

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

James Joseph Donato

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

United States District Judge for the Northern District of California

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.

Office: Shearman & Sterling LLP
 Four Embarcadero Center
 Suite 3800
 San Francisco, California 94111

Residence: Berkeley, California

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

1960; Pasadena, California

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.

1985 – 1988, Stanford Law School; J.D., 1988

1983 – 1984, Harvard University; A.M., History, 1984

1978 – 1983, University of California, Berkeley; B.A., History, 1983

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.

2009 – present
Shearman & Sterling LLP
Four Embarcadero Center
San Francisco, California 94111
Partner

1996 – 2009
Cooley LLP
101 California Street
San Francisco, California 94111
Partner (1998 – 2009)
Special Counsel (1996 – 1998)

1993 – 1996
San Francisco City Attorney's Office
Fox Plaza
San Francisco, California 94102
Deputy City Attorney, Trial Division

1990 – 1993
Morrison & Foerster LLP
345 California Street
San Francisco, California 94104
Associate

September 1989 – November 1989
Law office of Robert Logan
San Jose, California (street address currently unknown)
Intern/Legal Assistant

1988 – 1989
United States Court of Appeals for the Ninth Circuit
50 South Virginia Street
Reno, Nevada 89501
Law Clerk to the Honorable Procter Hug, Jr.

Summer 1988
Hale & Dorr
60 State Street
Boston, Massachusetts 02109
Summer Associate

Spring 1988
Research Assistant to Professor D. Farber
Stanford Law School

559 Nathan Abbott Way
Stanford, California 94305

Summer 1987
Orrick, Herrington & Sutcliffe
405 Howard Street
San Francisco, California 94105
Summer Associate

Spring 1987
Research Assistant to Professor R. Weisberg
Stanford Law School
559 Nathan Abbott Way
Stanford, California 94305

Summer 1986
California Department of Justice
455 Golden Gate Avenue
San Francisco California 94102
Summer Clerk

1984 – 1985
McCutchen Doyle Brown & Enersen
Three Embarcadero Center
San Francisco, California 94111
Legal Assistant

Other affiliations (uncompensated):

2010 – present
Berkeley Symphony
1942 University Avenue
Berkeley, California 94704
Director

1990 – present
Bar Association of San Francisco
301 Battery Street
San Francisco, California 94111
President (2008)
President-Elect (2007)
Treasurer (2006)
Secretary (2005)
Justice Gap Committee (2011 – present)
Food from the Bar Campaign (2011)
Nominating Committee (2009)

Marriage Fairness Task Force (2008 – present)
Charitable Giving Task Force (2006)
Judiciary Committee (2003 – 2005)
Board of Directors (2000 – 2001)
President of the Barristers Club of the Bar Association of San Francisco (young lawyers chapter) (1997)

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

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

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

Professional:

Fellow, American Bar Foundation (2010 – present)
Northern California Super Lawyer (2004 – 2013)
Legal 500 for antitrust law (2013)
Northern California Innocence Project Pro Bono Firm of the Year (2013)
Award of Merit, Bar Association of San Francisco (2012)
Benchmark Litigation for antitrust law (2011)
Legal 500 for healthcare law (2011)

Academic:

Duniway and Yee scholarships at Stanford Law School
Senior Editor, Stanford Law Review
Scholarship at Harvard Graduate School of Arts and Science
Phi Beta Kappa, University of California, Berkeley

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 (2009 – present)

American Bar Foundation (2009 – present)
Fellow

American Law Institute (2000 – present)
Elected Member (2000 – present)

ALI Outreach Committee (2012)
Adviser, Restatement (3d) of Torts (2008 – 2011)

Bar Association of San Francisco (1990 – present)
Justice Gap Committee (2011 – present)
Food from the Bar Campaign (2011)
Nominating Committee (2009)
President (2008)
Marriage Fairness Task Force (2008 – present)
President-Elect (2007)
Treasurer (2006)
Charitable Giving Task Force (2006)
Secretary (2005)
Judiciary Committee (2003 – 2005)
Board of Directors (2000 – 2001)
President of the Barristers Club of San Francisco (young lawyers chapter) (1997)

Federal Bar Association (approximately 2000 – 2007)

Northern California Innocence Project (2007 – 2010)
Advisory Board

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.

