

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Michael Brian Brennan

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

United States Circuit Judge for the Seventh 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.

Gass Weber Mullins LLC
241 North Broadway, Suite 300
Milwaukee, Wisconsin 53202

Residence: Fox Point, Wisconsin

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

1963; Milwaukee, Wisconsin

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.

1986 – 1989, Northwestern University School of Law; J.D., 1989

1982 – 1986, University of Notre Dame; B.A. (*cum laude*), 1986

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.

2008 – present
Gass Weber Mullins LLC
241 North Broadway, Suite 300

Milwaukee, Wisconsin 53202
Partner

2000 – 2008
Milwaukee County Circuit Court
901 North 9th Street
Milwaukee, Wisconsin 53233
Circuit Court Judge

1999 – 2000
Governor's Task Force to Enhance Probation
819 North 6th Street
Milwaukee, Wisconsin 53203
Staff Counsel (1999 – 2000)
Member (2000)

1997 – 1999
Milwaukee County District Attorney's Office
821 West State Street, Room 405
Milwaukee, Wisconsin 53233
Assistant District Attorney

1998 – 1999
Wisconsin Criminal Penalties Committee
819 North 6th Street
Milwaukee, Wisconsin 53203
Staff Counsel

1995 – 1997
Hon. Daniel A. Manion
U.S. Court of Appeals for the Seventh Circuit
301 Federal Building
204 South Main Street
South Bend, Indiana 46601
Law Clerk

1991 – 1995
Foley & Lardner
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202
Associate

1989 – 1991
Hon. Robert W. Warren
U.S. District Court for the Eastern District of Wisconsin
517 East Wisconsin Avenue

Milwaukee, Wisconsin 53202
Law Clerk

Summer 1988
Sidley Austin LLP
1501 K Street, N.W., Suite 700
Washington, D.C. 20005
Summer Associate

Summer 1988
Sidley Austin LLP
1 South Dearborn Street
Chicago, Illinois 60603
Summer Associate

Summer 1987
Reinhart Boerner Van Deuren, s.c.
1000 North Water Street, Suite 1700
Milwaukee, Wisconsin 53202
Summer Associate

Other Affiliations (uncompensated):

2013 – present
Eastern District of Wisconsin Bar Association
424 East Wells Street
Milwaukee, Wisconsin 53202
Board Member

2011 – 2017
Governor's Judicial Selection Advisory Committee
Office of the Governor
115 East State Capitol
Madison, Wisconsin 53702
Chairperson

1998 – 2004
St. Thomas More Lawyers Society of Wisconsin
No permanent address.
Board Member

2003
The Milwaukee Forum
No permanent address.
Board Member

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 did not serve in the military. I registered for the selective service upon turning 18.

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

Professional Honors

National Association of Distinguished Neutrals (2016 – present)

The Best Lawyers in America – Recognized for Arbitration, Commercial Litigation, Mediation, and Personal Injury Litigation (Defendants) (2011 – present)

The Wisconsin Law Journal – Most affirmed trial judge in Wisconsin (2006)

U.S. Department of Justice, Office on Violence Against Women – Special Commendation (2005)

State Bar of Wisconsin – Certificate of Commendation for November 2002 article “Fully Implementing Truth-in-Sentencing” (co-authored with Thomas Hammer and Donald Latorraca) (2003)

Milwaukee Business Journal – “40 under 40” (2001)

Academic Honors

Northwestern University School of Law:

Dean’s List (1989)

Coordinating Note and Comment Editor, *Northwestern University Law Review* (1988 – 1989)

Julius H. Miner Moot Court Competition – William Jennings Bryan Award and Lowden-Wigmore First Prize (1988)

Degree from the University of Notre Dame conferred *cum laude* (1986)

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.

Defense Research Institute (2009 – 2017)

Eastern District of Wisconsin Bar Association
Board Member (2013 – 2017)

Federalist Society for Law & Public Policy Studies
Advisor, Milwaukee Lawyers Chapter (2000 – present)
Co-President, Milwaukee Lawyers Chapter (1991 – 1999)

Governor's Judicial Selection Advisory Committee
Chairperson (2011 – 2017)

Governor's Task Force to Enhance Probation (1999 – 2000)

Litigation Counsel of America
Assistant Dean, Trial Law Institute (2011 – present)

National Advisory Committee on Violence Against Women
Chairperson, Drafting Subcommittee (2004 – 2005)
Steering Committee (2003 – 2004)

St. Thomas More Lawyers Society of Wisconsin
Board Member (1998 – 2004)

Seventh Circuit Bar Association (2016 – present)

Wisconsin Bar Association (1989 – present)

Wisconsin Business Court Advisory Committee (2016 – 2017)

Wisconsin Legislative Council Special Committee on Review of Crimes Against
Children (2006 – 2007)

Wisconsin Sentencing Commission (2002 – 2003)

Wisconsin State Judicial Conference
Legislative Committee (2001 – 2005)
Uniform Bond Committee (2001 – 2005)

Wisconsin Trial Judges Association (2000 – 2008)

10. **Bar and Court Admission:**

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

Wisconsin, 1989

Illinois, 1991

I am no longer an active member of the bar in Illinois, as I voluntarily selected retired status in 2000 as I was no longer practicing in the state.

There has been no lapse in my Wisconsin bar membership.

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

Supreme Court of the United States, 1992
United States Court of Appeals for the Seventh Circuit, 1989
U.S. District Court for the Northern District of Georgia, 2016
U.S. District Court for the Northern District of Indiana, 2009
U.S. District Court for the District of Minnesota, 2014
U.S. District Court for the District of Nevada, 2016
U.S. District Court for the Eastern District of Wisconsin, 1989
U.S. District Court for the Western District of Wisconsin, 2009

There have been no lapses in membership.

11. **Memberships:**

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

The Milwaukee Forum (2000 – 2004)
Board Member (2003)

Theodore Roosevelt Association, Milwaukee Chapter (The Spectacle Club) (2001 – present)

University of Notre Dame National Monogram Club (1986 – present)

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

implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies. The Spectacle Club is a yearly dinner gathering of professionals and friends to commemorate President Teddy Roosevelt's life and public service. Although women do not regularly attend these gatherings, there is no membership policy or practice that prohibits women from attending.

12. Published Writings and Public Statements:

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

Top 9 Recent Wisconsin Federal Court Decisions, Wisconsin Lawyer, December 2016. Copy supplied.

Top 8 Recent Wisconsin Federal Court Decisions, Wisconsin Lawyer, December 2015. Copy supplied.

A Brief Conversation with New U.S. Bankruptcy Judge Beth Hanan, Milwaukee Bar Association Messenger, Winter 2015. Copy supplied.

Top 10 Recent Wisconsin Federal Court Decisions, Wisconsin Lawyer, December 2014. Copy supplied.

Top 8 Recent Wisconsin Federal Court Decisions, Wisconsin Lawyer, December 2013. Copy supplied.

Walker's Approach to the Judiciary, Milwaukee Journal Sentinel, Sept. 21, 2013. Copy supplied.

With Ric Gass, *After Action Reviews*, For the Defense, August 2013. Copy supplied.

Top 9 Recent Wisconsin Federal Court Decisions, Wisconsin Lawyer, November 2012. Copy supplied.

Act Alters Rules for Removal of Civil Cases to Federal Court, WisBar InsideTrack, Mar. 24, 2012. Copy supplied.

Top 8 Recent Wisconsin Federal Court Decisions, Wisconsin Lawyer, November 2011. Copy supplied.

The Pendulum Swings: No More Early Release, Wisconsin Lawyer, September 2011. Copy supplied.

With James T. Barry et al., *Sen. Johnson Only Wants to Have His Say on Nourse Nomination*, Milwaukee Journal Sentinel, July 24, 2011. Copy supplied.

Forbush and the Riddle of a Fragmented Court, On Point – Wisconsin State Public Defender Website, May 24, 2011. Copy supplied.

Perspective on Tort Reform: Reforms Improve Wisconsin's Civil Liability System, WisBar InsideTrack, Mar. 2, 2011. Copy supplied.

Top 7 Recent Wisconsin Federal Court Decisions, Wisconsin Lawyer, October 2010. Copy supplied.

The Value of Appellate Moot Courts, In-House Defense Quarterly, Summer 2010. Copy supplied.

The Law and Politics are Two Separate Things, Milwaukee Journal Sentinel, June 27, 2010. Copy supplied.

Changes to the Federal Rules of Civil Procedure Effective Dec. 1, 2009, WisBar InsideTrack, Jan. 20, 2010. Copy supplied.

Significant Wisconsin Federal Decisions, Wisconsin Lawyer, September 2009. Copy supplied.

The Spectacle Club Eulogy, Theodore Roosevelt Association Journal, June 2007. Copy supplied.

Kevin J. Smart's Principles and Heresies (Book Review), Engage, June 2007. Copy supplied.

Cynical Citizens? Find hope and instruction in Leadership and Leaders of the Past, Milwaukee Journal Sentinel, Apr. 15, 2007. Copy supplied.

Are Courts Becoming Too Activist?, Milwaukee Journal Sentinel, Oct. 2, 2005. Copy supplied.

Goals of Safety, Efficiency in Sentencing Can Work Together, Milwaukee Journal Sentinel, Dec. 12, 2004. Copy supplied.

The Lodestar of Personal Responsibility, 88 Marq. Law Rev. 365 (2004). Copy supplied.

A Citizen's Freedom Is Bound by Allegiance (Letter to the Editor), Wall Street Journal, May 3, 2004. Copy supplied.

Kenneth Starr's First Among Equals: The Supreme Court in American Life (Book Review), Wisconsin Lawyer, May 2003. Copy supplied.

Remarks at the Presentation of the Portrait of the Honorable Robert W. Warren, 230 F. Supp. 2d XXXIX (2003). Copy supplied.

