

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Denzil Price Marshall Jr.

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

United States District Judge for the Eastern District of Arkansas

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.

Arkansas Court of Appeals
Justice Building
625 Marshall Street
Little Rock, Arkansas 72201

Additional Office:
Craighead County Courthouse, Room 311
511 South Main Street
Jonesboro, Arkansas 72401

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

1963; Memphis, Tennessee

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, Harvard Law School; J.D. cum laude, 1989

1985-86, The London School of Economics and Political Science; M.Sc., 1987

1981-1985, Arkansas State University; B.A. cum laude, 1985

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.

2007-present
Arkansas Court of Appeals
Justice Building
625 Marshall Street
Little Rock, Arkansas 72201
Associate Judge

2008-present and in 2001
Arkansas State University
Department of Political Science
Wilson Hall
State University, Arkansas 72467
Adjunct Faculty

1997-present
Arkansas Supreme Court Committee on Civil Practice
Justice Building
625 Marshall Street
Little Rock, Arkansas 72201
Member (1997-2003) (unpaid)
Reporter (2004-present) (unpaid)

2001-2006
Journal of Appellate Practice and Process
William H. Bowen School of Law
University of Arkansas at Little Rock
1201 McMath Avenue
Little Rock, Arkansas 72202
Contributing Editor (unpaid)

1993-2006
Barrett & Deacon, A Professional Corporation
300 South Church Street, Third Floor
Jonesboro, Arkansas 72401
Principal (1995-2006)
Associate (1993-1995)

1999-2007

Jonesboro Church Health Center, Inc.
500 Kitchen Street
Jonesboro, Arkansas 72401
Member, Board of Directors (1999-2007) (unpaid)
President (2005-2006) (unpaid)

1998-2000

Union Planters Bank of Northeast Arkansas
(now merged with Regions Bank)
2400 East Highland Drive
Jonesboro, Arkansas 72401
Member, Community Development Board

1997-2007

Arkansas Law Review, Inc.
Waterman Hall
Leflar Law Center
University of Arkansas
Fayetteville, Arkansas 72701
Member, Board of Directors (1997-2007) (unpaid)
Secretary (1998-1999) (unpaid)
President (1999-2003) (unpaid)

1978-1995 (intermittent association)

Boy Scouts of America
Eastern Arkansas Area Council
(now merged with Quapaw Area Council)
3220 Cantrell Road
Little Rock, Arkansas 72202
Member, Board of Directors (1991-1995) (unpaid)
Vice President for Program (1994-1995) (unpaid)
Pine Trail Reservation, Camp Cedar Valley, Staff Member (summers 1978-1983, 1985)

1992-1996

Northeast Arkansas Comprehensive Learning Center, Inc.
(now The Learning Center, Inc.)
2808 Fox Meadow Lane
Jonesboro, Arkansas 72404
Member, Board of Directors (1992-1996) (unpaid)
Vice-President (1993-1994) (unpaid)
President (1995-1996) (unpaid)

1989, 1991-1993 (intermittent association)
Barrett, Wheatley, Smith & Deacon
(now known as Womack, Landis, Phelps & McNeill)
301 West Washington Avenue
Jonesboro, Arkansas 72401
Summer Law Clerk (1989)
Associate (1991-1993)

1989-1991
The Honorable Richard S. Arnold, Circuit Judge
United States Court of Appeals for the Eighth Circuit
208 U.S. Post Office and Courthouse
600 West Capitol Avenue
Little Rock, Arkansas 72201
Law Clerk

1990-1991
University of Arkansas at Little Rock
Political Science Department
2801 South University Avenue
Little Rock, Arkansas 72204
Adjunct Faculty

1990
Webster University
200 West Capitol Avenue
Little Rock, Arkansas 72201
Adjunct Faculty

1989
University of Arkansas at Little Rock School of Law
(now the William H. Bowen School of Law)
1201 McMath Avenue
Little Rock, Arkansas 72202
Research Assistant, Prof. John Pagan

1988
Foley, Hoag & Eliot
(now Foley, Hoag)
Seaport West
155 Seaport Boulevard
Boston, Massachusetts 02109
Summer Associate

1987-1989

Harvard University
1350 Massachusetts Avenue
Cambridge, Massachusetts 02138
Research Assistant, Prof. William W. Fisher III
Research Assistant, Prof. Morton J. Horowitz
Teaching Fellow, Justice, Prof. Michael Sandel
Teaching Fellow, American Government, Prof. Paul Peterson and Prof. Morris Fiorina

1987

Arkansas Attorney General
Suite 1100, 323 Center Street
Little Rock, Arkansas 72201
Summer Law Clerk

1985-1986

The British Library of Political and Economic Science
London School of Economics and Political Science
Houghton Street, Aldwych
London, Great Britain, WC2A 1AE
Clerk

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

I have not served in the military. I registered for Selective Service in 1981.

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.

Equal Access to Justice Panel, Outstanding Craighead County Volunteer, 2005
Golden Gavel for Exemplary Service, Arkansas Bar Association, 1998, 2002 & 2009
Best of CLE, Arkansas Bar Association, 1998, 2000, 2001, 2002, & 2005
Elcan Leadership Award, Young Lawyers Section, Arkansas Bar Association, 2001
Elected to Membership, The American Law Institute, 1999
40 under 40, Arkansas Business, 1998
Presidential Award of Excellence, Arkansas Bar Association, 1997
Wilson Outstanding Graduate Award, Arkansas State University, 1985
Distinguished Service Award, Arkansas State University, 1985
2nd Place, Future Farmers of America, National Extemporaneous Public Speaking, 1980
Craighead County Livestock Judging Champion, 1980
Eagle Scout, 1977

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

American Bar Association (1991-present)

Section on Litigation, Products Liability Committee (approx. 1994-present)

Section on Judicial Administration, Council of Appellate Lawyers (2001-present)

Committee on State Justice Initiatives (approx. 1998- approx. 1999)

American Law Institute (1999-present)

Members Consultative Group, Restatement (Third) of Restitution and Unjust Enrichment (1999-present)

Members Consultative Group, Restatement (Third) of Torts: General Principles and Physical and Emotional Harm (1999-present)

Arkansas Bar Association (1989-present)

Executive Director Search Committee (2006-2007)

Law-Related Education Committee (2006-2007)

Board of Governors, Chair (2003-2004)

Income Planning Taskforce, Chair (2003-2004)

Future Internet Presence Taskforce, Chair (2001-2003)

Professional Ethics Committee (2001-2003)

Professionalism Task Force (1999-2002)

Judicial Article Task Force (1999-2000)

Membership Dues Structure Task Force (1997-1998)

Executive Council, Parliamentarian (1997-1998)

Membership Development Committee, Chair (1997-1998)

Editorial Board for Handbooks (1997-2007)

Young Lawyers Section, Chair (1996-1997)

Appellate Practice Committee (1995-2001)

Civil Procedure Committee (1993-1997)

Young Lawyers Section Executive Council (1993-1996)

Uniform Laws Committee (1992-1996)

Association of the Bar of the U. S. Court of Appeals for the Eighth Circuit (2003-2006)

Arkansas Association of Defense Counsel (1992-2005)

Craighead County Bar Association (1991-2006)

Secretary-Treasurer (1994-1995)

Program Chair (1995-1998)

American Inns of Court, Judge William Overton Inn (2006-present)

Scribes, The American Society of Legal Writers (1996-present)

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.

Arkansas (1990) (no lapses)

- 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 (1999)
United States Court of Appeals for the Eighth Circuit (1991)
United States Court of Appeals for the District of Columbia Circuit (2006)
United States District Court for the Eastern District of Arkansas (1991)
United States District Court for the Western District of Arkansas (1991)

No lapses in any of these memberships.

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.

Arkansas Bar Foundation (2004-present)
Jonesboro County Club (1998-2006)
Arkansas State University Alumni Association (2001-present)
Tau Kappa Epsilon International Fraternity, Beta Psi Chapter Alumni Association
(approx. 1992-2009) (intermittent association)
Crowley's Ridge Girl Scout Council (approx. 2002-approx. 2003)
Board of Directors Nominating Committee
Council Performance Assessment Task Force
Camp Cedar Valley Alumni Association (approx. 1994-present)
Farm Bureau of Arkansas (1999-present)
United Way of Jonesboro (now Craighead County) (1991-1997)
Campaign Volunteer and Professional Division Chair
Jonesboro University Rotary Club (approx. 1992-approx. 1993)

I have supported our local public radio station, KASU, and the Arkansas Educational Television Network, AETN, and thus have been a "member" or "friend" of these institutions from time to time.

- 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.

When I was in college at Arkansas State University, I joined the Beta Psi chapter of Tau Kappa Epsilon International Fraternity, an all-male group. There were approximately twenty such all-male or all-female fraternal organizations on the campus. In approximately 1992, I joined the alumni group that supports the T.K.E. chapter at A.S.U. and thereafter participated from time to time in various group activities. I resigned my membership in the alumni association in 2009 because I support the anti-discrimination principle embodied in the ABA's Commentary to its Code of Judicial Conduct.

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.