California, 1990
Hawaii, 2012

There have been no lapses in membership.

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

Supreme Court of the United States, 2002
United States Court of Appeals for the Ninth Circuit, 1990
United States Court of Appeals for the First Circuit, 2008
United States District Court, Northern District of California, 1990
United States District Court, Eastern District of California, 1990
United States District Court, Central District of California, 1991
United States District Court, District of Colorado, 1997
United States District Court, Eastern District of Michigan, 1997
United States District Court, Southern District of California, 2000

State of California, 1990
State of Hawaii, 2012

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.

Berkeley Symphony (2011 – present)
Director

Newman Hall Holy Spirit Parish (2007 – 2010)
Parish Council

College Preparatory School (2008 – 2009)
Fifty Forward Committee

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

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

12. Published Writings and Public Statements:

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

ABA Section of Antitrust Law, Antitrust Law Developments (Jonathan Gleklen, et al. eds., 7th ed. 2012) (contributing writer). Copy supplied.

Equal Justice Under Law: We can afford civil Gideon Daily Journal, Oct. 10, 2011 (with James Brosnahan). Copy supplied.

Beikoku Class Action no Saishin Jitsumu. 39 Kokusai Shoji Homu, Journal of the Japanese Institute of Int'l Bus. Law, no. 8, 2011. Copy supplied.

Beikoku Class Action no Saishin Jitsumu. 39 Kokusai Shoji Homu, Journal of the Japanese Institute of Int'l Bus. Law, no. 6, 2011. Copy supplied.

Beikoku Class Action no Saishin Jitsumu., 39 Kokusai Shoji Homu, Journal of the Japanese Institute of Int'l Bus. Law, no. 4, 2011. Copy supplied.

The Role of Technology in Evidence Collection: Leading Lawyers on Preserving Electronic Evidence, Developing New Collection Strategies, and Understanding the Implications of Social Media, Practical E-Discovery Issues 7 (Jo Alice Darden ed.) (2011). Copy supplied.

Defending a Class Action Trial, Daily Journal, July 19, 2010. Copy supplied.

California Supreme Court Holds 'Pass-On' Defense Unavailable in Antitrust Suit (Shearman & Sterling LLP client publication July 2010). Copy supplied.

Judicial Independence Must Be Respected, The Bar Association of San Francisco, Sept. 9, 2008. Copy supplied.

Our Enduring Mission, 34 San Francisco Attorney, no. 4, 2008. Copy supplied.

New Standards for an Enduring Problem, 34 San Francisco Attorney, no. 3, 2008. Copy supplied.

The Justice Gap, 34 San Francisco Attorney, no. 2, 2008. Copy supplied.

Standing Together in Public Service Through The Law, 34 San Francisco Attorney, no. 1, 2008. Copy supplied.

Are We Rome? 32 San Francisco Attorney, no. 3, 2006. Copy supplied.

Section 17200: Reform Comes In From The Cold, 14 Ass'n of Bus. Trial Lawyers J., no. 2, 2005.

At Sidebar, 50 Federal Lawyer, May 2003. Copy supplied.

Dworkin and Subjectivity in Legal Interpretation, 40 Stan. L. Rev. 1517 (1988). Copy supplied.

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

I served as a board member from 2000 to 2001 and as an officer from 2005 to 2008 for the Bar Association of San Francisco. During that time, the Bar Association signed on to or requested the preparation of amicus briefs. The Bar Association also periodically prepared reports on diversity initiatives. Although I did not personally prepare these letters, briefs, or reports, I did vote on their submission or publication in my capacity as an officer or board member of the Bar Association. I have listed the materials on which I voted that I was able to identify after searching my records and consulting with the Bar Association.

Amicus Letter to the California Supreme Court re Proposition 8 (November 10, 2008). Copy supplied.

Report on Lesbian, Gay, Bisexual and Transgender Issues (November 2007). Copy supplied.

Signatory to Amicus Brief by the Bar of the City of New York in support of affirming a decision in *Hepting v. AT&T*, 439 F. Supp. 2d 974 (N.D. Cal. 2006), denying a motion to dismiss a challenge to AT&T's participation in a warrantless surveillance program. Copy available at 2007 WL 1899190.