With Thomas Hammer & Donald Latorraca, *Fully Implementing Truth-in-Sentencing*, Wisconsin Lawyer, November 2002. Copy supplied.

Truth-in-Sentencing Part II, The Third Branch, Summer 2002. Copy supplied.

Judge Not (Letter to the Editor), The New Republic, Feb. 18, 2002. Copy supplied.

Conservative Judicial Activism: More than Whose Ox is Being Gored, The Federalist Society, August 2001. Copy supplied.

Truth-in-Sentencing Needs More Work, Wisconsin Law Journal., Jan. 31, 2001. Copy supplied.

Bush's Judiciary, National Review Online, Jan. 5, 2001. Copy supplied.

Leon F. Scully, Jr.'s Bombers, Bolsheviks, and Bootleggers: A Study in Constitutional Subversion (Book Review), National Review, Dec. 18, 2000. Copy supplied.

With Donald Latorraca, *Truth-in-Sentencing*, Wisconsin Lawyer, May 2000. Copy supplied.

David Atkinson's Leaving the Bench: Supreme Court Justices At The End, Wisconsin Lawyer, March 2000. Copy supplied.

Determinate Sentencing Begins Dec. 31, 1999, Wisconsin Lawyer, December 1999. Copy supplied.

Key Recommendations of the Criminal Penalties Study Committee, The Third Branch, Fall 1999. Copy supplied.

William Rehnquist's All the Laws But One: Civil Liberties During Wartime (Book Review), 83 Marq. L. Rev. 221 (1999). Copy supplied.

With Gordon P. Giampietro & David W. Simon, *School Choice Fight: Both Sides Relentless* (Letter to the Editor), Wall Street Journal, Feb. 1, 1999. Copy supplied.

With Alexander Dushku, *Each Lawyer's Crisis*, 81 Marq. L. Rev. 831 (1998). Copy supplied.

Appellate Review Before Final Judgment in Federal District Court, Illinois Bar Journal, Feb. 1998. Copy supplied.

New Amendments to Federal Rules of Civil Procedure and Federal Rules of Evidence, Wisconsin Lawyer, November 1997. Copy supplied.

Antonin Scalia's A Matter of Interpretation: Federal Courts and the Law (Book Review), Wisconsin Lawyer, September 1997. Copy supplied.

Kudos to Wisconsin Lawyer on Timely Topics (Letter to the Editor), Wisconsin Lawyer, February 1997. Copy supplied.

O'Connor's Federal Rules – Civil Trials 1996 (Book Review), Wisconsin Lawyer, December 1996. Copy supplied.

Federal Courts Improvement Act of 1996 Affects Key Areas of Practice, Wisconsin Lawyer, December 1996. Copy supplied.

The Bar Against Federal Appellate Review of a District Court's Remand of a Case, Wisconsin Lawyer, August 1996. Copy supplied.

Post-Trial Traps for the Unwary: New Amendments to the Federal Rules of Civil Procedure, Wisconsin Lawyer, December 1995. Copy supplied.

Overcoming Law by Richard Posner (Book Review), 79 Marq. L. Rev. 329 (1995). Copy supplied.

Bridging the Time 'Gap': Removing A Case From State To Federal Court, Wisconsin Lawyer, October 1995. Copy supplied.

Richard Posner's Overcoming Law (Book Review), Wisconsin Lawyer, July 1995. Copy supplied.

Amendments to the Federal Rules of Civil Procedure, Wisconsin Lawyer, March 1992. Copy supplied.

Okure v. Owens: Choosing Among Personal Injury Statutes of Limitations for § 1983, 82 Nw. U. L. Rev. 1306 (1988). Copy supplied.

Letter to the Editor, The Observer (Notre Dame), Oct. 19, 1983. Copy supplied.

Letter to the Editor, The Observer (Notre Dame), Feb. 1, 1983. Copy supplied.

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

Report of Wisconsin Legislative Council Special Committee on Review of Crimes Against Children (2007). Copy supplied.

National Advisory Committee on Violence Against Women:

Report of Subcommittee on Teen Dating Violence (2007). Copy supplied.

Response to Committee's Charge (2005). Copy supplied.

Report of the Governor's Task Force to Enhance Probation (2000). Copy supplied.

Report of the Criminal Penalties Study Committee (1999). Copy supplied.

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

From August 1998 to August 1999, I served as Staff Counsel to the Wisconsin Criminal Penalties Committee, a committee established by state law to rewrite Wisconsin's criminal penalty statutes as the state adopted Truth-in-Sentencing. During that time, the Committee regularly held public meetings at which it was common for me to speak. I do not have copies of the minutes or transcripts of these meetings.

On September 15, 1999, I appeared at a public hearing of the Wisconsin Assembly Committee on Criminal Justice in support of the legislation created by the Wisconsin Criminal Penalties Committee. Copy supplied.

On November 1 and 9, 1999, I appeared at public hearings of the Wisconsin Senate Committee on Judiciary and Consumer Affairs in support of the legislation created by the Wisconsin Criminal Penalties Committee. Copy supplied.

On January 24, 2001, I appeared for information only at a public hearing of the Wisconsin Assembly Committee on Criminal Justice regarding the legislation

created by the Wisconsin Criminal Penalties Committee. Copy supplied.

From 2001 to 2005, I served on the Legislative Committee of the Wisconsin Judicial Conference. That committee of judges reviews pending legislation and may take positions supporting or opposing bills. I do not recall and I do not have records of which bills the committee reviewed or may have supported or opposed during my membership.

National Advisory Committee on Violence Against Women:

February 2003 meeting. Copy of minutes supplied.

April 2003 meeting. Copy of minutes supplied.

October 2003 meeting. Copy of minutes supplied.

February 2005 meeting. Copy of minutes supplied.

April 2006 meeting. Copy of minutes supplied.

October 2006 meeting. Copy of minutes supplied.

On January 11, 2011, I appeared at a joint public hearing of the Wisconsin Assembly Committee on Judiciary and Ethics and the Wisconsin Senate Committee on Judiciary, Utilities, Commerce, and Government Operations in support of Special Session Assembly Bill 1 relating to an amendment of Wis. Stat. § 907.02 regarding expert witness testimony. Copy of testimony supplied.

In 2016 and 2017, I served as a member of the Business Court Advisory Committee which submitted a petition to the Wisconsin Supreme Court to create commercial court dockets in Wisconsin. Copy of petition, memorandum, and application supplied.

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

May 19, 2016: Speaker, "Criminal Law & Sentencing Institute," Wisconsin Court System Office of Judicial Education, Appleton, Wisconsin. Notes supplied.

April 22, 2016: Speaker and Panelist, "Jury Selection – How Are You Choosing Jurors, Who Are You Choosing, and Are Their Deliberations Truly Secret?," Litigation Counsel of America, 5th Annual Trial Law Institute. Scottsdale, Arizona. Notes supplied.

October 9, 2015: Speaker and Panelist, "Theme in Trial Storytelling," Litigation Counsel of America, 4th Annual Trial Law Institute, Newport Beach, California. Notes supplied.

September 9, 2015: Speaker, "What is the Federalist Society?," Marquette University Law School Federalist Society Chapter, Milwaukee, Wisconsin. Presentation supplied.

September 16, 2014: Speaker, "What is the Federalist Society?," Federalist Society, University of Wisconsin Law School Chapter, Madison, Wisconsin. Presentation supplied.

September 13, 2014: Speaker and Panelist, "Direct Examination: Making the Difficult Simple," Litigation Counsel of America, 3rd Annual Trial Law Institute, Rancho Palos Verdes, California. I have no notes, transcript, or recording. The address of the Litigation Counsel of America is 6 Office Park Circle, Suite 317A, Birmingham, Alabama 35223.

October 18, 2013: Moderator, "2012-2013 Supreme Court of U.S. Review," Federalist Society, Madison Lawyers Chapter, Madison, Wisconsin. Presentation supplied.

September 6, 2013: Speaker, "Handling Emotions at Trial," Litigation Counsel of America, 2nd Annual Trial Law Institute. Chicago, Illinois. Notes supplied.

April 25, 2013: Panelist, "Federal Jurisdiction: Getting it Right; a Refresher for Federal Practitioners," Eastern District of Wisconsin Bar Association, Milwaukee, Wisconsin. Presentation supplied.

March 22-23, 2013: Speaker and Moderator, "Renaissance Symposium VII," Litigation Counsel of America. Litigation Counsel of America, Telluride, Colorado. Notes supplied.

October 12, 2012: Speaker, "Getting Appointed: A Reality Check," Path to the Judiciary Conference, Wisconsin Association of Women Lawyers, Milwaukee, Wisconsin. Presentation supplied.

September 11, 2012: Speaker, "What is the Federalist Society?," Federalist Society, Marquette University Law School Chapter. While I do not have a copy of this presentation, it was substantially similar to my presentation on the same topic on September 8, 2011, which I have provided.

July 20, 2012: Speaker and Panelist, "Case Study of a Jury Trial: The Right, the Wrong, and the Should've," Litigation Counsel of America, 1st Inaugural Trial Institute. Santa Barbara, California. Presentation supplied.

January 11, 2012: Speaker, “*Daubert* and Soft Science,” Seminar on Expert Opinion Evidence, Wisconsin Defense Counsel, Milwaukee, Wisconsin. Presentation and notes supplied.

December 3, 2011: Speaker, “Recent Developments in Sentencing Law,” 32nd Annual Criminal Law Conference, Marquette University Law School. I have no notes, transcript, or recording. The address of Marquette Law School is 1215 West Michigan Street, Milwaukee, Wisconsin 53233.

September 8, 2011: Speaker, “What is the Federalist Society?,” Federalist Society, Marquette University Law School Chapter, Milwaukee, Wisconsin. Presentation supplied.