Newbern & Watkins, ARKANSAS CIVIL PRACTICE AND PROCEDURE (West 4th Ed. 2006) (co-authored 2008, 2009, and revised 2009 pocket parts)

HANDLING APPEALS IN ARKANSAS (Ark. Bar. Ass'n 1st ed. 1998, 2nd ed. 2007, supplements in 2008 and 2009) (authored chapter in both editions, was the editorial board chair for the second edition, and edited the supplements)

Preface, After The Bench Special Section, 8 The Journal Of Appellate Practice And Process 223 (2006)

RSA and Reading Statutes, 58 Arkansas Law Review 519 (2005)

From The Library: Learning From Professor Llewellyn, 7 Journal Of Appellate Practice And Process 171 (2005)

From The Library: A Time To Lose, 6 Journal Of Appellate Practice And Process 155 (2004)

From The Library: Advice From Justice Jackson, 5 Journal Of Appellate Practice And Process 215 (2003)

Model Appellant's Brief, available on the Arkansas Judiciary Website, www.courts.state.ar.us/aoc/forms (July 2003 and updated in 2008)

From The Library: Meet Mortimer Levitan, 4 Journal Of Appellate Practice And Process 303 (2002)

From The Library: Listening to John W. Davis, 3 Journal Of Appellate Practice And Process 743 (2001)

A Modest Proposal: Simplify Arkansas Appellate Practice By Abolishing The Abstracting Requirement, 53 Arkansas Law Review 37 (2000) (co-author)

Supper, Elephants, and Phil's Plan, 33 Arkansas Lawyer 12 (1998)

Clerking for RSA, 1 Journal Of Appellate Practice And Process 199 (1999)

A Careless Written Letter: Situating Amendments To The Federal Constitution, 51 Arkansas Law Review 95 (1998)

On Appeal: First Impressions, 32 Arkansas Lawyer 9 (1997)

On Appeal: Have You Got Your Addendum Ready?, 33 Arkansas Lawyer 12 (1998)

First Impressions: Young Lawyers Section Report, 32 Arkansas Lawyer 39 (1996)

On Appeal: Amicus Curiae, 31 Arkansas Lawyer 45 (1996)

Your Young Lawyer's Section Is Busy, 31 Arkansas Lawyer 41 (1996)

On Appeal: Resources For Arkansas Lawyers, 30 Arkansas Lawyer 41 (1996)

No Political Truth: The Federalist And Justice Scalia On The Separation Of Powers, 12 University of Arkansas At Little Rock Law Journal 245 (1990)

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

I have served on, chaired, and contributed to the reports of various Arkansas Bar Association Task Forces and Committees. I do not have copies of any of these reports. I served as the special co-editor of Judicial Independence and

Accountability, 61 Law and Contemporary Problems No.3 (1998). This publication is a report of symposia sponsored by the American Bar Association. As Reporter for the Arkansas Supreme Court's Committee on Civil Practice, since 2004 I have been the primary author of civil court rule amendments and the reporter's notes that accompany them. These materials are integrated into the various court rules and are unavailable in stand-alone form.

- 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.

None

- 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.

Remarks at the Presentation of Portraits of Judge Richard S. Arnold, 28 June 2002, 315 Federal Reporter 3d. XXXVII-XL, Little Rock, Arkansas

Remarks at the U.S. Court of Appeals for the Eighth Circuit's Memorial Session in honor of Judge Richard S. Arnold, 10 January 2005, 432 Federal Reporter 3d. XXXVIII-XL, St. Louis, Missouri

Remarks at Arkansas Court of Appeals Investiture Ceremony for myself and others, 19 March 2006, Little Rock, Arkansas

Remarks introducing the 2008 Equal Access to Justice Panel's Outstanding Craighead County Volunteer Lawyer on 26 February 2009. I encouraged pro bono service and summarized why the winner deserved thanks and recognition. I spoke without notes.

I gave speeches during the 2000 campaign supporting what is now Amendment 80 to the Arkansas Constitution, which merged law and equity, made judicial elections nonpartisan, and made other reforms. I do not recall the dates of any of these events, do not have copies of any resulting press reports, and do not have copies of my remarks or outlines of them.

I made brief introductions for various candidates for public office at northeast Arkansas gatherings of supporters between 1991 and 2006. These candidates included Nate Coulter, U.S. Senator Mark Pryor, Chief Justice Jim Hannah, and Circuit Judge Collins Kilgore. I have no record or memory of exactly when these events occurred or exactly what I said.

Since 1989, I have made remarks and speeches at various non-law-related events in my hometown of Jonesboro, Arkansas. These events were funerals for friends, receptions for retiring teachers, civic club meetings, and banquets. I do not have copies of my outlines for any of these remarks except one, a 2008 banquet speech.

Since about 1994, I have spoken several times a year to bar groups and at continuing legal education seminars about law-related matters. I have also participated in Law Day and Constitution Day activities at public schools and Arkansas State University in Jonesboro, Arkansas. I have not kept a list of all these occasions or copies of all my outlines. After reviewing my old calendars, I have compiled the following list. I know of no press reports generated by any of these events. I have a DVD of the Bridging the Gap presentation that I did in 1998 for the Arkansas Bar Association.

2009

Bridging the Gap: Appellate Practice in Arkansas and the United States Court of Appeals for the Eighth Circuit, Arkansas Bar Association, 2 October 2009 (co-presenter)

Recent Rule Changes and Pending Proposal, Craighead County Bar Association, Jonesboro, Arkansas, 20 August 2009

Appellate Points of Interest: Recent Rule Changes and Best Practices, Arkansas Bar Association Annual Meeting, Hot Springs, Arkansas, 12 June 2009 (co-presenter)

Judge Richard S. Arnold—A Legacy of Justice on the Federal Bench: RSA's Judicial Temperament In Oral Argument, Arkansas Bar Association Annual Meeting, Hot Springs, Arkansas, 12 June 2009 (co-presenter)

Ethics in Pre-trial Practice, Arkansas State University-Craighead County Bar Association, 17 April 2009

2008

Bridging the Gap: Appellate Practice in Arkansas and the United States Court of Appeals for the Eighth Circuit, Arkansas Bar Association, November 2008 (co-presenter)

Appellate Practice: Recent Rule Changes and Court of Appeals' Operation, First Judicial Circuit CLE, Forrest City, Arkansas, 21 November 2008

Ethical Issues On Appeal, Arkansas Trial Lawyers Association Seminar, Little Rock, Arkansas, 26 September 2008

Summary Judgment Day: State and Federal, Overton Inn of Court, Little Rock, Arkansas, 16 September 2008 (co-presenter)

Argument As Character, Arkansas Association of Defense Counsel, Branson, Missouri, 1 August 2008

2007

Bridging the Gap: Appellate Practice in Arkansas and the United States Court of Appeals for the Eighth Circuit, Arkansas Bar Association, 2 November 2007 (co-presenter)

A Time to Lose, Panel Discussion on *Brown v. Board of Ed.*, Arkansas State University Constitution Day Celebration, 17 September 2007

Court of Appeals Operation and Proposed Rule Changes, Craighead County Bar Association, Jonesboro, Arkansas, 16 August 2007

Handling Appeals, Panel Discussion, Arkansas Bar Association Annual Meeting, Hot Springs, Arkansas, 8 June 2007

2006

Bridging the Gap: Appellate Practice in Arkansas and the United States Court of Appeals for the Eighth Circuit, Arkansas Bar Association, 3 November 2006 (co-presenter)

2005

Bridging the Gap: Appellate Practice in Arkansas and the United States Court of Appeals For The Eighth Circuit, Arkansas Bar Association, November 2005 (co-presenter)

Writing Briefs That Sing While They March, Arkansas Bar Association Best of CLE, 30 June 2005

Writing Briefs That Sing While They March, Arkansas Bar Association Annual Meeting, 10 June 2005

1994-2004

During the fall of each of these years, I participated in the Arkansas Bar Association's Bridging the Gap continuing legal education seminar for new lawyers. I was a co-presenter in a session usually entitled Appellate Practice in Arkansas and the United States Court of Appeals for the Eighth Circuit.

- 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.

I have occasionally given short statements for newspaper stories about cases (in particular, the *Lake View* school-funding case) and law-related matters. I do not have copies of any such article. Between 1999 and 2005, I gave interviews to the local television station and local newspaper about the Jonesboro Church Health Center's annual peach sale. No copies of the clips or transcripts are available to me. I was interviewed by the local newspaper in 1997 about the Young Lawyers Section of the Arkansas Bar Association and again in 2006 about my election to the Arkansas Court of Appeals.

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 was elected in May 2006 in a non-partisan election for Associate Judge, District 1, position 2, on the Arkansas Court of Appeals. I ran unopposed. I took office on 1 January 2007 and continue to serve. The Court of Appeals has jurisdiction over most civil, criminal, and administrative appeals in Arkansas.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? 0
- i. Of these, approximately what percent were:
- jury trials? ___%; bench trials ___% [total 100%]
- civil proceedings? ___%; criminal proceedings? ___% [total 100%]
- b. Provide citations for all opinions you have written, including concurrences and dissents.