- 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.

Signatory to Letter by the Bar Association of San Francisco to California Judicial Council re state court budget cuts (July 21, 2011). Copy supplied.

Signatory to Letter by the Bar Association of San Francisco to Senator Patrick Leahy re Nomination of Magistrate Judge Edward Chen (Sept. 14, 2009). Copy supplied.

During my tenure as a board member or officer of the Bar Association of San Francisco, the Bar Association periodically sent letters to public bodies and issued press releases. Although I did not personally prepare or recall these letters or press releases, I may have voted on their submission or publication in my capacity as an officer or board member of the Bar Association:

Letter by the Bar Association of San Francisco to California State Senators re SB 511, 609 and 756 (Sept. 5, 2007). Copy supplied.

Press Release by the Bar Association of San Francisco re Evaluation of Superior Court Judicial Candidate (June 2, 2006). Copy supplied.

Letter by the Bar Association of San Francisco to Senators Dianne Feinstein, Barbara Boxer, Arlen Specter and Patrick Leahy re nomination of Judge Samuel Alito to the United States Supreme Court (Jan. 10, 2006). Copy supplied.

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

March 21, 2013: I gave an acceptance speech at the Northern California Innocence Project dinner in Redwood City, California, for an award recognizing pro bono service. I have no notes, transcripts or recordings for this event. The address of the Northern California Innocence Project is Santa Clara University School of Law, 900 Lafayette Street, Suite 105, Santa Clara, California 95050.

September 28, 2012: I participated in a small-group meeting of the American Law Institute in San Francisco, California, about a potential privacy law project. I have no notes, transcripts or recordings for this event. The address of the American Law Institute is 4025 Chestnut Street, Philadelphia, Pennsylvania 19104.

October 22, 2011, and September 27, 2012: I delivered opening remarks at events in San Francisco, California, for local members of the American Law Institute. These remarks were introductions of other speakers. I gave similar remarks in San Francisco, California, to local members of the American Law Institute on September 23, 2010, March 22, 2011. I have no notes, transcripts or recordings for these events. The address of the American Law Institute is 4025 Chestnut Street, Philadelphia, Pennsylvania 19104.

March 22, 2011: I was a panelist for a Bar Association of San Francisco event on women in the law. I have no notes, transcripts or recordings for this event. The address of the Bar Association of San Francisco is 301 Battery Street, San

Francisco, California 94111.

October 14, 2011: I was a panelist on class action trials at the ABA 15th National Institute on Class Actions. I have no notes, transcripts or recordings for this event, but press coverage is supplied. The address of the American Bar Association is Chicago Headquarters, 321 North Clark Street, Chicago, Illinois 60654.

October 19, 2010: I made introductory remarks at a seminar in Palo Alto, California, hosted by Shearman & Sterling LLP on antitrust issues facing technology companies. I have no notes, transcripts or recordings for this event. The address of Shearman & Sterling LLP is Four Embarcadero Center, San Francisco, California, 94111.

September 23, 2010: I delivered opening remarks at an event in San Francisco, California, for local members of the American Law Institute. These remarks were introductions of other speakers. I have no notes, transcripts or recordings for these events. The address of the American Law Institute is 4025 Chestnut Street, Philadelphia, Pennsylvania 19104.

March 25, 2010: I was a panelist in San Francisco, California, at the No Glass Ceiling: Crossing the Finish Line conference hosted by the Bar Association of San Francisco. I have no notes, transcripts or recordings for this event. The address of the Bar Association of San Francisco is 301 Battery Street, San Francisco, California 94111.

2008 and 2009: As President of the Bar Association of San Francisco, I made several short introductions and speeches at award ceremonies, officer installations, and other bar events in San Francisco, California, and other California locations. I have no notes, transcripts or recordings for these events. The address of the Bar Association of San Francisco is 301 Battery Street, San Francisco, California 94111.

December 18, 2008: I delivered remarks in San Francisco, California, at the Annual Meeting of the Bar Association of San Francisco on the end of my term as president and the installation of the new president. I have no notes, transcripts or recordings for this event. The address of the Bar Association of San Francisco is 301 Battery Street, San Francisco, California 94111.