May 5, 2011: Speaker and Panelist, “Case Study of a Jury Trial: The Right, the Wrong, and the Should’ve,” Litigation Counsel of America, Laguna Beach, California. I used the same presentation as I have supplied for my July 20, 2012 speech on the same topic.

March 22, 2011: Speaker, “SCOTUScast – *Michigan v. Bryant*,” Federalist Society for Law and Public Policy Studies, Washington, D.C. Audio recording supplied.

December 3, 2010: Moderator, “Civil Rights and Civil Liberties,” Seminar on the Wisconsin Supreme Court sponsored by Marquette University Law School, Milwaukee, Wisconsin. Notes supplied.

October 20, 2010: Speaker, “Annual Review of Federal and Wisconsin Supreme Court Decisions,” The Wisconsin Lawyer, State Bar of Wisconsin. Video available at: <https://www.youtube.com/watch?v=wIEHzLqaXqA>.

September 21, 2010: Speaker, “What is the Federalist Society?,” Federalist Society, Marquette University Law School Chapter, Milwaukee, Wisconsin. Presentation supplied.

April 30, 2010: Speaker, “Memorial Service,” Milwaukee Bar Association, Milwaukee, Wisconsin. Notes supplied.

October 30, 2009: Moderator, “Whither Activism and Restraint: Has the Court Changed and How?” Seminar on the Wisconsin Supreme Court, Marquette University Law School, Milwaukee, Wisconsin. I have no notes, transcript, or recording. The address of Marquette Law School is 1215 West Michigan Street, Milwaukee, Wisconsin 53233.

October 30, 2009: Speaker and Panelist, “Criminal Law Cases During the 2008-2009 Term,” Seminar on the Wisconsin Supreme Court, Marquette University Law School, Milwaukee, Wisconsin. I have no notes, transcript, or recording.

The address of Marquette Law School is 1215 West Michigan Street, Milwaukee, Wisconsin 53233.

September 15, 2009: Speaker, "What is the Federalist Society?," Federalist Society, Marquette University Law School Chapter, Milwaukee, Wisconsin. Presentation supplied.

May 21, 2009: Speaker, "Empathy and Judicial Selection," Conservative Young Professionals of Milwaukee, Milwaukee, Wisconsin. I have no notes, transcript, or recording. The address of the Conservative Young Professionals of Milwaukee is 633 West Wisconsin Avenue, Suite 330, Milwaukee, Wisconsin 53203.

April 30, 2009: Speaker and Panelist, "Federal Litigation in Tough Times," Eastern District of Wisconsin Bar Association, Milwaukee, Wisconsin. Notes supplied.

February 24, 2009: Speaker, "Trial Witnesses – Selection, Care, Feeding and Understanding – Mastery of Direct Examination," The Federation of Defense and Corporate Counsel, Elmhurst, Illinois. Presentation supplied.

February 23, 2009: Speaker, "SCOTUScast – *Jimenez v. Quarterman*," Federalist Society for Law and Public Policy Studies, Washington, D.C. Audio recording supplied.

January 30, 2009: Speaker, "On the Issues with Mike Gousha: Attorneys and Former Judges Michael Brennan and John Franke." Marquette University Law School, Milwaukee, Wisconsin. Video available at: https://www.youtube.com/watch?v=sl9Dckh_D9w.

September 16, 2008: Speaker, "What is the Federalist Society?," Federalist Society, Marquette University Law School Chapter, Milwaukee, Wisconsin. Presentation supplied.

December 1, 2007: Speaker, "Recent Developments in Sentencing Law," 28th Annual Criminal Law Conference, Marquette University Law School. I have no notes, transcript, or recording. The address of Marquette Law School is 1215 West Michigan Street, Milwaukee, Wisconsin 53233.

November 2007: Speaker, "Bridging the Gap Between the Classroom and the Courtroom," The Wisconsin Academy of Trial Lawyers (now Wisconsin Association for Justice). Notes supplied.

October 18, 2007: Speaker, "Sentencing Exercises and Update," Wisconsin Court System Office of Judicial Education, Madison, Wisconsin. Presentation supplied.

September 11, 2007: Speaker, "What is the Federalist Society?," Federalist Society, Marquette University Law School Chapter, Milwaukee, Wisconsin. Presentation supplied.

May 21, 2007: Speaker, "Landlord-Tenant Practice in Milwaukee County Circuit Court." Apartment Association of Southeast Wisconsin, Milwaukee, Wisconsin. Presentation supplied.

May 9, 2007: Speaker, "Sentencing Exercises and Update," Wisconsin Court System Office of Judicial Education, Madison, Wisconsin. Presentation supplied.

April 27, 2007: Speaker, "Should We Be Cynical or Hopeful about the Wisconsin State Judiciary?" BGB Luncheon Group, Milwaukee, Wisconsin. Notes supplied.

March 26, 2007: Moderator, "A Court Unbound? The Recent Jurisprudence of the Wisconsin Supreme Court," Federalist Society, Milwaukee Lawyers Chapter. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street, NW, Suite 300, Washington, DC 20006.

December 2, 2006: Speaker, "Recent Developments in Sentencing Law," 27th Annual Criminal Law Conference, Marquette University Law School. I have no notes, transcript, or recording. The address of Marquette Law School is 1215 West Michigan Street, Milwaukee, Wisconsin 53233.

October 19, 2006: Speaker, "Are Criminal Procedure Protections Elastic? Constitutional Rights and the Judicial Role," Federalist Society, University of Dayton Law School Chapter, Dayton, Ohio. Presentation and notes supplied.

October 4, 2006: Speaker, "Update on Domestic Violence Cases after *Crawford v. Washington* and *Davis v. Hammon*," National Advisory Committee on Violence Against Women. I have no notes, transcript, or recording. The address of the National Advisory Committee on Violence Against Women is U.S. Department of Justice, Office of Violence Against Women, 145 N Street, N.E., Suite 10W.121, Washington, D.C. 20530.

September 19, 2006: Speaker, "Personal Responsibility: Perspectives from the Bench and of Chief Justice Warren Burger," Federalist Society, William Mitchell College of Law Chapter, St. Paul, Minnesota. Presentation and notes supplied.

August 31, 2006: Speaker, "What is the Federalist Society?," Federalist Society, Marquette University Law School Chapter, Milwaukee, Wisconsin. Presentation supplied.

May 9, 2006: Speaker, "Sentencing Exercises and Update," Wisconsin Court System Office of Judicial Education, Madison, Wisconsin. Presentation supplied.

December 3, 2005: Speaker, "Recent Developments in Sentencing Law," 26th Annual Criminal Law Conference, Marquette University Law School. Presentation supplied.

October 4, 2005: Speaker, "Judicial Activism: More Than Whose Ox is Being Gored?," Federalist Society, University of Dayton Law School Chapter, Dayton, Ohio. Presentation supplied.

September 22, 2005: Speaker, "A View from the Bench," Milwaukee County District Attorney's Office, Milwaukee, Wisconsin. Notes supplied.

May 19, 2005: Speaker, "Sentencing Exercises," Wisconsin Court System Office of Judicial Education, Madison, Wisconsin. Presentation supplied.

February 11, 2005: Speaker, "Domestic Violence Cases after *Crawford v. Washington*," National Advisory Committee on Violence Against Women, Washington, D.C. Presentation supplied.

January 14, 2005: Speaker, "Domestic Violence Cases after *Crawford v. Washington*," Boston Police Department, Boston, Massachusetts. I used the same presentation as I have supplied for my February 11, 2005 speech on the same topic.

December 4, 2004: Speaker, "Truth-in-Sentencing: Recent Case Law," 25th Annual Criminal Law Conference, Marquette University Law School. I have no notes, transcript, or recording. Presentation supplied.

December 6, 2003: Speaker, "Truth-in-Sentencing: Recent Case Law," 24th Annual Criminal Law Conference, Marquette University Law School, Milwaukee, Wisconsin. Presentation supplied.

September 26, 2003: Speaker, "Criminal Law & Personal Responsibility: Perspectives from the Bench and of Chief Justice Warren Burger," Federalist Society, William Mitchell College of Law Chapter, St. Paul, Minnesota. I used the same presentation and notes as I have supplied for my September 19, 2006 speech on the same topic.

April 8, 2003: Speaker, "Judicial Activism: More Than Whose Ox is Being Gored?," Federalist Society, University of Wisconsin Law School Chapter, Madison, Wisconsin. I used the same presentation as I have supplied for my October 4, 2005 speech on the same topic.

February 7, 2003: Speaker, "Structure of the Law and Bill of Rights," Milwaukee County Sheriff's Department, Franklin, Wisconsin. Presentation and notes supplied.

January 29, 2003: Speaker, "Truth-in-Sentencing II," Milwaukee County District Attorney's Office, Milwaukee, Wisconsin. Presentation supplied.

December 13, 2002: Speaker, "Judgment Day: Truth-in-Sentencing II," State Bar of Wisconsin, Madison, Wisconsin. Presentation supplied.

December 7, 2002: Speaker, "Truth-in-Sentencing: The Second Stage," 23rd Annual Criminal Law Conference, Marquette University Law School, Milwaukee, Wisconsin. Presentation supplied.

June 14, 2002: Speaker, "Truth-in-Sentencing Update," Wisconsin State Public Defenders Convention, Madison, Wisconsin. Notes supplied.

June 13, 2002: Speaker, "Truth-in-Sentencing Update: Case law and Legislative Revisions," Wisconsin State Prosecutors Education and Training, Madison, Wisconsin. Notes supplied.

May 15, 2002: Speaker, "Truth-in-Sentencing Review and Update," Wisconsin Court System Office of Judicial Education, Madison, Wisconsin. Notes supplied.