Elkins v. State, No. CACR09-1252, slip op., 2009 Ark. App. 808 (Dec. 2, 2009)
Hanna v. State, CACR09-121, slip op., 2009 Ark. App. 809 (Dec. 2, 2009)
Dunahue v. State, CACR09-360, slip op., 2009 Ark. App. 810 (Dec. 2, 2009)

Ludlam v. State, CACR09-707, slip op., 2009 Ark. App. 811 (Dec. 2, 2009)
Parker v. Stant, CA09-432, slip op., 2009 Ark. App. 812 (Dec. 2, 2009)
White v. State, 2009 WL 3855689 (Ark. App. 2009)
Valley v. Helena National Bank, 2009 WL 3855695 (Ark. App. 2009)
Reid v. Ark. Dep't. of Human Services, 2009 WL 3855700 (Ark. App. 2009)
SubTeachUSA, Inc. v. Director, Dep't. of Workforce Services, 2009 WL 3643442
 (Ark. App. 2009) (dissenting opinion)
R.A.S. v. State, 2009 WL 3466015 (Ark. App. 2009)
McKenzie v. State, 2009 WL 3460714 (Ark. App. 2009)
Hodgson v. State, 2009 WL 3384437 (Ark. App. 2009)
QHG of Springdale, Inc. v. Archer, 2009 WL 3400690 (Ark. App. 2009)
Butcher v. Beatty, 2009 WL 3199151 (Ark. App. 2009)
Burdette v. City of Van Buren, 2009 WL 3153327 (Ark. App. 2009)
Carroll v. State, 2009 WL 3028984 (Ark. App. 2009)
Howell v. Ark. Dep't. of Human Services, 2009 WL 3028987 (Ark. App. 2009)
Maxey v. Kossover, 2009 WL 3029310 (Ark. App. 2009)
Furlow v. State, 2009 WL 2958337 (Ark. App. 2009)
Swaim v. State, 2009 WL 2777999 (Ark. App. 2009)
Wonder v. McLeese, 2009 WL 2778048 (Ark. App. 2009)
Elkins v. State, 2009 WL 1884592 (Ark. App. 2009)
Boen v. State, 2009 WL 1884633 (Ark. App. 2009)
Ark. Appraiser Licensing & Cert. Bd. v. Emig, 2009 WL 1812512 (Ark. App.
 2009) (unpublished)
Radford v. State, 2009 WL 1812948 (Ark. App. 2009) (unpublished)
Harbin v. Ark. Dep't. of Health & Human Services, 2009 WL 1812948 (Ark.
 App. 2009) (unpublished)
Mckenzie v. State, 2009 WL 1708644 (Ark. App. 2009) (unpublished)
Costley v. Ark. Dep't. of Human Services, 2009 WL 1818269 (Ark. App. 2009)
 (unpublished)
Bronakowski v. Lindhurst, 2009 WL 1816165 (Ark. App. 2009) (concurring
 opinion)
Hudgens v. Martin, 2009 WL 1553631 (Ark. App. 2009) (unpublished)
Miles v. Manpower Temporary Services, 2009 WL 1553634 (Ark. App. 2009)
 (unpublished)
Burcham v. State, 2009 WL 1556565 (Ark. App. 2009) (unpublished)
Fitzgerald v. State, 2009 WL 1478259 (Ark. App. 2009) (unpublished)
Torrence v. State, 2009 WL 1362053 (Ark. App. 2009) (unpublished)
Tipps v. State, 2009 WL 1233469 (Ark. App. 2009) (unpublished)
Carter v. State, 2009 WL 1152008 (Ark. App. 2009)
Holifield v. Mullenax Financial & Tax Advisory Group, 2009 WL 1010886 (Ark.
 App. 2009) (dissenting opinion)
Sams v. Crabtree RV Center, Inc., 2009 WL 1152987 (Ark. App. 2009)
 (unpublished)
Jones v. Ark. Dep't. of Health & Human Services, 2009 WL 1154927 (Ark. App.
 2009) (unpublished)

Bruton v. Van Buren Pipe Corp., 2009 WL 1076828 (Ark. App.2009)
 (unpublished)
Hollins v. Hollins, 2009 WL 1085959 (Ark. App. 2009) (unpublished)
Southern Development Corp. v. Freightliner of New Hampshire, Inc., 2009 WL
 1010871 (Ark. App. 2009)
Bean v. Global Geophysical Services, 2009 WL 1017711 (Ark. App. 2009)
 (unpublished)
Pender & Sons, Inc. v. Lee, 2009 WL 1010866 (Ark. App. 2009) (dissenting
 opinion)
Webb v. State, 2009 WL 942054 (Ark. App. 2009) (unpublished)
Lagasse v. Strait, 2009 WL 942327 (Ark. App. 2009) (unpublished)
Childress v. State, 2009 WL 863952 (Ark. App. 2009) (unpublished)
Thompson v. State, 2009 WL 700770 (Ark. App. 2009) (unpublished)
Holman v. Coker, 2009 WL 700824 (Ark. App. 2009) (unpublished)
Prows v. Ark. Dep't. of Human Services, 2009 WL 700886 (Ark. App. 2009)
 (unpublished)
Carter v. State, 2009 WL 702198 (Ark. App. 2009) (unpublished)
Mathis v. State, 2009 WL 613458 (2009) (Ark. App. 2009) (concurring opinion)
Griffin v. Ark. Dep't. of Health & Human Services, 2009 WL 613538 (Ark. App.
 2009)
Guffey v. Counts, 2009 WL 613539 (Ark. App. 2009)
Deutscher v. Aluminum Co. of America, 2009 WL 539564 (Ark. App. 2009)
 (unpublished)
Care Manor of Baxter County v. Wheeler, 2009 WL 465064 (Ark. App. 2009)
Watkins v. State, 2009 WL 475960 (Ark. App. 2009) (unpublished)
Castillo v. State, 2009 WL 398210 (Ark. App. 2009) (unpublished)
Parkerson v. McMurtry, 2009 WL 331468 (Ark. App. 2009)
 (unpublished)
Superior Industries v. Shaddock, 2009 WL 331477 (Ark. App. 2009)
 (unpublished)
Ramey v. State, 2009 WL 344394 (Ark. App. 2009) (unpublished)
Flowers v. Ark. Dep't. of Health & Human Services, 2009 WL 263358 (Ark. App.
 2009) (unpublished)
Montgomery v. Ark. Dep't. of Human Services, 2009 WL 195935 (Ark. App.
 2009) (unpublished)
Bailey v. State, 2009 WL 88485 (Ark. App. 2009) (unpublished)
Banks v. State, 2009 WL 88600 (Ark. App. 2009) (unpublished)
Bedsole v. State, 104 Ark. App. 253, 290 S.W.3d 607 (2009)
Williams v. State, 2009 WL 33509 (Ark. App. 2009) (unpublished)
Contreras v. Ramos, 2008 WL 5264998 (Ark. App. 2008) (unpublished)
Jones v. Currens, 104 Ark. App. 187, 289 S.W.3d 506 (2008)
Goodsell v. State, 104 Ark. App. 183, 289 S.W.3d 534 (2008)
Hausman v. Throesch, 104 Ark. App. 113, 289 S.W.3d 493 (2008)
Ellis v. J.D. & Billy Hines Trucking, Inc., 104 Ark. App. 118, 289 S.W.3d 497
 (2008)

Costley v. Ark. Dep't. of Human Services, 2008 WL 5176759 (Ark. App. 2008)
 (unpublished)
Farmer v. Riddle, 2008 WL 5104246 (Ark. App. 2008) (unpublished)
Mitchner v. State, 2008 WL 4939626 (Ark. App. 2008) (unpublished)
Howard v. State, 2008 WL 4939742 (Ark. App. 2008) (unpublished)
Roberts v. Yang, 2008 WL 4946350 (Ark. App. 2008) (unpublished)
Watts v. Nelson Utility Construction, 2008 WL 4946430 (Ark. App. 2008)
 (unpublished)
Rogers v. Ark. Dep't. of Health & Human Services, 2008 WL 4874789 (Ark. App.
 2008) (unpublished)
Holt v. Ark. Dep't. of Human Services, 2008 WL 4874818 (Ark. App. 2008)
 (unpublished)
Dixie Care 106 v. Gross, 2008 WL 4875939 (Ark. App. 2008) (unpublished)
Moody v. Addison Shoe Co., 104 Ark. App. 27, 289 S.W. 3d 115 (2008)
Rice v. State, 2008 WL 4736295 (Ark. App. 2008) (unpublished)
Battles v. Morehead, 103 Ark. App. 283, 288 S.W. 3d 693 (2008)
Brown v. Frank, 2008 WL 4724123 (Ark. App. 2008) (unpublished)
Pullam v. State, 2008 WL 4493430 (Ark. App. 2008) (unpublished)
Vela v. Djafazadeh, 2008 WL 4493603 (Ark. App. 2008) (unpublished)
Hicks v. Cook, 103 Ark. App. 207, 288 S.W.3d 244 (2008) (concurring opinion)
Sharp v. Keeler, 103 Ark. App. 233, 288 S.W.3d 256 (2008)
Rivers v. State, 2008 WL 4335959 (Ark. App. 2008) (unpublished)
Delamar v. State, 2008 WL 4336123 (Ark. App. 2008) (unpublished)
Shaw v. Dyson, 2008 WL 4336125 (Ark. App. 2008) (unpublished)
Carroll v. Carroll, 2008 WL 4286494 (Ark. App. 2008) (unpublished)
IH Services v. Perry, 2008 WL 4287338 (Ark. App. 2008) (unpublished)
Owens v. State, 2008 WL 4152870 (Ark. App. 2008) (unpublished)
Young v. Young, 2008 WL 4062081 (Ark. App. 2008) (unpublished)
Lackey v. Mays, 103 Ark. App. 70, 286 S.W.3d 193 (2008)
Hernandez v. State, 2008 WL 4006728 (Ark. App. 2008) (unpublished)
Warren v. State, 2008 WL 4006746 (Ark. App. 2008) (unpublished)
Bailey v. State, 2008 WL 2515484 (Ark. App. 2008) (unpublished)
Benedict v. Ark. Dep't. of Human Services, 2008 WL 2515678 (Ark. App. 2008)
 (unpublished)
Sullivent v. Sullivent, 2008 WL 2444737 (Ark. App. 2008) (unpublished)
Vandiver v. Ark. Dep't. of Human Services, 2008 WL 2444808 (Ark. App. 2008)
 (unpublished)
Hite v. J & J Trucking, 2008 WL 244810 (Ark. App. 2008) (unpublished)
Patterson v. United Parcel Service, Inc., 102 Ark. App. 378, 285 S.W.3d 683
 (2008)
Roberts v. Yang, 102 Ark. App. 384, 285 S.W.3d 689 (2008)
C. Bean Transport, Inc. v. Justice, 2008 WL 2268314 (Ark. App. 2008)
 (unpublished)
Pathfinder, Inc. v. Williams, 2008 WL 2268336 (Ark. App. 2008) (unpublished)
Diebold, Inc. v. Webber, 2008 WL 2268343 (Ark. App. 2008) (unpublished)
Henley v. Estate of Reddell, 2008 WL 2268352 (Ark. App. 2008) (unpublished)

