexual assault three years earlier, but that conviction had been overturned based on the trial court's failure to give a jury instruction on voluntary intoxication. The case was tried June 4 - 6, 1991, before the Honorable Roger G. Strand. At trial, we introduced evidence of the prior kidnapping and rape under Federal Rule of Evidence 404(b). The defendant was found guilty of kidnapping and two counts of aggravated sexual abuse. He was sentenced to a term of 250 months imprisonment on each count.

The admission of evidence about the prior rape was one of several issues raised by the defendant on appeal. He also appealed the trial court's refusal to give an instruction on the defense of voluntary intoxication with respect to the kidnapping charge, and challenged the trial court's decision not to group the two rape counts together for sentencing. The Ninth Circuit upheld the government's use of evidence about the defendant's prior bad acts, and, in an issue of first impression, held that kidnapping under the provision at issue, 18 U.S.C. § 1201(a)(2), was a general, rather than a specific intent crime. Because the defense of voluntary intoxication is not a defense to a general intent crime, the Ninth Circuit held that it was not error for the district court to refuse the defendant's requested instruction. The Ninth Circuit overturned the district court's decision to sentence the defendant separately for each count of aggravated sexual abuse based on its interpretation of the Sentencing Guidelines and thus found that the court was required to group the two rapes for sentencing because of their temporal proximity. However, the Ninth Circuit panel recommended to the United States Sentencing Commission that it amend the guidelines "to avoid giving defendants a 'free rape' and to avoid forcing judges to go through the repulsive and dispiriting task of making timing distinctions in this area."

On remand for sentencing the defendant's original sentence was modified to reflect a grouping of the two rape counts. The Ninth Circuit affirmed the conviction. United States v. Sneezzer, 983 F.2d 920 (9th Cir. 1992).

Counsel for defendant: Eugene A. Burdick, P.O. Box 5367, Mesa, Arizona 85211, 480-833-6166.

7. United States v. Johnson, No. CR-94-326-PHX-RCB (D. Ariz.)

I represented the United States in this prosecution under the federal statute concerning robbery of a postal employee. This case was the culmination of a series of investigative and prosecutorial efforts which resulted in the conviction of three individuals who were responsible for the aggravated robbery of a postal worker two years earlier. I received one of the highest awards given by the U.S. Postal Inspection Service for my work on this matter.

This aggravated robbery occurred at a docking area behind a post office in Mesa, Arizona, in December of 1992. Two masked men approached a postal worker who was loading a postal truck. One held the postal employee at gunpoint while the other went to

the rear of the postal truck and removed three mail pouches containing over \$15,000. Postal Service investigators suspected that the robbery was an inside job, but the case went unsolved for almost two years. In early 1994, an individual incarcerated in the Kansas State penitentiary revealed to law enforcement officials that he had information relating to this robbery.

Several obstacles had to be overcome to have the Kansas prisoner transferred to Arizona so he could act as a confidential informant and make key phone calls and meetings with the individuals suspected of being involved in the robbery.

After the first suspect was captured on audio and video tape, he agreed to cooperate against the other robber. Covert audio and video surveillance was again used to record the second robber not only admitting his involvement, but also re-enacting it. He was arrested and also agreed to cooperate against the mastermind of the robbery, a former postal employee named Robert Johnson.

After several phone calls with the cooperating co-defendants, the third defendant, Robert Johnson, ultimately confessed.

All three pleaded guilty. Robert Johnson entered into a plea agreement on October 25, 1994, before the Honorable Robert C. Broomfield and was sentenced to a term of nine years' imprisonment. The Ninth Circuit affirmed. United States v. Johnson, 69 F.3d 545 (9th Cir. 1995).

Counsel for defendant: J. Douglas McVay, 207 West Clarendon, Suite 3, Phoenix, Arizona 85013, 602-264-2636.

8. United States v. Proshak, No. CR-90-358-PHX-EHC (D. Ariz.)

I represented the United States in this federal counterfeiting and fraudulent passport possession case. I was the sole counsel on the case, and represented the United States before the Court of Appeals for the Ninth Circuit.