December 8, 2001: Speaker, "Wisconsin's Experience in the First Two Years of Determinate Sentencing." 22nd Annual Criminal Law Conference, Marquette University Law School. Milwaukee, Wisconsin. I have no notes, transcript, or recording. The address of Marquette Law School is 1215 West Michigan Street, Milwaukee, Wisconsin 53233.

September 28, 2001: Speaker, "Judicial Activism: More Than Whose Ox is Being Gored?," Federalist Society, Notre Dame Law School Chapter, Notre Dame, Indiana. Presentation supplied.

December 2, 2000: Speaker, "Truth-in-Sentencing: The First Year," 21st Annual Criminal Law Conference, Marquette University Law School. Milwaukee, Wisconsin. I have no notes, transcript, or recording. The address of Marquette Law School is 1215 West Michigan Street, Milwaukee, Wisconsin 53233.

May 25, 2000: Speaker, "Truth-in-Sentencing Update and Overview of Probation Task Force Recommendations," Wisconsin Court System Office of Judicial Education. I have no notes, transcript, or recording. The address of the Office of Judicial Education is 110 East Main Street, Suite 200 Madison, Wisconsin 53703-3328.

February 18, 2000: Speaker, "Appellate Judges Training on Truth-in-Sentencing." Wisconsin Court System Office of Judicial Education, Waukesha, Wisconsin. I have no notes, transcript, or recording. The address of the Office of Judicial Education is 110 East Main Street, Suite 200, Madison, Wisconsin 53703-3328.

February 11, 2000: Speaker, Administration of Oath of Office as Milwaukee County Circuit Court Judge by Wisconsin Governor Tommy G. Thompson. Milwaukee, Wisconsin. Transcript supplied.

January 20, 2000: Speaker, "Truth-in-Sentencing Update: Case Law and Legislative Revisions," Wisconsin State Prosecutors Education and Training, Appleton, Wisconsin. I have no notes, transcript, or recording. The address of the Wisconsin Department of Justice is 17 West Main Street, Madison, Wisconsin 53703.

December 20, 1999: Speaker, "Truth-in-Sentencing Training," Milwaukee County District Attorney's Office. I have no notes, transcript, or recording. The address of the Milwaukee County District Attorney's Office is 821 West State Street, # 405, Milwaukee, Wisconsin 53233.

December 20, 1999: Speaker, "Truth-in-Sentencing Training," Milwaukee Bar Association. I have no notes, transcript, or recording. The address of the Milwaukee Bar Association is 424 East Wells Street, Milwaukee, Wisconsin 53292

December 16-17, 1999: Speaker, "Truth-in-Sentencing Training," Wisconsin Court System Office of Judicial Education. I have no notes, transcript, or recording. The address of the Office of Judicial Education is 110 East Main Street, Suite 200, Madison, Wisconsin 53703.

December 9, 1999: Speaker, Special "Truth-in-Sentencing" Training," Wisconsin State Prosecutors Education and Training. I have no notes, transcript, or recording. The address of the Wisconsin Department of Justice is 17 West Main Street, Madison, Wisconsin 53703.

December 4, 1999: Speaker, "Truth-in-Sentencing Comes to Wisconsin," 20th Annual Criminal Law Conference, Marquette University Law School. I have no notes, transcript, or recording. The address of Marquette Law School is 1215 West Michigan Street, Milwaukee, Wisconsin 53233.

November 18, 1999: Speaker, "Truth-in-Sentencing Comes to Wisconsin," State Bar of Wisconsin. I have no notes, transcript, or recording. The address of the State Bar of Wisconsin is 5302 Eastpark Boulevard, Madison, Wisconsin 53718.

May 20, 1999: Speaker, "Truth in Sentencing," Wisconsin Court System Office of Judicial Education. I have no notes, transcript, or recording. The address of the Office of Judicial Education is 110 East Main Street, Suite 200, Madison, Wisconsin 53703.

December 5, 1998: Speaker, "Truth-in-Sentencing Comes to Wisconsin," 19th Annual Criminal Law Conference, Marquette University Law School. I have no notes, transcript, or recording. The address of Marquette Law School is 1215 West Michigan Street, Milwaukee, Wisconsin 53233.

December 15, 1994: Speaker, "Federal Civil Litigation" Lorman Education Services, Milwaukee, Wisconsin. Handout supplied.

December 10, 1993: Speaker, "Federal Civil Litigation" Lorman Education Services, Milwaukee, Wisconsin. Handout supplied.

- 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.

Observations on the Wisconsin Supreme Court's 2016-17 Term, WisBar InsideTrack, Aug. 2, 2017. Copy supplied.

Wisconsin Supreme Court's 2015-16 Term: Fewer Decisions, Lots of Change, WisBar InsideTrack, Aug. 3, 2016. Copy supplied.

Thompson Makes Ballot Return in Wis. Senate Race, Associated Press, Aug. 15, 2012. Copy supplied.

Proof & Hearsay: Michael Brennan to Lead Walker's Judicial Advisory Group, Milwaukee Journal Sentinel, May 11, 2011. Copy supplied.

Judge Brennan Heads to Milwaukee Law Firm of Gass Weber Mullins Dec. 1, Wisconsin Law Journal, Nov. 17, 2008. Copy supplied.

Crooks Unopposed So Far in Re-Election Bid for State's Top Court, Associated Press, Dec. 24, 2005. Copy supplied.

Prodding Helps Get Defendants to Court: Program Puts Misdemeanor Cases Back On Schedule, Milwaukee Journal Sentinel, June 15, 2000. Copy supplied.

Few Convicts Get Treatment for Addictions – Agents Blame Probation System, Milwaukee Journal Sentinel, Feb. 14, 2000. Copy supplied.

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

I served as a Milwaukee County, Wisconsin Circuit Court judge from January 2000 through November 30, 2008. I was initially appointed to that position by Governor

Tommy Thompson to fill an existing vacancy. Circuit court judges stand for election every six years in nonpartisan elections. I was unopposed for re-election in 2001 and 2007. Wisconsin circuit courts have original jurisdiction in all civil and criminal matters within the state, including civil and criminal trials, probate, juvenile, and traffic matters. I served as the presiding judge of the civil division of the Milwaukee County Circuit while I was assigned to that division.

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

I presided over approximately 300 cases that went to verdict after a jury or bench trial.

- i. Of these, approximately what percent were:

jury trials:	35%
bench trials:	65%
civil proceedings:	33%
criminal proceedings:	67%

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

Wisconsin courts do not publish circuit court opinions. Computerized research services such as Westlaw gather and make available certain circuit court opinions, decisions, orders, and judgments including ministerial orders such as scheduling orders, stipulated orders of dismissal, and non-reasoned orders on motions in *limine*. The only two substantive orders I have issued available on Westlaw are:

C.A.J.E. Builders, Inc. v. Evans, No. 07-CV-012599, 2008 WL 7716126 (Wis. Cir. Ct. Feb. 12, 2008).

Phelps v. Cook-Bey, No. 08-CV-007464, 2008 WL 7123052 (Wis. Cir. Ct. Dec. 2, 2008).

- 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 (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *State v. Spivey*, No. 01-CM-003817 (Wis. Cir. Ct. Oct. 3, 2001). Copy supplied.

The defendant in a domestic violence case filed a motion to modify terms of his bail that required him to comply with a pre-trial monitoring program. The

condition applied only to defendants arrested in two of Milwaukee's seven police districts and did not apply to defendants arrested and charged with identical conduct in the other districts. I held that the program violated Wisconsin's equal protection clause. The State did not appeal the decision but instead, modified the terms of the program in accordance with my decision.

Counsel for the State

Brent D. Nistler
Nistler Law Office, S.C.
7000 West North Avenue
Wauwatosa, Wisconsin 53213
(414) 763-1147

Counsel for the Defendant

Maureen B. Fitzgerald
925 East Wells Street, Apartment 419
Milwaukee, Wisconsin 53202
Phone number unavailable.

2. *State v. Stank*, No. 02-CF-176 (Wis. Cir. Ct. 2004), *aff'd*, 708 N.W.2d 43 (2005), *petition for review dismissed*, 286 Wis. 2d 664 (Wis. 2005).

After jury trial, the defendant was convicted of possession with intent to deliver marijuana while armed, possession with intent to deliver Oxycodone while armed, failure to pay controlled substance tax, and keeping a drug house. I issued no written opinion in this case.

Counsel for the State

Mark A. Sanders
Milwaukee County Circuit Court
901 North 9th Street
Milwaukee, Wisconsin 53233
(414) 257-7674

Counsel for the Defendant

Dennis Coffey
Mawicke & Goisman S.C.
1509 North Prospect Avenue
Milwaukee, Wisconsin 53202
(414) 224-0600

3. *State v. Promotor*, Case No. 2003-CF-2230 (Wis. Cir. Ct. Aug. 3, 2004), *aff'd*, 2004AP002242-CR (Wis. Ct. App. Oct. 14, 2005). Copy of decision and order denying motion supplied.

After consuming 23 beers in seven hours, the defendant drove a car and was involved in an automobile accident which resulted in the deaths of four people – his passenger and three others – as well as serious physical injuries to two others. The defendant was sentenced to 66 years in prison. His motion for post-conviction relief was denied. Federal courts have denied the defendant’s *habeas* challenges. *Promotor v. Pollard*, No. 07-CV-363, 2009 WL 891923 (E.D. Wis. Mar. 30, 2009), *aff’d*, 628 F.3d 878 (7th Cir. 2010).

Counsel for the State

Karen Loebel
Milwaukee County District Attorney’s Office
821 West State Street
Milwaukee, Wisconsin 53202
(414) 278-4626

Counsel for the Defendant

Rick David Steinberg
12690 West North Avenue, Suite C
Brookfield, Wisconsin 53005
(262) 784-2511

4. *State v. McAfee*, No. 1996-CF-964525 (Wis. Cir. Ct. Mar. 16, 2004), *aff’d* 284 Wis.2d 569 (Wis. Ct. App.), *petition for review denied*, 285 Wis.2d 628 (Wis. 2005). Copy supplied.