Ester v. State, 2008 WL 2192136 (Ark. App. 2008) (unpublished)
Fiore v. State, 2008 WL 2192150 (Ark. App. 2008) (unpublished)
Owen v. Quarles, 2008 WL 2192807 (Ark. App. 2008) (unpublished)
Matlock v. State, 2008 WL 1962032 (Ark. App. 2008) (unpublished)
Prows v. Ark. Dep't. of Health & Human Services, 102 Ark. App. 205, 283 S.W.3d 637 (2008)
Marshall v. State, 102 Ark. App. 175, 283 S.W.3d 597 (2008)
Warren V. Warren, 2008 WL 1812970 (Ark. App. 2008) (unpublished)
Reed v. State, 2008 WL 1812971 (Ark. App. 2008) (unpublished)
England v. Eaton, 102 Ark. App. 154, 283 S.W.3d 228 (2008)
Gehre v. Gehre, 2008 WL 1735120 (Ark. App. 2008) (unpublished)
RWR Properties, Inc. v. Mid-State Trust VIII, 102 Ark. App. 115, 282 S.W.3d 297 (2008)
Brown v. State, 2008 WL 946100 (Ark. App. 2008) (unpublished)
Polly v. State, 2008 WL 907632 (Ark. App. 2008) (unpublished)
Davitt v. State, 2008 WL 907635 (Ark. App. 2008) (unpublished)
Miller v. Cothran, 102 Ark. App. 61, 280 S.W.3d 580 (2008)
Lee v. State, 102 Ark. App. 23, 279 S.W.3d 496 (2008)
Central Moloney, Inc. v. Ringo, 2008 WL 651655 (Ark. App. 2008) (unpublished)
Thornton v. Thornton, 2008 WL 651695 (Ark. App. 2008) (unpublished)
Glenn Mechanical, Inc. v. South Ark. Regional Health Center, Inc., 101 Ark. App. 440, 278 S.W.3d 583 (2008)
Ryan's Family Steak Houses v. Miros, 2008 WL 588639 (Ark. App. 2008) (unpublished)
McCloud v. State, 2008 WL 509929 (Ark. App. 2008) (unpublished)
Taylor v. Landherr, 101 Ark. App. 279, 275 S.W.3d 656 (2008)
Stewart v. State, 2008 WL 376279 (Ark. App. 2008) (unpublished)
Mitchell v. Nettles, 2008 WL 376323 (Ark. App. 2008) (unpublished)
Clouse v. Tu, 101 Ark. App. 260, 274 S.W.3d 344 (2008)
Downum v. Downum, 101 Ark. App. 243, 274 S.W.3d 349 (2008)
Duke v. Shinpaugh, 101 Ark. App. 331, 276 S.W.3d 713 (2008) (concurring opinion)
Brewton v. State, 2008 WL 316170 (Ark. App. 2008) (unpublished)
Nichols v. Ark State Highway & Transportation Dep't., 2008 WL 241285 (Ark. App. 2008) (unpublished)
Roberts v. Green Bay Packaging, Inc., 101 Ark. App. 160, 272 S.W.3d 125 (2008)
McCain v. State, 2008 WL 186190 (Ark. App. 2008) (unpublished)
Leon's Catfish & Restaurant, Inc. v. Hosto & Buchan, P.L.L.C., 2008 WL 142513 (Ark. App. 2008) (unpublished)
Sales v. State, 2008 WL 142574 (Ark. App. 2008) (unpublished)
Melton v. State, 2008 WL 82239 (Ark. App. 2008) (unpublished)
Steak House v. Weigel, 101 Ark. App. 81, 270 S.W.3d 365 (2007)
Bull Motor Co. v. Murphy, 101 Ark. App. 33, 270 S.W.3d 350 (2007) (dissenting opinion)
Roberts v. United Water, Inc., 2007 WL 4415388 (Ark. App. 2007) (unpublished)

Green v. State, 2007 WL 4415458 (Ark. App. 2007) (unpublished)
Crow v. State, 2007 WL 4327781 (Ark. App. 2007) (unpublished)
Stouffer v. T&L Janitorial, Inc., 2007 WL 4327957 (Ark. App. 2007)
(unpublished)
Lackey v. Mays, 100 Ark. App. 386, 269 S.W.3d 397 (2007)
Miller v. State, 100 Ark. App. 391, 269 S.W.3d 400 (2007)
Tate v. Director, Dep't. of Workforce Services, 100 Ark. App. 394, 269 S.W.3d
402 (2007)
Stephens v. State, 2007 WL 4248299 (Ark. App. 2007) (unpublished)
Brunetti v. Brunetti, 2007 WL 4180959 (Ark. App. 2007) (unpublished)
Bledsoe v. Director, Dep't. of Workforce Services, 2007 WL 3358496 (Ark. App.
2007) (unpublished)
Presley v. Brown, 2007 WL 3276987 (Ark. App. 2007) (unpublished)
Aubrey v. Aubrey, 2007 WL 3276988 (Ark. App. 2007) (unpublished)
Stokan v. Estate of Cain, 100 Ark. App. 216, 266 S.W.3d 210 (2007)
King v. State, 100 Ark. App. 208, 266 S.W.3d 205 (2007)
Frawley v. Wood, 2007 WL 3171948 (Ark. App. 2007) (unpublished)
Crossno v. State, 2007 WL 3172142 (Ark. App. 2007) (unpublished)
Misenheimer v. State, 100 Ark. App. 189, 265 S.W.3d 764 (2007)
Forte v. State, 2007 WL 3088273 (Ark. App. 2007) (unpublished)
Rymor Builders, Inc. v. Tanglewood Plumbing Co., Inc., 100 Ark. App. 141, 265
S.W.3d 151 (2007)
Texarkana School District v. Conner, 100 Ark. App. 100, 264 S.W.3d 579 (2007)
Lieblong v. State, 2007 WL 2852614 (Ark. App. 2007) (unpublished)
Shelnut v. State, 2007 WL 2782540 (Ark. App. 2007) (unpublished)
Lyons v. Ark. Dep't. of Health & Human Services, 2007 WL 2713466 (Ark. App.
2007) (unpublished)
Fitzgerald v. State, 2007 WL 2713585 (Ark. App. 2007) (unpublished)
*McAlmont Suburban Sewer Improvement District No. 242 v. McCain-Hwy. 161,
LLC*, 99 Ark. App. 431, 262 S.W.3d 185 (2007)
Wardlow v. State, 2007 WL 2660248 (Ark. App. 2007) (unpublished)
Roehm v. Ark. Dep't. of Health & Human Services, 2007 WL 2482130 (Ark. App.
2007) (unpublished)
McFarland v. EZ Loader Boat Trailer, 2007 WL 2482146 (Ark. App. 2007)
(unpublished)
Hendrix v. Walters, 2007 WL 2429526 (Ark. App. 2007) (unpublished)
Donahue v. Arkansas Dep't. of Health & Human Services, 99 Ark. App. 330, 260
S.W.3d 334 (2007)
Thomas v. State, 2007 WL 1831776 (Ark. App. 27 June 2007) (unpublished)
Jim Ray, Inc. v. Williams, 99 Ark. App. 315, 260 S.W.3d 307 (2007)
Cox v. Cedar Creek, 2007 WL 1765548 (Ark. App. 2007) (unpublished)
Waltz v. Golden, 2007 WL 1765554 (Ark. App. 2007) (unpublished)
Sellars v. St. Vincent Health Services, 2007 WL 1765557 (Ark. App. 2007)
(unpublished)
Parkerson v. McMurtrey, 2007 WL 1643216 (Ark. App. 2007) (unpublished)
Foote v. State, 2007 WL 1643240 (Ark. App. 2007) (unpublished)