November 24, 2008: I delivered remarks in San Francisco, California, at a meeting of the State Bar of California on the topic of bar association legal referral services. I have no notes, transcripts or recordings for this event. The address of the State Bar of California is 180 Howard Street, San Francisco, California 94105.

October 28, 2008: I delivered introductory remarks in San Francisco, California, at the Bridging the Justice Gap: The Right to a Lawyer conference hosted by the

Bar Association San Francisco. I have no notes, transcripts or recordings for this event. The address of the Bar Association of San Francisco is 301 Battery Street, San Francisco, California 94111.

October 11, 2008: I delivered introductory remarks in San Francisco, California, at Annual Gala for the Volunteer Legal Services Program of the Bar Association San Francisco. I have no notes, transcripts or recordings for this event, but press coverage is supplied. The address of the Bar Association of San Francisco is 301 Battery Street, San Francisco, California 94111.

May 20, 2008: I spoke in Washington, D.C., at the American Law Institute's annual meeting on the occasion of the retirement of President Michael Traynor. Transcript supplied.

April 17, 2008: I delivered introductory remarks in San Francisco, California, at a public forum hosted by the Bar Association San Francisco on candidates for election to Superior Court. I have no notes, transcripts or recordings for this event. The address of the Bar Association of San Francisco is 301 Battery Street, San Francisco, California 94111.

April 4, 2008: I delivered introductory remarks in San Francisco, California, at a Bar Association of San Francisco conference on Law Office Diversity, Inclusion and Retention. I have no notes, transcripts or recordings for this event, but press coverage is supplied. The address of the Bar Association of San Francisco is 301 Battery Street, San Francisco, California 94111.

December 19, 2007: I gave a speech to the Bar Association of San Francisco at my installation as president in San Francisco, California. Copy of my remarks, *Standing Together in Public Service Through The Law*, have been supplied in response to Question 12a.

- 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.

Interview in Law360, June 25, 2012, on the burden of proof for fines in criminal antitrust cases. Copy supplied.

Northern California's Newest Federal Judge a Piedmonter, Contra Costa Times, March 29, 2012. Copy supplied.

Donato Receives Bar Association of San Francisco's Award of Merit for Pro Bono Efforts, Shearman & Sterling LLP press release, March 15, 2012. Copy supplied.

20th Anniversary of Food From The Bar Campaign Brings in record Amount, Bar Association of San Francisco press release, July 7, 2011. Copy supplied.

Team Files Brief on Behalf of California's Poorest Residents in Groundbreaking Tax Case, Shearman & Sterling LLP press release, Dec. 15, 2010. Copy supplied.

Shearman & Sterling's Second Bay Area Seminar Examines EU and International Merger Control, Shearman & Sterling LLP press release, Nov. 22, 2010. Copy supplied.

DOJ/FTC Horizontal Merger Guidelines, Shearman & Sterling LLP press release, Oct. 19, 2010. Copy supplied.

NCIP Newsletter, Santa Clara Law School (Fall 2010). Copy supplied.

Cooley Announces Details of 2009 Diversity Fellowship Program, Cooley Godward LLP press release, March 4, 2009. Copy supplied.

Bar's Referral Service Idea Sparks Outcry, Oakland Employment Lawyer blog, Nov. 24, 2008. Copy supplied.

Woes that Felled 2 S.F. Law Firms Shaking Industry, San Francisco Chronicle, Nov. 1, 2008. Copy supplied.

State Bar Announces Diversity Award Winners, U.S. States News, Aug. 21, 2008. Copy supplied.

BASF Diversity Director Yolanda Jackson Named Deputy Executive Director, Bar Association of San Francisco press release, June 17, 2008. Copy supplied.

Bar Association Gives its Qualified Support for Judge, San Francisco Weekly, May 21, 2008. Copy supplied.

BASF First to Support ACLU Death Penalty Guidelines Resolution in California, Bar Association of San Francisco press release, April 4, 2008. Copy supplied.

Cooley Godward Kronish Announces Diversity Fellowship Program (Cooley LLP press release Jan. 31, 2008). Copy supplied.

District Court Dismisses Tyco Antitrust Suit, Competition Law360, Jan. 24, 2008. Copy supplied.

BASF's New President Putting Public Education First, The Recorder, Jan. 14, 2008. Copy supplied.