A jury convicted the defendant of first-degree intentional homicide for the killing of a Milwaukee police officer. After the death of the presiding judge, the case was transferred to me and I heard the defendant’s post-conviction motion for a new trial which I denied. The Wisconsin Court of Appeals affirmed, and the Wisconsin Supreme Court denied a petition for review. Federal courts have denied the defendant’s *habeas* challenges. *McAfee v. Kingston*, No. 06-C-1200, 2008 WL 4853612 (E.D. Wis. Nov. 3, 2008), *aff’d*, 589 F.3d 353 (7th Cir. 2009).

Counsel for the State

William Molitor
Post Office Box 170073
Milwaukee, Wisconsin 53217
Telephone number unavailable.

Counsel for the Defendant

James Rehbolz
Rehholz & Auberry
1414 Underwood Avenue, Suite 400
Wauwatosa, Wisconsin 53213
(414) 479-9130

5. *State v. Duchow*, No. 2003-CF-002648 (Wis. Cir. Ct. Dec. 29, 2003), *rev'd*, 303 Wis. 2d 744 (Wis. Ct. App. 2007), *rev'd*, 749 N.W.2d 913 (Wis. 2008).

The parents of a disabled child placed a voice-activated recorder in the child's backpack. The recorder captured abusive statements by the defendant, the child's bus driver, to the child. In a criminal trial of the defendant for intentionally causing bodily harm to a child and disorderly conduct, I concluded that the tape-recorded statements were not "oral communications" as defined by Wisconsin's Electronic Surveillance Control Law, Wis. Stat. § 968.27-.33. Accordingly, the recordings were not excluded from evidence. The Wisconsin Court of Appeals reversed but the Wisconsin Supreme Court reinstated my decision. I issued no written opinion in this case.

Counsel for the State

Paul Tiffin
Milwaukee County District Attorney's Office
821 West State Street
Milwaukee, Wisconsin 53202
(414) 278-4666

Counsel for the Defendant

Martin E. Kohler
1414 North Astor Street
Milwaukee, Wisconsin 53202
(414) 899-5559

6. *State v. Whitmore*, No. 2003-CF-005697 (Wis. Cir. Ct. Oct. 13, 2004) *aff'd*, 2004AP002821 - CR (Wis. Ct. App. Oct. 21, 2005), *petition for review denied*, 2004AP002821 - CR (Wis. Nov. 13, 2005). Copy supplied.

The defendant pled guilty to first degree reckless homicide and was sentenced to 35 years of confinement followed by 20 years of extended supervision. The defendant moved to modify his sentence which I denied.

Counsel for the State

Mark S. Williams
11708 Settlers Road
Cedarburg, Wisconsin 53012
(262) 675-6879

Counsel for the Defendant

Meighan Anger
State Public Defender's Office
819 North 6th Street, Room 908
Milwaukee, Wisconsin 53203
(414) 227-4130

7. *Hunzinger Constr. Co. v. First Place Milwaukee LLC*, No. 06-CV-7523 (Wis. Cir. Ct.).

A construction company filed a breach of contract suit alleging complaints about its work were false, and that a developer had created a pretext to fire the company so he could hire his own company as construction manager. The construction company won a \$5 million judgment against the developer and the remainder of case was settled.

I presided over nine different motion hearings over the course of one year concerning issues of contractual interpretation, foreclosure, electronic discovery, and other matters.

Counsel for the Plaintiff

John Hinderaker
8421 Wayzata Boulevard, Suite 110
Golden Valley, Minnesota
(612) 338-3605

Brian Smigelski
Dewitt Ross & Stevens SC
13935 Bishops Drive, Suite 300
Brookfield, Wisconsin 53005
(262) 754-2844

Counsel for Defendant First Place Milwaukee

Roy Wagner
von Briesen & Roper s.c.
411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202
(414) 287-1250

Counsel for Defendant Alliance Builders Group

Steven Slawinski
O'Neill Cannon Hollman DeJong & Laing S.C.
111 East Wisconsin Avenue, Suite 1400
Milwaukee, Wisconsin 53202
(414) 276-5000

8. *Pries v. McMillon*, No. 06-CV-3800 (Wis Cir. Ct. Dec. 14, 2007), *aff'd*, 760 N.W.2d 174 (Wis. Ct. App. 2008), *aff'd*, 784 N.W.2d 648 (Wis. 2010). Copy supplied.

The plaintiff alleged a state employee negligently caused personal injuries when disassembling horse stalls at Wisconsin State Fair Park. After a bench trial, I

concluded that the defendant was not protected by governmental immunity because the ministerial duty exception applied. The Wisconsin Court of Appeals affirmed on different grounds, concluding that the “known danger” exception applied. The Wisconsin Supreme Court affirmed, applying the ministerial duty exception as I had.

Counsel for the Plaintiff

Anthony Skemp
Martin Law Office SC
7280 South 13th Street, Suite 102
Oak Creek, Wisconsin, 53154
(414) 856-2310

Counsel for the Defendant

James McCambridge
7 Manning Street, Unit 3
Ipswich, Massachusetts 01938
Telephone number unavailable.

9. *260 North 12th Street LLC v. Wisconsin Dep't of Transp.*, No. 2005-CV-005593 (Wis. Cir. Ct.), *aff'd*, 792 N.W.2d 572 (Wis. Ct. App. 2010), *aff'd*, 808 N.W.2d 372 (Wis. 2011).

The Wisconsin Department of Transportation acquired defendant’s property by eminent domain. A jury awarded more than \$2 million in compensation for the taking. Over the defendant’s objection, I permitted the jury to hear evidence concerning the environmental contamination of the property. The Wisconsin Court of Appeals and the Wisconsin Supreme Court affirmed the pretrial rulings in all respects and confirmed the jury award. I issued no written opinion in this case.

Counsel for the State

Phillip Ferris
Wisconsin Department of Justice
17 West Main Street
Madison, Wisconsin 53707
(608) 266-7971

Counsel for the Defendant

E. Kelly Keady
Biersdorf & Associates
150 South 5th Street, Suite 3100
Minneapolis, Minnesota 55402
(612) 339-7242

10. *Maryland Arms Ltd. P'ship v. Connell*, No. 07-CV-002291 (Wis. Cir. Ct. June 18, 2008), *rev'd*, 769 N.W.2d 145 (Wis. Ct. App. 2009), *aff'd on other grounds*, 786 N.W.2d 15 (Wis. 2010). Copy supplied.

Landlord sued tenant alleging the tenant was liable for fire damage. I granted the landlord's motion for summary judgment based on the language of the lease. The court of appeals reversed and granted summary judgment for the tenant concluding that the lease and a Wisconsin statute required that the tenant be negligent in connection with the fire as a precondition to liability. The Wisconsin Supreme Court affirmed the court of appeals decision on other grounds, concluding that a lease term made the tenant liable for all damage to the premises.

Counsel for the Plaintiff

Randy J. Wynn

No contact information available.

Counsel for the Defendant

James B. Connell

803 Greenhill Drive

Wausau, Wisconsin 54401

Telephone number unavailable.

- 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. *State v. Spivey*, No. 01-CM-003817 (Wis. Cir. Ct. Oct. 3, 2001). Copy supplied in response to Question 13(c).

Counsel for the State

Brent D. Nistler

Nistler Law Office, S.C.

7000 West North Avenue

Wauwatosa, Wisconsin 53213

(414) 763-1147

Counsel for the Defendant

Maureen B. Fitzgerald

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Milwaukee, Wisconsin 53202

Telephone number unavailable.

2. *State v. McCullough*, No. 02-CF-001551, 2003 WL 25704008 (Wis. Cir. Ct. Jan. 2, 2003), *aff'd per curiam*, 288 Wis. 2d 460 (Wis. Ct. App. 2005).

Counsel for the State

Dennis Stingl
Milwaukee County District Attorney's Office
821 West State Street
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(414) 278-4696

Counsel for the Defendant

John A. Birdsall
1110 North Old World Third Street, Suite 218
Milwaukee, Wisconsin 53202
(414) 831-5465

3. *State v. Garcia*, No. 02-CF-005769, 2003 WL 25703966 (Wis. Cir. Ct. July 21, 2003) *aff'd*, 279 Wis.2d 517 (Wis. Ct. App. 2005).

Counsel for the State

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Milwaukee, Wisconsin 53202
(414) 278-4848

Counsel for the Defendant

Christopher Cherella
111 East Wisconsin Avenue, Suite 1925
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(414) 347-9334

4. *State v. McAfee*, Case No. 1996-CF-964525 (Wis. Cir. Ct. Mar. 16, 2004), *aff'd* 284 Wis.2d 569 (Wis. Ct. App. 2005). Copy supplied in response to question 13(c).

Counsel for the State

William Molitor
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Telephone number unavailable.

Counsel for the Defendant

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1414 Underwood Avenue, Suite 400
Wauwatosa, Wisconsin 53213
(414) 479-9130

5. *State v. Miller*, Case No. 97-CI-970002 (Wis. Cir. Ct. Nov. 30, 2002).
Copy supplied.

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(608) 266-1221

Counsel for the Respondent
Robert W. Peterson
State Public Defender's Office
819 North 6th Street, Room 908
Milwaukee, Wisconsin 53203
(414) 227-4130

6. *State v. Promotor*, Case No. 2003-CF-2230 (Wis. Cir. Ct. Aug. 3, 2004),
aff'd, 2004AP002242-CR (Wis. Ct. App. Oct. 14, 2005). Copy supplied in
response to Question 13(c).