Porter v. State, 99 Ark. App. 137, 257 S.W.3d 919 (2007)
Owen v. Quarles, 2007 WL 1556289 (Ark. App. 2007) (unpublished)
Thacker v. State, 2007 WL 1430043 (Ark. App. 2007) (unpublished)
Rhodes v. State, 2007 WL 1430048 (Ark. App. 2007) (unpublished)
McKinney v. State, 2007 WL 1347656 (Ark. App. 2007) (unpublished)
Cox v. Cedar Creek, 2007 WL 1347661 (Ark. App. 2007) (unpublished)
Hill v. White River Health Systems, Inc., 2007 WL 1277913 (Ark. App. 2007)
(unpublished)
Aguilar v. Galdamez, 2007 WL 1277920 (Ark. App. 2007) (unpublished)
White v. State, 2007 WL 1207364 (Ark. App. 2007) (unpublished)
Scott v. State, 2007 WL 1207366 (Ark. App. 2007) (unpublished)
Staab v. Mainard, 2007 WL 1207374 (Ark. App. 2007) (unpublished)
Pollard v. Newman, 2007 WL 1207383 (Ark. App. 2007) (unpublished)
Brandt v. Willhite, 98 Ark. App. 350, 255 S.W.3d 491 (2007)
First Ark. Bail Bonds, Inc. v. State, 2007 WL 987806 (Ark. App. 2007)
Coombs v. Hot Springs Village Property Owners Association, 98 Ark. App. 226,
254 S.W.3d 5 (2007)
Bolden v. State, 2007 WL 842068 (Ark. App. 2007) (unpublished)
Hooder v. Life of the South Insurance Co., 2007 WL 842072 (Ark. App. 2007)
(unpublished)
Oliver v. State, 2007 WL 757540 (Ark. App. 2007)(unpublished)
Ganter v. Ark. Dep't. of Health & Human Services, 2007 WL 678551 (Ark. App.
2007) (unpublished)
Clemons v. State, 2007 WL 701047 (Ark. App. 2007) (unpublished)
Bishop v. Bishop, 98 Ark. App. 111, 250 S.W.3d 570 (2007)
Brady v. Perdue, 2007 WL 521806 (Ark. App. 2007) (unpublished)
Weston v. State, 2007 WL 521815 (Ark. App. 2007) (unpublished)
Douglas v. State, 2007 WL 466811 (Ark. App. 2007) (unpublished)
White v. State, 2007 WL 466830 (Ark. App. 2007) (unpublished)
JB Wayne, Inc. v. Hot Springs Village Property Owners Association, 97 Ark.
App. 288, 248 S.W.3d 503 (2007)
Freeman v. State, 2007 WL 266434 (Ark. App. 2007) (unpublished)

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

As an appellate judge, I have not presided over trials. Our court does most of its work in three-judge panels. From time to time, I have handled the administrative duties of a presiding judge for the panel, such as recording votes and in one or two instances presiding over an oral argument.

- 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. *Carter v. State*, 2009 WL 1152008 (Ark. App. 2009) (forfeiture procedure and due process). Counsel for Carter was Billy Bob Webb, P.O. Box 682, Springdale, Arkansas 72765, 479.751.9100. Counsel for the State was Eileen W. Harrison, Assistant Attorney General, 323 Center Street, Suite 200, Little Rock, Arkansas 72201, 501.682.2007.

2. *Jones v. Currens*, 104 Ark. App. 187, 289 S.W.3d 506 (2008) (excited-utterance exception to the hearsay rule). Counsel for Jones were Jerry J. Sallings and Gary D. Marts, Jr., of Wright, Lindsey & Jennings, 200 West Capitol Avenue #2300, Little Rock, Arkansas 72201, 501.371.0808. Counsel for Currens was Chuck Gibson of the Gibson Law Office, P.O. Box 510, Dermott, Arkansas 71638, 870.538.3288.

3. *Battles v. Morehead*, 103 Ark. App. 283, 288 S.W. 3d 693 (2008) (constructive fraud in discovery). Counsel for Battles were Troy A. Price, Kathryn A. Pryor, Regina A. Young, and Gary D. Marts, Jr., of Wright, Lindsey & Jennings, 200 West Capitol Avenue #2300, Little Rock, Arkansas 72201, 501.378.0808. Counsel for Morehead was John Doyle Nalley, P.O. Box 606, Benton, Arkansas 72018, 501.315.7491.

4. *Patterson v. United Parcel Service*, 102 Ark. App. 378, 285 S.W.3d 683 (2008) (judicial notice of federal law). Counsel for Patterson was David S. Mitchell, David S. Mitchell, P.A., 1120 North Street, Little Rock, Arkansas 72201, 501.663.3322. Counsel for UPS were Mariam T. Hopkins and Jarrod Russell of Anderson, Murphy & Hopkins LLP, 400 West Capitol Avenue #2470, Little Rock, Arkansas 72201, 501.372.1887.

5. *Marshall v. State*, 102 Ark. App. 175, 283 S.W.3d 597 (2008) (eleven-person jury). Counsel for Marshall was Leah Lanford, Christian Legal Service, 515 Oak Street, Suite B, Conway, Arkansas 72032, 501.327.5800. Counsel for the State was Vada Berger, Assistant Attorney General, 323 Center Street, Suite 200, Little Rock, Arkansas 72201, 501.682.1052.

6. *Miller v. Cothran*, 102 Ark. App. 61, 280 S.W.3d 580 (2008) (inter-vivos gifts). Counsel for Miller was T. David Carruth, P.O. Box 91, Clarendon, Arkansas 72029, 870.747.3839. Counsel for Cothran was Charles E. Davis, Davis & Associates, P.A., P.O. Drawer 6, Springdale, Arkansas 72765, 479.751.3314.

7. *Lee v. State*, 102 Ark. App. 23, 279 S.W.3d 496 (2008) (confrontation clause). Counsel for Lee was Constance Grayson, P.O. Box 1328, West Memphis, Arkansas 72303, 870.735.4545. Counsel for the State was Nicana C. Sherman,

Assistant Attorney General, 323 Center Street, Suite 200, Little Rock, Arkansas, 72201, 501.682.5313.

8. *Taylor v. Landherr*, 101 Ark. App. 279, 275 S.W.3d 656 (2008) (revival and substitution on appeal). Counsel for Taylor was Charles Karr, Law Offices of Charles Karr, P.A., 602 Garrison Avenue, #650, Fort Smith, Arkansas 72901, 479.782.4028. Counsel for Landherr were Walter B. Cox and James R. Estes of Cox, Cox & Estes, PLLC, P.O. Box 878, Fayetteville, Arkansas 72702, 479.251.7900. Counsel for Sparks Medical Center were Wayne Harris and Stephanie Harper of Warner, Smith & Harris, PLC, P.O. Box 1626, Fort Smith, Arkansas 72902, 479.782.6041.

9. *Clouse v. Tu*, 101 Ark. App. 260, 274 S.W.3d 344 (2008) (service, commencement, and limitations). Counsel for Clouse were Constance G. Clark and Sidney P. Davis, Jr., of Davis, Wright, Clark, Butt & Carithers, PLC, P.O. Box 1688, Fayetteville, Arkansas 72702, 479.521.7600. Counsel for Tu was Phillip L. Votaw, Carr & Carr, Suite D, 14 North 3rd Street, Fort Smith, Arkansas 72901, 479.649.0100.

10. *Jim Ray, Inc. v. Williams*, 99 Ark. App. 315, 260 S.W.3d 307 (2007) (punitive damages). Counsel for Jim Ray was Thomas D. Stockland, Stockland & Trantham, P.A., 157 East Colt Drive, Suite One, Fayetteville, Arkansas 72703, 479.521.7130. Counsel for Williams were Troy Gaston and Bill Walters of Walters, Hamby and Gaston, 1405 West Center, 3rd Floor, Greenwood, Arkansas 72936, 479.996.2122.

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

None insofar as I know.

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.

I have written two hundred and four majority decisions for the Court of Appeals. One has been reversed on review by the Arkansas Supreme Court. *Texarkana School District v. Conner*, 100 Ark. App. 100, 264 S.W.3d 579 (2007). Conner, a school custodian, was injured badly when he unlocked an old gate and it fell on him. He was going a back way to his preferred parking place after returning from a personal errand off campus during lunch. Our Court held that, because he was not advancing his employer's interests at the time of the accident, he was not entitled to workers-compensation benefits. The Supreme Court held that he was performing employment services, and was entitled to benefits, because he was on

call during lunch and was on campus and returning to work when the accident occurred. 373 Ark. 372, 284 S.W.3d 57 (2007).

I concurred in the judgment, but did not join the majority opinion of the Court of Appeals sitting en banc in *Duke v. Shinpaugh*, 101 Ark. App. 331, 276 S.W. 3d 713 (2008). The Court of Appeals affirmed in part and reversed and remanded in part in this undue-influence case involving real property. The Supreme Court granted review. The Court affirmed without reaching the merits because it held that the appellant had not challenged an alternative basis for the circuit court's decision. 375 Ark. 358, 2009 WL 102714 (2009).

I wrote the majority opinion for the Court of Appeals panel in *Guffey v. Counts*, 2009 WL 613539 (Ark. App. 2009), a child-support case. The panel affirmed based on the voluntariness of the father's payments and an estoppel analysis. On review, the Supreme Court affirmed on voluntariness without mentioning estoppel or our Court's analysis on that issue. 2009 WL 2971752 (Ark. 2009).

- 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.

Approximately 75% of Court of Appeals opinions during my tenure have been designated unpublished. I have written two hundred and four majority opinions, four concurrences, and four dissents. Approximately 70% of my opinions have been designated unpublished. All unpublished opinions are available on the date filed on the Arkansas Judiciary website (www.courts.arkansas.gov). The Reporter of Decisions also sends all these opinions to West, Lexis, and other companies that maintain electronic databases. The Arkansas Supreme Court abandoned unpublished opinions for our appellate courts effective 1 July 2009. All decisions filed after that date are precedent.

- 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.