The defendant was found uttering counterfeit money with another individual at a shopping mall in Phoenix, Arizona. A large amount of counterfeit cash was found hidden in the car the two individuals had been driving. The defendant had an extensive and violent criminal background, including prostitution, resisting a public officer, assault with intent to commit rape, and kidnapping. He was also suspected of being a member of a Russian organized crime ring out of California.

The defendant pleaded guilty on March 4, 1991, before the Honorable Earl H. Carroll and was sentenced to a term of 24 months imprisonment. His sentence was ordered to run consecutive to his term of imprisonment for other state crimes in California. The defendant filed an appeal challenging the consecutive nature of his federal sentence. The Court of Appeals for the Ninth Circuit upheld the sentence. The Ninth Circuit affirmed



the conviction and sentence in May of 1992. United States v. Proshak, 963 F.2d 381 (9th Cir. 1992).

Counsel for defendant: Dennis G. Jones, 335 East Palm Lane, Phoenix, Arizona 85004, 602-553-9161.

9. State of Kansas v. Walker, Nos. 87 CR 0009, 87 CR 0350-A, 87 CR 424-B, (D. Court, Wyandotte County, Kan.)

I represented the State of Kansas in this child abuse, neglect and endangerment case involving two young boys (ages nine and twelve) who were physically and sexually abused by their stepmother. I also represented the State of Kansas on appeal before the Kansas Supreme Court.

The defendant stepmother physically beat the twelve-year-old boy regularly with her fists and, on occasion, with a two-by-four. In addition to the physical abuse, the defendant made both boys perform oral sex on her as “reward” for good behavior and as “punishment” for bad behavior. The boys’ natural father was aware of the abuse, and did nothing to stop it.

The state of the home was described by social workers as filthy and deplorable, and the children came to school improperly clothed and unusually hungry. The stepmother and father were aware that the twelve-year-old suffered from a rare and terminal disease (juvenile Huntington’s Chorea), and that the younger boy ran a high risk of contracting the same illness. The stepmother and father denied the children necessary medical treatment and medication for their respective medical problems.

The children’s father was charged with aiding and abetting the stepmother’s crimes, and he pleaded guilty before trial pursuant to a plea bargain. The stepmother was charged with two counts of aggravated criminal sodomy, two counts of endangering a child, and one count of terroristic threats (for her threats against a hospital social worker who had prohibited her from seeing the older boy during the boy’s stay in a hospital psychiatric ward for children). This case was tried July 21 to 27, 1987, before the Honorable Dean J. Smith. The evidence included expert testimony and eyewitness testimony from the younger boy. (The older boy was too ill to testify.) The defendant was found guilty on all counts.

The defendant was sentenced to a term of not less than fifteen years or more than life imprisonment on one count of aggravated criminal sodomy and to a term of not less than 5 years or more than 20 years on the second count of aggravated criminal sodomy. The two sentences were ordered to be served consecutively. The defendant was sentenced to a term of one year on each count of endangering a child – to be served concurrent with each other and concurrent with the other charges. The defendant was sentenced to a term of not less than one nor more than five years for making a terroristic threat. This sentence was ordered to run consecutively to the other charges. The Kansas Supreme Court found in favor of the State on appeal. The Supreme Court of the State of Kansas

affirmed the conviction in January of 1989. Kansas v. Lorie Walker, 244 Kan. 275, 768 P.2d 290 (1989).

Counsel for defendant: Annette Jackson, 6582 West 49<sup>th</sup> Street, Mission, Kansas 66202, 913-362-0544.

10. State of Kansas v. Moppin, No. 87 CR 925 (D. Ct., Wyandotte County, Kan.)

I represented the State of Kansas in this prosecution of child sexual abuse offenses. I also represented the State of Kansas on the appeal of this matter to the Kansas Supreme Court.

This case involved the sexual abuse of a five-year-old girl by her natural father, who was a Kansas City, Kansas, police officer. The trial received significant local media attention.