Counsel for the State
Karen Loebel
Milwaukee County District Attorney's Office
821 West State Street
Milwaukee, Wisconsin 53202
(414) 278-4626

Counsel for the Defendant
Rick David Steinberg
12690 West North Avenue, Suite C
Brookfield, Wisconsin 53005
(262) 784-2511

7. *O'Malley v. Jelinek*, No. 05-CV-7238 (Wis. Cir. Ct. Oct. 14, 2008). Copy
supplied.

Counsel for the Plaintiff
Benjamin Harris
Post Office Box 170614
Milwaukee, Wisconsin 53217
(414) 559-1701

Counsel for the Defendant
Sean D. Lanpheir
Mallery & Zimmerman S.C.

731 North Jackson Street, Suite 900
Milwaukee, Wisconsin 53202
(414) 271-2424

8. *Park Bank v. Weissgerber*, No. 07-CV-1477 (Wis. Cir. Ct. Apr. 22, 2008).
Copy supplied.

Counsel for the Plaintiff

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757 North Broadway Street, Suite 201
Milwaukee, Wisconsin 53202
(414) 224-1601

Counsel for the Defendant

Russell Brannen
Contact information unavailable

9. *Pries v. McMillon*, No. 06-CV-3800 (Wis. Cir. Ct. Dec. 14, 2007), *aff'd*,
760 N.W.2d 174 (Wis. Ct. App. 2008), *aff'd*, 784 N.W.2d 648 (Wis. 2010). Copy
supplied in response to Question 13(c).

Counsel for the Plaintiff

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(414) 856-2310

Counsel for the Defendant

James McCambridge
7 Manning Street, Unit 3
Ipswich, Massachusetts 01938
Telephone number unavailable.

10. *Maryland Arms Ltd. P'ship v. Connell*, No. 07-CV-002291 (Wis. Cir. Ct.
June 18, 2008), *rev'd*, 769 N.W.2d 145 (Wis. Ct. App. 2009), *aff'd on other
grounds*, 786 N.W.2d 15 (Wis. 2010). Copy supplied in response to Question
13(c).

Counsel for the Plaintiff

Randy J. Wynn
Contact information unavailable.

Counsel for the Defendant

James B. Connell
803 Greenhill Drive

Wausau, Wisconsin 54401
Telephone number unavailable.

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

Promotor v. Pollard, 628 F.3d 878, *cert. denied* 563 U.S. 1024 (2011).

- 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.

State v. Alicea, 650 N.W.2d 560 (Wis. Ct. App. 2002) (unpublished table decision), 2002 WL 1424367. The defendant was charged with criminal damage to property as party to a crime. The defendant argued he should have been granted a mistrial when a testifying police detective violated an order limiting the evidence that could be presented to the jury. The court of appeals held that a limiting jury instruction was not sufficient, and that the detective's statement regarding the defendant was not harmless error. The court of appeals reversed the conviction and remanded for an evidentiary hearing to determine whether the detective should be held in contempt.

State v. Lee, 722 N.W.2d 400 (Wis. Ct. App. 2006) (unpublished table decision), 2006 WL 2346344. The defendant was convicted of fleeing an officer as a habitual criminal and was sentenced. The defendant moved to modify his sentence arguing that a portion of the penalty enhancer had been improperly applied as extended supervision. I agreed and imposed a new sentence. The court of appeals reached the same initial confinement calculation, but based on a then-recent decision in *State v. Kleven*, 696 N.W.2d 226 (Wis. Ct. App. 2005), remanded for re-sentencing as to the length of extended supervision.

State v. Moore, 721 N.W.2d 725 (Wis. Ct. App. 2006). The defendant pleaded guilty to second degree sexual assault of a child. On post-conviction motion he asked that confidential, sealed juvenile records be reviewed. I denied this motion. The court of appeals reversed and instructed me to determine if the records' contents affected information presented at sentencing pursuant to the then-new standard set forth in *State v. Tiepelman*, 717 N.W.2d 1 (Wis. 2006).

State v. McGowan, 715 N.W.2d 631 (Wis. Ct. App. 2006). The defendant was convicted after jury trial of first degree sexual assault of a child. The court of appeals court concluded that evidence of other acts of sexual assault was improperly admitted and reversed and remanded for a new trial.

State v. Lord, 723 N.W.2d 425 (Wis. 2006). As the result of an automobile stop, the defendant was charged with carrying a concealed weapon. In response to a

pre-trial motion to suppress, a predecessor judge ruled that display of a temporary license plate could provide the basis to stop an automobile to determine whether it is properly registered. The defendant pleaded guilty. I issued a similar ruling on a post-conviction motion. The court of appeals affirmed the rulings. 710 N.W.2d 726 (Wis. Ct. App. 2006) (unpublished table decision). On appeal to the Wisconsin Supreme Court, the State confessed error, and the Supreme Court of Wisconsin agreed.

State v. Basley, 726 N.W.2d 671 (Wis. Ct. App. 2006). The defendant pleaded no contest to second degree reckless homicide. Post-conviction, the defendant moved to withdraw that plea, seeking an evidentiary hearing, a request I denied. The court of appeals reversed that decision and remanded the case for an evidentiary hearing to determine whether or not the defendant should be permitted to withdraw his no contest plea.

State v. Jackson, 735 N.W.2d 178 (Wis. Ct. App. 2007). The defendant was convicted by jury of being a felon in unlawful possession of a firearm. The defendant, a convicted felon, was in a gun store with some friends and was convicted of having handled a gun. I did not permit evidence to be presented to the jury that another person in the group was a convicted felon. The court of appeals reversed.

State v. Haas, 750 N.W.2d 518 (Wis. Ct. App. 2008) (unpublished table decision), 2008 WL 763242. The defendant was charged with attempted burglary as a habitual criminal and possession of burglarious tools. Another judge presided over the jury trial at which the defendant was convicted; I handled the post-conviction motion. The court of appeals agreed with the defendant that an out-of-court “show-up” identification should not have been admitted at trial and that exculpatory evidence of the defendant’s clothing which had been destroyed warranted new trial. Copy of trial court decision supplied.

- 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 Milwaukee County, Wisconsin Circuit Court judge, I drafted approximately fifty unpublished opinions. While on the bench I drafted a written decision in a pending case approximately every other month. A written decision should remain in the court file for that respective case.

Because computerized research services such as Westlaw gather and make available certain circuit court opinions, decisions, orders, and judgments, some of those opinions remain unpublished but are available through such services.

- 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.

State v. Spivey, No. 01-CM-003817 (Wis. Cir. Ct. Oct. 3, 2001). Copy supplied in response to Question 13(c).

- 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.

I have not sat by designation on a federal court of appeals.

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.

I relied upon Wisconsin Statute § 757.19 to determine whether or not to recuse myself from a case.

Because I am no longer a state court judge, I do not have access to that court system’s data to determine the number of cases in which I recused myself. I also do not know if that data can be analyzed to make such a determination.

In my nine years on the bench, I estimate the number of cases from which I recused is very low, in contrast to the approximately 9,000 cases over which I presided. I recall recusing myself from some cases in my first year on the bench (2000 to 2001) because I had served as an Assistant District Attorney in the branch of the Milwaukee County Circuit Court to which I was appointed judge.

Under Wisconsin law, a party has the right, for any reason or no reason, to have the judge assigned to a case removed *via* substitution. The party must move to substitute against the judge in a timely manner. The right to substitute exists in every type of case, and statutes

provide for the specific procedure, the most common of which is Wisconsin Statute § 801.58.

In my nine years on the bench, my best research efforts indicate that a substitution request was filed against me in approximately 82 cases of the approximately 9,000 cases over which I presided.

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.

Chair, Governor's Judicial Selection Advisory Committee (2011 –2017)
Appointed by Wisconsin Governor Scott Walker

Member, National Advisory Committee on Violence Against Women (2002 –
2007)
Appointed by U.S. Attorney General John Ashcroft and U.S. Health and
Human Services Secretary Tommy G. Thompson

Member, Wisconsin Legislative Council Special Committee on Review of Crimes
Against Children (2006 –2007)
Appointed by the Wisconsin Joint Legislative Council

Member, Wisconsin Sentencing Commission (2002 –2003)
Appointed by Wisconsin Governor Scott McCallum

Member, Governor's Task Force to Enhance Probation (2000)
Appointed by Wisconsin Governor Tommy G. Thompson

Staff Counsel, Criminal Penalties Study Committee (1998 –1999) Appointed by
Wisconsin Governor Tommy G. Thompson

- 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.

Ron Johnson for U.S. Senate, Fundraiser (2010, 2016)

Transition Team for Wisconsin Attorney General Brad Schimel (2014)

Tommy Thompson for U.S. Senate, Fundraiser (2012)

Wisconsin State Republican Party, Finance Committee (1992 – 1995; 1998 – 1999)

Jeff Wagner for Wisconsin Attorney General, Fundraising Committee (1994)

U.S. Congressman F. James Sensenbrenner, Fundraiser (1994)

Milwaukee East Side Republican Club (1992 – 1994)

In 2001 and 2007, I was a candidate for retaining the circuit court seat to which I had been appointed. A non-partisan judicial campaign committee was formed for that election. I was elected without opposition in April 2001 and April 2007. The campaign committee was disbanded in late 2008 or early 2009 when I left the circuit court bench.

I have circulated nomination papers for and endorsed many state judges over the years, including each year I served on the bench, for my judicial colleagues.

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

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

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

From 1989 to 1991, I served as a law clerk for the Honorable Robert W. Warren, Chief United States District Judge for the Eastern District of Wisconsin.

From 1995 to 1997, I served as a law clerk for the Honorable Daniel A. Manion, Circuit Judge of the United States Court of Appeals for the Seventh Circuit.

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

I have not practiced law alone.