Bronakowski v. Lindhurst, 2009 WL1816165 (Ark. App. 2009) (punitive damages) (concurring opinion)

Carter v. State, 2009 WL 1152008 (Ark. App. 2009) (due process)

Mathis v. State, 2009 WL 613458 (Ark. App. 2009) (due process) (concurring opinion)

Bedsole v. State, 2009 WL 33312 (Ark. App. 2009) (fourth amendment)

Lee v. State, 102 Ark. App.23, 279 S.W.3d 496 (2008) (confrontation clause)

Jim Ray, Inc. v. Williams, 99 Ark. App. 315, 260 S.W.3d 307 (2007) (punitive damages)

- 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.

None

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 have endeavored to follow Canon 2 of the Arkansas Code of Judicial Conduct, and in particular Rule 2.7 (Responsibility to Decide) and Rule 2.11 (Disqualification). I have participated in the Arkansas Court of Appeals' automatic recusal system and have recused sua sponte in some other cases. No one has ever suggested that I recuse in any case.

I have supplied a recusal list, which I have periodically revised, to our Court's Chief Staff Attorney for purposes of our Court's automatic recusal system. The list contains litigants whose cases I should not hear. These litigants include: entities in which I have a financial interest or a longstanding business relationship, family members and close friends, clients or former clients of my law firm with whom I had a long-term relationship or for whom I was working with when I left the firm at the end of 2006. I have recused in all cases in which my former firm is involved, and will continue to do so for several more years. I have recused in all cases where lawyers who represented me or family members are involved. I have recused in cases involving any circuit judge while any matter involving any family member is pending before that judge.

My election to the Court of Appeals was coordinated by a committee of lawyers and citizens. The committee sponsored receptions and collected donations to pay

campaign expenses. I screened myself from information about who contributed to the committee's campaign fund. For two years after my election, I recused in all cases in which any committee member or other prominent campaign supporter was involved in any way.

Periodically a member of our court's central staff circulates a list of cases (including counsel) ready for submission. My staff and I review each such list carefully and make sure that I have recused in all matters implicating any of the concerns that I have described.

15. Public Office, Political Activities and Affiliations:

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

None

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

I do not recall ever being a member of any political party. Before I became a judge, I volunteered in several local and state non-judicial campaigns---handing out literature, introducing the candidate around town, helping plan meet-and-greets, and mailing postcards. These candidates included Nate Coulter, U.S. Senator Mark Pryor, and others. I do not remember ever having any kind of position or role other than volunteer in these campaigns.

I have served as a member of several committees seeking to elect someone to the Arkansas Supreme Court. I remember being on such committees for Chief Justice Jim Hannah, Justice Annabelle Clinton Imber, Justice Robert Brown, and Circuit Judge Collins Kilgore. I introduced the candidates around my home town, took them by the newspaper and TV station for interviews, and sometimes coordinated placing signs. I recall helping plan receptions for Hannah and Kilgore.

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 1989-1991, I clerked for Judge Richard Sheppard Arnold, United States Court of Appeals for the Eighth Circuit.

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

I have never practiced law alone.

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

Barrett & Deacon, A Professional Corporation
300 South Church Street, Third Floor
Jonesboro, Arkansas 72401
Associate (1993-1995); Principal (1995-2006)

Barrett, Wheatley, Smith & Deacon
(now Womack, Landis, Phelps, and McNeill)
300 West Washington Avenue
Jonesboro, Arkansas 72401
Summer Law Clerk (1989); (Associate 1991-1993)

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

I have never served as a mediator or arbitrator in an alternative-dispute resolution proceeding.

b. Describe:

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

I had a general law practice emphasizing civil litigation throughout my fifteen years at the bar.

Between 1991 and 1995, when I was an associate, I handled insurance-defense cases of various kinds, did probate work, drafted simple wills, and did some real estate transactions. I drafted and argued motions for summary judgment, motions in limine, jury instructions, and post-trial motions in cases being litigated by senior lawyers in the firm. I also did a few state and federal appeals.

Between 1995 and 2006, approximately two-thirds of my practice involved litigating cases in federal and state court. I handled commercial litigation of various sorts, will contests, ERISA cases, an Arkansas Teacher Fair Dismissal Act case or two, Title VII and other civil rights cases, and tort cases of many kinds. I also worked on several Superfund cases, one for more than a decade.

Between 1995 and 2006, I also maintained an office practice. I represented the local newspaper, a school district, and a school for disabled children. These clients generated soup-to-nuts issues---some litigation, but mostly counseling and drafting on employment, contract, and property matters.

In 1995, around the time that I became a principal in Barrett & Deacon, I began emphasizing appellate work. This practice grew to about 50% of my litigation work. When I stopped practicing law in 2006, I had handled approximately 100 federal and state appeals. These cases dealt with a range of issues: abstention, arbitration, attorney's fees, causation, contracts, damages, jurisdiction, environmental law, ERISA, expert witnesses, injunctions, jury misconduct, pleading, and statutory interpretation in many contexts.

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

I handled cases for individuals, the insureds of various insurance companies and some times the insurance company itself in declaratory-judgment cases, and businesses of all kinds. I represented school teachers and a school district, doctors and one of our local hospitals, employers small and large, employees, estates, our local newspaper, farmers, banks, prisoners, and railroads.

- 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.

One-half to two-thirds of my practice has always involved litigation in trial and appellate courts. I have appeared in court frequently throughout my career.

- i. Indicate the percentage of your practice in:
 - 1. federal courts; 50%
 - 2. state courts of record; 50%
 - 3. other courts;
 - 4. administrative agencies

ii. Indicate the percentage of your practice in:

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

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

As best as I can remember, I tried ten cases to verdict or judgment. I was associate counsel in two, chief counsel in one, and sole counsel in the other seven.

i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury; | 50% |
| 2. non-jury. | 50% |

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.

As best as I can recall, I responded to three petitions for certiorari and petitioned for certiorari once. The Supreme Court denied review in all these cases.

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. South 8th Street Landfill/Gurley Pit

This Superfund litigation lasted more than a decade. My former law firm represented the Burlington Northern Railroad Company, a potentially responsible party (PRP) at both sites. My senior partner Jack Deacon's name was on the papers too, but I handled all aspects of the case. I investigated the facts and

prepared the railroad's defense. The Burlington Northern was a founding participant in the PRP Group, which grew to almost two hundred members. The Group entered into a consent decree with EPA and cleaned up the South 8th Street site. *USA v. Aircraft Services International, Inc.*, et al., No. 3:98CV00362 (E.D. Ark. 19 Dec. 2000). I served as local counsel for the Group in the parts of the litigation pending in Arkansas before U.S. District Judge Stephen M. Reasoner (now deceased) and later U.S. District Judge Bill Wilson Jr. In 2005, I was part of the team of lawyers who persuaded Judge Wilson to reject a proposed settlement and consent decree between the United States and a recalcitrant party. After cleaning up the South 8th Street site, and collecting contributions from recalcitrants, the PRP Group refunded money to its members (including Burlington Northern) and dissolved.

This case involved hundreds of lawyers. The PRP Group counsel, and my lead counsel, was Gary P. Gengel, Latham & Watkins LLP, One Newark Center, 16th Floor, Newark, New Jersey 07101, 973.639.7287 (then with Morgan, Lewis & Bockius LLP). In the last stages of the case, the lead trial lawyer was Michael Dillon, Professor of Political Science, La Salle University, 1900 W. Olney Ave., Philadelphia, Pennsylvania 19141, 215.991.3748 (then with Morgan, Lewis & Bockius LLP). The PRP who left the Group and sought a separate settlement with the United States was represented by Michael F. Rafferty, Harris, Shelton, Dunlap and Cobb, Suite 2700, One Commerce Square, Memphis, TN 38103, 901.525.1455. The United States was represented by Richard Gladstein, Environmental Enforcement Section, Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, 202.514.1711.

2. *Lake View School Funding Case*

I represented the Arkansas Chamber of Commerce and Associated Industries of Arkansas as amici curiae in most of the *Lake View* appeals to the Arkansas Supreme Court and in the proceedings before Special Masters David Newbern and Bradley Jesson. The issue was whether our State was providing every child with the equal opportunity for an adequate education. The Circuit Court held that it was not. In the appeal from that ruling, the State Chamber was the only party that urged the Supreme Court to affirm the Circuit Court's decision in every major respect. With one main exception, the Supreme Court did so. *Lake View School District No. 25 of Phillips County v. Huckabee*, 351 Ark. 31, 91 S.W.3d 472 (2002). The Arkansas General Assembly then passed landmark legislation on educational adequacy, accountability, and standards. As the State Chamber urged, Special Masters Newbern and Jesson reported favorably on that legislation to the Supreme Court. The Court endorsed the Special Masters' report. *Lake View School District No. 25 of Phillips County v. Huckabee*, 358 Ark. 137, 189 S.W.3d 1 (2004).

I was sole counsel for the State Chamber. There were many other lawyers in the case. The following counsel played lead roles. For the State of Arkansas: Timothy Gauger and Mark Hagemeier, of the Attorney General's Office. Gauger is now counsel to Arkansas Governor Mike Beebe, 250 State Capitol, 500 Woodlane, Little Rock, Arkansas 72201, 501.682.2345. Hagemeier is now a lawyer for the University of Arkansas System, UAMS, 4301 West Markham, Slot #860, Little Rock, Arkansas 72205, 501.686.7608. Larger school districts were represented by David R. Matthews, Matthews, Campbell, Rhoads, McClure, Thompson & Fryauf, P.A., 119 South 2nd Street, Rogers, Arkansas 72756, 479.636.0875 and Chris Heller, Friday, Eldridge & Clark, 400 West Capitol Avenue #2000, Little Rock, Arkansas 72201, 501.370.1506. Arkansas Supreme Court Justice Robert L. Brown wrote the opinions mentioned.