This case was tried April 4 to 7, 1988, before the Honorable Cordell Meeks, Jr. At trial, the victim testified about the defendant's commission of oral sex on her and the defendant's sexual fondling of her. He was convicted on both counts. The defendant was facing a term of not less than three years, or more than five years on the indecent liberties count, and to a term of not less than five years, or more than twenty years on the aggravated criminal sodomy count. The defendant was then granted probation. The defendant nonetheless appealed his conviction.

On appeal, the defendant's conviction for indecent liberties was upheld, but his conviction for aggravated criminal sodomy was overturned. The Kansas Supreme Court determined that the definition of "sodomy" under the relevant criminal code did not include oral contact with the genitals of a female.

Subsequent to the appellate ruling, a subcommittee of the Kansas legislature convened a hearing to address the issues in the sexual abuse provisions of the criminal code that had been highlighted in this case. I testified at that hearing about the relevant statutes. The Supreme Court of the State of Kansas issued its decision affirming the conviction in part, reversing in part, and vacating in part on December 8, 1989. Kansas v. Moppin, 245 Kan. 639, 783 P.2d 878 (1989).

Counsel for defendant: John Duma, 831 Armstrong, Kansas City, Kansas 66101, 913-342-7070

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

As a state and federal prosecutor, most of my significant legal activities involved trial litigation in the area of violent crime.

As Director of the Executive Office for United States Attorneys, I provided administrative oversight of and support to the 94 United States Attorneys' offices, comprised of 93 Presidentially-appointed United States Attorneys (a single United States Attorney serves Guam and the Northern Mariana Islands), approximately 5,000 Assistant United States Attorneys, and approximately 5,000 support staff employees. I served as liaison between the United States Attorneys and the Attorney General, Deputy Attorney General, the Department's legal divisions and other Department components. I supervised 22 components comprised of approximately 270 people. I was also responsible for the administration of an appropriation of more than 1 billion dollars.

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

None.

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

None.

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

I have no plans, commitments or agreements to pursue outside employment, with or without compensation, during my service with the court.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

No family members, categories of litigation, or financial arrangements are likely to present potential conflicts-of-interest. With respect to persons other than family, if the City of Chandler were to appear as a party in a case to which I was assigned, I would recuse myself because of my long-standing friendship with the Chandler City Attorney. I have a few close personal friends who practice as attorneys before the Court of Appeals; if any of these attorneys appeared before me in a case, I would disclose the relationship and/or recuse.

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

If confirmed, I will continue to consult and apply the Code of Conduct for United States Judges as well as other relevant canons and statutory provisions.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

In my role as a judicial officer, my ability to participate in pro bono work has been limited. However, in accordance with this limitation, I established a program for disadvantaged youth called "Court Works – Kids to Court," which is now in its fifth year. Each year, approximately 300 children and their teachers prepare for, and participate in, a mock trial at the District Court. The program is designed to introduce youngsters to the judicial system and create a context for a professional career in law. It also serves to bring the community to the Sandra Day O'Connor Courthouse, which I believe is a vital role of the District Court.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your

jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

There is no selection commission in my jurisdiction to recommend candidates for nomination to the federal courts. On January 15, 2010, I received a telephone call from an attorney in the Office of Legal Policy at the U.S. Department of Justice, who informed me that I was being considered for nomination to serve as a judge on the United States Court of Appeals for the Ninth Circuit. Since that time, I have been in contact with pre-nomination officials at the Department of Justice. On February 17, 2010, I interviewed in Washington, D.C., with officials from the White House Counsel's Office and the Department of Justice. On March 25, 2010, the President submitted my nomination to the Senate.

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

No one involved in the process of selecting me as a judicial nominee has discussed any case, legal issue or question with me.

AFFIDAVIT

I, **MARY HELEN MURGUIA**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Apr. 9, 2010  
(DATE)

*Mary Helen Murguia*  
(NAME)

*Linda S. South*  
(NOTARY)

**LINDA S. SOUTH**  
Notary Public - State of Kansas  
My Appt. Expires 08/10/2010