Lawyers Working to Defeat the Death Penalty, 34 San Francisco Attorney, no. 3,

2008. Copy supplied.

The Civil Gideon Movement: Justice for All, 34 San Francisco Attorney, no. 2, 2008. Copy supplied.

Profile of a President, 34 San Francisco Attorney, no. 1, 2008. Copy supplied.

'Rare Bird' Prepares to Helm SF Bar Association, Daily Journal, Dec. 19, 2007. Copy supplied.

Schools Settle Achievement Test Lawsuit, The Daily Californian, Nov. 21, 2000. Copy supplied.

Deal Behind School's Reversal on English Tests Suit, San Francisco Examiner, Nov. 17, 2000. Copy supplied.

Schools Put State Exam to the Test in Court, San Francisco Chronicle, Nov. 1, 2000. Copy supplied.

Precedent Setting Trial Set for the City Disputed Test Policy State Wants to Include Limited-English Kids, San Francisco Examiner, Oct. 30, 2000. Copy supplied.

English-only Testing Gets Day in Court, San Diego Union-Tribune, Oct. 28, 2000. Copy supplied.

Trial Will be the Test of English-Only Exams 4 Bay Area Districts Argue They're Unfair to Students Newly Learning the Language, San Francisco Examiner, Oct. 20, 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 have not held any judicial offices.

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

- 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.
 - 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).
 - d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
 - e. Provide a list of all cases in which certiorari was requested or granted.
 - f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held any judicial offices.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

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

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

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

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

I served as a volunteer polling place monitor for the Democratic Party in the 2008 presidential election in Liberty City, Florida.

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

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

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

I served as a Judicial Law Clerk to the Honorable Procter Hug, Jr., Circuit Judge of the United States Court of Appeals for the Ninth Circuit.

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

I have not practiced law alone at any time in my legal career.

- 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.

June – July 1988
Hale & Dorr
60 State Street
Boston, Massachusetts 02109
Summer Associate

September 1989 – November 1989
Law Office of Robert Logan
San Jose, California (street address currently unknown)
Intern/Legal Assistant

1990 – 1993
Morrison & Foerster LLP
345 California Street
San Francisco, California 94104
Associate

1993 – 1996
San Francisco City Attorney's Office
Fox Plaza
San Francisco, California 94102
Deputy City Attorney, Trial Division

1996 – 2009
Cooley LLP
101 California Street
San Francisco, California 94111
Special Counsel (1996 – 1998)
Partner (1998 – 2009)

2009 – present
Shearman & Sterling LLP
Four Embarcadero Center
Suite 3800
San Francisco, California 94111
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.

I have served as a court-appointed mediator for the Northern District of

California since approximately 2002. I typically handle one or two mediations per year. The cases referred to me by the Court are generally civil rights actions against state or local law enforcement departments and officers, typically for claims of excessive force. As a court-appointed mediator, I do not give formal opinions about the law or the facts. My role is limited to promoting settlement negotiations between the parties. All communications during the mediations are privileged under state and federal law.

b. Describe:

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

After the end of my judicial clerkship, I worked for approximately two months as a part-time intern for a sole practitioner, Robert Logan, in San Jose, California. Mr. Logan was a former city attorney and an acquaintance of my father. I provided legal assistant services to Mr. Logan on a very limited part-time basis.

From 1990 to 1993, I worked as a junior associate at Morrison & Foerster in San Francisco. I assisted in civil litigation and land use cases mainly as defense counsel for corporations in matters involving contract claims, RICO, CEQA, CERCLA, business torts, and other civil issues. I performed research and analysis, document drafting, written and deposition discovery, case management and other tasks. I also worked on pro bono matters, including an immigration asylum case and environmental cases.

From 1993 to 1996, I entered government service as a Deputy City Attorney in the Trial Division of the San Francisco City Attorney's Office. I was responsible for defending San Francisco and its employees in a wide range of civil litigation matters, including complex personal injury cases and Section 1983 civil rights claims against San Francisco Police and Sheriff Officers. My duties involved handling every aspect of each case from the initial response to the complaint through motion practice, discovery, and settlement or trial. I tried several civil cases before juries on behalf of the City and County of San Francisco.