3. *Biedenharn v. Hogue*

I handled this matter from the answer to the appeal. Several taxpayers filed an illegal-exaction case against former Arkansas State Representative and Speaker of the Arkansas House Bobby Hogue. They alleged that he had secured some funding for Arkansas State University in return for a job there. The complaint raised complicated legal issues about the Arkansas Constitution, various state statutes, and doctrines about the conduct of public officials. I was lead counsel, although two senior lawyers in our firm were also counsel of record. I supervised one associate. After discovery, briefing, and a hearing, Circuit Judge David Burnett granted summary judgment to Hogue. The taxpayers appealed. The Arkansas Supreme Court affirmed the judgment for Hogue on mootness grounds. 338 Ark. 660, 1 S.W.3d 424 (1999).

The senior lawyers on the case in our firm were Jack Deacon and Barry Deacon. The firm's address is listed several other places in my answers. Their telephone number is 870.931.1700. Jennifer Donaldson, the associate, no longer works at the firm. She is a lawyer for the United States Post Office in Memphis, Tennessee, but I have no contact information for her. The lawyer for the taxpayers was Oscar A. Stilley, 2120 North B Street, Fort Smith, Arkansas 72901, 479.575.0726. Former Justice Tom Glaze of the Arkansas Supreme Court wrote the opinion.

4. Westside School Shooting Case

In March 1998, two teenagers killed several classmates and a teacher and wounded several others at the Westside Middle School in Jonesboro, Arkansas. The families of those killed and injured sued (among others) the shooters, the grandfather of one of the shooters (from whom the boys stole the guns), and Remington Arms Company, who made one of the rifles used. The Plaintiffs asserted defective-product theories against the rifle manufacturer. Together with lawyers from New York and Chicago, I represented Remington. In my role as local counsel, I worked on discovery and motions. The Circuit Court of

Craighead County, Arkansas, granted Remington's motion for summary judgment, which I helped draft and argued orally. The case number is CIV-98-394 (B). It remains pending.

Lead counsel for Remington was Anne E. Cohen, Debevoise & Plimpton, 919 Third Avenue, New York, New York 10022, 212.909.6078. Regional counsel for Remington was Dale G. Wills, Swanson, Martin & Bell, One IBM Plaza, Suite 3300, 330 North Wabash, Chicago, IL 60611, 312.923.8266. For the grandfather: David A. Hodges, Centre Place – Fifth Floor, 212 Center Street, Little Rock, Arkansas 72201, 501.374.2400. For the Plaintiffs: Bobby McDaniel and Dustin McDaniel, McDaniel & Wells, 400 S. Main Street, Jonesboro, Arkansas 72401, 870.932.5950. Dustin McDaniel now serves as Attorney General of Arkansas, Suite 1100, 323 Center Street, Little Rock, Arkansas 72201, 501.682.2007.

5. *Mountain Pure*

Mountain Pure bottles water. It was pursuing parallel state and federal cases against several suppliers (on product-defect theories) and a customer (on a contract). I joined the case as co-counsel for Mountain Pure midstream. With the help of co-counsel and an associate at my firm, I handled the appeal to the Eighth Circuit where that Court reversed U.S. District Judge Susan Webber Wright's decision dismissing the federal case on alternative preclusion and absence grounds. *Mountain Pure LLC v. Turner Holdings LLC*, 439 F.3d 920 (8th Cir. 2006). I also led the work on two appeals in state court, one on appellate jurisdiction and one on the merits of summary judgment. Mountain Pure prevailed in both. *Mountain Pure LLC v. Affiliated Foods Southwest, Inc.* 366 Ark. 62, 233 S.W.3d 609 (2006) and 96 Ark. App. 346, 241 S.W.3d 774 (2006). Most of this litigation was settled. The Mountain Pure/Affiliated matter remains pending.

My co-counsel was Tim Dudley, 114 South Pulaski Street, Little Rock, Arkansas 72201, 501.372.0080. The associate at Barrett & Deacon was Brandon J. Harrison, 870.931.1700. The following individuals were counsel for the other parties. For Affiliated: William A. Waddell, Jr., Friday, Eldridge & Clark, 2400 Regions Center, 400 West Capitol Avenue, Little Rock, Arkansas 72201, 501.370.1510. For Turner: Bruce Munson and Kara B. Mikles, Huckabay, Munson, Rowlett & Moore, 400 West Capitol, Suite 1900, Little Rock, Arkansas 72201, 501.374.6535. For Stone: M. Stephen Bingham, Cross, Gunter, Witherspoon & Galchus, P.C., 500 President Clinton Avenue, Suite 200, Little Rock, Arkansas 72201, 501.371.9999. For Consolidated: Cotton Cunningham, Laser Law Firm, P.A., 101 South Spring Street, Suite 300, Little Rock, Arkansas 72201, 501.376.2981. For Portola: Gary Corum, Wilson, Engstrum, Corum & Coulter, P.O. Box 71, Little Rock, Arkansas 72203, 501.375.6453.

U.S. Circuit Judge Kermit Bye wrote the opinion for the Eighth Circuit. Justice Annabelle Clinton Imber wrote the opinion for the Arkansas Supreme Court on

appellate jurisdiction. And then-Judge (now Chief Judge) Larry Vaught of the Arkansas Court of Appeals wrote the opinion reversing summary judgment on the merits.

6. *Bennett*

This case began as a purported nationwide class action in the Western District of Arkansas asserting Title VII and 1981 claims against various Nucor entities. Nucor is a steel manufacturer. I was local counsel. The defense team, led by Nucor's labor and employment counsel in Texas, succeeded in getting the case split into four pieces and transferred to the Eastern District of Arkansas and federal courts in Texas, Alabama, and South Carolina. I worked with lead counsel on all the motions – evidentiary, discovery, class certification, and summary judgment – on the part of the case in the Eastern District. The case was styled *Bennett v. Nucor Corporation*, No. 3:04CV00291SWW. The case remains pending. U.S. District Judge Susan Webber Wright presided in the Eastern District of Arkansas. U.S. District Judge Harry Barnes presided when the case was first filed in the Western District of Arkansas.

The lawyers at Alaniz and Schraeder, L.L.P., 2500 City West Blvd., Suite 1000, Houston, Texas 77042, 281.833.2200, were lead counsel for Nucor. I worked with Rick Alaniz, Terry Schraeder, John Linker, Cary Ferris, and others. Local counsel for plaintiffs was Philip E. Kaplan, now at Williams & Anderson PLC, 22nd Floor, 111 Center Street, Little Rock, Arkansas 72201, 501.372.0800. Lead counsel for plaintiffs were Robert L. Wiggins, Jr., Ann Wiggins, and Ben DeGweck, Wiggins, Childs, Quinn & Pantazis, The Kress Building, 301 19th Street North, Birmingham, Alabama 35203, 205.314.0500.

7. *White*

Arkansas has a strong Teacher Fair Dismissal Act. The Manila School District could not terminate a particular teacher/coach under the Act, but it wanted to get him off the basketball court. The District changed all his teaching assignments. I sued the District for White. We prevailed after a mini-trial in Circuit Court, and prevailed again on appeal. The case made precedent by establishing the limits of a District's statutory authority to make adjustments in a teacher's class schedule by reassignment. *Manila School District Number 15 v. White*, 338 Ark. 195, 992 S.W.2d 125 (1999).

I was sole counsel for White. Richard Roachell, Suite 208F, 415 North McKinley Street, Little Rock, Arkansas, 72205 was counsel for Manila. I have not been able to locate a phone number for him. Now-retired Circuit Judge Samuel Turner presided. Justice Annabelle Clinton Imber wrote the opinion for the Arkansas Supreme Court.

8. Federal Pre-emption

In a series of railroad cases, my former law firm helped make law in Arkansas and the Eighth Circuit on the federal pre-emption of state-law claims about inadequate warning devices at grade crossings. I located the microfilm records in the archives of the Arkansas State Highway & Transportation Department that established federal funding of the warning devices. The railroad would seek summary judgment on this basis and then press the pre-emption issue on appeal. Representative cases are *Elrod v. Burlington Northern Railroad Company*, 68 F.3d 241 (8th Cir. 1995) and *St. Louis Southwestern Railway v. Malone Freight Lines, Inc.*, 39 F.3d 864 (8th Cir 1994), *cert. denied*, 514 U.S. 1110 (1995).

I worked with Jack and Barry Deacon at my former firm on these issues. Their telephone number is 870.931.1700. Now-Senior U.S. District Judge G. Thomas Eisele presided over the *Elrod* case in District Court. Now-Senior Circuit Judge Pasco M. Bowman II wrote the opinion for the Eighth Circuit. Counsel for plaintiffs in that case were: Wm. Pal Rainey, P.O. Box 89, Marion, Arkansas 72364, 870.739.4446 and Robert G. Gilder, P.O. Box 93, Southaven, Mississippi 38671, 601.342.1444.