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

1991 – 1995
Foley & Lardner
777 East Wisconsin Avenue

Milwaukee, Wisconsin 53202
Associate

1997 – 1999
Milwaukee County District Attorney's Office
821 West State Street, Suite 405
Milwaukee, Wisconsin 53202
Assistant District Attorney

1998 – 1999
Wisconsin Criminal Penalties Committee
819 North 6th Street
Milwaukee, Wisconsin 53203
Staff Counsel

1999 – 2000
Governor's Task Force to Enhance Probation
819 North 6th Street
Milwaukee, Wisconsin 53203
Staff Counsel (1999-2000)
Member (2000)

2008 – present
Gass Weber Mullins LLC
241 North Broadway, Suite 300
Milwaukee, Wisconsin 53202
Partner

- 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.

Since 2009 I have served as the mediator in approximately 90 cases, and served as the arbitrator (either the sole arbitrator or as part of a three-arbitrator panel) in approximately 25 cases.

1. *Jane Does v. Diocese of Sioux Falls, South Dakota*, Nos. 07-cv-8390 & 07-cv-10888 (Wis. Cir. Ct.), and Nos. 2:16-cv-783 & 2:16-cv-786 (E.D. Wis.). I served as the mediator for these cases alleging sexual abuse by a priest. The cases settled at an in-person mediation conducted on January 18 and 19, 2017.

2. *Echo Lake Foods, Inc. v. Ace Chem. Prods., Inc.*, No. 14-cv-4189 (Wis. Cir. Ct.). I served as the mediator in this commercial case concerning the sale of a sanitizing product used in the food industry. The case settled at an in-person mediation on January 13, 2016.

3. *Principle Sols. LLC v. Feed. Ing B.V.*, Nos. 13-cv-223 & 14-cv-1241 (E.D. Wis.). I served as the mediator in this commercial action concerning supplies for pet food. After an in-person mediation on October 22 and 23, 2015, and numerous post-mediation telephone calls and negotiations, the cases settled on November 27, 2015.
4. *WRR Envtl. v. Admiral Ins.*, No. 10-C-843 (E.D. Wis.). I served as the mediator of this commercial insurance dispute concerning insurance coverage of environmental claims. The case settled in April 2015.
5. *Grace Christian Fellowship v. United Eng'g Consultants, Inc.*, No. 07-cv-3817 (Wis. Cir. Ct.), and No. 2:07-CV-00348 (E.D. Wis.). I served as the mediator in these cases in which a property owner, an environmental engineer, and an insurer disputed responsibility for contamination on the property. The cases were mediated in-person on April 3, 2009, May 28, 2009, and October 7, 2013. At the third mediation session, the cases settled.
6. *Scocos v. Wisconsin*, No. 09-cv-6213 (Wis. Cir. Ct.). I served as the mediator of this dispute alleging the improper termination of a public official and violation of Wisconsin's open meetings law. The case settled at an in-person mediation on July 18, 2013.
7. *Wis. Dept. of Agric. v. Agro Distrib.*, No. 2011-cv-1916 (Wis. Cir. Ct.). I served as the mediator of this civil enforcement action which sought penalties against a private corporation regarding statements made in applications to receive funds from a state program. After an in-person mediation on May 8, 2013, and numerous post-mediation telephone calls and negotiations, the case settled in June 2013.
8. *Johnson Controls v. Unifirst*, Private Arbitration (related to No. 2:12-cv-565 (E.D. Wis.)). I served as the sole arbitrator in this commercial dispute between two companies about the cleaning of lead from work garments. The case was the subject of a series of pre-trial written rulings and a two-week arbitration hearing. I issued an arbitration decision and award in March 2015 and a decision and order on prevailing party and attorneys' fees and a final award in June 2015.
9. *Mortimore v. Merge Health Care*, No. 51 16 Y 00113 13 (Am. Arb. Ass'n (2014)). I served as the sole arbitrator in this commercial dispute between an individual and a company concerning his employment contract with the business he helped develop. The case was the subject of a one-week arbitration hearing after which I issued an arbitration decision and award.

10. *Bollman v. Bank of America*, No. 51 148 Y 414 12 (Am. Arb. Ass'n 2012). I served as one of three panel arbitrators in this commercial dispute between an individual, his corporate entities, and Bank of America N.A. The individual sued the bank alleging common law contract and tort and securities law claims regarding the bank's loan to the individual and his collateral for that loan. The case settled before a hearing after numerous pre-trial rulings and after pending approximately 18 months.

b. Describe:

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

As an associate at Foley & Lardner from 1991 to 1995, I drafted and responded to written discovery, drafted motions and appeals, took depositions, appeared in court to argue motions, and represented clients at contested hearings including trials.

As an Assistant District Attorney from 1997 to 1998 I prosecuted felony and misdemeanor cases on behalf of the State of Wisconsin. From 1998 to 1999 I was on loan from the Milwaukee County District Attorney's Office and served as staff counsel to Wisconsin Criminal Penalties Committee, established by state law to rewrite Wisconsin's criminal penalty statutes as the state adopted Truth in Sentencing. As a consequence of this work, I was appointed in 1999 to serve as Staff Counsel to the Governor Tommy Thompson's task force which proposed revisions to Wisconsin statutes and drafted policy initiatives to strengthen probation and parole supervision in Wisconsin.

As a partner at Gass Weber Mullins LLC since 2009, my practice includes complex business and commercial disputes, and defense of cases involving catastrophic injury and death, in trial and appellate federal and state courts. I also arbitrate and mediate business and commercial disputes.

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

At Foley & Lardner, from 1991 to 1995, clients were typically local and national corporations.

At the Milwaukee County District Attorney's Office, from 1997 to 1999, I represented the State of Wisconsin.

From 2009 to the present, my clients have been national and local companies, national insurance companies, small firms and individuals. Approximately one-third of my practice is commercial and construction

litigation, approximately one-third is catastrophic tort defense, and approximately one-third is mediation and arbitration. Approximately half of my cases are in state courts (in Wisconsin and other states) and half of my cases are in federal court (in Wisconsin and other states). My appellate practice is largely, but not exclusively, before the U.S. Court of Appeals for the Seventh Circuit and Wisconsin appellate courts.

- 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.

All of my practice has been in litigation, except when I have handled cases as a mediator or an arbitrator, in which case I am resolving or attempting to resolve litigation. I appear in court frequently.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 50% |
| 2. state courts of record: | 50% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 0% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 75% |
| 2. criminal proceedings: | 25% |

- 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 have tried 65 cases to verdict, judgment or final decision (other than settlement). I was lead counsel in most of those cases.

- i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 70% |
| 2. non-jury: | 30% |

- 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.

Brief in Opposition to Certiorari, *Edwards v. Great-West Life Assur. Co.*, 513 U.S. 962 (1994) (No. 94-419) (cert. denied). Brief available at 1994 WL

16101557.

Petition for Writ of Certiorari, *Glisson v. Corr. Med. Svs, Inc.*, – U.S. – (2017)
(No. 16-1406) (cert. denied). Brief available at 2017 WL 2303108.

I have not argued before the Court.

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. *Glisson v. Indiana Dep't of Corrections*, 849 F.3d 372 (7th Cir. 2017) (*en banc*), *cert. denied sub nom. Correctional Med. Svcs., Inc. v. Glisson*, – U.S. – (2017).

In 2017, Correctional Medical Services, Inc. (CMS) retained me to petition for a writ of *certiorari* to the United States Supreme Court. The plaintiff, a pre-trial detainee, alleged CMS was deliberately indifferent to prisoner's serious medical needs. CMS prevailed in a panel opinion, *see* 813 F.3d 662, but a closely divided Seventh Circuit sitting *en banc* reversed that opinion. A petition for a writ of *certiorari* to the Supreme Court was denied October 2, 2017.

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2. *James v. Eli*, 846 F.3d 951 (7th Cir. 2017), *reh'g granted*, No. 15-3034, 2017 WL 1228561 (7th Cir. Mar. 31, 2017).

An inmate brought an action under 42 U.S.C. § 1983 alleging that two prison doctors were deliberately indifferent to his need for medical treatment. On appeal, the Seventh Circuit ruled the district court should have endeavored to obtain appointed counsel and a medical expert for a prisoner. In 2017, after the panel opinion was issued, I took over as lead counsel for defendant. I drafted and revised the petition for rehearing, along with co-counsel, which the Seventh Circuit panel granted. The case is being re-briefed and will be argued.

Judges

U.S. Court of Appeals for the Seventh Circuit: Chief Judge Diane Wood and Judges Richard Posner and Joel Flaum.

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3. *Rowe v. Gibson*, 798 F.3d 622 (7th Cir. 2015), *reh'g en banc denied*, No. 14-3316, 2015 WL 10767326 (7th Cir. Dec. 7, 2015).

A prisoner brought a § 1983 action against prison administrators and employees of a prison medical services company, claiming that defendants were deliberately indifferent to his serious medical needs. On appeal, the Seventh Circuit ruled the district court erred by granting summary judgment to prison medical staff who allegedly withheld prisoner's

heartburn mediation. In the course of its ruling, the Seventh Circuit determined that a genuine issue of material fact existed due in part to information obtained by the court from the Internet. I served as lead counsel for the defendants in preparing a petition for rehearing *en banc* in 2015. This petition was denied on a tie vote but the court's accompanying order clarified that "[t]he panel majority should not be read as holding that we expect district judges to do their own factual research or as suggesting anything at all about the propriety of internet research."

Co-Counsel

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Opposing Counsel

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4. *Estate of Rice v. Correctional Med. Svcs., Inc.*, 675 F.3d 650 (7th Cir. 2012), *on remand*, 3:09-cv-00319-RLM-CAN (N.D. Ind. Nov. 12, 2013).