From 1996 to 2009, I returned to private practice as a special counsel and partner in the San Francisco office of Cooley LLP. My practice consisted of civil litigation in a broad array of substantive fields including antitrust and unfair competition, class actions, consumer fraud and warranty, privacy, contracts, business torts, Lanham Act, False Claims Act, Section 1983, RICO, copyright, mergers and acquisitions, technology licenses, and other fields. I took cases to bench and jury trials while at Cooley. In

addition to these matters, I was active in pro bono cases, including assisting in a dispute over public housing that was decided by the United States Supreme Court in 2002 (*HUD v. Rucker*, 535 U.S. 125 (2002)). I was also the chair of the firmwide Diversity Committee for several years.

Since 2009, I have practiced as a partner in the San Francisco office of Shearman & Sterling LLP. My practice continues to involve the same broad array of civil litigation matters that I handled at Cooley. I tried a federal antitrust class action case before a jury while at Shearman. I have continued to handle pro bono matters, including a California state habeas petition on behalf of an inmate in conjunction with the Northern California Innocence Project. I am also a member of the firm's Diversity Committee.

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

At all stages of my time in private practice, my clients typically have been American and international technology and Internet companies, consumer manufacturing and services companies, and medical device companies. Since 2002, I have focused on antitrust cases.

- 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.

My practice has always been 100% litigation. I am typically in court frequently.

- i. Indicate the percentage of your practice in:

- 1. federal courts: 90%
- 2. state courts of record: 10%
- 3. other courts: 0%
- 4. administrative agencies: 0%

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 100%
- 2. criminal proceedings: 0%

- 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 have tried six cases to verdict or final decision. I was lead or co-lead counsel in four and associate counsel in two.

In addition, I have tried four other cases that settled during trial before submission

to the jury or bench. I was lead or co-lead counsel in each of these trials.

i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 80% |
| 2. non-jury: | 20% |

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.

HUD v. Rucker, 535 U.S. 125 (2002) (opposition brief to petition for certiorari, 2001 WL 34090276; brief for the respondents, 2001 WL 1705900).

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) *Masimo Corp. v. Tyco Healthcare et al.*, No. 2:02-cv-04770-MRP-AJW, United States District Court for the Central District of California, Judge Mariana Pfaelzer (2002 – 2007).

This case involved antitrust claims under Sherman Act Section 1 and Section 2, and Clayton Act Section 3, for unreasonable restraints, monopolization, and exclusionary conduct in the U.S. market for pulse oximeters. On behalf of defendant Tyco Healthcare, I served as second chair in the five-week jury trial on liability and damages. After the jury verdict, I was lead counsel for the post-trial motion for Judgment as a Matter of Law that successfully reversed some of the liability findings and set aside damages entirely for a new trial. I was lead counsel in the damages re-trial. The verdict was reduced by approximately 90% after re-trial. The case involved multiple economists as experts on liability and damages issues, as well as multiple party and third-party witnesses.

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- (2) *Natchitoches Parish Hosp. Service District v. Tyco Healthcare et al.*, 1:05-cv-12024-PBS, District of Massachusetts, Judge Patti B. Saris (2006 – 2010).

This case was an antitrust consumer class action under Sherman Act Section 1 and Section 2 for unreasonable restraints, monopolization, and exclusionary conduct in the U.S. market for sharps disposal containers. After substantial motion practice, including multiple rounds of briefing and argument on class certification, the case went to trial before a jury in Boston. This is one of the relatively few times an antitrust class action has gone to trial. The case settled the night before closing argument after three weeks of trial, on terms favorable to my client. I was lead counsel throughout the case and at trial. The case featured multiple economists as expert witnesses on liability and damages issues. The case involved several important antitrust issues, including whether above-cost discounts could amount to anticompetitive conduct. The case also raised important questions about class certification in Section 2 cases where putative class members were subject to highly variable discounting arrangements, and certain class members (namely distributors) had financial interests in conflict with other class members (direct purchasers). The class certification issues were sufficiently novel and complex that the court retained an independent expert to assist it.

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- (3) *Malaney v. UAL Corp.*, No. 3:10-cv-02858-RS, United States District Court for the Northern District of California, Judge Richard Seeborg (2011 – present).