9. Union Activity at Wal-Mart

An Arkansas Circuit Court entered a nation-wide injunction barring any person connected with the United Food and Service Workers International Union from entering any Wal-Mart store and talking about the union with employees. I was hired to handle the union's appeal to the Arkansas Supreme Court. My co-counsel was George Wiszynski, assistant general counsel for the UFCW. The case involved interesting issues about alleged trespasses on property open to the public, union solicitation, and injunctions. The Arkansas Supreme Court vacated the injunction and remanded the case. *UFCW v. Wal-Mart*, 353 Ark. 902, 120 S.W.3d 89 (2003). The case was dismissed without prejudice on Wal-Mart's motion after the remand.

George Wiszynski, UFCW, 1775 K Street, N.W., Washington, D.C. 20006, 202.466.1597. Lead counsel for Wal-Mart was Ben Shipley, Cross, Gunter, Witherspoon & Galchus, 5491 Rogers Avenue, Suite 200, Fort Smith, Arkansas 72903, 479.783.8200. Former Justice Ray Thornton of the Arkansas Supreme Court wrote the opinion vacating the nation-wide injunction.

10. North Hills

Belz-Burrow Development Group, LLC, got a section 404(b) permit to fill some wetlands in connection with developing The Shoppes at North Hills, a planned commercial development in North Little Rock, Arkansas. An environmental lawyer then at my former firm, Andy Adams, helped Belz-Burrow get the permit.

Several citizens and environmental groups filed suit against the Corps in the Eastern District of Arkansas seeking to invalidate the permit. The case was styled *Arkansas Nature Alliance, Inc. v. United States Corps of Engineers*, 4:05-CV-00622GH. It was assigned to U.S. District Judge George Howard Jr. (now deceased). Belz-Burrow intervened to help defend the permit. I led the team of four lawyers representing Belz-Burrow. The plaintiffs raised several claims, most of which involved either the Clean Water Act or the National Environmental Policy Act. The parties filed voluminous cross motions for summary judgment on the merits. In addition, Belz-Burrow also argued lack of standing. After a day-long hearing on all issues, Judge Howard concluded that the plaintiffs lacked standing and entered summary judgment on that basis without prejudice. After I became a judge, the case was refiled by new plaintiffs. U.S. District Judge Bill Wilson invalidated the permit. The Eighth Circuit dismissed the developer's appeal.

Lead counsel for the plaintiffs was Richard H. Mays, P.O. Box 1450, Heber Springs, Arkansas 72543, (501) 362-0055. My co-counsel were Andy Adams and E.B. "Chip" Chiles IV and David Curran of Quattlebaum, Grooms, Tull & Burrow, suite 1900, 111 Center Street, Little Rock, Arkansas 72201 (501) 379-1700. Adams is no longer at my former law firm. He is an in-house environmental lawyer for Koch Companies Public Sector, LLC, 4111 East 37th Street North, Wichita, Kansas 67201, 316.828.5500. Lead counsel for the Corps was Daniel Steele, U.S. Department of Justice, Environmental and Natural Resources Division, Defense Section, 601 D Street NW, Room 3122, Washington, D.C. 20024, (202) 305-0506.

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.)

One of my most significant legal activities was representing the local newspaper and the family who owned and then sold it. I handled everything from Arkansas Freedom of Information Act litigation to human-resources issues for the paper. One of my former partners and I handled the sale of the paper, a multi-million dollar transaction. After the family sold the paper, I represented them in a multitude of litigated and non-litigated matters about their investments and business activities.

Another significant legal activity has been my work as a member and as reporter of the Arkansas's Supreme Court's Committee on Civil Practice. The Committee is charged with making at least annual reports to the Arkansas Supreme Court suggesting needed amendments to the Arkansas Rules of Civil Procedure, the Arkansas Rules of Appellate Procedure—Civil, the Arkansas District Court Rules, the Arkansas Rules of Evidence,

and the Rules of the Arkansas Supreme Court and Court of Appeals. I have been the Committee's reporter since 2004. In that capacity, I have been the primary author of proposed rule amendments and reporter's notes. I write the Committee's reports to Justice Annabelle Clinton Imber, our liaison. Helping keep our court rules fair, efficient, and just has been one of the most challenging and rewarding aspects of my legal career.

I have never been a lobbyist.

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

Judicial Process and Legal Reasoning

Arkansas State University

Fall 2008 and Fall 2009

This course covers how state and federal courts work, judicial selection, statutory interpretation, and constitutional interpretation.

Introduction To American Government

Arkansas State University

Spring 2001

This course surveys our nation's founding, the three branches of government, state government, interest groups, elections, and the media.

American National Government

University of Arkansas at Little Rock

While I was a law clerk, I taught this course at night in the spring of 1990 and again in the early morning during the summer of 1991. It is the same basic course described above.

The Judicial System

University of Arkansas at Little Rock

I taught this course at night in the fall of 1990. This was essentially the same course that I am now teaching at ASU.

Constitutional Law

University of Arkansas at Little Rock

I also taught this course at night while I was a law clerk, but do not remember exactly when. It covered constitutional structure: federalism, separation of powers, and judicial review. I have been unable to find the syllabus.

Administrative Law and Process

Webster University, Little Rock

I taught this graduate course at night in the fall of 1990 at the Jacksonville Air Force Base. It covered the post-New Deal development of administrative law, judicial review of

administrative decisions, and federal rulemaking.

When I was a law student, I served as a teaching fellow at Harvard University in two courses: Justice, taught by Professor Michael Sandel, and American Government, taught by Professors Paul Peterson and Morris Fiorina. The latter was a typical survey course like those of the same name described above. The former introduced students to theories of justice in the context of contemporary policy issues. I have been unable to locate a syllabus for the American Government course.

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 have no deferred-income or future-benefits arrangements from any previous relationships. I have an interest in the Arkansas Judicial Retirement System, which will vest after I have served on the state bench for eight years. If I leave the state bench before that date, then the System will refund my contributions.

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

I have always put my court work first in my professional life and will continue to do so. I am teaching a class, which ends this month, at Arkansas State University. I have no plans to teach in the future. I might do so, however, if it did not interfere with discharging all my judicial obligations and complied with all applicable rules of judicial conduct. My co-author and I are under contract with West to prepare a new edition of Arkansas Civil Practice and Procedure by early next year. I am also compiling and editing the late Judge Richard Arnold's speeches and essays into a book. I have no publication agreement for this project.

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 and Schedules.

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.

Parties, categories of litigation, and financial arrangements likely to present potential conflicts of interest include my family, cases where my former law firm is counsel of record, clients with whom I had a long-standing relationship, and the companies in whom my IRA owns stock or with whom I have an ongoing business relationship.

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

I would resolve any potential conflict of interest by following 28 U.S.C § 455, the Code of Conduct for United States Judges, and all applicable policies and procedures of the United States Courts.

- 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.

Every year during my fifteen years of private practice, I handled several cases without charge for people who could not pay. Some of these cases walked in the door, while Legal Services of Northeast Arkansas and Arkansas Volunteer Lawyers for the Elderly referred others to me. I drafted simple wills, handled small estates, resolved landlord/tenant disputes, gave legal advice, and handled appeals. E.g., *Davis v. Office of Child Support Enforcement*, 341 Ark. 349, 20 S.W.3d 273 (2000) (federal disability payments not income for child-support purposes).

Between 1991 and 2006, the U.S. District Court for the Eastern District of Arkansas appointed me to represent plaintiffs and prisoners in civil rights cases. I did so gladly and without fee. By appointment from the Eighth Circuit, I also handled two criminal appeals at a reduced rate. *Shaw v. Norris*, 33 F.3d 958 (8th Cir. 1994) (habeas and double jeopardy); *Osmont v. United States*, 13 F.3d 1240 (8th Cir. 1994) (guilty-plea procedure).

In 2005, the Equal Access to Justice Panel named me the Outstanding Craighead County Volunteer Attorney. That award was based on my handling an appeal for a disabled man, whose access to his property and house trailer had been blocked by an adjoining landowner. We won. *Powhatan Cemetery Association v. Phillips*, 90 Ark. App. 424, 206 S.W.3d 377 (2005).

I also believe that lawyers should help organizations that help people in their community. I therefore did various legal work for free, or at a substantially reduced rate, for a school for disabled children, a clinic providing medical care for the working uninsured, and other local charitable enterprises.

26. Selection Process:

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

There is no selection commission in Arkansas for vacancies on the federal bench. After U.S. District Judges Bill Wilson Jr. and James M. Moody took senior status, I wrote to U.S. Senators Blanche L. Lincoln and Mark L. Pryor and told them that I would be honored to be considered for one of those vacancies. I had periodic contacts with their staff members about the status of their selection process. I filled out a questionnaire sent by Senator Lincoln. She interviewed me on 29 December 2008. During the next six weeks, I had periodic contacts with members of the Senators' staffs about where things stood. On 12 March 2009, Senator Lincoln and Senator Pryor each called and told me that they were recommending me and others to the President for consideration. On 20 August 2009, a lawyer from the White House Counsel's office telephoned and told me that the President was sending my name to the Justice Department for further evaluation. That afternoon, I began a series of communications with Justice Department personnel about my background. On 1 October 2009, lawyers from the White House Counsel's office and the Department of Justice interviewed me in Washington, DC. My nomination was submitted to the Senate on 3 December 2009.

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

No

AFFIDAVIT

I, **Denzil Price Marshall Jr.**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

3 December 2009

(DATE)

DPM Marshall Jr.

(NAME)

Nancy Nelms

(NOTARY)

**NANCY NELMS
NOTARY PUBLIC-STATE OF ARKANSAS
CRAIGHEAD COUNTY
MY COMMISSION EXPIRES 01-01-2019**