The estate of a pretrial detainee brought a § 1983 action asserting deliberate indifference to the detainee's medical condition after the detainee died while incarcerated. The district court granted summary judgment in favor of the defendants. The Seventh Circuit affirmed in part and reversed in part. On remand, the district court granted my client summary judgment on the remaining claims. From 2009 to 2014, I served as lead appellate counsel and conducted oral argument on the motion for summary judgment on remand.

Judges

U.S. Court of Appeals for the Seventh Circuit: Judges Joel Flaum, Ilana Rovner, and Terence Evans. (*Judge Evans passed away between oral argument and the decision of the case.*)

U.S. District Court for the Northern District of Indiana: Judge Robert L. Miller

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5. *Karlin v. Foust*, 975 F. Supp. 1177 (W.D. Wis. 1997), *aff'd in part, rev'd in part*, 188 F.3d 446 (7th Cir. 1999), *reh'g en banc denied* 198 F.3d 620 (1999).

As an Assistant District Attorney for Milwaukee County, I represented the District Attorney on the appeal of a challenge to Wisconsin's informed consent statute from 1998 to 1999. The District Court for the Western District of Wisconsin held that certain provisions of the statute were constitutional while others were not. On appeal, the Seventh Circuit affirmed in part and reversed that part of the district court's decision which held that the statute was unconstitutional.

Judges

U.S. Court of Appeals for the Seventh Circuit: Judges John Coffey, Michael Kanne, and Richard Cudahy.

Co-Counsel

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Co-Defendant's Counsel

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6. *Edwards v. Great-West Life Assur. Co.*, 20 F.3d 748 (7th Cir.), cert. denied 513 U.S. 962 (1994).

Plaintiff filed suit seeking benefits due under an ERISA plan in which her deceased husband participated. The district court ruled in favor of the plaintiff. On appeal, the Seventh Circuit reversed the district court's judgment and remanded with directions to dismiss the action). From 1992 to 1994, on behalf of the defendant I litigated the case in the District Court and I prepared the appeal and argued before the Seventh Circuit.

Judges

U.S. Court of Appeals for the Seventh Circuit: Judges Walter Cummings, Richard Cudahy, and Stanley Roszkowski (by designation).

U.S. District Court for the Eastern District of Wisconsin: Judge Terence Evans

Co-Counsel

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Opposing Counsel

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7. *Wosinski v. Advance Cast Stone Co.*, 14-AP-1961, 2017 WL 2954721 (Wis. Ct. App. July 11, 2017).

Plaintiffs filed a tort action against the manufacturer and installer of concrete panels in a parking garage. The jury awarded damages to several parties. Milwaukee County received a \$6 million jury verdict in its favor for a construction defect and lost revenue at the garage. The Wisconsin Court of Appeals affirmed the jury's verdict and reversed on issues of coverage and the manufacturer's duty to defend. I argued before the Wisconsin Court of Appeals in support of the verdict on behalf of Milwaukee County. The parties reached a settlement in August 2017.

Judges

Wisconsin Court of Appeals: Judge Kitty Brennan, Joan Kessler, and William Brash.

Co-Counsel

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8. *FDIC v. Old Republic Ins. Co.*, No. 17-cv-734 (E.D. Wis.) removed from, *Guaranty Bank v. Old Republic Ins. Co.*, 09-CV-13592 (Wis. Cir. Ct.).

Since 2009, I have represented Old Republic Insurance Co. as local counsel in this action brought by two banks alleging that my client has improperly denied claims submitted under mortgage guaranty insurance policies insuring against losses arising out of borrowers' defaults of second mortgage loans. I have participated in approximately 40 court hearings as the case has moved through discovery, interlocutory appeals, and substantial motion practice.

Judges

U.S. District Court for Eastern District of Wisconsin: Judge J.P. Stadtmueller

Co-Counsel

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9. *Aeriel et al. v. State Operated Sch. Dist. of Newark, New Jersey, et al.*, No. ESX-L-4320-08 (N.J. Super.).

In 2007, members of the MS-13 gang brutally attacked four people in the schoolyard of a school run by the State Operated School District of Newark. Three of the victims were murdered; a fourth survived. The surviving victim, and the estates of the other victims, brought a lawsuit against the school district raising claims of premises liability. From 2011 to 2013, I served as co-counsel for the school district and its insurer. I handled many of the expert and fact witnesses, all motion practice, and jury instructions and special verdict. After a seven-week jury trial the case settled at the pre-trial offer.

Judge

New Jersey Superior Court, Essex County; Judge Paul Vichness (retired)

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10. *Molitor v. Coca-Cola Enters.*, No. 08-CV-16286 (Wis. Cir. Ct.).

From 2009 to 2010, I represented Coca-Cola Enterprises in a personal injury suit alleging that a Coca-Cola delivery truck struck the plaintiff. After a two-week jury trial, the jury found for the defense. I handled many of the expert and fact witnesses and all motion practice.

Judges

Wisconsin Circuit Court, Milwaukee County: Judge John DiMotto

Co-Counsel

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

From 1998 to 1999, I served as staff counsel to the legislative committee which rewrote Wisconsin's criminal penalty statutes. As a consequence of this work, I was appointed in 1999 to serve as staff counsel to the Governor Tommy Thompson's task force which proposed revisions to Wisconsin statutes and drafted policy initiatives to strengthen probation and parole supervision in Wisconsin.

As a result of my experience in these positions, and my experience as a trial court judge in criminal cases, from 1998 to 2007, I regularly conducted training on sentencing issues and related topics.

Beginning in 2011, I served as the chairman of Governor Scott Walker's Judicial Selection Advisory Committee. This committee reviews applications, interviews candidates, and makes recommendations to Governor Walker regarding vacancies on Wisconsin's courts. I participated in the selection of approximately 75 judges to serve on Wisconsin's trial and appellate courts. My service on this Committee ended in August 2017.

Since 2012, I have regularly served as an appellate moot court judge for the Wisconsin State Public Defender's Office and the Federal Defender Services of Wisconsin. During this time I have helped prepare attorneys from these agencies for oral arguments before Wisconsin's appellate courts and the U.S. Court of Appeals for the Seventh Circuit in approximately 20-25 cases.

As set forth in greater detail in response to Question 16(a)(iv), my current practice involves serving as an arbitrator and mediator.

I have never performed any lobbying activities.

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.

In 1994, I taught a semester of Federal Courts at Marquette University Law School. The course discussed the operation of the federal courts and their jurisdiction. I no longer have a copy of the syllabus.

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

I am a beneficiary under the Wisconsin state pension system for my service as a circuit court judge and as an assistant district attorney. I will not be eligible for these benefits until I reach retirement age.

If I am confirmed, I will receive a return of capital after my resignation from Gass Weber Mullins LLC.

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

None.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

If confirmed, I will recuse in any case in which an attorney from my current law firm Gass Weber Mullins LLC, participated at any stage of the proceedings. I will evaluate any other real or potential conflict, or relationship that could give rise to appearance of conflict, on a case by case basis and determine appropriate action with the advice of parties and their counsel, including recusal where necessary.

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

If confirmed, I will carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any other laws, rules, and practices governing such circumstances.

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

Early in my career, in 1992 I served as a public service special prosecutor under Wisconsin Statute § 978.045(3). I also worked on federal *habeas corpus* litigation at Foley & Lardner from 1993 to 1994 on behalf of an incarcerated defendant. From 2012 to the present, I have served *pro bono* as an appellate moot court judge for the Wisconsin State Public Defender's Office and the Federal Defender Services of Wisconsin on approximately 20-25 cases and recruited my firm colleagues to volunteer as well. In February 2015 the State Bar of Wisconsin named my law firm the Pro Bono Organization of the Year due in large part to our work with the State Public Defender's Office.

Throughout my career, I have also devoted countless hours to engaging in public speaking and writing about the law and teaching the next generation of lawyers. Since 1992, I have published many law-related articles for review and use by my fellow lawyers and others. In 1994, I taught a class on federal courts and federal jurisdiction at Marquette University Law School and donated my faculty stipend to the law school. After several years of government service as an assistant district attorney, I taught sentencing-related concepts *pro bono* to hundreds of judges, lawyers (public and private), and non-lawyers across Wisconsin from 1999 through 2007.

While serving as a circuit court judge, the opportunity to engage in *pro bono* work was necessarily limited. Nonetheless, from 2000 through 2008, I frequently presided over trial and appellate moot courts for Marquette University Law School students. From 2002 through 2007, I served on the National Advisory Committee on Violence Against Women, contributing my time and experience to provide advice on a national level concerning issues surrounding domestic violence. Moreover, in 2003, I served on the board of directors of the Milwaukee Forum, a non-profit organization committed to increasing communication and dialogue among people of various racial and ethnic

backgrounds. Also, in 2006 and 2007, I served as a public member of the Wisconsin Legislative Council's special committee, which reviewed Wisconsin's laws prohibiting crimes against children to clarify them and to ensure their penalties are consistent and appropriate.

26. Selection Process:

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

In March 2017, I was contacted by the White House Counsel's Office concerning my interest in serving as a federal judge. On March 15, 2017, I interviewed with attorneys from the White House Counsel's Office and the U.S. Department of Justice Office of Legal Policy, in Washington, District of Columbia. In early April 2017, the Wisconsin Federal Nominating Commission solicited applications for this vacancy. I submitted my application on April 28, 2017. I interviewed with that Commission on June 1, 2017. The results of the Commission's process were not released. On June 30, 2017, I was contacted by Senator Ron Johnson and the White House Counsel's Office and informed that the White House was interested in nominating me for this vacancy. They informed me that they had consulted with and would continue to consult with Senator Tammy Baldwin. I have been in communications with officials from the Office of Legal Policy at the Department of Justice since that time. On August 3, 2017, the President submitted my nomination to the Senate.

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

No.