This is an antitrust case under Clayton Act Section 7 challenging the merger of United and Continental airlines. I have been lead counsel for United since preliminary injunction proceedings were handled by other counsel. After denial of the injunction, plaintiffs filed amended complaints seeking damages and other relief. I won dismissal of the case with prejudice on a motion to dismiss. Plaintiffs have appealed and the matter is fully briefed and pending for argument in the Ninth Circuit. This case raised issues about the proper pleading of a relevant product market and the application of Section 7 case law through *United States v. General Dynamics Corp.*, 415 U.S. 486 (1974).

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- (4) *In re Carrier IQ Inc. Consumer Privacy Litigation.*, No. 12-md-2330-EMC, United States District Court for the Northern District of California, Judge Edward Chen (2012 – present).

This case is a consumer class action alleging wiretapping and other privacy and consumer claims relating to use of the Carrier IQ product on cell phones. Carrier IQ provides network monitoring services for service providers such as AT&T, Sprint, and other carriers. Plaintiffs allege that Carrier IQ also surreptitiously collects and transmits personally identifiable information about consumers without consent. The case is a multi-district litigation matter that has been assigned to the Northern District of California. I am lead counsel for defendant LG Electronics, which manufactures handsets allegedly loaded with the Carrier IQ product. The case is in active litigation with a motion to compel arbitration pending before the court. The case raises important issues about the application of the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510 *et seq.*, and multiple consumer and state law privacy statutes, to cell phones. It also raises important issues of compelling arbitration and class action waivers under the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*, and *AT&T Mobility LLC v. Concepcion*, 563 U.S. ___, 131 S.Ct. 1740 (2011).

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(5) O&R Construction, LLC, v. Dun & Bradstreet Credibility Corporation, Dun & Bradstreet Corporation, and Dun & Bradstreet, Inc., No. 2:12-cv-02184-TSZ, Western District of Washington, Judge Thomas S. Zilly (2012 – present).

This case is a consumer class action that originally alleged antitrust and consumer claims relating to the sale of certain credit building and monitoring products to small businesses. I am lead counsel for defendant Dun & Bradstreet. The case is in active litigation. After a motion to dismiss the original complaint, plaintiff filed an amended complaint that dropped the antitrust claims we had challenged as legally insufficient. A new motion to dismiss the amended complaint is pending.

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- (6) *Southeast Missouri Hosp. v. Bard et al.*, No. 1:07-cv-00031-TCM, Eastern District of Missouri, Magistrate Judge Thomas C. Mummert, III (2006 – 2008).

This case was an antitrust consumer class action for unreasonable restraints, monopolization, and exclusionary conduct in the U.S. market for urology catheters. Plaintiffs alleged claims based on above-cost discounts and other pricing programs. I was lead counsel for defendant Tyco Healthcare. I won dismissal with prejudice on our motion at the pleading stage, primarily on the grounds that plaintiffs failed to plead facts sufficient to show substantial anticompetitive foreclosure by Tyco Healthcare, and that the market shares of independent business entities could not be aggregated to show foreclosure absent conspiracy allegations.

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- (7) *Hindin v Agilent*, No. CGC-02-406137, San Francisco Superior Court, Judge John Munter (2008 – 2010).

This case was a California False Claims Act action for alleged fraud in healthcare reimbursements and the sale of medical devices to the State of California. I was lead counsel for defendant Agilent. The case settled in mediation on terms favorable to my client. The California False Claims Act closely follows the federal False Claims Act, and the case raised complicated questions about government health care payments and contract certifications in the false claims context.

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- (8) *Stewart et al. v. Gogo, Inc.*, No. 12-cv-05164-EMC, United States District Court for the Northern District of California, Judge Edward M. Chen (2012 – present).

This case is a consumer antitrust class action alleging monopolization and exclusive dealing under Sherman Act Section 1 and Section 2, and California state law analogs, in the U.S. market for in-flight Internet connectivity on commercial aircraft. I am lead counsel for defendant Gogo. We won dismissal of the amended complaint without prejudice and anticipate bringing another motion to dismiss if plaintiffs amend. The case is in active litigation. The case raises issues about the definition of a relevant product market and the determination of substantial foreclosure in new and rapidly developing technology markets.

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(9) *Larscom v. UTStarcom*, JAMS arbitration, Judge Eugene Lynch (Ret.) (2002 – 2004).

This case involved a dispute between Larscom and UTStarcom over a license for telecommunications hardware. I was lead counsel for plaintiff Larscom in a technology license dispute. The case went to binding arbitration, and I won all of the damages and costs requested by my client.

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(10) *In re Jack Edward Sagin*, No. H039151, California Court of Appeal for the Sixth District (2009 – present).

This case is a pro bono matter involving a habeas corpus petition for an incarcerated inmate based on new DNA evidence acquired post-conviction. The case raises novel issues involving innocence claims based on the absence of incriminating DNA. We are co-counsel with the Northern California Innocence project. The case is active and pending.

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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.)

In addition to my caseload, I have served as an officer or board member in several organizations focused legal discourse and the delivery of pro bono legal services. I have been very involved in the Bar Association of San Francisco throughout my career. The Bar Association of San Francisco is one of the leading bar organizations in the United States, and is very active in the delivery of legal services. In 1997, I was the president of the Barristers Club of the Bar Association of San Francisco, which is the the young lawyers division of the bar association. I also was a board member of the Bar Association of San Francisco from 2000 to 2001 and as the president in 2008. As an officer and board member, I was responsible for the administration and operation of the bar and participated in discussions and votes on setting bar policy. I have also served as the co-chair of the Bar Association of San Francisco Civil Gideon Committee since 2011. This committee investigates ways of obtaining legal counsel for indigent individuals and families in civil litigation matters involving housing, child custody and similar matters. From 2007 to 2010, I have also been an advisory board member of the Northern California Innocence Project. As an advisory board member, I was responsible for the administration and operation of the organization. Finally, I was elected to be a member

of the American Law Institute in 2000. The ALI is a national limited membership organization engaged in scholarly work to clarify the law, primarily at the state common law level.

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.

Approximately ten years ago, I taught one semester of first-year contracts at San Francisco Law School. I do not 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.

If confirmed, I would receive compensation payments for my work to date upon separation from Shearman & Sterling LLP. I would also receive retirement benefits under an HR-10 Plan maintained by Shearman, which have already vested. Depending on the date of termination of my service with Shearman, I might also receive retirement benefits under a pension plan.

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.

If confirmed, I have no plans, commitments, or agreements to pursue outside employment.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

I am not aware of any potential conflicts of interest likely to be presented by family members. I would recuse myself, for at least some initial time period, from any case being handled by my current law firm. I would also recuse myself from cases on which I previously worked, and from any case where, due to professional or personal relationships with a party or attorney involved, my impartiality might reasonably be questioned. Overall, I will follow the provisions of the Code of Conduct for United States Judges and other relevant canons or statutes.

- 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 resolve any potential conflict of interest pursuant to the Code of Conduct for United States Judges and all other applicable rules of ethics.

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.

I have regularly engaged in pro bono work throughout my career. I have worked on many pro bono cases since starting my practice in 1990, and have also served in organizations such as the Bar Association of San Francisco that are dedicated to providing pro bono legal services. Some matters have involved referrals from the Northern District of California judges to represent prisoners without counsel in Section 1983 cases, typically over prison condition issues and excessive force claims. In 2002, I second-chaired a pro bono case involving public housing policy that was heard by the United States Supreme Court. As my career progressed, I have regularly supervised younger lawyers in pro bono matters for which they have primary responsibility. Most recently, I have spent significant amounts of time handling a civil habeas petition for a pro bono client in conjunction with the Northern California Innocence Project. I have also served as a court-appointed mediator for the Northern District of California since approximately 2002 on a pro bono (non-fee) basis.

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 the fall of 2012, the Chair of Senator Feinstein's selection committee for the Northern District of California contacted me about submitting an application for a District Judge appointment. I submitted a written application in October 2012 and met with the committee shortly afterward in San Francisco, California. In late November 2012, I met with Senator Feinstein's state-wide chair in San Diego, California, for a further interview. In early March 2013, I was advised by officials from the Office of Legal Policy at the Department of Justice that Senator Feinstein had forwarded my name to the White House as a potential nominee for an open seat in the Northern District of California, and I have been in contact with officials from OLP since then. On April 25, 2013, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On June 20, 2013, 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.